

ANOTHER INCONVENIENT TRUTH: FRAGILE FAMILIES AND THE LOOMING FINANCIAL CRISIS FOR THE WELFARE STATE

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I INTRODUCTION

Societies around the western world are facing a series of crises and difficulties that will profoundly affect the younger generation, and children yet to be born. First of all, there is the debt crisis in the United States, much of Europe, and other countries such as Japan.¹ While the focus of news reports has been on the short-term issues of bailouts, and, in the USA, an increase in borrowing to prevent defaults, the longer-term issues are profound.² The next generation will be responsible for the debts that have been built up on the intergenerational credit card.

Today's children and young people will also bear the burden of the environmental problems that have been building over the last few generations – problems such as global warming, air quality and reduced biodiversity.³ These are likely to have a range of very direct and practical impacts in the next 50 years.

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¹ See e.g. SOVEREIGN DEBT AND THE FINANCIAL CRISIS: WILL THIS TIME BE DIFFERENT? (C. Primo Braga, G. Vincelette, eds, 2010); SOVEREIGN DEBT: FROM SAFETY TO DEFAULT (R. Kolb, ed, 2011); C. Reinhart & K. Rogoff, *The Forgotten History of Domestic Debt* (2011) 121 *ECONOMIC J.* 319.

² See e.g. D. ELMENDORF, *THE BUDGET AND ECONOMIC OUTLOOK: FISCAL YEARS 2011 TO 2021* (2011); J. GAGNON, *THE GLOBAL OUTLOOK FOR GOVERNMENT DEBT OVER THE NEXT 25 YEARS: IMPLICATIONS FOR THE ECONOMY AND PUBLIC POLICY* (2011).

³ See e.g. W. STEFFEN ET AL, *GLOBAL CHANGE AND THE EARTH SYSTEM: A PLANET UNDER PRESSURE* (2005); *OECD ENVIRONMENTAL OUTLOOK TO 2030* (2008).

The capacity to address these issues through publicly funded initiatives will be reduced by a third problem, and that is the aging of the population. A shared problem for most western societies is that increased longevity has been combined with decreased fertility.⁴ The consequence of these two trends, taken together, is that in many countries at least, an aging population will be supported by a shrinking base of people of working age who will be paying the taxes to support them.

These three problems, taken together, are daunting enough for any government thinking about the longer-term wellbeing of its population. This Article suggests that there is a fourth long-term problem to be addressed – that of the fragility of family life. Western societies, including the United States, it is argued, can no longer afford the costs of family instability that have been growing exponentially for so long. These costs affect not only the adult partners to the relationship and their children, but may also affect the parents of each of those partners. That is, family instability may have intergenerational effects that are both ascendant and descendant.

However, the costs of family instability are not just borne by individuals. They are to a very significant extent borne by taxpayers, who provide income support for many parents and their children, pay substantial administrative costs in ensuring income transfers through the child support system, and bear more of the costs of caring for the elderly than would be necessary if a greater number of marital and quasi-marital relationships remained intact.

As with the physical environment, the costs of inaction are likely to be much greater than the costs of action. Indeed, the costs of fragile families for public health and finances are quite simply unsustainable. It is not yet too late to avert the looming crisis in the welfare state, but

⁴ K. KINSELLA & V. VELKOFF, AN AGING WORLD: 2001, (U.S. Census Bureau, Washington, DC, 2001; series P95/01-1); NATIONAL INSTITUTE ON AGING, NATIONAL INSTITUTES OF HEALTH, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES & U.S. DEPARTMENT OF STATE, WHY POPULATION AGING MATTERS: A GLOBAL PERSPECTIVE, (2007).

reversing the growing fragility of families will require significant effort, and a renewed focus on the importance of marriage in promoting safe, stable and nurturing families in which children can flourish. That in turn, may require some rethinking in terms of public policy, both in the USA and other western countries.

The structure of this Article is as follows. Part II of the Article examines the growing fragility of family life in the USA and other western countries, which is a consequence in particular of an exponential increase in non-marital cohabitation and of births to single mothers. Non-marital cohabitation has proved to be much less durable than marriage even when there are children, and so the declining popularity of marriage, and the increase in non-marital cohabitation has in turn led to a greatly increased likelihood that children will live in a lone parent family by the time they are 15 years old. Parts III and IV explore the financial impact when parents live apart and the limited scope for private transfers from non-resident parents through spousal maintenance and child support. As a consequence of that limited scope for private transfers, much of the cost of supporting lone parents with children who are unable to support themselves adequately falls to the public purse through poverty relief and social insurance programs. Part V concerns the impact of family breakdown on the elderly parents of adults who separate, reducing their capacity to provide care and support when their own parents are frail, and breaking the nexus of commitment and obligation that women might otherwise have felt towards their elderly in-laws.

Part VI explores the implications of this unsustainable cost of family fragility for public policy. It is argued that, as far as possible, government action and legal regulation should be directed towards the goal of promoting safe, stable and nurturing family relationships and that serious attention now must be given to how this can be achieved.

II THE GROWTH OF FAMILY INSTABILITY ACROSS THE WESTERN WORLD

One of the most striking demographic changes in western societies has been the growth in the numbers of children and young people who experience life in a family other than living with their two biological parents.

In the United States, for example, the proportion of children living with their mother without their father present doubled from 11 percent to 22 percent between 1970 and 1990. By 2009, more than 27% of children were living with only one of their parents, and another four percent with neither parent.⁵ Recent Australian data tells a similar story. The likelihood of a child experiencing birth into a lone-mother household or experiencing parental separation before the age of 15 has almost doubled within a generation.⁶ Such changes are also evident in other western countries.

How is it that there has been such rapid change in only a generation or two in the extent to which children are born into single parent families or experience their parents' separation? In the first wave of change, in the 1970s and 80s, the increase in parental separation was mostly associated with divorce, as cohabitation involving children was very uncommon. However, in recent years, the divorce rate has slowed⁷ or plateaued⁸ in many western countries, and in some countries such as Britain⁹ and the United States,¹⁰ has even declined.

⁵ R. KREIDER & R. ELLIS, LIVING ARRANGEMENTS OF CHILDREN: 2009, tbl 1 (US Census, 2011).

⁶ B. RODGERS, P. GRAY, T. DAVIDSON & P. BUTTERWORTH, PARENTAL DIVORCE AND ADULT FAMILY, SOCIAL AND PSYCHOLOGICAL OUTCOMES: THE CONTRIBUTION OF CHILDHOOD FAMILY ADVERSITY, Social Policy Research Paper No 42 (Department of Family, Housing, Community Services and Indigenous Affairs, (2011) 9. Twelve percent of 40 to 44 year olds had experienced their parents living apart by the age of 15, compared to 21.5% of 20 to 24 year olds.

⁷ In Australia, for example, there was a sharp rise in the divorce rate after the introduction of no-fault divorce in the Family Law Act 1975, as many people who had separated prior to 1975 sought a formal divorce when the ground for dissolution became irretrievable breakdown proven by one year's separation. By the late 1980s the divorce rate per 1000 married women ranged between 10.6 and 10.9. The rate over the past few years has fluctuated between 12.0 and 13.0 divorces per 1,000 married women: R. Weston and L. Qu, *Family Statistics*

While many marriages continue to end in divorce, the main driver for the substantial increase in the number of children experiencing life with a lone parent has been the rapid rise in births to mothers who cohabit informally with the other parent, and in births to single mothers without partners living with them. In the USA, in 1976, 83% of mothers who were not living with the father of their child or children were or had been married. By 1997, that percentage had dropped to 54%.¹¹

(a) *The rise in ex-nuptial births*

In the USA, as in many western countries, a substantial proportion of all babies are now born outside of marriage, and to parents who may never marry. The figure is close to 40% in the United States,¹² with significant variations according to race.¹³ In Estonia, France, Iceland, Norway and Sweden, more than half of all births are ex-nuptial.¹⁴ These are the figures for *all* births outside of marriage. The proportion of first-born children who are ex-nuptial is much

and Trends: Trends in Couple Dissolution, FAM.RELATIONSHIPS Q. issue no 2 (online, Australian Institute of Family Studies, 2006). The proportion of divorces involving children has actually declined over the last 20 years: S. Linacre, *Australian Social Trends 2007: Lifetime marriage and divorce trends*, Cat no 4102.0 (Australian Bureau of Statistics, 2007) at 3.

