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Emory Bankruptcy Developments Journal

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Volume 38 | Issue 2

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2022

## The "Ideal Debtor" and the "Traditional" American Household

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### Recommended Citation

A. M. Dickerson, *The "Ideal Debtor" and the "Traditional" American Household*, 38 Emory Bankr. Dev. J. 185 (2022).

Available at: <https://scholarlycommons.law.emory.edu/ebdj/vol38/iss2/1>

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# THE “IDEAL DEBTOR” AND THE “TRADITIONAL” AMERICAN HOUSEHOLD

*A. Mechele Dickerson\**

## ABSTRACT

*Laws that award governmental benefits reflect an archetype of the type of person deemed worthy of governmental assistance and generally favor and reward people who have specific personal attributes or who engage in activities deemed socially desirable. Just as the Bankruptcy Code favors the “Ideal Debtor,” state and federal laws favor and subsidize Americans who live in a “traditional household.” Historically, this household consisted of husbands who earned income in the paid labor market and wives who stayed home to provide unpaid care for their husbands and minor children. Households that deviated from that norm rarely received the full range of benefits and often were excluded from receiving the financial subsidies traditional households receive. Changes in social mores, the legalization of same-sex marriages, bans on gender discrimination in employment markets, and widening economic inequality have made it more likely that households will consist of a multi-generational family, single parents, unmarried partners, childless married couples, and married parents who both earn income in the paid labor market.*

*Despite a shrinking number of traditional households, U.S. laws continue to subsidize the narrow profile of families who are most likely to live in a traditional household: white, rich, college graduates. Even if public policy historically justified providing subsidies for traditional households, ongoing subsidies for personal choices (to marry, have children and live in an independent household) can no longer be justified and, in addition, exacerbate existing income and wealth disparities.*

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## INTRODUCTION

Almost 20 years ago, I argued that the members of Congress who envisioned the type of people most worthy of debt relief in bankruptcy “either consciously or unconsciously exhibited a bias in favor of a specific demographic profile” which I labeled the “Ideal Debtor.”<sup>1</sup> To receive the full benefits provided by federal bankruptcy laws, the Ideal Debtor needs savings or stable income to pay bankruptcy filing and legal fees, should be married (to take advantage of filing a joint petition and exempting tenants by the entirety property), and should be a homeowner (to shield property from creditors using state homestead laws). The Ideal Debtor also should have ERISA-qualified retirement funds or be the beneficiary of a spendthrift trust (since neither creditors nor the bankruptcy estate can seize those funds), should have few nondischargeable debts (like student loans) and should only pay expenses for legal dependents, not other family members.

Because Black debtors generally do not fit that demographic profile, I concluded that the Ideal Debtor is white.<sup>2</sup> Blacks typically will not fully benefit from the debt relief provided by federal bankruptcy laws because they have

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<sup>1</sup> A. Mechele Dickerson, *Race Matters in Bankruptcy*, 61 WASH. L. REV. 1725, 1726 (2004).

<sup>2</sup> *Id.*

lower overall income<sup>3</sup> and wealth<sup>4</sup> but higher unemployment rates. These factors make it more likely that they will file for relief under chapter 13, which takes longer and is more expensive, because they may lack the funds to pay a bankruptcy lawyer a one-time lump sum fee to receive a shorter and cheaper chapter 7 discharge. Likewise, because they are more likely to have unstable employment and income it will be harder for them to successfully complete a multi-year chapter 13 repayment plan.<sup>5</sup>

Similarly, Blacks are less likely to have the expense, asset or debt mix to fully benefit from federal debt relief because they have lower marriage and homeownership rates and are more likely to provide financial support for non-dependents, including parents and other family members.<sup>6</sup> In addition, they have disproportionately higher overall student loan debt, hold smaller amounts in employer-provided retirement plans and rarely are the beneficiaries of spendthrift trusts.<sup>7</sup> Having identified the profile of the “Ideal Debtor,” the Article concluded by urging Congress to reconsider who they deemed worthy of bankruptcy relief and to revise the Code to ensure that federal bankruptcy relief did not inadvertently favor (or discriminate against) any racial group.<sup>8</sup>

The overall financial predicament Blacks face has changed little over the last 20 years. In fact, their financial circumstances may now be worse given the income and wealth inequality gaps, particularly between the Top 20% of households and other poor or middle-income households, that widened during the 2007-2009 Recession and remain at historic levels. Lower- and middle-income households had barely recovered from their recession losses when the 2020 COVID-19 recession sent unemployment numbers skyrocketing. Although the richest households quickly rebounded from the 2007 Recession and they flourished financially during the COVID pandemic, *all* lower- and middle-income households of all races now face economic precarity.<sup>9</sup>

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<sup>3</sup> Generally speaking, income includes revenue streams from wages, salaries, interest on a savings account, dividends from shares of stock, rent, and the profits an owner makes from selling property. *Income Inequality in the United States*, INEQUALITY.ORG, <https://inequality.org/facts/income-inequality/> (last visited Mar. 28, 2022).

