

Marriage Is the Best Measure of Society's Commitment to Child Well-being

By Lynn D. Wardle¹

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- I. Introduction: The Case for Marriage in the Best Interests of Children*

"Protecting children is a top priority" was a headline in an American newspaper recently.² The headline and accompanying story -- written by a member of the Minnesota state legislature -- express a sentiment with which few would disagree. Similarly, the director of a British child services agency recently declared: "We need to think about the child's physical safety, social safety, emotional safety - their whole wellbeing both at home and in the school environment."³

¹ Bruce C. Hafen Professor of Law, J. Reuben Clark Law School, Brigham Young University, Provo, UT. This paper was originally presented at the International Society of Family Law Colloquium on *Parents and Children: A Comparative and International Perspective*, at Notre Dame London Center in London, England, UK, on April 15, 2016.

² Tyler Ohmann, Opinion, *Protecting children is a top priority*, Morrison County [MN] Record, Apr. 1, 2016, at <http://mcrecord.com/2016/04/01/protecting-children-is-a-top-priority/> (seen 8 April 2016).

³ Sarah Jewell, *Children give safety top priority*, The Guardian, at <http://www.theguardian.com/everychildmatters/story/0,1892002,00.html> (seen 8 April 2016).

Again, the sentiment is nearly universal. In principle nearly everyone agrees that the well-being of children should be given top priority not only in our personal lives but also, especially, in matters of public policy and government services and programs.

However, in reality, do we –as societies, families and individuals– really give top priority to providing for and protecting children? If so, one of the first things we would do would be to insure that the family environment – the environment in which children spend most of their time and in which most of their socialization and development occurs – is the most beneficial for their most favorable and complete development. The family environment that is the most beneficial for children is the marital family. Sadly, however, marriage and marital families seem to be devalued today. For example, the former President of the International Society for Family Law, Professor Patrick Parkinson, wrote in 2012: “For years, the rhetoric of progressive politics has been that family structure does not matter and that the law should equally recognise and value all kinds of family, not just the “traditional” family consisting of a married couple with children. Many have been dismissive of marriage as an institution.”⁴ He added: “Marriage is a mere shadow of what it used to be, legally and culturally Robbed of its distinctiveness, and detached from its cultural and religious roots, *marriage as an institution is unlikely to retain its cultural importance and vitality.*”⁵

⁴ Patrick Parkinson, *About time we all cared more about marriage*, The Sydney Morning Herald, August 24, 2012, at <http://www.smh.com.au/federal-politics/political-opinion/about-time-we-all-cared-more-about-marriage-20120823-24p2g> (seen 1 March 2016):

⁵ *Id.* (emphasis added). In a presentation made at the Brigham Young University Law School in January, 2016, Professor Parkinson opined that marriage as we know it and as it has been known in western societies for centuries will not survive.

That is a very sobering prediction. Truly, marriages are not perfect; all marriages and all persons have flaws. However, as imperfect as they are, marriages overall and categorically provide the best environment in which adult intimate relations may be nurtured, and in which children may be born and raised. Indeed, one might say about the marital family compared to other kinds of family forms what Churchill said about democracy compared to other forms of government – that it “is the worst form . . . except [for] all those other forms that have been tried from time to time.”⁶

The best measure of any society’s or legal system’s commitment to the well-being of its children is its commitment to and support of the institution of marriage. That is because healthy marriage generally provides the most secure and most promising family setting into which children may be born and in which children can most safely and successfully be reared. No other social relationship, institution, government agency, or program benefits children as much as marriage does.

Where marriage access is unduly restricted, or marital stability and longevity limited, or where marriages are severely burdened by cultural, legal and other social influences that curtail the benefits of marriage, more children are born and/or raised outside of marriage. The children of nonmarital relationships and children of insecure and failed marriages experience more difficult, disadvantaged lives and life outcomes. Children deprived of the benefits of healthy,

⁶ Winston Churchill, speech, House of Commons, November 11, 1947, in Winston S. Churchill: His Complete Speeches, 1897-1963, ed. Robert Rhodes James, vol. 7, p. 7566 (1974), at <http://bartleby.com/73/417.html> (seen 8 April 2016).

stable marriages disproportionately generally fall into the underclass – educationally, economically, legally and socially.

Since marriage rates are dropping in many nations, especially in affluent western nations, there is good reason to be concerned that the welfare of children in those countries will be diminished and their opportunities will be impaired compared to children in those nations in prior generations, and, ironically, compared to children in less prosperous countries in the world.

Not all adults are able or willing to make or sustain the real, full marital commitment necessary to make a healthy, lasting marriage. Because it takes two spouses to make a marriage work, but it only takes one spouse to end or abandon or destroy a marriage, our laws and societies must be prepared to help, assist and protect the interests of vulnerable adults and children in nonmarital relationships, in unstable marriages, after divorce, and after so-called “common law divorce,” (i.e., abandonment).

So, if a society truly is committed to promoting the well-being of children, and to their most advantageous growth and development it will be (at least) equally committed to protecting, encouraging and promoting healthy marriage. A marriage-promoting society also will strive to preserve, strengthen, and improve the quality of marriages. A legal system can do so by facilitating and supporting informed, reasonable and responsible entry into marriage. That means that society will provide reasonable preparation for marriage (such as providing basic marriage education and training). It also means that such states will foster other organizations (including private, charitable, religious and other non-governmental organizations) that help to foster marriage and that teach responsible marriage practices, and that help couples to achieve successful, healthy, happy married life.

While the benefits of marriage for adults are obvious and many, the benefits of marriage for children and for society may be even more profound. Indeed, it could be argued that marriage is a social institution created first, and foremost, for the benefit of children, their parents, and future generations of society.

II. Changing Families and Family Structures

The world is changing in many ways, and among the most profound changes are occurring in families. Some of those family changes involve or portend very deep and powerful changes in the environment in which children live and are raised. Changes in family composition and family structure can produce consequences for individuals and families that last for generations. That is because the family is the main site of and the very heart of the environment in which children grow up, are socialized, and acquire their core beliefs, values, and living patterns.

Changes occurring in the United States may be indicative of what is happening to families in many nations. The U.S. Census Bureau reported in 2010 that about half of all men (50 percent) and women (54 percent) in America aged 15 and over have married only once.⁷ But that represents a drop in the once-married population of four percent (men) to six percent (women) in less than fifteen years.⁸ Marriage stability generally is highest among well-educated Americans.⁹ While nearly 60 percent of recent marriages are first marriages for both spouses, twenty-one percent (21%) of marriages involve both spouses who have been married at least once

⁷ Jamie M. Lewis & Rose M. Kreider, *Remarriage in the United States*, American Community Survey Reports, March 2015, at 2 (hereinafter “*Remarriage*.”).