⁸ Kennedy and Thompson summarise the international picture: “Overall divorce rates have achieved a high plateau in some countries, while increasing steadily in those where divorce has been rare.” S. Kennedy & E. Thompson, *Children’s Experiences of Family Disruption in Sweden: Differentials by Parent Education over Three Decades*, 23 DEMOGRAPHIC RESEARCH 479, 481 (2010).

⁹ OFFICE OF NATIONAL STATISTICS, *DIVORCES IN ENGLAND AND WALES, 2009* (2011).

¹⁰ A. Cherlin, *Demographic Trends in the United States: A Review of Research in the 2000s*, 72 J MARRIAGE & FAM. 403 at 405; B. Stevenson & J. Wolfers, *Trends in Marital Stability*, in RESEARCH HANDBOOK IN THE LAW AND ECONOMICS OF THE FAMILY, (L. Cohen & J. Wright, eds, 2011) 96.

¹¹ E. SORENSEN & A. HALPERN, *CHILD SUPPORT ENFORCEMENT: HOW WELL IS IT DOING?*, Urban Institute, Discussion Paper, 1 (1999).

¹² In 2007, 39.7% of all births in the United States were nonmarital births. S. VENTURA, *CHANGING PATTERNS OF NONMARITAL CHILDBEARING IN THE UNITED STATES*, NATIONAL CENTER FOR HEALTH STATISTICS, Data Brief No 18 (May 2009), <<http://www.cdc.gov/nchs/data/databriefs/db18.htm>>.

¹³ *id.*

¹⁴ See SOCIAL POLICY DIVISION, ORGANISATION FOR ECONOMIC CO-OPERATION & DEVELOPMENT, *SHARE OF BIRTHS OUTSIDE MARRIAGE AND TEENAGE BIRTHS*, <<http://www.oecd.org/dataoecd/38/6/40278615.pdf>> (data mostly from 2007).

higher, since many women have a first child outside of marriage and then marry subsequently – either to the father of that child or to another man.¹⁵

The pace of change in terms of ex-nuptial births has been extraordinarily rapid. In the early 1970s in Britain, for example, less than 10% of all births were outside marriage. In 1995, 34 per cent of live births were outside marriage¹⁶ and in 2008 the percentage was 45%.¹⁷ There is a similar pattern of exponential growth in the USA.¹⁸ In the United States, only a slight majority(52%) of all ex-nuptial births are to couples who are cohabiting, and the proportion is 29% for African-American women.¹⁹

(b) *The instability of informal cohabitation*

That the majority of ex-nuptial children are born into cohabiting unions does not mean that they will experience a stable family life. Cohabiting relationships are typically quite short-term.²⁰ People cohabit outside marriage for a range of different reasons. Some people live

¹⁵ This can be illustrated by Australian data. Throughout the last decade, births of a first child were twice as likely to be to unmarried parents (39%) as births of second or subsequent children (20%). Australian Bureau of Statistics, *Couples in Australia* (23 December 2009), <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features20March%202009>>.

¹⁶ NATIONAL STATISTICS, POPULATION TRENDS No 126, 45, tbl 3.2 (2006), <http://www.statistics.gov.uk/downloads/theme_population/PopTrends126.pdf>.

¹⁷ L. O’Leary, E. Natamba, J. Jefferies, & B. Wilson, *Fertility and Partnership Status in the Last Two Decades*, POPULATION TRENDS No 140, 5 (2010).

¹⁸ Four percent of all births were outside marriage in 1950. By 1970, the figure was 11 percent; by 1990, 28 percent; and by 2003, 35 percent: A. Cherlin, *American Marriage in the Early Twenty-First Century* 15(2) FUTURE OF CHILDREN 33 at 35 (2005). The 2009 figure of 39.7% (above n. 12) shows how quickly the ex-nuptial birth rate continues to climb.

¹⁹ J. Manlove, S. Ryan, E. Wildsmith & K. Franzetta, *The Relationship Context of Nonmarital Childbearing In The U.S.* 23 DEMOGRAPHIC RESEARCH 615 (2010).

²⁰ In a study of 11 European countries, Kiernan found that cohabiting relationships which did not result in marriage were much more fragile than marriages either preceded by a period of cohabitation or without a prior period of cohabitation. In Britain, only 18% of such relationships survived for ten years. The levels of stability of cohabitation were higher in other countries, but in no country other than East Germany did the majority of cohabiting partnerships survive for ten years: K. Kiernan, *Cohabitation in Western Europe*, 96 POPULATION TRENDS 25 (1999).

together with the intention of getting married.²¹ Others may enter a cohabiting relationship with a hope or intention on the part of at least one of them,²² that they will marry, but the relationship does not survive long enough for this to occur. Others reject the idea of formal marriage entirely,²³ but see themselves as being in a committed and ongoing relationship.²⁴

Whatever the reason for entering into a cohabiting relationship, the evidence from many parts of the world is that cohabiting relationships break down at a very much faster rate than do marriages.²⁵ This is not particularly surprising as regards childless couples, for the nature of much non-marital cohabitation is that either it is an intimate relationship for the time being, or a stage on the way to making a decision about marriage. Yet the pattern of instability persists even when there are children. Data from the Fragile Families study in the US (a

²¹ The Australian Bureau of Statistics reported that 42% of those in a de facto marriage in 2006-07, stated that they expected to enter into a registered marriage with their current partner: Australian Bureau of Statistics, *Family Characteristics and Transitions, Australia, 2006-07* (26 May 2011), <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/E0C7AEEEEAE3AD51BCA25789C0023D7EF?opendocument>>.

²² On gender differences concerning cohabitation with a view to eventual marriage, see P. Huang, P. Smock, W. Manning, & C. Bergstrom-Lynch, *He Says, She Says: Gender and Cohabitation*, 32 J. FAM. ISSUES 876 (2011); S. Sassier & J. McNally, *Cohabiting Couples' Economic Circumstances and Union Transitions: A Re-Examination Using Multiple Imputation Techniques*, 32 SOCIAL SCIENCE RESEARCH 553 (2003); S. Brown, *Union Transitions among Cohabitors: The Significance of Relationship Assessment and Expectations*, 62 J. MARRIAGE & FAM. 833 (2000).

²³ For Australian evidence, see S. Buchler, J. Baxter, M. Haynes, & M. Western, *The Social and Demographic Characteristics of Cohabitors in Australia: Towards a Typology of Cohabiting Couples*, FAM. MATTERS no 82, 22 (2009).

²⁴ On the different meanings of commitment, see J. Pryor & J. Roberts, *What is Commitment? How Married and Cohabiting Parents Talk About Their Relationships*, FAM. MATTERS NO 71, 24 (2005). Recent Australian research indicates that people who are cohabiting but intend to marry (either as a first or subsequent marriage) are significantly less likely to separate compared to those who cohabit without having marriage plans. S. Buchler, M. Haynes, J. Baxter, & M. Western, *Cohabitation Outcomes: The Effect of Fertility Intentions, Relationship Satisfaction and Union Length on Cohabitation Transitions*, Paper given at the HILDA Survey Research Conference, Melbourne, 14 (2009).