<sup>4</sup> Wealth or net worth means the sum total of assets (which includes real estate, cash, stocks and bonds, and money saved in retirement accounts) minus liabilities (debts, including mortgages, automobile and student loans, and credit card balances). *Id.*

<sup>5</sup> See Dickerson, *supra* note 1, at 1742–43, 1752–53.

<sup>6</sup> *Id.* at 1747–48, 1759–61.

<sup>7</sup> *Id.* at 1765–66, 1770.

<sup>8</sup> *Id.* at 1772–75.

<sup>9</sup> See Mitchell Barnes et. al., *Tax Data Show Evidence of Strong Income Gains for Higher-Income Families and Only Muted Decreases for Lower- and Moderate-Income Families in 2020*, BROOKINGS INST. (June 17, 2021), <https://www.brookings.edu/blog/up-front/2021/06/17/tax-data-show-evidence-of-strong-income->

Progressive legislators and policy institutes regularly focus on ways to close income and wealth inequality gaps. But little attention has been paid to the ways state and federal policies award benefits to “traditional” households and, as a result, exacerbate those gaps. Just as the Code is biased in favor of a particular debtor profile, the people most likely to benefit from state and federal subsidies (including those contained in bankruptcy, tax, immigration, and local zoning laws) live in “traditional” households where a husband earns income in the labor market and a wife remains home to rear their children. As is true with the Ideal Debtor, people who live in traditional households fit a narrow demographic profile: they are rich, they are white, and they have college degrees.<sup>10</sup>

This Article argues that federal and state laws should neither encourage nor subsidize a household formation that largely benefits families who least need economic subsidies. Part I describes the benefits state and federal laws and policies bestow on “traditional” households and explains the policy justifications for encouraging families to live in that type of household. Part II explains how: (1) decades of stagnant income and job insecurity for all but the highest paid workers; (2) higher female college attendance rates; and (3) the increased tendency of college graduates to marry each other has resulted in lower marriage rates, an increase in unmarried cohabitating partner households, and an increase in the number of “unpartnered” young adults (especially males) who are neither married nor cohabitating. Economic precarity has had especially stark effects on marriage rates for low-income males without college degrees as many are now viewed as “unmarriageable” by potential partners.

Part III explains how the increase in the number of financially vulnerable young adults has resulted in more single-parent households and childless households and fewer single-earner married households. Part IV then shows how financial fragility makes it harder for young adults to form their own households and buy homes and why so many continue to live at home with their parents. Now, only higher-income college graduates or those with access to family wealth can reasonably expect to become homeowners and live independently.

This Article concludes by arguing that local, state, and federal laws and policies should be household-neutral to ensure that public financial benefits are not disproportionately bestowed on a shrinking demographic profile. The Article suggests that if legislators and policymakers continue to deem the “traditional”

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gains-for-higher-income-families-and-only-muted-decreases-for-lower-and-moderate-income-families-in-2020; see also Elise Gould & Jori Kandra, *Wages Grew in 2020 Because the Bottom Fell Out of the Low-Wage Labor Market*, ECON. POL’Y. INST. 1, 1, 5–9 (Feb. 24, 2021), <https://files.epi.org/pdf/219418.pdf>.

<sup>10</sup> See discussion *infra* Section III.

household formation worthy of government subsidies, they must find ways to make it financially feasible for young people to marry, have children, and establish independent households.