⁸ *Id.*

⁹ *Id.* (“Those with at least a bachelor’s degree are more likely to have married only once (64 percent) than all adults (52 percent).”).

previously.¹⁰ In the period 2008-2012, two-thirds of all men age fifteen or older (66.4%) and nearly three-fourths of all women (72.1%) were or had been married.¹¹ The rate of multiple marriages increases with the age of the parties until age 65, when it subsides.¹² Foreign-born Americans are the most likely to have married only once.¹³

Americans who have graduated from college (bachelor's degree) have lower risk of divorce than those with less education.¹⁴ The unemployed and those with low incomes have the highest percentage of never-married status, though some of that reflects their relatively young age.¹⁵ The recent drop in percentage of men and women who have ever married reflects also the rising age of marriage. The median age of first marriage for men fell consistently from 1890 (26.1 years) to 1960 (22.8 years), but it has risen pretty steadily since then and was 28.2 years in 2010. Likewise, the median age of first marriage for women fell regularly from 1890 (22.0 years) to 1960 (20.3 years), but it has risen pretty steadily since then and was 26.1 years in 2010.¹⁶ Out-of-wedlock births have steadily risen in America. In 2012, nearly 41% (40.7%) of all children born in the United States of America were born out of wedlock.¹⁷ In the United Kingdom, 47.5%

¹⁰ *Id.*

¹¹ *Id.* at 3, Table 1.

¹² *Id.* at 5, Table 2.

¹³ *Id.* at 6; *id.* at 7, Table 2.

¹⁴ *Id.*

¹⁵ *Id.* at 8, Table 3.

¹⁶ *Median Age at First Marriage, 1890-2010*, at <http://www.infoplease.com/ipa/A0005061.html> (seen 5 April 2016).

¹⁷ See Roger Clegg, *Latest Statistics on Out-of-Wedlock Births*, National Review, Oct. 11, 2013, at <http://www.nationalreview.com/corner/360990/latest-statistics-out-wedlock-births-roger-clegg> (seen 8 April 2016).

of all births in 2012 (346,595 babies) were out of wedlock, and it was predicted that “[m]ost children will be born out of wedlock by 2016.”¹⁸ For the first time since the U.K. Census was founded in 1801, married couples in 2012 were a minority.¹⁹

The rate of marriages (per 1,000 population) in the United States rose steadily from 1900 until 1930, fell during the Great Depression, rose again during the 1940s and 1950s, fell for a decade, then stabilized between 10.0 and 10.6 for sixteen years, before beginning a mostly downward trajectory in 1986 that has continued for three decades until the present (last reported in 2012, at 6.8 percent).²⁰ While it seems to be popular to assert that marriage has become obsolete, still, “over 90 percent of American women will marry by age 45”²¹

Increased cohabitation may explain some of the recent decline in marriage rates. The rate of divorce was less than one divorce per one thousand population in 1900 and 1910, and rose pretty steadily until the early 1980s peaking at 5.3 in 1981; but since then the divorce rate has dropped steadily and most recently the divorce rate in America was reported to be 3.4 divorces per 1,000 population (in 2012).²²

Interestingly,

¹⁸ Steven Swinford, *Most children will be born out of wedlock by 2016*, The Telegraph (UK), 10 July 2013, at <http://www.telegraph.co.uk/news/politics/10172627/Most-children-will-be-born-out-of-wedlock-by-2016.html> (seen 8 April 2016).

¹⁹ *Id.*

²⁰ *Marriage and Divorces, 1900-2012*, at <http://www.infoplease.com/ipa/A0005044.html> (seen 5 April 2016).

²¹ Diana B. Elliott, et al, *Historical Marriage Trends from 1890-2010: A Focus on Race Differences*, SEHSD Working Paper Number 2012-12, at <http://www.census.gov/hhes/socdemo/marriage/data/acs/ElliottetalPAA2012paper.pdf> (seen 31 March 2016).

²² *Id.*

while marriage rates have been declining, people's aspirations to marry have not fallen as fast. Even as 39 percent of Americans in 2010 told researchers at Pew that "marriage is an institution that is becoming obsolete," 61 percent of unmarried people said they hoped to get married someday. And even among unmarried adults who said they thought marriage was obsolete, nearly half still planned on marriage for themselves.

As the sociologist Andrew Cherlin described this aspirational view, marriage is now the "capstone," not the cornerstone, of people's lives. "Marriage has become a status symbol—a highly regarded marker of a successful personal life," Cherlin wrote in the *New York Times*. It's no wonder, then, that college graduates are the only ones who feel successful enough to marry, and who are also more likely to find partners of equal status with whom to tie the knot.²³

Thus, while the percentage of white American women college graduates who marry has remained steady for the past three decades, the marriage percentage has fallen steadily for women with only high school (or less) education, and women with less than four years of college.²⁴ "As the returns to education rise, children handicapped by access to just one parent's time, attention, and income are at a serious disadvantage. By getting married and staying

²³ Anne Kim, *Why is Marriage Thriving Among (and Only Among) the Affluent?* *Washington Monthly*, April/May 2016 at http://www.washingtonmonthly.com/magazine/marchaprilmay_2016/ten_miles_square/why_is_marriage_thriving_among059894.php?page=1 (seen 18 March 2016).

²⁴ *Id.* at Fig. 2.

married, educated parents are compounding the ever-widening gaps in both achievement and opportunity between the haves and have-nots.”²⁵

Other changes are influencing marriage and family life also. For example, today only four American states have majority-minority populations (more than half of the population of the state is non-White “minorities”). By 2040 there will be fifteen majority-minority states, and by 2060 it is estimated that 22 of the 50 states will be majority-minority.²⁶ In 1980, 80% of the U.S. population was white; today it is only 63%, and by 2060 it is projected to be less than 44%. “Hispanics were 6 percent in 1980, are 17% today, and should be 29 percent by 2060. Asians/Others were just 2 percent in 1980, are 8 percent today, and should be 15 percent by 2060. Blacks, however, should be stable at 12 percent to 13 percent”²⁷ An additional ten American states in 2060 are expected to be more than 40% minority.²⁸ The Table below shows the dramatic rise in the percentage of never-married American men and women for four decades.

²⁵ *Id.*

²⁶ Karlyn Bowman, *States of change: The demographic evolution of the American electorate, 1974-2060*, 23 Feb. 2015, AEI at <http://www.aei.org/publication/states-change-demographic-evolution-american-electorate-1974-2060/> (seen 5 April 2016).

²⁷ *Id.*

²⁸ Press Release: *New AEI, Brookings, & CAP Report Maps the Demographic Evolution of the American Electorate from 1974 to 2060*, 24 Feb. 2015, at <http://www.aei.org/press/press-release-new-aei-brookings-cap-report-maps-demographic-evolution-american-electorate-1974-2060/> (seen 5 April 2016).