²⁵ A. THORNTON, W. AXINN, & Y. XIE, MARRIAGE AND COHABITATION (2007); L. Bumpass & J. Sweet, *National Estimates of Cohabitation*, 26 DEMOGRAPHY 615 (1989); R. Forste, *Prelude to Marriage or Alternative to Marriage? A Social Demographic Look at Cohabitation in the U.S.*, 4 J. L. & FAM. STUD. 91 (2002); H. Glezer, *Cohabitation and Marriage Relationships in the 1990s*, FAM. MATTERS no 47, 5 (1997); S. Nock, *A Comparison of Marriages and Cohabiting Relationships*, 16 J. FAM. ISSUES 53 (1995).

major study of a cohort of unmarried and married mothers in 20 large cities²⁶) found that parental separation by the time the child was 3 was five times greater for children born to cohabiting than married parents. Differences in financial wellbeing and family characteristics between cohabiting and married parents explained this to some extent, but after controlling for race, ethnicity, education, economic factors, family characteristics and an extensive set of other covariates, parents who were cohabiting at their child's birth still had over two and a half times the risk of separating as compared with parents who were married at their child's birth.²⁷

Findings from the Millennium Cohort Study in Britain, initially comprising a cohort of more than 18,500 mothers who gave birth during 2000 or 2001, indicate that children born to cohabiting parents were almost three times as likely as those born to married parents to be no longer living with both these parents by the time they were 5 years old.²⁸ In an Australian study, the odds of a cohabiting couple with children breaking up was more than seven times

²⁶ The term 'fragile-families' refers to families in which the parents are unmarried at the time of the child's birth, in order to 'underscore that they are families and that they are at greater risk of breaking up and living in poverty than more traditional families.' (The Fragile Families and Child Wellbeing Study, *About Fragile Families*, <<http://www.fragilefamilies.princeton.edu/about.asp>>. See also N. Reichman, J. Teitler, I. Garfinkel, & S. McLanahan, *Fragile Families: Sample and Design*, 23 CHILDREN & YOUTH SERVICES REV. 303, 306 (2001).

²⁷ C. Osborne, W. Manning, & P. Smock, *Married and Cohabiting Parents' Relationship Stability: A Focus on Race and Ethnicity*, 69 J. MARRIAGE & FAM. 1345 (2007).

²⁸ K. Kiernan & F. Mensah, *Unmarried Parenthood, Family Trajectories, Parent and Child Well Being* in CHILDREN OF THE 21ST CENTURY: FROM BIRTH TO AGE 5, p. 77 (K. Hansen, H. Joshi, S. Dex, eds, 2010) (28 per cent of cohabitees had broken up compared with 10 per cent of married couples). See also A. Berrington, *Entry into Parenthood and the Outcome of Cohabiting Partnerships in Britain*, 63 J. MARRIAGE & FAM. 80 (2001) (26% of all cohabiting partnerships dissolved within 5 years, 16% continued and 59% resulted in marriage. For women, the presence of children born within the partnership had no effect on either the probability that the couple marry or the rate of separation, compared to women without children, although for men, the birth of a child had a stabilizing effect on the partnership); K. Kiernan, *Childbearing Outside Marriage in Western Europe*, 98 POPULATION TRENDS 11, tbl 11 (1999) (probability of relationship surviving 3 and 5 years after birth of first child among women aged 20-45 lower for cohabiting relationships than marriage in 9 countries studied). R. Weston & L. Qu, *Family Statistics and Trends: Trends in Couple Dissolution*, FAM. RELATIONSHIPS Q. No 2 (online, 2006).

as high as a married couple who had not lived together before marriage, and more than four times as high as those who had lived together but went on to marry.²⁹

III THE FINANCIAL IMPACTS OF FAMILY BREAKDOWN

The increasing fragility of family life has had a very serious impact on public finances, and this will only get worse if trends continue. To understand why this is so, it is necessary to explore why private income transfers between former husbands and wives by way of alimony, and between mothers and fathers through child support, have done so little to protect the public purse from the costs of family breakdown.

a) Divorce and the feminization of poverty

The adverse effects of the divorce revolution of the 1970s on the financial position of many women has been very well documented.³⁰ The generation of women who went through divorce in the 1970s and 1980s were quite likely to have withdrawn from workforce participation entirely, either after marriage or at least with the arrival of the first child.³¹ They frequently did a great variety of unpaid work outside the home, such as involvement in schools, charitable organisations, and community groups. Such specialisation was an optimal arrangement if the marriage lasted; but if the relationship broke down, then women who had withdrawn from workforce participation entirely in order to devote themselves to the care of the family, were particularly vulnerable to adverse economic effects on separation.

²⁹ P. BUTTERWORTH, T. OZ, B. RODGERS, & H. BERRY, FACTORS ASSOCIATED WITH RELATIONSHIP DISSOLUTION OF AUSTRALIAN FAMILIES WITH CHILDREN, Social Policy Research Paper No 37, 22 and 29, tbl 9 (2008).

³⁰ In the USA see eg J. McLindon, *Separate but Unequal: The Economic Disaster of Divorce for Women and Children*, 21 FAM. L. Q. 351 (1987); S. Hoffman & G. Duncan, *What are the Economic Consequences of Divorce?*, 25 DEMOGRAPHY 641 (1988). In Britain, see J. EEKELAAR & M. MACLEAN, MAINTENANCE AFTER DIVORCE (1986).

³¹ M. Brinig & J. Carbone, *The Reliance Interest in Marriage and Divorce*, 62 TUL. L. REV. 855 (1988); C. Schneider, *Rethinking Alimony: Marital Decisions and Moral Discourse*, [1991] BYU L. REV. 197.

While the economic effects of separation and divorce were often reported for women and men as a whole, the research even in the 1980s and early 1990s revealed a significant degree of heterogeneity in terms of the adverse economic effects of relationship breakdown. The evidence was that those women who are able to form a stable and enduring new partnership with another man typically recovered their former financial position.³² However, for women, the opportunities to repartner tend to diminish with age.³³ While the position for women after separation tends to be much better now than it was a generation ago, these adverse financial consequences remain for many.³⁴

b) Separation, divorce and the economic wellbeing of fathers

The impact of separation and divorce on the economic wellbeing of men is less well understood.³⁵ It was widely reported in studies conducted in the 1980s that men's standard of living increased after separation, raising the prospect that they could reasonably be required to make significant financial transfers to their former partners. While that may well be true in some cases, the reality is somewhat different across the population of separated parents.

Studies which have reported an increase in the standard of living of men following divorce have based this on a comparison of incomes and needs. Here, the assessment of need plays a

³² See SETTling UP (P. MacDonald, ed, 1986); K. FUNDER, M. HARRISON, & R. WESTON, SETTling DOWN (1993).

³³ J. Hughes, *Repartnering after Divorce: Marginal Mates and Unwedded Women*, FAM. MATTERS no 55, 16 (2000).

³⁴ For international evidence, see H-J. Andreß, B. Borgloh, M. Bröckel, M. Giesselmann, & D. Hummelsheim, *The Economic Consequences of Partnership Dissolution—A Comparative Analysis of Panel Studies from Belgium, Germany, Great Britain, Italy, and Sweden*, 22 EUROPEAN SOC. REV. 533 (2006). For recent Australian research see B. Smyth & R. Weston, *Financial Living Standards After Divorce: A Recent Snapshot*, Research Paper No 23 (2000); J. Silvey & B. Birrell, *Financial Outcomes for Parents After Separation*, 12 PEOPLE & PLACE 45 (2004); S. KELLY & A. HARDING, LOVE CAN HURT, DIVORCE WILL COST, AMP/NATSEM Income and Wealth Report Iss 10 (April 2005).

³⁵ For an analysis of US data, see S. BRAVER WITH D. O'CONNELL, DIVORCED DADS: SHATTERING THE MYTHS (1998).

critical part. Does a non-resident father need more than a one bedroom apartment? The answer to that question depends on whether he is seeing his children regularly for overnight stays. Early studies, using equivalence scales to work out income needs per person in the household, typically treated non-resident parents as single people without others living in the home.³⁶ That may have been true in the 1970s and 1980s for a substantial number of separated and divorced fathers who did not have their children to stay regularly overnight,³⁷ and who therefore needed only a much more modest level of accommodation than the mother. With the changing demographics of post-separation parenting, and the greater level of involvement that non-resident parents have with their children, including regular overnight stays, that assumption is no longer sustainable.³⁸

Even those non-resident fathers who do not have to accommodate the children for regular visits, may find that their housing costs do not vary significantly from the former family home. Major cities may well have a plentiful supply of small apartments, but the housing stock of many towns and rural communities may be based almost entirely on family-size homes. The assumptions of economists do not always sit easily with real-world experience.