### I. THE TRADITIONAL AMERICAN HOUSEHOLD

Before the 1970s, the stereotypical American household consisted of a married man and woman with children who moved out of their parents' home to form their own households once they graduated from high school.<sup>11</sup> Husbands in "traditional" households earned income in the paid labor market to support their wives and children while wives remained in the home to provide care for their husbands and children.<sup>12</sup> This household formation was reasonably attainable until the 1970s because: (1) male workers (particularly if they were white) could find stable, high wage jobs that paid them enough to support their families; and (2) marriage rates were high because gender discrimination in paid labor markets limited the ability of female workers to earn enough to support themselves.<sup>13</sup>

While both state and federal laws encourage and subsidize traditional households, the status of being married is defined and regulated by state (not federal) laws. State laws determine how marriages can be formed and terminated, regulate the property interests of married couples, and impose and enforce responsibilities on married couples and their children.<sup>14</sup> As the United States Supreme Court observed in *Obergefell v. Hodges*, marriage has always been the gateway to greater legal rights and benefits<sup>15</sup> and has been encouraged and subsidized on both moral and financial grounds.<sup>16</sup>

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<sup>11</sup> See Shannon E. Cavanagh & Paula Fomby, *Family Instability in the Lives of American Children*, 45 ANN. REV. SOCIO. 493, 495–96 (2019).

<sup>12</sup> See *id.*

<sup>13</sup> See *id.*

<sup>14</sup> See Katharine K. Baker, *What is Nonmarriage?*, 73 SMU L. REV. 201, 207 (2020) (critiquing post-marital support determinations that are based on marital status rather than individual need).

<sup>15</sup> Marriage is the gateway to a range of governmental rights and benefits including laws or norms governing:

taxation; inheritance and property rights; rules of intestate succession; spousal privilege in the law of evidence; hospital access; medical decisionmaking authority; adoption rights; the rights and benefits of survivors; birth and death certificates; professional ethics rules; campaign finance restrictions; workers' compensation benefits; health insurance; and child custody, support, and visitation rules.

*Obergefell v. Hodges*, 576 U.S. 644, 670 (2015).

<sup>16</sup> See Robin L. West, *The Incoherence of Marital Benefits*, 161 U. PA. L. REV. PENNUMBRA 179, 181 (2013) (“[T]he contention that children in such families fare better than their peers who lack those advantages is supported by an abundance of social science.”).

To encourage people to enter into a status-based relationship that initially consisted of only one husband and only one wife, both state and federal laws and policies subsidize people who are married<sup>17</sup> based on the assumption that marriage would be followed by children and that dual-parent households provide a more financially stable, healthy, and emotionally secure environment to rear children.<sup>18</sup> State and federal laws historically justified marriage subsidies based on the legislative and judicial view that a traditional husband-wife household is “the natural or optimal environment in which to raise children”<sup>19</sup> and that non-marital sexual relationships were morally offensive and undermined and debased the institution of marriage.<sup>20</sup>

To discourage non-marital cohabitation, state laws historically refused to grant unmarried couples (whether opposite or same sex) the same legal rights and benefits that husbands and wives received, since cohabitating partners ostensibly could receive those benefits (at least if they were opposite-sex) by marrying each other.<sup>21</sup> For example, while ex-wives could receive alimony from their husbands after a divorce, women who left non-marital relationships had limited rights to financial support from their male partners<sup>22</sup> and same sex cohabitants generally had *no* legal right to support from their ex-partners until *Obergefell v. Hodges* legalized their marriages.

In addition to discouraging unmarried cohabitation, state laws encouraged parents to marry and form traditional households by stigmatizing and penalizing mothers who had children outside of marriage.<sup>23</sup> To encourage women to marry

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<sup>17</sup> A report prepared by the Government Accounting Office identified 1,138 provisions in the United States Code where marital status is a factor in determining or receiving benefits, rights, and privileges. U.S. GOV'T. ACCOUNTABILITY OFF., GAO-04-353R, DEFENSE OF MARRIAGE ACT: UPDATE TO PRIOR REPORT I (2004), <https://www.gao.gov/products/gao-04-353r>.

<sup>18</sup> See Kaiponanea T. Matsumura, *The Integrity of Marriage*, 61 WM. & MARY L. REV. 453, 472 (2019); Vivian Hamilton, *Mistaking Marriage for Social Policy*, 11 VA. J. SOC. POL'Y & L. 307, 307, 308–09, 325 (2004).

<sup>19</sup> Matsumura, *supra* note 18, at 482; see West, *supra* note 16 (“If you have a child and don’t marry the child’s father, then you have done something grossly irresponsible, so don’t turn to the government for assistance.”).

<sup>20</sup> See A. Mechele Dickerson, *“Family Values” and the Bankruptcy Code: A Proposal to Eliminate Bankruptcy Benefits Awarded Based on Marital Status*, 67 FORDHAM L. REV. 69, 73, 84 (1998).

<sup>21</sup> See Baker, *supra* note 14 (critiquing post-marital support determinations that are based on marital status rather than individual need).