Table 3.
Marital History by Sex for Selected Birth Cohorts, 1940 to 1944 Through 1975 to 1979, 2008-2012¹

(For information on confidentiality protection, sampling error, nonsampling error, and definitions, see www.census.gov/acs/www/Downloads/data_documentation/Accuracy/MultiyearACSAccuracyofData2012.pdf)

Characteristic	1940 to 1944	1945 to 1949	1950 to 1954	1955 to 1959	1960 to 1964	1965 to 1969	1970 to 1974	1975 to 1979
Men								
Never married	276,975	523,516	882,525	1,335,083	1,730,004	1,867,149	2,320,185	3,475,511
Married once	3,501,778	4,636,795	5,495,080	6,431,107	6,844,849	6,453,472	6,312,590	5,485,511
Married twice	1,350,306	1,935,897	2,145,666	2,167,656	1,946,368	1,477,495	1,039,963	539,311
Married three or more times	512,057	718,205	698,112	586,119	422,651	244,655	126,671	40,211
Women								
Never married	309,929	548,268	819,729	1,167,001	1,408,998	1,543,488	1,936,444	2,824,711
Married once	4,259,435	5,364,877	6,044,201	6,858,543	7,213,895	6,747,747	6,674,650	6,116,011
Married twice	1,371,770	1,960,886	2,318,452	2,440,620	2,271,932	1,773,209	1,343,169	817,611
Married three or more times	459,155	680,046	772,193	731,278	569,475	351,760	202,186	78,611
PERCENT								
Men								
Never married	4.9	6.7	9.6	12.7	15.8	18.6	23.7	36.1
Married once	62.1	59.3	59.6	61.1	62.5	64.3	64.4	57.8
Married twice	23.9	24.8	23.3	20.6	17.8	14.7	10.6	4.8
Married three or more times	9.1	9.2	7.6	5.6	3.9	2.4	1.3	0.4
Women								
Never married	4.8	6.4	8.2	10.4	12.3	14.8	19.1	28.1
Married once	66.6	62.7	60.7	61.3	62.9	64.8	65.7	61.6
Married twice	21.4	22.9	23.3	21.8	19.8	17.0	13.2	8.1
Married three or more times	7.2	7.9	7.8	6.5	5.0	3.4	2.0	1.1

¹ This table includes people 15 years old and over.
 Source: U.S. Census Bureau, American Community Survey, 2008-2012.

The percentage of never-married men has risen during the last forty years by over 700%, and the percentage of married women has increased by nearly 600% in that same period.

According to the Pew Research Center (PRC), the percentages of Americans ages eighteen to thirty-two years old who were married has steadily fallen from 1960, when 65% of the Silent Generation were married, to 2013, when only 26% of Millennials of the same age were married. As of 2015, fewer than half as many (only about 40% as many) young Americans ages eighteen to thirty-two were married than young Americans of the same age in 1960—less than three generations (or age cohorts) earlier.²⁹ Marriage has become devalued in contemporary affluent societies. For example, fewer than half of Americans surveyed by the Pew Research Center in

²⁹ Pew Research Center, Social & Demographic Trends, *Millennials in Adulthood: Detached from Institutions, Networked with Friends*, Mar. 7, 2014, <http://www.pewsocialtrends.org/2014/03/07/millennials-in-adulthood/>

2014 agreed that society is better off if marriages and children are given priority, while 50% of those surveyed responded that society is “just as well off if people have other priorities.”³⁰

Of course, no discussion of changes in marriage in the USA would be complete without mention of the legalization of same-sex marriage. On June 26, 2015, by a vote of 5 to 4, the U.S. Supreme Court ruled in *Obergefell v. Hodges*³¹ that all states must legalize same-sex marriage. That ruling settled the legal question (absent a constitutional amendment or later Court ruling reversing *Obergefell*), but not the broader questions of social acceptance and legitimacy.

Prior to the *Obergefell* ruling last year, voters in nearly two thirds (thirty-one) of the states had approved amendments to state constitutions explicitly prohibiting same-sex marriage.³² Of course, all of those amendments were effectively nullified by the Supreme Court decision.

The legalization of same-sex marriage in the United States has put America on the ideological extreme in the international community of nations. Currently only twenty-one sovereign nations

³⁰ Pew Research Center, Social and Demographic Trends [hereinafter PRC Trends], *Public Divided over Value of Marriage for Society*, Sept. 23, 2014, <http://www.pewsocialtrends.org/2014/09/24/record-share-of-americans-have-never-married/st-2014-09-24-never-married-02/>

³¹ 576 U.S. ___, 135 S. Ct. 2584 (2015).

³² The states are: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Idaho, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wisconsin. State constitutions can be viewed at Cornell University School of Law, *Legal Information Institute*, <https://www.law.cornell.edu/statutes.html>

out of 193 sovereign nations in the world (only 10.87%) -- allow same-sex marriage.³³ In contrast, more than twice as many nations—at least forty-seven nations—have adopted constitutional language that bars same-sex marriage.³⁴ Pressure from many international bodies and influential nations on other nations to legalize same-sex marriage persists.

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In note 23, below, please firm things up for Croatia, which has some question marks.

The impact upon children of being raised by same-sex parents remains largely unexplored. The most recent annual report by the Federal Interagency Forum on Child and

³³ Here, in chronological order of the date the law took effect, is a list of the countries that legally recognize same-sex marriage as of this writing: Netherlands (2001), Belgium (2003), Canada (2005), Spain (2005), South Africa (2006), Norway (2009), Sweden (2009), Portugal (2010), Iceland (2010), Argentina (2010), Denmark (2012) (including Greenland, which has its own marriage laws, 2015), Uruguay (2013), New Zealand (2013), France (2013), Brazil (2013), United Kingdom (England, Wales, and Scotland, but not Northern Ireland) (2014); Luxembourg (2015); Ireland (2015); and the United States (2015). If Scotland and Greenland are counted as separate jurisdictions—as they should be (though not sovereign, they have their own marriage laws)—the current total is twenty-one nations. The total population of these nations that allow same-sex marriage is less than 900 million, which amounts to just 11.9% of the population of the world. Same-sex marriage is legal in some sub-jurisdictions in Mexico (Mexico City and some Mexican states). PRC, *Gay Marriage Around the World*, June 26, 2015, <http://www.pewforum.org/2015/06/26/gay-marriage-around-the-world-2013>. Bills to allow same-sex marriage have been passed in Slovenia and Finland; the Finnish bill is slated to become law in 2017, but a voter referendum in Dec. 2015 overturned the Slovenian legislation. Israel recognizes same-sex marriages legally performed in other jurisdictions, but does not allow same-sex marriages to be celebrated in Israel.

³⁴ Constitutions of Armenia (art. 32), Azerbaijan (art. 34), Belarus (art. 32), Bolivia (art. 63), Brazil (art. 226), Bulgaria (art. 46), Burkina Faso (art. 23), Burundi (art. 29), Cambodia (art. 45), China (art. 49), Columbia (art. 42), Croatia (art. 61, Dec. 2013), Cuba (art. 43), Democratic Republic of Congo (art. 40), Ecuador (art. 38), Eritrea (art. 22), Ethiopia (art. 34), Gambia (art. 27), Honduras (art. 112), Hungary (art. M), Japan (art. 24), Latvia (art. 110), Lithuania (art. 31), Malawi (art. 22), Moldova (art. 48), Mongolia (art. 16), Montenegro (art. 71), Namibia (art. 14), Nicaragua (art. 72), Panama (art. 58), Paraguay (arts. 49, 51, 52), Peru (art. 5), Poland (art. 18), Romania (art. 44), Rwanda (art. 26), Serbia (art. 62), Seychelles (art. 32), Somalia (art. 2.7); Sudan (art. 15), Suriname (art. 35), Swaziland (art. 27), Tajikistan (art. 33), Turkmenistan (art. 25), Uganda (art. 31), Ukraine (art. 51), Venezuela (art. 77), Vietnam (art. 64). Cf. Lynn D. Wardle, *Marriage, "Magic Bullets" and Medical Decision-Making: Contemporary Reflections on Themes in the Scholarship of Professor Marygold S. Melli*, 29 WISC. J.L., GENDER & SOC. 87, 123, appendix section D (2014) (listing 46 nations then).