Whatever the situation may have been in the 1970s and 80s, the situation now is that many men as well as women suffer from the loss of the other partner's income when relationships

³⁶ On methodological issues in the studies conducted in the 1980s, see A. Sørensen, *Estimating the Economic Consequences of Separation and Divorce: A Cautionary Tale from the United States*, in *THE ECONOMIC CONSEQUENCES OF DIVORCE: THE INTERNATIONAL PERSPECTIVE*, (L. Weitzman and M. Maclean, eds, 1992) 263.

³⁷ J. Seltzer, *Relationships between Fathers and Children Who Live Apart: The Father's Role after Separation*, 53 *J. MARRIAGE & FAM.* 79 (1991); F. Furstenberg, C. Nord, J. Peterson, & N. Zill, *The Life Course of Children of Divorce: Marital Disruption and Parental Contact*, 48 *AM. SOC. REV.* 656 (1983); J. Seltzer & S. Bianchi, *Children's Contact with Absent Parents*, 50 *J. MARRIAGE & FAM.* 663 (1988).

³⁸ P. Amato, C. Meyers, & R. Emery, *Changes in Nonresident Father-Child Contact From 1976 to 2002*, 58 *FAM. REL.* 41 (2009).

break down.³⁹ While the economic impact of separation and divorce on women and men depends greatly on both their pre-separation circumstances and their post-separation household composition, it is evident that in most cases both parents will suffer a loss in standard of living as long as both are having to meet the housing needs of the children in their separate households. People cannot go from one household into two households, with a duplication of housing costs, furnishings and appliances, and other such expenses, without suffering a significant loss of living standards.

The economics of separation inevitably dictate loss. Unless parents can significantly increase their engagement in paid work, the one budget that the family had together while intact, has to stretch across two households with whatever additional support the welfare state may provide through poverty relief and social insurance programs.

IV THE SCOPE FOR PRIVATE INCOME TRANSFERS

The main focus of public policy has, to date, been in terms of ameliorating the financial impacts of separation for women and children by requiring income transfers from men. However, the effectiveness of this has been limited in western countries, with the consequence that as the incidence of single motherhood and family breakdown has increased, an ever greater burden has had to be borne by the public purse in terms of welfare expenditure.

a) Spousal maintenance

Spousal maintenance, or alimony as it is otherwise known, might in theory ameliorate the economic consequences of family breakdown,⁴⁰ but the evidence from a number of countries

³⁹ P. McManus & T. DiPrete, *Losers and Winners: The Financial Consequences of Separation and Divorce for Men*, 66 AM. SOC. REV. 246 (2001).

⁴⁰ Countries vary significantly in their approach to spousal maintenance in practice. See P. PARKINSON, FAMILY LAW AND THE INDISSOLUBILITY OF PARENTHOOD, chs 2 & 11 (2011). For a survey of the current legislative

has been that only a few women who have experienced family breakdown benefit from it. Given the financial pressures created for both parents when the income that once provided for one household has to meet the expenses of two, in comparatively few cases is there enough money available to award spousal maintenance.

In the USA, Census data reveals that courts made awards of permanent alimony in only 9.3% of the divorces between 1887 and 1906, only 15.4% of divorces in 1916, and only 14.6% of those in 1922.⁴¹ This was about the same percentage (14.3%) as was awarded in 1978, towards the beginning of the no-fault divorce revolution.⁴² The levels of spousal support hovered around 14-15% in the first half of the 1980s,⁴³ although the evidence from at least some jurisdictions is that levels of permanent awards fell sharply, with a focus on rehabilitative maintenance.⁴⁴

That spousal support has a limited role to play in practice is also evident from the German experience. In Germany, the concept of post-marital ‘solidarity’ is used to justify spousal support. While readily available in theory, the practice has been rather different. A large-scale study conducted between 1999 and 2001 found that 10 months after divorce, only 21% of women who shared parental responsibility with their former partners, and only 12% of women with sole parental responsibility, received spousal support.⁴⁵ By 2001, some 2 years

position in different European countries *see* 2 EUROPEAN FAMILY LAW IN ACTION, MAINTENANCE BETWEEN FORMER SPOUSES (K. Boele-Woelki, B. Braat, & I. Sumner, eds, 2003).

⁴¹ P. JACOBSEN, AMERICAN MARRIAGE AND DIVORCE 126 (1959), *cited in* L. WEITZMAN, THE DIVORCE REVOLUTION: THE UNEXPECTED SOCIAL AND ECONOMIC CONSEQUENCES FOR WOMEN AND CHILDREN IN AMERICA 180 (1985).

⁴² M. Melli, *Alimony Trends*, 19 FAM. ADVOCATE 21 (1996-1997).

⁴³ R. Kelly & G. Fox, *Determinants of Alimony Awards: An Empirical Test of Current Theories and a Reflection on Public Policy*, 44 SYRACUSE L. REV. 641, 643 (1993).

⁴⁴ M. Garrison, *Good Intentions Gone Awry: The Impact of New York's Equitable Distribution Law on Divorce Outcomes*, 57 BROOKLYN L. REV. 621 (1991).

⁴⁵ R. PROKSCH, RECHTSTATSÄCHLICHE UNTERSUCHUNG ZUR REFORM DES KINDSCHAFTSRECHTS 172 (2002).

after the divorce, the levels of spousal support had fallen. Only 18% of women with shared parental responsibility and 9.5% of those with sole parental responsibility received spousal support.⁴⁶ The main reasons given for the decline in the incidence of spousal support over the interval between the two surveys was remarriage and the former partner's inability to pay.⁴⁷ Economic realities, rather than legal constraints, proved the major determinant of whether spousal maintenance is awarded.

In any event, in almost all countries, a right to spousal maintenance only exists where the parties were married.⁴⁸ As has been noted, the proportion of the population of separated parents who used to be married has declined sharply in many western countries.

b) Child support

What about child support? This, at least, ought to be a universal obligation for non-resident parents. However, enforcing child support obligations has proved far more problematic than might have first appeared, and this has much to do with the increase in ex-nuptial births.

The experience of the United States is illustrative. In 1975, Congress established a federal Office of Child Support Enforcement, and required all states to establish similar offices. It operated both with sticks and carrots. The stick, for the states, was loss of some of their federal funding under a combined federal-state welfare program, the Aid to Families with

⁴⁶ *Id.* at 18.

⁴⁷ *Id.* Another study of 1500 divorced couples, published in 2003, examined receipt of spousal maintenance during the period of separation but before the divorce. Seventy-six per cent of women were eligible, but only 28% of these received spousal maintenance in full while another 9% received some but not all that had been agreed, or received it irregularly: H-J. ANDREß, B. BORGLOH, M. GÜLLNER, & K. WILKING, WENN AUS LIEBE ROTE ZAHLEN WERDEN. DIE WIRTSCHAFTLICHEN FOLGEN VON TRENNUNG UND SCHEIDUNG, 15 (2003).

⁴⁸ In Australia (Family Law Act 1975, Part VIIIAB) and New Zealand (Family Proceedings Act 1980, Part 6) cohabitation has been assimilated with marriage, so that once a court establishes that a cohabiting relationship of sufficient duration existed, the legal rights and obligations that flow therefrom in terms of property division and maintenance are the same as for marriages. This includes maintenance. New Zealand even has a provision allowing maintenance to be ordered against a natural parent where the parents have not lived together: Family Proceedings Act 1980, s.79.