<sup>22</sup> See *id.*

<sup>23</sup> Andrew Cherlin et al., *Promises They Can Keep: Low-Income Attitudes Toward Motherhood*, 70(4) J. MARRIAGE & FAM. 919, 920 (2008), <https://doi.org/10.1111/j.1741-3737.2008.00536.x> (“Until the last third of the twentieth century, a strong norm against having a first child prior to marrying existed. Even if a woman became pregnant before marrying, she and her partner often married whether they had planned to or not – in the latter case, submitting to a so-called shotgun wedding.”); Linda C. McClain, *“Irresponsible” Reproduction*, 47 HASTINGS L.J. 339, 343–55 (1996)

the fathers of their children and to demonize single mothers who refused to be married, state and federal public assistance programs made it harder for single mothers to receive assistance from government programs, essentially deeming those programs to be appropriate only for “worthy” mothers with young children.<sup>24</sup>

There has always been a tension in this country between economic conservatives who think the unmarried mothers of young children should earn income in the paid labor market in exchange for receiving financial assistance from the government, and social conservatives who think a mother’s role is to remain at home with their children.<sup>25</sup> Which single mothers should be ostracized and forced to work in return for governmental assistance, and which should be encouraged to remain home to rear their children, has always been colored by race as single Black mothers consistently have been vilified and deemed unworthy “welfare queens” who should not be allowed to remain home, rear their children, and avoid the paid labor market.<sup>26</sup>

To discourage non-marital sexual relationships and to encourage mothers to marry the fathers of their children, state and federal legislators enacted laws to “reduce single mothers’ dependence upon government” and encourage their “dependency upon a husband wage earner in a traditional marriage.”<sup>27</sup> For example, when Congress passed the Personal Responsibility and Work Opportunity Act of 1996 (PRWO) and revised existing social welfare programs, legislators implemented work requirements which required states to demonstrate they would use federal funds to promote “healthy marriage . . . activities and activities promoting responsible fatherhood.”<sup>28</sup> Legislation like this essentially deemed unmarried mothers, who ostensibly could support their children by

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<sup>24</sup> McClain, *supra* note 23, at 351–55; Gillian Brockell, *She Was Stereotyped As ‘The Welfare Queen.’ The Truth Was More Disturbing, A New Book Says*, WASH. POST (May 21, 2019), <https://www.washingtonpost.com/history/2019/05/21/she-was-stereotyped-welfare-queen-truth-was-more-disturbing-new-book-says/>; see Richard V. Reeves & Christopher Pulliam, *Middle Class Marriage is Declining, and Likely Deepening Inequality*, BROOKINGS INST. (Mar. 11, 2020), <https://www.brookings.edu/research/middle-class-marriage-is-declining-and-likely-deepening-inequality/>.

<sup>25</sup> McClain, *supra* note 23, at 353–55.

<sup>26</sup> *Id.*; Emily Badger & Claire Cain Miller, *A New Benefit Raises an Old Question: Which Mothers Should Work?*, N.Y. TIMES (Apr. 26, 2021), <https://www.nytimes.com/2021/04/26/upshot/mothers-child-allowance-biden.html> (updated June 25, 2021); see Brockell, *supra* note 24. The Moynihan Report found that Black single-mother household rates increased from 16.8% in 1940 to 23% in 1965 and suggests that this increase was destroying the Black community. The Moynihan Report, *infra* note 53, at 5, 9. Though the Moynihan Report notes that rates were also increasing for white mothers (from 2% in 1940 to slightly over 3% in 1965), Black mothers were the only ones vilified in the report. *Id.*

<sup>27</sup> West, *supra* note 16, at 182.

<sup>28</sup> 42 U.S.C. § 603(a)(2)(A)(ii) (2018); see Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, §101(3), 110 Stat. 2105, 2110 (1996).

changing their marital status from single to married, as unworthy of the legal rights and protections married mothers received.<sup>29</sup>

While federal laws do not determine how marriages can be formed, both state and federal laws and policies favor married parents who live in traditional households. For example, as I noted when describing the Ideal Debtor, bankruptcy laws allow married couples to reduce their filing fees and legal expenses by filing a joint bankruptcy petition.<sup>30</sup> Bankruptcy laws also let married debtors: (1) protect certain property a “dependent” spouse owns even if the spouse is not actually financially dependent on the debtor; (2) include some of their spouse’s expenses when calculating how much money they must use to repay debts in a chapter 13 bankruptcy case; and (3) shield property held as tenants by the entirety from their creditors.<sup>31</sup>