Family Statistics (Forum), a collection of 22 Federal government agencies involved in research and activities related to children and families, provides a basis for concern. The percentage of children ages 0-17 being raised by two married parents has dropped from nearly 80% in 1980 to just over 60% in 2014.³⁵ In 2014, 24 percent of children lived with only their mothers, 4 percent lived with only their fathers, and 4 percent lived with neither of their parents. The majority of children who live with neither of their parents are living with grandparents or other relatives.³⁶ “In 2014, there were about 74 million [American] children ages 0–17. Sixty-nine percent of them lived with two parents (64 percent with two married parents and 4 percent with two biological or adoptive cohabiting parents), 24 percent lived with only their mothers, 4 percent lived with only their fathers, and 4 percent lived with no parent.”³⁷ “Out of all [American] children ages 0–17, 5.7 million (8 percent) lived with a parent or parents who were cohabiting.”³⁸ Older children were less likely to live with two parents than were younger children.³⁹

Despite recent declines in birth rates generally,
the overall increases in births to unmarried women over the last several decades
have affected family structure and the economic security of children. Children of
unmarried mothers are at higher risk of adverse birth outcomes, such as low

³⁵ The Federal Interagency Forum on Child and Family Statistics (herein “Forum”), *America’s Children: Key National Indicators of Well-Being, 2015*, at <http://www.childstats.gov/americaschildren/index.asp> (seen 10 March 2016) (herein “*America’s Children*”).

³⁶ *Id.* Family Structure and Children’s Living Arrangements, at <http://www.childstats.gov/americaschildren/family1.asp> (seen 10 March 2016).

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

birthweight and infant mortality, than are children of married mothers. They are also more likely to live in poverty than are children of married mothers.⁴⁰

Another report emphasized that: “Children in single-parent families comprise 27% of all American children, yet they account for 62% of all poor children.”⁴¹ Similarly,

[b]etween 1980 and 1994, the birth rate for unmarried women ages 15–44 increased from 29 per 1,000 to 46 per 1,000. Between 1995 and 2002, the rate varied little, ranging from 43 per 1,000 to 44 per 1,000. From 2002 to 2008, the rate increased from 44 per 1,000 to 52 per 1,000. However, in 2009 the birth rate for unmarried women ages 15–44 began to decline [again]⁴²

“Unmarried birth rates for all age groups generally increased between 1980 and the mid-1990s but have shown varying patterns for different groups since then.”⁴³ The percentage of children born to unmarried women increased between 1980 and 2013 in *all* age cohorts. Births out of marriage more than tripled for women in their twenties, “rising from 19 to 65 percent for ages 20–24 and from 9 to 36 percent for ages 25–29. The proportion of births to unmarried women in their thirties more than doubled, from 8 to 22 percent.”⁴⁴ In fact, “[f]orty-six percent of first births were to unmarried women in 2013.” Overall the percentage of births out of wedlock more than doubled during that

⁴⁰ *Id.*

⁴¹ U.S. CONFERENCE OF CATHOLIC BISHOPS, WHY CHILDREN NEED MARRIED PARENTS, at <http://www.usccb.org/issues-and-action/marriage-and-family/children/children.cfm> (seen 1 March 2016) (hereinafter “*Why Children Need*”).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.* at Indicator Fam2.B.

thirty-three year period – essentially in a single generation. Of course, “[c]hildren are at greater risk for adverse consequences when born to a single mother because the social, emotional, and financial resources available to the family may be limited.”⁴⁵

Children of all ages are at greater risk of harm and have lower prospects of educational achievement when they are not raised by married parents. For example, three economists (Professors Allen, Pakaluk and Price) found significant difference in *educational progress* of children raised by parents in same-sex relationships and children raised by married moms and dads.⁴⁶ Their article, published online in *Demography* in late 2012, examined a claim published two years earlier by Professor Michael J. Rosenfeld that school progress by children raised by same-sex couples was statistically indistinguishable from the progress made by children raised by heterosexual married couples.⁴⁷ Using the same data as Dr. Rosenfeld, but using alternative (arguably less biased) comparison groups or sample restrictions Allen, Pakaluk and Price found that children raised by same-sex parents were twenty-six to thirty-five percent more likely to *not* make the same normal school progress as children raised by married heterosexual parents.⁴⁸ They concluded: “With respect to normal school progress, children residing in same-sex households can be distinguished statistically from those in traditional married homes and in

⁴⁵ *Id.*

⁴⁶ Douglas W. Allen, Catherine Pakaluk, & Joseph Price, *Nontraditional Families and Childhood Progress Through School: A Comment on Rosenfeld*, 50 *DEMOGRAPHY* 955, 960-61 (2012).

⁴⁷ Michael J. Rosenfeld, *Nontraditional Families and Childhood Progress Through School*, 47 *DEMOGRAPHY* 755, 770 (2010) (In terms of normal progress through primary school, “children of same-sex couples cannot be distinguished with statistical certainty from children of heterosexual married couples.”). *Id.* at 772 (“[C]hildren raised by same-sex couples have no fundamental deficits in making normal progress through school.”).

⁴⁸ Allen, Pakaluk & Price, *supra* note 195, at 959-60.

heterosexual cohabiting households.”⁴⁹ Clearly, gender-integrative marriage benefits children’s educational attainment.

These and similar trends regarding the diminished value of marriage are spreading in many other nations as well. “All around the world today, pre-existing family patterns are being upended”⁵⁰ “According to Eurostat, the European Union’s statistical agency, the probability of marriage before age 50 has been plummeting for European women and men, while the chance of divorce for those who do marry has been soaring.”⁵¹ Nicholas Eberstadt has noted that

The proportion of childless 40-something women is one in five for Sweden and Switzerland, and one in four for Italy. In Berlin and in the German city-state of Hamburg, it’s nearly one in three, and rising swiftly. Europe’s most rapidly growing family type is the one-person household: the home not only child-free, but partner- and relative-free as well. In Western Europe, nearly one home in three (32%) is already a one-person unit, while in autonomy-prizing Denmark the number exceeds 45%.⁵²

Likewise, not long ago it was reported that “[t]here are around 61,000 children in care in England alone”⁵³ “The number of UK children living in ‘severe poverty’ rose in the four years before the recession, research from a children’s charity suggests. Save the Children says

⁴⁹ *Id.* at 960.

⁵⁰ Nicholas Eberstadt, *The Global Flight From the Family*, Wall St. J., 21 Feb. 2015, at A11.

⁵¹ *Id.*

⁵² *Id.*

⁵³ Jewell, *supra* note __.

the number of children in homes in this category rose 260,000 to 1.7m from 2004 to 2008.”⁵⁴ In 2010, it was noted that:“Child poverty within working households is rising and now accounts for 58% of all UK cases, a report has found. A Joseph Rowntree Foundation report says there are 2.1 million impoverished youngsters in homes where parents are in work.”⁵⁵

It also is reported that over half (52.4%) of all babies born in Wales are born outside of marriage, and nearly half of all Scottish babies (47.1%) are born out of wedlock.⁵⁶ That puts Welsh and Scottish children at significant disadvantage from the day of their birth.