Dependent Children program (AFDC), if they did not comply.⁴⁹ The carrot was substantial federal funding of state enforcement programs, as long as they complied with federal standards.⁵⁰

The federal involvement in child support enforcement was clearly necessary. Between the mid-1950s and the mid-1970s, welfare expenditure on single parent families rose threefold in real terms, with little actual increase in the rates of payment to each family.⁵¹ In 1976, official government statistics indicated that only 30% of single mothers actually received child support.⁵² One reason was the gap between having an award and actually receiving payment. In 1978, 3,424,000 women had child support due to them but only 64% of the money due was paid.⁵³ Thus while in theory, the obligation that non-resident parents had to pay child support was universal, the practical reality was very different.

Strenuous efforts were made to turn this around. A major strategy was to identify fathers of ex-nuptial children to pay child support. That involved efforts to obtain information from mothers about the identity of fathers and to ensure that a child support claim was made.⁵⁴ A national parent-locator system was also established, assisted by access to a wide range of government records.

⁴⁹ This is now known as Temporary Assistance for Needy Families (TANF).

⁵⁰ H. Krause, *Child Support Reassessed: Limits of Private Responsibility and the Public Interest*, U. ILLINOIS L. REV. 367, 372 (1989).

⁵¹ I. Garfinkel, D. Meyer, & S. McLanahan, *A Brief History of Child Support Policies in the United States*, in *FATHERS UNDER FIRE: THE REVOLUTION IN CHILD SUPPORT ENFORCEMENT* 14, 18 (I. Garfinkel, S. McLanahan, D. Meyer, & J. Seltzer, eds, 1998).

⁵² SORENSEN & HALPERN, *supra* note 11, at 1. This data was from the March Current Population Surveys (CPS). This is a nationally representative survey of approximately 50,000 households conducted by the U.S. Census Bureau.

⁵³ US Census Bureau, *Child Support and Alimony: 1989*, <<http://www.census.gov/hhes/www/childsupport/cstabf.html>>.

⁵⁴ 42 U.S.C. § 602(a)(26)(B) (1988).

A second dimension was enforcement, with the state taking a role in collecting child support that was similar in some respects to the enforcement of the obligation to pay taxes. In the drive to improve collection, automatic withholding of child support from wages became the front-line strategy. Federal legislation passed in 1984 obliged states to withhold child support from wages if the child support payer was more than a month behind in payments.⁵⁵ Legislation in 1988 extended the obligation of automatic withholding to all cases where mothers were on welfare, with a further extension in 1994 to all new or modified child support cases.⁵⁶ Tax refunds could also be intercepted, liens could be imposed on property, and a range of more punitive measures such as cancellation of driving licences were made available to support enforcement efforts.⁵⁷

Between 1975 and 1999, \$30 billion was spent implementing the child support enforcement program.⁵⁸ Despite all these efforts to improve child support collection, the overall effect of these efforts has been comparatively modest. Between 1976 and 1997, the numbers of single mothers receiving child support increased by less than 1%.⁵⁹ The amounts mothers received may have increased due to the development of child support guidelines,⁶⁰ but not the proportion of mothers receiving money.

Why? The major reason for this has been found to be the shift in the characteristics of mothers who live apart from fathers. In that period, the number of never-married mothers

⁵⁵ Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, 98 Stat. 1305.

⁵⁶ Garfinkel et al., *supra* n. 51, at 23-24.

⁵⁷ For examples, see S. Maldonado, *Beyond Economic Fatherhood: Encouraging Divorced Fathers to Parent*, 153 U. PA. L. REV. 921, 936-37 (2005).

⁵⁸ SORENSEN & HALPERN, *supra* note 11, at 1.

⁵⁹ *Id.*

⁶⁰ Robert Williams, *An Overview of Child Support Guidelines in the United States*, in CHILD SUPPORT GUIDELINES: THE NEXT GENERATION 1, 1 (Margaret Campbell Haynes ed., 1994); Jane Venohr & Robert Williams, *The Implementation and Periodic Rev. of State Child Support Guidelines*, 33 FAM. L.Q. 7 (1999).

increased fivefold, while the number of divorced, or married but separated, mothers increased at a much slower rate, rising from 3.6 million to 4.6 million.⁶¹

Single, never-married mothers have much lower rates for receipt of child support. This is in part due to the characteristics of those who father their children. There are also issues about establishing the child support liability. For a proportion of single mothers, paternity would need to be established before a child support claim could be made. In 1993, the father was identified for only about a third of the children born to unmarried women.⁶² Where single mothers are on welfare, most of the father's child support payments might well go to reimbursing the government, and so the incentive for fathers to pay is limited.

Compliance among those with formal child support orders is still not particularly high. Data from 2007 published by the US Census Bureau indicates that 46.8% of those who had formal child support orders received the full amount and 29.5% received a portion of the total due. The other quarter did not receive child support in that year.⁶³

One of the problems in achieving income transfers by way of child support for mothers is that so many children are born to fathers who themselves have limited financial means. In Australia, for example, about 20% of all those with an obligation to pay child support are themselves on welfare benefits.⁶⁴ The incomes of other non-resident parents are not high. In June 2009, the median income of all parents liable to pay child support was only \$31,000. Taking account only of those who had a taxable income, the median was \$40,677.⁶⁵ In May

⁶¹ Williams, *id.* at 3.

⁶² D. Chambers, *Fathers, the Welfare System, and the Virtues and Perils of Child Support Enforcement*, 81 VIRGINIA L. REV. 2575, 2589 (1995).

⁶³ T. GRALL, CUSTODIAL MOTHERS AND FATHERS AND THEIR CHILD SUPPORT: 2007 (2009), <<http://www.census.gov/prod/2009pubs/p60-237.pdf>>.

⁶⁴ REPORT OF THE MINISTERIAL TASKFORCE, IN THE BEST INTERESTS OF CHILDREN: REFORMING THE CHILD SUPPORT SCHEME 95 (2005).

⁶⁵ CHILD SUPPORT AGENCY, FACTS AND FIGURES, 2008-09, 1 at 31-32 (2009).

2009, full-time adult earnings were over \$64,000 per year for the population as a whole.⁶⁶ Disproportionately, the parents who separate, or never lived together in the first place, are concentrated towards the bottom of the socio-economic scale.

For most fathers, on modest incomes to begin with, there is little room for financial transfers after accommodation and other necessities are met. Certainly, modern child support formulae typically require significant portions of a non-resident parent's income to be paid in child support, but there is only so much that can reasonably be expected. Even where collection mechanisms are effective, the cost to government is considerable. In Australia, for example, it costs 34.6 cents to the Government for every dollar collected in child support through the Child Support Agency.⁶⁷

The problems in enforcing child support mean that much of the burden of income support for primary caregivers who cannot support themselves through paid work falls on the public purse. If non-resident parents are not contributing adequately to their children's support, governments are left as the default providers for low-income sole parent households, placing a considerable strain on welfare budgets.

The role of government in ameliorating the economic impacts of family breakdown on children is nonetheless a vitally important one. Parents' post-separation financial difficulties account for a significant part of the observed adverse impacts of parental separation on children.⁶⁸ As parents struggle financially in the aftermath of separation, maintaining two

⁶⁶ Average weekly earnings were \$1,243.50, which equates to \$64,662 annually. See Australian Bureau of Statistics, *Average Weekly Earnings*, Cat No 6302.0, <[http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/376AFC773288BA43CA25761000197A9F/\\$File/63020_may%202009.pdf](http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/376AFC773288BA43CA25761000197A9F/$File/63020_may%202009.pdf)>. If all part-time workers are included, the figure is still over \$48,000 per annum.

⁶⁷ CHILD SUPPORT AGENCY, *FACTS AND FIGURES*, 2008-09, 1 (2009).