Outside of bankruptcy, older widowed (and some divorced) adults can receive enhanced Social Security, workers’ compensation, or disability payments based on their current or prior marital status. In contrast, never-married adults who no longer earn income but may also need financial assistance when they retire are not entitled to receive this financial enhancement.<sup>32</sup> Federal tax law also favors and provides significant financial benefits for traditional households as only married couples can lower their taxes by filing a joint tax return and receive a “marriage bonus” if one spouse earns most (or all) of the income.<sup>33</sup> Single taxpayers do not receive these benefits and married couples that involve partners with roughly equal earnings are hit with a “marriage penalty” that requires them to pay higher taxes than married couples with a stay-at-home spouse.<sup>34</sup> Married couples also are allowed to: (1) gift (or bequeath) some of their wealth (including retirement wealth) to their spouse in reduced tax

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<sup>29</sup> West, *supra* note 16, at 185 (characterizing as “anachronistic and voyeuristic at best and sadistic, rather than functional, at worst” the laws’ “stigmatization of unwed mothers; and the refusal, beginning in the mid-1990s, to extend the full advantage of state and federal benefits to single parents”).

<sup>30</sup> Dickerson, *supra* note 1; *e.g.*, 11 U.S.C. § 302(a) (2018) (“A joint case under a chapter of this title . . . is commenced by the filing with the bankruptcy court of a single petition under such chapter by an individual that may be a debtor under such chapter and such individual’s spouse.”).

<sup>31</sup> Dickerson, *supra* note 20, at 93–94 (discussing procedure spouses can use to keep entirety property from creditors).

<sup>32</sup> See 20 C.F.R. § 404.336 (outlining how a divorced spouse can collect widow’s benefits if their ex-spouse dies). Widowed spouses may be entitled to other social welfare benefits if their spouse’s employer provides benefits to the widowed spouses of their deceased employees. See Baker, *supra* note 14, at 210–11.

<sup>33</sup> See Dickerson, *supra* note 20, at 88 & nn.99–101; see Erez Aloni, *The Marital Wealth Gap*, 93 WASH. L. REV. 1, 35–39 (2018).

<sup>34</sup> Linda Sugin, *The Social Meaning of the Tax Cuts and Jobs Act*, 128 YALE L.J. F. 403, 407 (2018); DOROTHY A. BROWN, *THE WHITENESS OF WEALTH: HOW THE TAX SYSTEM IMPOVERISHES BLACK AMERICANS—AND HOW WE CAN FIX IT* 5, 9–10, 53 (2021).

or largely tax-free transactions; (2) make larger contributions to Individual Retirement Accounts than unmarried couples can; and (3) receive favorable privileges in immigration decisions.<sup>35</sup>

## II. THE NEW “TRADITIONAL” UNMARRIED HOUSEHOLD

A 2020 article in *The Atlantic* makes the following observation about the changes over the last century in the structure of households in America:

We’ve made life freer for individuals and more unstable for families . . . . We’ve moved from big, interconnected, and extended families, which helped protect the most vulnerable people in society from the shocks of life, to . . . families . . . [that] give the most privileged people in society room to maximize their talents and expand their options. The shift . . . ultimately led to a familial system that liberates the rich and ravages the working-class and the poor.<sup>36</sup>

Though the *Atlantic* article broadly examined changes in family structure over the last century, the following sections explore similar changes to household formations since 1980.

### A. Fewer Married Couples and More Unmarried Cohabitants

Because of changing social mores and norms about marriage, non-marital sex, cohabitation, and single-parent households, people who live in non-traditional households now face less moral condemnation than they did historically.<sup>37</sup> For example, state and federal laws and policies no longer deem non-marital sexual relationships to be morally offensive and the children of single mothers are no longer denied the right to receive financial support from their fathers.<sup>38</sup> Likewise, same-sex marriages are now legal and generally accepted by most people in this country.<sup>39</sup>

People of all income groups, educational levels, and races still aspire to marry and they do not believe their marriages will end in divorce. However,

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<sup>35</sup> Dickerson, *supra* note 20, at 88 & nn.99–101; *see* Aloni, *supra* note 33.

<sup>36</sup> David Brooks, *The Nuclear Family Was a Mistake*, THE ATL., Mar. 2020, at 55, 56 (available at <https://www.theatlantic.com/magazine/archive/2020/03/the-nuclear-family-was-a-mistake/605536/>).