The same trend of escape from family life is evident in Japan. “[A]bout one-sixth of Japanese women in their mid-40s are still single, and about 30% of all women that age are childless. Twenty years hence, [it is projected that] 38% of all Japanese women in their mid-40s would be childless, and an even higher share -- just over 50% -- would never have grandchildren.”⁵⁷ Likewise, the flight from marriage is appearing in some Muslim nations.⁵⁸

Some look to government to replace the family in many spheres. However, “as the past century of social policy has demonstrated, government is a highly imperfect substitute for family -- and a very expensive one.”⁵⁹ “[E]ven in Sweden, children from single-parent families are less

⁵⁴ *Severe Child Poverty – UK*, posted 29 January 2010, at University of Wisconsin-Madison, IRP Poverty Dispatch, at <http://www.irp.wisc.edu/dispatch/tag/united-kingdom/page/2/> (seen 12 April 2016).

⁵⁵ *Id.* at *Working Households and Child Poverty – UK*, posted on 9 December 2010 (seen 12 April 2016).

⁵⁶ *Marriage Best Environment to Raise Children, says Church*, Christian Today, 8 January 2007, at <http://www.christiantoday.com/article/marriage.best.environment.to.raise.children.says.church/9006.htm> (seen 11 April 2016).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

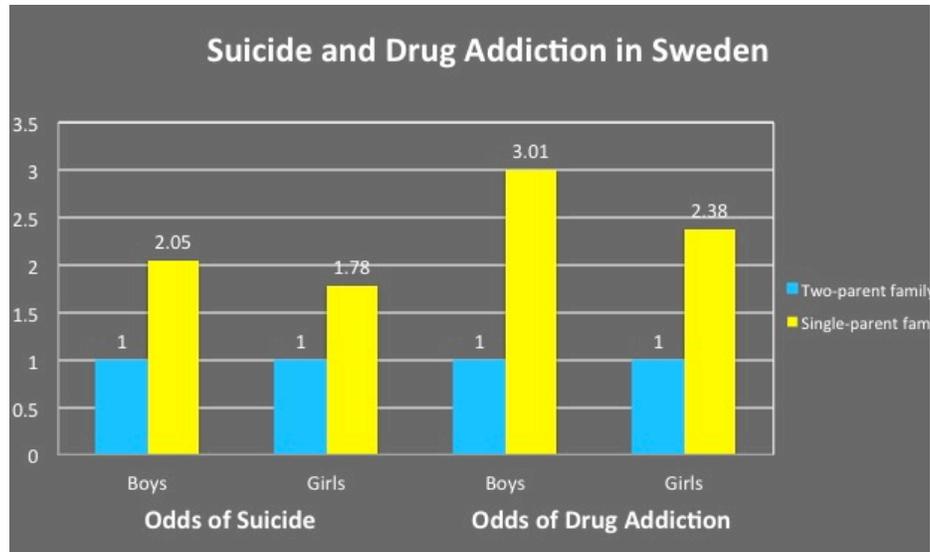
likely to thrive than are children from two-parent families.’⁶⁰ Rates of suicide and drug addiction for children raised in one-parent families in Sweden are about two or three times higher than for children raised by both parents together.⁶¹ Other risks are also increased.

A recent report from Child Trends found that the odds that children in Sweden were held back in school were 78 percent higher for children from single-parent families, compared to their peers from two-parent families Another study of the entire population of Swedish children found that Swedish children from single-parent families were about twice as likely to have psychological problems, attempt suicide, or struggle with substance abuse, compared to their peers from two-parent families, even after controlling for socioeconomic differences and parents’ history of psychological problems (see figure below). Finally, even in Sweden, marriage is the best ticket to the kind of stable, two-parent family that optimizes children’s odds of thriving. In fact, children born to married parents are 44 percent less likely to see their parents break up than are children born to cohabiting parents in this Scandinavian country.⁶²

⁶⁰ W. Bradford Wilcox, *The New Progressive Argument: For Kids, Marriage Per Se Doesn’t Matter*, Family Studies, Sept. 15, 2014, at <http://family-studies.org/for-kids-marriage-per-se-doesnt-matter-right/> (seen 24 March 2016).

⁶¹ *Id.*

⁶² *Id.*



Clearly families, family structures, and family forms are changing in many nations. Equally clearly, not all of those changes are improvements; not all of those changes benefit children. The family relationship form that provides the best opportunities for children -- the ideal, and the gold standard -- is marriage.

III. The Risk that Cohabitation Poses to Marriage

The substitution of nonmarital cohabitation for marriage by young American adults in recent years has impacted the marriage and divorce data.⁶³ For example, “[a]mong women, 68% of unions formed in 1997–2001 began as a cohabitation rather than as a marriage”⁶⁴ Data from the

⁶³ Paula Y. Goodwin, William D. Mosher & Anjani Chandra, *Marriage and Cohabitation in the United States: A Statistical Portrait Based on Cycle 6 (2002) of the National Survey of Family Growth*, Vital and Health Statistics, Series 23, Number 28, at p.1 (2010), at http://www.cdc.gov/nchs/data/series/sr_23/sr23_028.pdf (seen 5 April 2016).

⁶⁴ Casey E. Copen, et al., *First Marriages in the United States: Data From the 2006-2010 National Survey of Family Growth*, 49 Nat'l H. Stats. Reps., Mar. 22, 2012, at [http://www.cdc.gov/nchs/data/nhsr/nhsr049.pdf#x2013;2010 National Survey of Family Growth](http://www.cdc.gov/nchs/data/nhsr/nhsr049.pdf#x2013;2010%20National%20Survey%20of%20Family%20Growth) [PDF - 419 KB] (seen 31 March 2016).

National Survey of Family Growth conducted in 2002 and reported in 2010 revealed that about 78% of marriages lasted 5 years or more, compared with less than 30% of cohabitations, but about half of cohabitations transitioned into marriages within three years.⁶⁵ Cohabitation seems to be influenced by prior family experience: “For example, the proportion of women who had married but did not cohabit before their first marriage was higher for women who lived with both parents at age 14 (26%) than for other women (12%)”⁶⁶ A CDC report in 2012 noted that the percentage of women aged 15-44 who married for the first time dropped eight percentage points (8%) between 1982 and 2010, while the percentage of women currently cohabiting rose by eight percentage points (8%).⁶⁷

In the USA, “[p]eople are marrying for the first time at older ages, and many adults cohabit with a partner before ever marrying. Current estimates of divorce indicate that about half of first marriages end in divorce.”⁶⁸ “Cohabitation has increasingly become the first coresidential union formed among young adults in the United States (8). Among women, 68% of unions formed in 1997–2001 began as a cohabitation rather than as a marriage”⁶⁹

Thus, cohabitation has become “the new normal” in the USA⁷⁰ “Cohabitation has increased by nearly 900 percent over the last 50 years. More and more, couples are testing the waters

⁶⁵ Goodwin, et al, *supra* note __, at 1.

⁶⁶ *Id.* at 2.

⁶⁷ Copen, *supra* note __, at 5, Fig. 1.

⁶⁸ Copen, *supra* note __, at 1.

⁶⁹ *Id.* at 2.