⁶⁸ S. McLANAHAN & G. SANDEFUR, *GROWING UP WITH A SINGLE PARENT: WHAT HURTS, WHAT HELPS* (1994); P. Amato & J. Gilbreth, *Nonresident Fathers and Children's Well-Being: A Meta-Analysis*, 61 J. MARRIAGE & FAM. 557, 564 (1999); S. McLanahan, *Father Absence and the Welfare of Children*, in *COPING WITH DIVORCE*,

households where once there was one, and bearing additional costs, in many cases, for the children to travel between the parents' homes, there is simply less money than before to provide for the children. That has a range of impacts upon children's life chances.⁶⁹ It follows that if governments are to reduce child poverty and promote the wellbeing of the youngest generation, they need to maintain a heavy public investment in supporting children whose parents do not live together.

V FAMILY BREAKDOWN AND THE IMPACT ON THE ELDERLY

The financial consequences of family breakdown have repercussions not only for the parents and their children, but also for the elderly,⁷⁰ because parental separation reduces the capacity of adults in mid-life to support and care for the older generation.

The burden of care for the elderly has in the past disproportionately fallen on women, and this pattern appears to transcend cultures.⁷¹ There are no doubt many reasons for this gendered pattern, including social expectations of daughters and, to a lesser extent perhaps, daughters-in-law. One of the factors that is likely to have played a role in the gendered pattern of caring in the past has been role differentiation, with women taking on the primary role in caring both for children and the elderly and having the greater time to do so because they were either working part-time outside the home or not at all.

SINGLE PARENTING AND REMARRIAGE: A RISK AND RESILIENCY PERSPECTIVE 117, 130-35 (M. Hetherington, ed, 1999).

⁶⁹ See e.g. J. Elliott & M. Richards, *Children and Divorce: Educational Performance and Behaviour Before and After Parental Separation*, 5 INT. J. L. & FAM. 258 (1991); S. McLanahan, *Diverging Destinies: How Children Are Faring Under the Second Demographic Transition*, 41 DEMOGRAPHY 607 (2004).

⁷⁰ In 2003, one in five Australians needed ongoing assistance because of a disability, a long-term condition or the frailty of age. Of these, about 70 per cent (2,826,300) were living in the community: S. LYMER, R. PERCIVAL, & A. HARDING, THE COST OF CARING IN AUSTRALIA 2002 TO 2005. WHO CARES?, AMP.NATSEM Income and Wealth Report Issue 13, 9 (May 2006).

⁷¹ L. Brewer, *Gender Socialization and the Cultural Construction of Elder Caregivers*, 15 J. AGING STUD. 217 (2001).

The support given to elderly parents by their adult children and partners takes a multitude of forms. If a parent lives in the same area, it may include such tasks as helping with shopping and cleaning, assisting with the paperwork in managing finances, and taking the parent to medical appointments. This informal support is of critical importance in reducing the necessity for the elderly to go into institutional care, or in delaying that eventuality.

The capacity of women to take on these caregiving roles for the elderly has been diminished over the years by the growth in married women's workforce participation. In the United States, workforce participation of married women jumped from 28% in 1960, to 68% in 1987.⁷² The largest fall in the proportion of marriages with stay-at-home mothers occurred in the 1980s, levelling off by about 1991.⁷³

Parental separation drives more women either into the workforce or to increase their level of workforce participation. This is evident from a study comparing married and divorced women (excluding women who had repartnered) in 1980 and 2001 respectively.⁷⁴ The data came from the large-scale, and longitudinal, Current Population Survey. In that 21 year period, divorced women's per capita income increased 48% while married women's per capita income increased 34%. The increase in the lowest income quartile was only a little lower than the average, indicating divorced women across the spectrum had gained increases in living standards. However, child support and spousal support were less significant than they once were as a proportion of household income. These income transfers, for those who received them, represented only 14% of total family income in 2001 compared with 31% in

⁷² T. Oldham, *Changes in the Economic Consequences of Divorces, 1958-2008*, 42 FAM. L. Q. 419 at 424 (2008).

⁷³ I. Ellman, *Marital Roles and Declining Marriage Rates*, 41 FAM. L. Q. 455, 465 (2007). Since the late 1990s there has been a modest increase in the proportion of stay-at-home mothers in marriages, but this must be read in the context of a decline in marriage rates and corresponding rise in cohabitation.

⁷⁴ M. McKeever & N. Wolfinger, *Shifting Fortunes in a Changing Economy: Trends in the Economic Wellbeing of Divorced Women*, in FRAGILE FAMILIES AND THE MARRIAGE AGENDA 127, 143-45 (L. Kowaleski-Jones & N. Wolfinger, eds, 2006).

1980.⁷⁵ Separated and divorced women, in other words, became much more self-sufficient over a twenty year period, through increased workforce participation. That increased workforce participation particularly of mothers who are living apart from fathers, reduces their capacity to provide care to elderly and frail parents in addition to being the sole breadwinner for the family and looking after the children.

Parental separation is also likely to remove any sense of obligation that a woman may have felt to provide care for her partner's elderly parents. Divorce does not only dissolve the marital bond, but also the ties of moral obligation and cultural expectation in relation to elderly in-laws, for no longer are they related. That nexus of commitment and obligation may in any event be less in the case of cohabiting relationships.

Geographical distance also inhibits providing care for the elderly, but this may well be exacerbated if the adult child has suffered a family breakdown. There may, for example, not be enough money for travel to visit elderly parents regularly.

From a governmental perspective, the reduced capacity of people in mid-life to provide informal care and support to elderly parents, means that an increased burden is likely to fall on health and social services to meet these needs and to try to keep them in their own home. Institutional care is more expensive still. In the United States, a shortfall is already predicted in the capacity of the Social Security system to meet scheduled benefits by 2037 at current funding and benefit levels.⁷⁶ The combined effect of rising pension costs and an increased burden on publicly funded health and social services presents a major challenge to public

⁷⁵ *Id.* at 149.

⁷⁶ THE 2010 ANNUAL REPORT OF THE BOARD OF TRUSTEES OF THE FEDERAL OLD-AGE AND SURVIVORS INSURANCE AND FEDERAL DISABILITY INSURANCE TRUST FUNDS (2010).

finances in most western countries in the next 30 years.⁷⁷

If elderly people who need care have themselves experienced a family breakdown, their capacity to support themselves financially may also be diminished. As people live longer, so there are more years for which their retirement incomes need to stretch and more years in which they need to receive medical treatment.⁷⁸ While elderly people are in reasonable health, and able to live at home, they may very well be self-sufficient. However, for many older people, there comes a point where age, infirmity and mental decline take their toll and they are no longer remain living in their own home. Residential care comes at a huge cost, and to the extent this cannot be financed by the individuals themselves, or family members, the burden may fall on governments.⁷⁹

It is only in the last few years that the full impact of the divorce revolution on the aged population of western societies has begun to be felt. The cohort of those who divorced in their mid-30s and 40s in the late 1970s and 80s have in recent years started to reach retirement age. Those women who did not gain a share of their former partner's retirement savings, and did not repartner, have been particularly vulnerable to economic hardship in their twilight years, with consequent dependence on public support.⁸⁰ The long-term economic effects of the divorce revolution have started to become apparent, beyond the immediate crises requiring welfare support for so many single mothers. The financial impacts of family breakdown have consequences that are lifelong.

⁷⁷ See, in the US context, D. Rice & N. Fineman, *Economic Implications of Increased Longevity in the United States*, 25 ANNUAL REV. PUBLIC HEALTH, 03.1 (2004).

⁷⁸ Estimates given by the US Census Bureau indicate that a child born in 1970 could expect to live until 71. A child born in 2010 could expect to live until 78. US CENSUS BUREAU, THE 2011 STATISTICAL ABSTRACT (2011) at http://www.census.gov/compendia/statab/cats/births_deaths_marriages_divorces.html

⁷⁹ In Australia, for example, see PRODUCTIVITY COMMISSION, CARING FOR OLDER AUSTRALIANS (2011).