<sup>37</sup> Cavanagh & Fomby, *supra* note 11, at 496; *see* Gretchen Livingston, *The Changing Profile of Unmarried Parents*, PEW RSCH. CTR. (Apr. 25, 2018), <https://www.pewresearch.org/social-trends/2018/04/25/the-changing-profile-of-unmarried-parents/>.

<sup>38</sup> Dickerson, *supra* note 20, at 84 (discussing ways states denigrated non-marital cohabitation to protect the state of marriage).

<sup>39</sup> *Attitudes on Same-Sex Marriage*, PEW RSCH. CTR. (May 14, 2019), <https://www.pewforum.org/fact-sheet/changing-attitudes-on-gay-marriage/>.

women generally reject the antiquated belief that their lives will be unfulfilled if they do not marry, reproduce, and remain home to rear their children<sup>40</sup> and most young adults now reject the view that being married is essential for a man or a woman to live a fulfilling life.<sup>41</sup> Although young adults generally are not anti-marriage, fewer people believe that society is necessarily better off if people prioritize marriage and having children.<sup>42</sup>

Despite generally positive views toward marriage and high marital expectations and aspirations,<sup>43</sup> there has been a “deinstitutionalization of marriage”<sup>44</sup> and marriage rates have dropped across racial and income groups.<sup>45</sup> The Pew Research Center, which examines marriage rates and household formations, reports that only 44% of Millennials (born from 1981-1996 and between the ages of 26 and 41 in 2022) were married in 2019 compared to 53% of Gen Xers, 61% of Boomers, and 81% of the Silent Generation at comparable ages.<sup>46</sup> Marriage rates vary dramatically by race with Asian adults having the

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<sup>40</sup> Colette Allred, *High School Seniors' Attitudes Toward Cohabitation as a Testing Ground for Marriage, 2017*, BOWLING GREEN STATE UNIV.: NAT'L CTR. FOR FAM. & MARRIAGE RSCH. (2019) (available at <https://www.bgsu.edu/content/dam/BGSU/college-of-arts-and-sciences/NCFMR/documents/FP/allred-hs-seniors-cohab-test-mariag-fp-19-10.pdf>). Cf. *Bradwell v. State*, 83 U.S. 130, 141 (1873) (“The paramount destiny and mission of woman are to fulfil [sic] the noble and benign offices of wife and mother.”).

<sup>41</sup> Colleen N. Nugent & Jill Daugherty, *A Demographic, Attitudinal, and Behavioral Profile of Cohabiting Adults in the United States*, CDC: NAT'L HEALTH STATS. REPS. 1, 3 (May 31, 2018), <https://www.cdc.gov/nchs/data/nhsr/nhsr111.pdf>; Amanda Barroso et al., *More Than Half of Americans Say Marriage Is Important But Not Essential to Leading a Fulfilling Life*, PEW RSCH. CTR. (Feb. 14, 2020), <https://www.pewresearch.org/fact-tank/2020/02/14/more-than-half-of-americans-say-marriage-is-important-but-not-essential-to-leading-a-fulfilling-life/> (indicating that 54% of Americans believe that “being married is important but not essential for men and women to live fulfilling lives”).

<sup>42</sup> Kim Parker & Renee Stepler, *As U.S. Marriage Rate Hovers at 50%, Education Gap in Marital Status Widens*, PEW RSCH. CTR. (Sept. 14, 2017), <https://www.pewresearch.org/fact-tank/2017/09/14/as-u-s-marriage-rate-hovers-at-50-education-gap-in-marital-status-widens/>. But see Kiley Hurst, *Rising Share of Americans See Women Raising Children on Their Own, Cohabitation as Bad for Society*, PEW RSCH. CTR. (Mar. 11, 2022), <https://www.pewresearch.org/fact-tank/2022/03/11/rising-share-of-americans-see-women-raising-children-on-their-own-cohabitation-as-bad-for-society/> (noting an increase in the percentage of Americans who are now more likely than three years ago to say that it is bad for society when single women raise children alone and unmarried couples live together).

<sup>43</sup> Juliana M. Horowitz et al., *Public Views of Marriage and Cohabitation*, PEW RSCH. CTR. (Nov. 6, 2019), <https://www.pewresearch.org/social-trends/2019/11/06/public-views-of-marriage-and-cohabitation/>.

<sup>44</sup> Cavanagh & Fomby, *supra* note 11.