⁷⁰ Jonel Aleccia, “The new normal” *Cohabitation on the rise, study finds*, NBC News, 4 April 2013, at <http://www.nbcnews.com/health/health-news/new-normal-cohabitation-rise-study-finds-flC9208429> (seen 5 April 2016) quoting Pamela J. Smock, director and research professor at the Population Studies Center at the University of Michigan-Ann Arbor.

before diving into marriage. Census data from 2012 shows that 7.8 million couples are living together without walking down the aisle, compared to 2.9 million in 1996.⁷¹ For nearly half of those couples cohabitation is a preliminary step towards marriage, but for the other half, it is a step towards relational instability and perhaps a pattern of serial temporary relationships. One commentator noted that: “Cohabitation has become so common that it’s almost odd not to test drive a partner before marriage.”⁷² Sadly that comment, and the attitude of many young adults who cohabit, reflects the distorted view that marriage is something you find, rather than something you work together to create and to improve over a lifetime.

The relationship outcomes vary significantly. Cohabitation poses several significant risks for the health and success of the parties’ subsequent marriages. Approximately two-thirds of first marriages lasted ten (10) years or more, whereas only about a quarter of men’s and one-third of women’s first cohabitations were estimated to last three (3) years without either disrupting (about half) or transitioning to marriage (about half).⁷³ Data from the National Survey of Family Growth (CDC) based on face-to-face interviews with nearly 11,000 women in 1995 showed that “[c]ohabitation before the first marriage was associated with a greater chance of divorce”⁷⁴

Since the 1970’s, study after study found that living together before marriage could undercut a couple’s future happiness and ultimately lead to divorce. On

⁷¹ Lauren Fox, *The Science of Cohabitation: A Step Toward Marriage, Not a Rebellion*, The Atlantic, 20 March 2014, at <http://www.theatlantic.com/health/archive/2014/03/the-science-of-cohabitation-a-step-toward-marriage-not-a-rebellion/284512/> (seen 5 April 2016).

⁷² *Id.*

⁷³ *Id.* at 3,

⁷⁴ Richard Niolon, Cohabitation, Marriage, and Divorce, Data From The Center for Disease Control, 2002, at http://www.psychpage.com/family/mod_couples_thx/cdc.html (seen 12 April 2016).

average, researchers concluded that couples who lived together before they tied the knot saw a 33 percent higher rate of divorce than those who waited to live together until after they were married.

. . . Meg Jay, a clinical psychologist, outlined the “cohabitation effect” in a widely-circulated *New York Times* op-ed in 2012.

“Couples who cohabit before marriage (and especially before an engagement or an otherwise clear commitment) *tend to be less satisfied with their marriages—* and more likely to divorce—than couples who do not,” she wrote.⁷⁵

As a CDC report noted: “It has been well documented that women and men who cohabit with their future spouse before first marriage are more likely to divorce than those who do not cohabit with their spouse before first marriage.”⁷⁶ However, as cohabitation has become more common, the risks it poses may be subsiding.⁷⁷

One of the principle risks of cohabitation is that couples who cohabit just “slide” from cohabitation into marriage without careful consideration, analysis, or determination. University of Virginia Sociologist Bradford Wilcox explained the risk: “Cohabitation fosters enough intimacy to facilitate childbearing but not enough commitment to make people deliberate about their choices to become parents,” [he] says.⁷⁸

⁷⁵ Lauren Fox, *supra* note __ (emphasis added).

⁷⁶ Copen, *supra* note __, at 2.

⁷⁷ *Id.*

⁷⁸ *Id.*

Women who never cohabited with their first husband before marriage had about a 25% greater probability of the marriage lasting 20 years than women who had cohabited.⁷⁹

Growing up outside an intact marriage increases the chance that children themselves will divorce or become unwed parents. . . . Children of divorce experience lasting tension as a result of the increasing differences in their parents' values and ideas. At a young age they must make mature decisions regarding their beliefs and values. Children of so called "good divorces" fared worse emotionally than children who grew up in an unhappy but "low-conflict" marriage.⁸⁰

Likewise, "a child living with a single mother is 14 times more likely to suffer serious physical abuse than is a child living with married biological parents. A child whose mother cohabits with a man other than the child's father is 33 times more likely to suffer serious physical child abuse."⁸¹

Higher education appears to correlate with less cohabitation and with more stable, enduring marriages. Women with a bachelor's degree or higher were less likely to be currently cohabiting and were more likely to be currently married for the first time compared with women with less education. Women with a bachelor's degree also had a higher probability of their first marriage lasting 20 years compared with women who had some college or women with a high school diploma.⁸²

⁷⁹ *Id.* at 8.

⁸⁰ *Why Children Need*, *supra* note __, at __.

⁸¹ *Id.* at __.

⁸² *Id.* at 9-10.

Yet, ironically, premarital cohabitation has been increasing in America. That portends more unstable, difficult marriages and less-educated adults in the future.

The advantages of marriage for children, adults and society are profound. For example:

Children raised in intact married families are more likely to attend college, are physically and emotionally healthier, are less likely to be physically or sexually abused, less likely to use drugs or alcohol and to commit delinquent behaviors, have a decreased risk of divorcing when they get married, are less likely to become pregnant/impregnate someone as a teenager, and are less likely to be raised in poverty.⁸³

Children receive gender specific support from having a mother and a father. Research shows that particular gender roles of mothers (e.g., to nurture) and fathers (e.g., to discipline), as well as complex biologically rooted interactions, are important for the development of boys and girls.⁸⁴

A recent study of robust predictors of chronic debt identified five measure that distinguish non-debtor adults from “intermittent and chronic debtors.”⁸⁵ Two of them reveal the

⁸³ *America's Children*, *supra*, citing Bradford Wilcox, *Why Marriage Matters: 26 Conclusions from the Social Sciences*, Institute for American Values, at www.americanvalues.org/html/r-wmm.html (seen 1 March 2016).

⁸⁴ *Why Children Need*, *supra*, note __, at __.

⁸⁵ Bryce J. Christensen and Nicole M. King, “New Research,” *The Natural Family: A Natural Debt Preventative*, in 27 *The Family in America*, Winter 2013, at <http://familyinamerica.org/journals/winter-2013/natural-family-natural-debt-preventative/#.Vww6tvkrJph>, discussing Richard K. Caputo, *Patterns and Predictors of Debt: A Panel Study, 1985-2008*,” 39 *J. Sociology & Soc. Welfare*, Number 2 [June 2012], at 7-29.

impact of divorce and family form: “living with mother and father at age 14” and “marital status in 2008” (seven years earlier).⁸⁶ Thus, “[g]rowing up in a two-parent home and marrying are both good for the avoidance of chronic debt.”⁸⁷

Marriage is not only best for children, but it is best for parents. “[I]t is easier to parent with a partner: Two parents can invest more time in their children, they can support one another when the going gets tough, and they can encourage and monitor one another in ways that foster higher-quality parenting. And married partners in the United States are much more likely to stick together, compared to their cohabiting peers, when it comes to sharing the joys and challenges of parenting.”⁸⁸

IV. Children’s Hunger (and Need) to Live With Their Married Mothers and Fathers

Children need the parental influence of a present, responsible residential mother and father. That is best; that is the ideal. The reason is because children need and benefit from the influence of both mother and father; children need and benefit from both “mothering” and “fathering.” Substitute parenting by a man or a nanny or a baby-sitter is not the same as “mothering,” and substitute parenting by a woman or uncle or teacher or neighbor or scout leader is not the same as “fathering.”