⁸⁰ For Australian research, see D. DE VAUS, M. GRAY, L. QU, & D. STANTON, THE CONSEQUENCES OF DIVORCE FOR FINANCIAL LIVING STANDARDS IN LATER LIFE (2007).

VI THE LOOMING CRISIS FOR THE WELFARE STATE

a) *The public costs of family breakdown*

While decisions on family formation and dissolution may be entirely private matters, it is clear that they have public consequences. Many countries stumbled into divorce reform in the late 60s and 70s without really thinking the financial issues through. Twenty-five years ago, British scholar Pamela Symes identified with great clarity the nub of the problem concerning financial issues following separation in her country. In all the debates about divorce law reform in England, she observed, the one question that was not answered was how it was going to be paid for. A large number of new households would be created, so where would the extra resources come from to finance this?⁸¹ The financial implications for taxpayers were enormous, yet there was no explicit recognition of the extent to which preventing women and children falling into poverty would fall to the public purse. Twenty-five years on, western societies continue to have few answers to this dilemma.

There have been attempts in a number of countries to estimate the costs of family breakdown to taxpayers. The methodological issues are of course considerable, in terms of what costs can be attributed to family breakdown either wholly or partially. Such studies for that reason tend to offer conservative estimates. Even still, the estimated costs per annum are substantial. A British study found the costs of family breakdown were £41.74 billion in 2011, or £1,364 for every taxpayer.⁸² A Canadian study, published in 2009, estimated the costs in that country as 7 billion Canadian dollars per year.⁸³ A US study estimated the costs of family breakdown and unmarried parenthood in 2008 as being at least \$112 billion per year.⁸⁴ There is of course

⁸¹ P. Symes, *Indissolubility and the Clean Break*, 48 MODERN L. REV. 44 (1985).

⁸² Relationships Foundation, *Counting the Cost of Family Failure* (2011).

⁸³ R. Walberg and A. Mrozek, *Private Choices, Public Costs: How Failing Families Cost Us All* (2009).

⁸⁴ B. Scafidi, *The Taxpayer Costs of Divorce and Unwed Childbearing* (2008).

plenty of scope for argument about the detail, but the broad picture is clear. Such calculations do not include the less measurable costs such as the intergenerational impacts considered in this Article. The human costs are, of course, immeasurable.

Given these impacts on public finances, how much family instability can western societies afford? Another way of expressing the question is to ask how much family instability developed societies can cope with before they need to get serious about trying to reverse the trend. For the reality is that governments in most developed societies have stood by and watched the increase in family breakdown, together with the massive rise in ex-nuptial births, without really addressing the issue as being a serious policy problem. For years, that was the typical attitude of western societies to the issue of global warming as well.

b) Another inconvenient truth

Al Gore's film, *An Inconvenient Truth*, released in 2006, played a major role in turning public opinion around. Countries around the globe are now actively discussing how to take action on this enormously difficult problem, and many are acting through emissions trading schemes, encouragement of greener sources of power, and other measures, to reduce greenhouse gas emissions.

Reversing the tide of family breakdown may not be much less difficult, but it is important at the very least to focus on this now as a pressing social policy problem. As long as public finances in western societies were healthy, the growing costs of family instability could be absorbed. However, Europe and the United States in particular, are both facing a crisis in terms of government debt and the affordability of social welfare provision. With an ageing population, and a shrinking tax base, there are very real limits to the capacity of western governments to continue affording to absorb the public costs of private lifestyle decisions.

c) Safe, stable and nurturing families

Law has a limited role in reversing the tide of family breakdown. The main focus needs to be on programs and services that have the goal of promoting safe, stable, and nurturing relationships between children and adults,⁸⁵ and enhancing various protective factors that improve parental resilience.⁸⁶ One way of doing this is to provide education programs about family life which will help address the knowledge deficits across the community through lack of healthy modelling in people's families of origin. In the British context, the Centre for Social Justice has well articulated the need for such programs to be widely available:⁸⁷

“Increasing geographical mobility has meant that fewer people now live close enough to extended family to access traditional sources of immediate wisdom and support. Voluntary sector providers described to us how many parents and partners experience a sense of psychological isolation, all too aware of the shortcomings in their relational skills, but unaware of how improvements might be made to prevent future family breakdown. Further anecdotal evidence we received suggested that most people struggle with the concept of seeking advice on how to manage relationships at home, considering it is only for those with problems. 75% of all relationship support involves the treatment of problems, such as counselling..., rather than their prevention.”

One of the key recommendations it made was for the development and national roll-out of a suite of relationship and parenting education programmes.⁸⁸ A comprehensive relationship

⁸⁵ Centers for Disease Control and Prevention (CDC), *Strategic Direction for Child Maltreatment Prevention: Preventing child maltreatment through the promotion of safe, stable, and nurturing relationships between children and caregivers* (Department of Health and Human Services) <http://www.cdc.gov/ViolencePrevention/pdf/CM_Strategic_Direction--Long-a.pdf>.

⁸⁶ The US Administration for Children and Families, within the Department of Health and Human Services, lists five protective factors that organisations working with families should seek to promote: These are nurturing and attachment; knowledge of parenting and youth development; parental resilience; social connections; and concrete supports for parents: Administration on Children, Youth and Families, Administration for Children and Families, U.S. Department of Health and Human Services, *Strengthening Families and Communities: 2011 resource guide* www.childwelfare.gov/pubs/guide2011/guide.pdf#page=21. See also the similar, but not identical list, developed by the Center for the Study of Social Policy in Washington DC: Center for the Study of Social Policy, *Strengthening Families: Protective Factors: The five protective factors* <http://www.strengtheningfamilies.net/index.php/main_pages/protective_factors>.

⁸⁷ SOCIAL JUSTICE POLICY GROUP, BREAKTHROUGH BRITAIN: ENDING THE COSTS OF SOCIAL BREAKDOWN (The Centre for Social Justice, July 2007) vol 1, 17.

⁸⁸ Ibid 48. Five streams, it recommended, should be targeted at the general population. These are pre-marriage education, antenatal classes, and parenting 0-5s, 5-11s & teens. They also recommended programs for lone

education program ought to cover both couple relationships and parent-child relationships, for the wellbeing of children depends critically on both.⁸⁹

This author has proposed, in Australia, a major new initiative in providing community-based education programs for couple relationships and parent-child relationships.⁹⁰ The aim is to expand greatly their availability across the community by drawing upon volunteer resources to help deliver them. Such courses, designed by professional relationship organisations that would provide the training for instructors, could be delivered by parents' associations in schools, community organisations such as Rotary Clubs, churches and other faith-based communities, culturally and linguistically diverse (CALD) organisations, gay and lesbian organisations, or indeed any other group willing to offer their time and facilities to provide programs for the local community or for a particular group within the community.

The United States has already gone some way towards this with its government-funded programs to build strong families, supported by rigorous evaluation.⁹¹ To the extent that programs for relationship education and family support are delivered by professionals, funding concerns inevitably mean that the reach of such programs is limited. The use of volunteers, in particular, the newly retired who have time, experience and energy to devote to

parents, prisoners, military personnel and parents of children who have been taken into out-of-home care. For further details of the proposed streams, see H. Benson, *Relationship Education Proposals* (Bristol Community Family Trust, July 2007) <[http://www.bcft.co.uk/images/Relationship education invitation scheme2007.pdf](http://www.bcft.co.uk/images/Relationship%20education%20invitation%20scheme2007.pdf)>.

⁸⁹ P. Cowan and C. P. Cowan, *Diverging Family Policies to Promote Children's Well-being in the UK and US: Some Relevant Data from Family Research and Intervention Studies* 3(4) J. CHILDREN'S SERVICES 4 (2008); M. Pinguat and D. Teubert, *Effect of Parenting Education with Expectant and New Parents: A meta-analysis* 24 J. FAMILY PSYCHOLOGY 316 (2010).

⁹⁰ P. Parkinson, *For Kids' Sake: Repairing the Social Environment for Australia's Children and Young People* (2011).