<sup>45</sup> See Amanda Barroso et al., *As Millennials Near 40, They're Approaching Family Life Differently Than Previous Generations*, PEW RSCH. CTR. (May 27, 2020), <https://www.pewresearch.org/social-trends/2020/05/27/as-millennials-near-40-theyre-approaching-family-life-differently-than-previous-generations/>; Benjamin Gurrentz, *Living With an Unmarried Partner Now Common For Young Adults*, U.S. CENSUS BUREAU (Nov. 15, 2018), <https://www.census.gov/library/stories/2018/11/cohabitation-is-up-marriage-is-down-for-young-adults.html> (in 2018 roughly half of all adults and 30% of young adults were married, whereas in 1978 59% of young adults were married).

<sup>46</sup> Michael Dimock, *Defining Generations: Where Millennials End and Generation Z Begins*, PEW RSCH. CTR. (Jan. 17, 2019), <https://www.pewresearch.org/fact-tank/2019/01/17/where-millennials-end-and-generation-z->

highest overall marriage rates (58%), followed by whites (51%), Latinos (42%), and Blacks (29%).<sup>47</sup>

Just as Black people are less likely to be the Ideal Debtor in bankruptcy, they are also less likely to live in traditional households mostly because of their disproportionately low marriage rates.<sup>48</sup> Black marriage rates have lagged white rates since the time enslaved Blacks were denied the right to legally marry. Their low marriage rates and disproportionately high rates of single-parent households were chronicled over 50 years ago in The Moynihan Report, a controversial and highly-publicized congressional report.<sup>49</sup> To this day, approximately half of Black adults (regardless of income or educational levels) are never married (neither married, divorced, nor widowed) and less than one-quarter (24%) of Black millennials were married in 2019—half the rate of white Millennial marriages (48%) and almost half the rate of married Latino millennials (42%).<sup>50</sup> In fact, the current Black-white marital rate gap is now larger than the gap in 1968 when the Moynihan Report was issued, though the share of white (27.7%) and Latino (39.9%) never-married adults has also been rising since the 1980s.<sup>51</sup>

In addition to these racial disparities, marriage rates now vary, often substantially, by educational level. From the 1960s and until the early part of the 1990s, there was minimal variation in marriage rates by educational attainment status and overall marriage rates for all adults over the age of 25 exceeded 55%.<sup>52</sup> Although marriage rates have remained fairly constant for college graduates, 65% of young college graduates were married by 2015 compared to 55% of

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begins; Barroso et al., *supra* note 45.

<sup>47</sup> R. Kelly Raley et al., *The Growing Racial and Ethnic Divide in U.S. Marriage Patterns*, 25 FUTURE CHILD. 89, 91 tbl.1, 97 tbl.3 (2015); Parker & Stepler, *supra* note 42; see Fenaba R. Addo & Lowell Ricketts, *As Fewer Young Adults Wed, Married Couples' Wealth Surpasses Others'*, FED. RESRV. BANK OF ST. LOUIS (Jan. 2, 2019), <https://www.stlouisfed.org/publications/in-the-balance/2018/as-fewer-young-adults-wed>.

<sup>48</sup> See Parker & Stepler, *supra* note 42; Addo & Ricketts, *supra* note 47.

<sup>49</sup> See OFF. POL'Y PLAN. & RSCH., U.S. DEP'T LAB., THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION 5 (1965) [hereinafter The Moynihan Report]. The Moynihan Report observed that “[a]t the heart of the deterioration of the fabric of [Black] society is the deterioration of the [Black] family. It is the fundamental source of the weakness of the [Black] community at the present time.” *Id.* The findings in the Moynihan Report were controversial and critics contended that the authors painted an unduly unflattering image of the Black family. *E.g.*, Stephen Steinberg, *The Moynihan Report at Fifty*, BOS. REV. (June 24, 2015), <https://bostonreview.net/articles/stephen-steinberg-moynihan-report-black-families-nathan-glazer/>; L. Alex Swan, *A Methodological Critique of the Moynihan Report*, BLACK SCHOLAR, June 1974 at 18–24.

<sup>50</sup> Raley, *supra* note 47.

<sup>51</sup> Barroso et al., *supra* note 45; Kim Parker et al., *Record Share of Americans Have Never Married*, PEW RSCH. CTR. 11 (Sept. 24, 2014), [https://www.pewresearch.org/wp-content/uploads/sites/3/2014/09/2014-09-24\\_Never-Married-Americans.pdf](https://www.pewresearch.org/wp-content/uploads/sites/3/2014/09/2014-09-24_Never-Married-Americans.pdf); *Marital Status*, U.S. CENSUS BUREAU (2011), <https://data.census.gov/cedsci/table?t=Marital%20Status%20and%20Marital%20History&tid=ACSS15Y2011.S1201>.