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Wilcox, *The New Progressive Argument*, *supra*, note ____.

A poignant illustrative example of the need for both parents (and children's hunger for both parents) comes from an opinion commentary published in 2013 in the New York Times by a gay adoptive parent. He wrote:

SOMETIMES when my daughter, who is 7, is nicely cuddled up in her bed and I snuggle her, she calls me Mommy. I am a stay-at-home dad. My male partner and I adopted both of our children at birth in open domestic adoptions. We could fill our home with nannies, sisters, grandmothers, female friends, but no mothers.

My daughter says "Mommy" in a funny way, in a high-pitched voice. Although I refer the honors immediately to her birth mom, I am flattered. But saddened as well, because she expresses herself in a voice that is not her own. It is her stuffed-animal voice. She expresses not only love; she also expresses alienation. She can role-play the mother-daughter relationship, but she cannot use her real voice, nor have the real thing.⁸⁹

Children need "the real thing" of parenting by *both* parents, and the relationship institution that best provides "the real thing" of both a mother and a father for children is marriage. "[W]e know that 'levels of parental involvement, supervision, monitoring, and

⁸⁹ Frank Ligtvoet, *The Misnomer of 'Motherless' Parenting*, NY Times, Sunday Review, June 22, 2013 at <http://www.nytimes.com/2013/06/23/opinion/sunday/the-misnomer-of-motherless-parenting.html> (seen 160324).

closeness are higher, on average, in two-biological-married parent families than in single-parent families.”⁹⁰ Moreover, other research confirms that

[d]ivorce often appears to have a detrimental effect on the quality of children’s relationships with the custodial parent (usually the mother). A longitudinal study found that recently divorced custodial mothers exhibited many of the same problematic behaviors characteristic of parents in high-conflict families, that is more harsh discipline, less supervision, and less affection.

....

[The] Survey of Families and Households [indicates that] divorced and remarried mothers reported fewer enjoyable times with their children, had more disagreements with them, and were more likely to yell at or spank their children. With respect to fathers, research has shown that the amount of contact between non-custodial fathers and children tends to decline over time after divorce.⁹¹

Divorce is associated with deterioration of intimate relationships in young adults,⁹² lower social adjustment of the children impacted,⁹³ lower education and occupational success,⁹⁴ “low self-esteem, behavior problems, and psychological distress.”⁹⁵ While divorce can

⁹⁰ W. Bradford Wilcox, *The New Progressive Argument: supra* note __.

⁹¹ Smart Marriages, The Coalition for Marriage, Family, and Couples Education, *Texas Association for Marriage and Family Therapy, 1999*, ¶1.1, at <http://www.smartmarriage.com/texaswhitepaper.html> (seen 11 April 2016).

⁹² *Id.* at 1.2.

⁹³ *Id.* at 1.3.

⁹⁴ *Id.* at 1.4.

⁹⁵ *Id.* at 1.5.

in some cases be protective of and beneficial for children in high-conflict marriages, it can be devastating for children in low-conflict marriages – which constitute the bulk of marriages that are ended by divorce in America today.⁹⁶

Children also benefit from the advantages that marriage confers upon their parents. For example, a recent study found that marriage delivers substantive psychological benefits even to adults who enter marriage in a state of depression.⁹⁷ Earlier research demonstrated that, currently married people report higher levels of psychological well-being on average (measured by lower rates of depression, substance abuse, and alcoholism) than never-married, divorced, widowed, or separated individuals.⁹⁸ Also, previous longitudinal studies establishing that “transitions into marriage are associated with declines in depression among women and declines in alcohol use and abuse among men.”⁹⁹ Nonetheless, The Ohio State University sociologists also confirmed that “those who experience the transition into marriage report better psychological well-being than their continually unmarried counterparts.”¹⁰⁰ But, to their surprise, “they discover[ed] that . . . “the previously depressed benefit more from marriage than the nondepressed even though their marital quality is slightly worse.”¹⁰¹

⁹⁶ *Id.* at 1.1 & 1.6.

⁹⁷ *Treating Anxiety, Depression Can Help Global Economy, Study Says*, World Congress of Families, 5(13) WCF Natural Family News and Research, April 14, 2016, at ___.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

The positive mental health advantages of marriage for adults also benefit their children, directly and indirectly. Indirectly children benefit because less depressed parents are better parents. Directly children benefit because the factors that provide positive mental health benefits for adults also provide positive mental health benefits directly to their children. For example, a headline in a British newspaper recently suggested one way in which children benefit in emotional health and well-being from marital families. The newspaper headline read: “Bring back family dinners to fight childhood depression, says Rantzen.”¹⁰² The founder of ChildLine, a child protection and advocacy organization in the UK, Esther Rantzen, advised parents: “If we were less busy and more available to children and restored the family tea table as a place where we all meet at the end of the day and talk together, then children would be aware someone cares about them.” She added that “research ... has shown that ‘if a family eats together the family feels much happier and more united.’”¹⁰³

Similarly, recent research emphasizes that “family structure stands out as one of the ‘family/environmental determinants’ of children’s health-related quality of life. One study of data reported by parents of 10,651 children in the Netherlands between 2001-2009 concluded that: “Compared to children in single-parent families, children living with two parents came in with a significantly higher overall score for health-related

¹⁰² Anna Davis, *Bring back family dinners to fight childhood depression, says Rantzen*, Evening Standard (UK), 14 April 2016, at 8. “Parents should bring back family dinner time to stem the rising numbers of children feeling depressed and suicidal, the founder of ChildLine urged. Esther Rantzen said she believes children are less safe than they were 30 years ago when she launched the helpline.” *Id.*

¹⁰³ *Id.*

quality of life (p = 0.04).”¹⁰⁴ The disparate outcomes for the different family structures was underscored in the Psychosocial Summary Scale (PsS) of the report which noted that “living in single-parent families was a significant contributor to PsS score variance: a lower mean score was observed for children living in a single-parent family [p < 0.01].”¹⁰⁵ The evidence of the impact of different family structures upon child well-being is very relevant to contemporary concerns for child welfare.

The prestigious American Law Institute is engaged in preparing a new addition to its famous Restatement of the Law series. The new project is to produce a “Restatement of the Law, Children and the Law.”¹⁰⁶ It justifies the project as being valuable to promote the well-being of children.”¹⁰⁷ In addition, among other goals such as protecting parents’ rights, and strengthening parent-child bonds, the drafters mention that state regulation of parent-child relations “strengthen[s] families because they are the building blocks of society.”¹⁰⁸ Thus, at the highest level of academic scrutiny, strengthening families -- the core purpose and function of marriage -- has been recognized as critical to the well-being of children and to the future and the well-being of society.

¹⁰⁴ *The Single-Parent Handicap – Even in Western Europe*, 4(15) *The Family in America*, 28 April 2016, at <http://familyinamerica.org/newsletter/april-28-2016-children-single-parents/> (seen 28 April 2016), discussing Bryce J. Christensen & Nicole M. King, New Research, Study: Marieke Houben-van Heteren et al., “Determinants of Health-Related Quality of Life in School-Aged Children: A General Population Study in the Netherlands,” 29 (3) *The Family in America* (Summer 2015).