⁹¹ R. Wood, S. McConnell, Q. Moore, A. Clarkwest and J. Hsueh, *Strengthening Unmarried Parents' Relationships: The early impacts of Building Strong Families* (Mathematica Policy Research, 2010); B. Devaney and R. Dion, *15-Month Impacts of Oklahoma's Family Expectations Program* (Mathematica Policy Research, August 2010). See also R. Dion, S. Avellar and E. Clary, *The Building Strong Families Project: Implementation of eight programs to strengthen unmarried parent families* (Mathematica Policy Research, May 2010). These are available at <http://www.buildingstrongfamilies.info>.

community wellbeing, offers a more cost-effective strategy in terms of making such programs widely available.

There is nonetheless a place for law reform also. One issue is whether public policy, as expressed through law, can better encourage marriage as the preferred context for raising children. The overwhelming evidence from research is that children do best in two-parent married families. As American scholar Prof. Susan Brown recently stated in a review of the research evidence:⁹²

“Over the past decade, evidence on the benefits of marriage for the well-being of children has continued to mount. Children residing in two-biological-parent married families tend to enjoy better outcomes than do their counterparts raised in other family forms. The differential is modest but consistent and persists across several domains of well-being. Children living with two biological married parents experience better educational, social, cognitive, and behavioral outcomes than do other children, on average. Variation in well-being among children living outside of two-biological-parent married families (e.g., married step, cohabiting, and single-parent families) is comparatively low and often negligible. The benefits associated with marriage not only are evident in the short-term but also endure through adulthood.”

Although debate continues on the reasons for the benefits of marriage, and in particular, on the difference between marriage and cohabitation, the preponderance of the research indicates that these differences remain even after taking account of selection effects.⁹³

⁹² S. Brown, *Marriage and Child Well-Being: Research and policy perspectives* 72 J MARRIAGE AND FAMILY 1059, 1062 (2010) (references omitted).. See also P. Amato, *Research on Divorce: Continuing Trends and New Developments*, 72 J. MARRIAGE & FAM. 650, 653 (2010) (‘Research during the last decade continued to show that children with divorced parents, compared with children with continuously married parents, score lower on a variety of emotional, behavioral, social, health, and academic outcomes, on average. ... Although many of these studies replicate earlier findings, they are useful in showing that the links between divorce and forms of child well-being have remained relatively constant across decades.’); Sara McLanahan & Christine Percheski, *Family Structure and the Reproduction of Inequalities*, 34 ANNUAL REV. SOCIOLOGY 257, 264-65 (2008) (‘A large body of research indicates that living apart from a biological parent (typically the father) is associated with a host of negative outcomes that are expected to affect children’s future life chances or ability to move up the income ladder’).

⁹³ The debate is about whether the better outcomes for children in two-parent married families are the results only of selection, or whether there is an element of causation as well. “The selection perspective holds that it is not family structure per se that influences child well-being but the characteristics of parents that are related to both family structure and child outcomes. That is, children fare best in two-biological-parent married families, on average, because adults who form and maintain such families are the most stable, well-adjusted, resource-rich individuals”: Brown, *supra* note 92, at 1064. In contradistinction stands the causation view, which says that

Encouraging marriage as the preferred context for raising children will no doubt generate some objections, particular from those who celebrate ‘diversity’ in terms of family form, decry any differentiation as discrimination, and privilege individual autonomy above collective responsibility. The problem of fragile families is, without doubt, an inconvenient truth. However, the evidence is compelling that two parents tend to provide better outcomes for children than one, and that the most stable, safe and nurturing environment for children is when their parents are, and remain, married to one another.

The difference marriage seems to make is in the commitment that it involves, providing a greater degree of stability and resilience, especially when times are difficult. Marriage involves a decision to commit, to dedicate oneself to the other and to the partnership. By way of contrast, many people ‘slide’ into cohabiting relationships in a gradual process of transition from living apart to living together, without the same intentionality that a public decision to commit for the long-term future involves.⁹⁴ Such relationships then prove less durable when there are difficulties.

To say that marriage makes a difference is neither to denigrate other family forms nor to attribute blame. It is to recognise what is best for children, and that while governments should support all children, in all family forms, and help parents and children affected by family breakdown, it ought to do so in such a way that does nothing to undermine marriage.

when people take upon themselves the commitments of marriage and hold to them, the spouses and their children experience improved levels of wellbeing that they would not have experienced had the parents chosen a non-marital family structure, such as cohabitation. Although this debate is frequently couched in a ‘selection versus causation’ war, the research seems to suggest that both selection and causation are operative, with a degree of wellbeing attributable to each of them. For discussion see e.g. P. Amato, *The Impact of Family Formation Change on the Cognitive, Social, and Emotional Well-Being of the Next Generation* 15 *THE FUTURE OF CHILDREN* 75 (2005); J. Murray, *Marital Protection and Marital Selection: Evidence from a Historical-Prospective Sample of American Men*, 37 *DEMOGRAPHY* 511 (2000); L. Lillard & C. Panis, *Marital Status and Mortality: The Role of Health*, 33 *DEMOGRAPHY* 313 (1996).

⁹⁴ W. Manning and P. Smock, *Measuring and Modelling Cohabitation: New perspectives from qualitative data* 67 *J. MARRIAGE & FAM.* 989 (2005); S. Stanley, G. Kline Rhoades and H. Markman, *Sliding Versus Deciding: Inertia and the pre-marital cohabitation effect*, 55 *FAM. RELATIONS* 499 (2006).

Accepting that children do best when their parents are, and remain married, inevitably leads on to other questions. People will make their own choices whatever governments say or do, and government has a limited role in either regulation or persuasion. However, are there in some cases, financial penalties associated with getting married rather than living in a cohabiting relationship that ought to be removed?⁹⁵ What can be done about welfare benefit policies which have the effect of discouraging people from living together at all?⁹⁶ Does any tier of government provide perverse incentives to choose family forms that may not be optimal as a context for raising children?

The goal of public policy in this area ought to be to encourage the maintenance of stable, safe and committed relationships between parents, and to encourage the procreation of children in a context that maximizes their chances of experiencing a stable, safe and nurturing home environment.

VII CONCLUSION

There has been a dramatic rise within a couple of generations, in the number of children in western countries that experience the separation of their parents by the time they are 15. An increasing number are born into single parent families. Others experience the separation of their parents at some point in their childhood, often as a consequence of the breakup of non-marital cohabiting relationships. This has multiple detrimental effects for many children.

⁹⁵ In the USA, the ‘marriage penalty’, as it has been called, is a major cause for concern. See eg C. Donovan, *A Marshall Plan for Marriage: Rebuilding our shattered homes*, Backgrounder no 2567 (The Heritage Foundation, 2011); A. Roberts and D. Blakenhorn, *The Other Marriage Penalty: A new proposal to eliminate the marriage penalty for low-income Americans*, Research brief no 3 (Institute for American Values, September 2006); A. Carasso and E. Steuerle, *The Hefty Penalty on Marriage Facing Many Households with Children* 15 FUTURE OF CHILDREN 157 (2005).

⁹⁶ See in the UK, The Centre for Social Justice, *Dynamic Benefits: Towards welfare that works* (2009); The Centre for Social Justice, *The Centre for Social Justice: Green Paper on the Family* (January 2010) 4.2.3.

Family breakdown also has impacts on the elderly, by reducing the capacity of adults in mid-life to care for their own parents, and by disrupting the bonds of care and obligation between women and the elderly parents of their former partners.

The weakening of family ties has cast additional burdens on the public purse. For as long as economies were growing, and public revenues increasing, these costs could be absorbed. In an age when the debt crisis is so serious that sovereign governments are in danger of defaulting on their repayments, the costs of fragile families cannot be so readily absorbed in the future.

Fragile families lead to broken hearts. They also threaten the wellbeing of the community as a whole. Turning this around will require a herculean effort, but we cannot afford not to make the attempt.