¹⁰⁵ *Id.*

¹⁰⁶ See Restatement of the Law, Children and the Law, Preliminary Draft No. 1, *Projected Overall Table of Contents*, Feb. 4, 2016.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

Children also clearly benefit economically from marriage. Two scholars writing for the Heritage Institute put it well when they concluded that: “[the] collapse of marriage is the principal cause of child poverty and welfare dependence.” Indeed, “the poverty rate among single-parent families is about five times higher than the poverty rate among married-couple families.”¹⁰⁹

Thus, marriage has been a key element in the strategy to reduce poverty and welfare dependence in America. “The designers of welfare reform were concerned that prolonged welfare dependence had negative effects on the development of children. Their goal was to disrupt inter-generational dependence by moving families with children off the welfare rolls *through increased work and marriage*.”¹¹⁰

V. Conclusion: The Need to Revitalize Marriage for the Sake of Children

Two scholars writing for the Heritage Foundation summarized the main point this paper attempts to establish when they wrote: “*The current neglect of marriage is scandalous and deeply injurious to the well-being of children.*”¹¹¹ They also identified the key to solving the poverty problem when they declared: “The most effective way to reduce child poverty and

¹⁰⁹ Robert Rector & Patrick Fagan, *The Continuing Good News About Welfare Reform*, Heritage Backgrounder #1620, Feb. 6, 2003, at <http://www.heritage.org/research/reports/2003/02/the-continuing-good-news> (seen 24 March 2016).

¹¹⁰ *Id.* (emphasis added). Ironically, “[t]hroughout the War on poverty period, marriage eroded. However, since the welfare reform was enacted, this negative trend has begun to reverse. The share of children living with single mothers has declined, while the share living with married couples has increased.” *Id.*

¹¹¹ *Id.* (emphasis added).

increase child well-being is to increase the number of stable, healthy marriages.”¹¹² Marriage is the first and best measure of a society’s (and a family’s and an individual’s) commitment to the welfare of children.

That conclusion was confirmed by University of Virginia sociologist W. Bradford Wilcox, who wrote: “No other institution reliably connects two parents, and their money, talent, and time, to their children in the way that marriage does. . . . So the challenge for our time is to find and provide a way to increase the likelihood that every . . . child [may be] raised by his or her own parents in a strong and stable marriage[.]”¹¹³

As this paper has noted,

marriage enables the enormous logistical, emotional, and economic benefits in what’s now the high-stakes enterprise of middle-class and upper-middle-class parenthood. A second income helps pay for the football uniform or for a babysitter to shuttle Junior to his piano lesson if a parent is unavailable to do the driving. A second parent means one more set of eyes on the homework and one more voice to enforce discipline. And the returns to investing in children—such as by ensuring them a college education—have certainly grown over the decades.¹¹⁴

There are many things that governments can do that might strengthen and enhance marriages. For example, as noted earlier, educational achievement correlates with increased

¹¹² *Id.*.

¹¹³ Wilcox, *The New Progressive*, *supra* note __[35].

¹¹⁴ Kim, *supra* note __, at __.

likelihood that first marriage will remain intact for twenty years.¹¹⁵ So promoting education, especially among women, could produce great benefits for marriage stability and endurance. Likewise, as noted above, reducing the incidence and rates of nonmarital cohabitation could result in lower divorce rates.

Many individuals and institutions are committed to protecting children and helping children to develop, thrive and flourish. Sometimes, however, as an old axiom puts it, “too many cooks spoil the broth.” So, “[a] ‘collaborative . . . approach between the different service providers who care for children and young people is’” is critical.¹¹⁶ The key is for all persons, agencies and programs who are interested in fostering the welfare of children “to work together.”¹¹⁷

It has been said that we live in a world that has been “flattened by self-interest.”¹¹⁸ The diminution of respect for marriage is an especially troubling manifestation of that tragedy because as marriage recedes, the welfare of children suffers and hope for the future dims.

So marriage may be the best hope for the future of children. That means marriage is the best hope for the future of society. Thus, we need to revitalize and re-invigorate a culture of marriage in our countries today.

¹¹⁵ Copen, *supra* note __, at 8, Fig. 5. *See also id.* at 9 (“However, women who cohabited with their first husband—regardless of whether they were engaged when they began living together—had lower probabilities of marriage survival at 20 years than women who did not cohabit before marriage with their first husband.”) Interestingly, the same is not true for men. *Id.*

¹¹⁶ Jewell, *supra*, note __.

¹¹⁷ *Id.*

¹¹⁸ Jenet Jacob Erickson, *Suffer the Little Children: How A Culture Centered on Individual Rights Has Impacted the Lives and Wellbeing of Children*, BYU Wheatley Roundtable on Family 2016 (Marriage Matters: Framing the Family, March 23-24, 2016).

The overwhelming weight of social science research clearly confirms that children raised by two married parents experience clear life advantages. That does not diminish the exemplary efforts and remarkable successes of many single parents who sacrifice for and serve their children with loving commitment. It does, however, encourage responsible lawmakers and serious family law scholars to recognize and support loving, faithful and committed marriages as the best gift that parents can give to their children, and the best hope our generation can provide for the future of our societies.

Certainly marital discord and parental unhappiness negatively impacts children's well-being, but so does the experience of going through a divorce. Children in very high conflict homes may benefit by being removed from the conflict. In lower-conflict marriages, and perhaps as many as two-thirds of divorces are of this type, the situation of the children can be made much worse following a divorce. These children benefit if parents can stay together and work out their problems rather than get a divorce.¹¹⁹

All marriages have some good days and some bad days, some ups and some downs. But divorce always is painful and detrimental, especially to children of divorcing parents. Research in American using a large national sample found that 86% of people who were unhappily married in the late 1980s, and stayed with the marriage, were happier when interviewed five years later. Indeed, 60% of the formerly unhappily married rated their marriages as either "very happy" or "quite happy".¹²⁰ Certainly, some marriages are disastrous, and some persons (including some

¹¹⁹ *Why Married Parents*, citing Paul R. Amato & Alan Booth, *A Generation at Risk* (1997).

¹²⁰ *Why Married Parents Are Important For Children*, For Your Marriage, at <http://www.foryourmarriage.org/married-parents-are-important-for-children/> (seen 2 March 20116), citing Linda J. Waite & Maggie Gallagher, *The Case for Marriage*, p. 148 (2000).

married adults and their children) are better off after divorce than during a toxic marriage. But the common reflection on divorce is, as a divorced neighbor once told my wife: “If I had known then what I know now, I never would have gotten divorced.” That reflection is a sober warning. To ignore it is to neglect and consign to decades of sorrow struggling couples (and families) who might, with some compassionate support, encouragement and training work through their difficulties and develop the skills needed to create and maintain happy and successful marriages.

As Nelson Mandela said: “*There can be no keener revelation of a society’s soul than the way in which it treats its children.*”¹²¹ It is clear that the safest, best environment we can provide for children is a family founded on parental marriage. Thus, providing marital families for all children is a goal worthy of the best efforts of legal scholarship and of the best law reform efforts that the legal profession and society can offer.

*** END ***

¹²¹ Nelson Mandela, *Speech by President Mandela at the launch of the Nelson Mandela Children’s Fund*, May 8, 1995, available at http://db.nelsonmandela.org/speeches/pub_view.asp?ItemID=NMS250&txtstr=Mahlamba&pg=item (seen 12 April 2016).