<sup>52</sup> Parker & Stepler, *supra* note 42.

those with some college education and only 50% of non-college adults.<sup>53</sup> In addition to having higher marriage rates, college graduates are more likely than non-college young adults to assume that they will marry and remain married,<sup>54</sup> as shown in a 2017 poll that revealed that 20% of never-married non-college adults do not plan on marrying compared to 11% of other adults.<sup>55</sup>

In addition to lower overall marriage rates, adults who choose to marry are now delaying when they marry. Although most Americans believe the ideal age to marry is 25, only 24% of adults are actually married by that age. The average age for first marriages for both women and men has steadily increased since the 1960s, when the average age of marriage was 20.3 for women and 22.8 for men.<sup>56</sup> By 1980, the average age for first marriages for women and men was 22 and 24.7 years (respectively), increased to 25.6 and 27.5 at the start of the 2007 Great Recession, and had increased to 28.6 and 30.4 by 2021 during the COVID-19 pandemic.<sup>57</sup>

Relative to young adults the same age from earlier generations, young adults are now more likely to live in unmarried cohabitating (but partnered) households.<sup>58</sup> For example, in 1968, 0.1% of people ages 18-24 and 0.2% of people ages 25-34 lived with an unmarried partner. Between 1989 and 2016, the share of unmarried partnered households grew from 7% to 21% and the share of unpartnered, *i.e.*, neither married nor cohabiting, households also increased.<sup>59</sup> Census data show that, by 2018, young adults were more likely to live with an unmarried partner (9%) than to live with a spouse (7%).<sup>60</sup>

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<sup>53</sup> *Id.*; Mark Mather & Beth Jarosz, *The Demography of Inequality in the United States*, 69 POPULATION BULL. 1, 11 (2014), <https://www.prb.org/wp-content/uploads/2021/01/population-bulletin-2014-69-2united-states-inequality.pdf>.

<sup>54</sup> Aloni, *supra* note 33, at 45; Claire Cain Miller & Quoc Trung Bui, *Equality in Marriages Grows, and So Does Class Divide*, N.Y. TIMES (Feb. 27, 2016), <https://www.nytimes.com/2016/02/23/upshot/rise-in-marriages-of-equals-and-in-division-by-class.html>.

<sup>55</sup> Parker & Stepler, *supra* note 42; see Mather & Jarosz, *supra* note 53.

<sup>56</sup> Parker & Stepler, *supra* note 42; *Median Age at First Marriage*, U.S. CENSUS BUREAU (2018), <https://data.census.gov/cedsci/table?hidePreview=true&tid=ACSDT1Y2018.B12007&vintage=2018&moe=false>; see Melissa S. Kearney et al., *The Puzzle of Falling US Birth Rates Since the Great Recession* 9 (Nat'l Bureau of Econ. Rsch., Working Paper No. 29286, 2021) (available at <http://www.nber.org/papers/w29286>).

<sup>57</sup> See Parker & Stepler, *supra* note 42; *Historical Marital Status Tables*, U.S. CENSUS BUREAU (2021), <https://www.census.gov/data/tables/time-series/demo/families/marital.html>.

<sup>58</sup> Gurrentz, *supra* note 45; Pamela J. Smock et al., "Everything's There Except Money": How Money Shapes Decisions to Marry Among Cohabitants, 67 J. MARRIAGE & FAM. 680, 686-87 (2005); Baker, *supra* note 17, at 217-18 (2020).

<sup>59</sup> Parker & Stepler, *supra* note 42; Addo & Ricketts, *supra* note 47.

<sup>60</sup> Similarly, 15% of young adults, ages 25-34, lived with an unmarried partner, which increased from 12% ten years earlier. Gurrentz, *supra* note 45.

By 2016, roughly 38% of adults between the ages of 25 to 54 were unpartnered—a sizeable increase from the 29% of unpartnered adults in 1990.<sup>61</sup> One reason the unpartnered population expanded was because of the increase in the number of previously married adults who are now separated, divorced, or widowed. The main reason the number of unpartnered adults has grown since 1990, however, is because of lower marriage rates.<sup>62</sup> Moreover, while there has been an overall increase in the number of unpartnered young adults, there is an increasingly gendered and socioeconomic pattern to who is unpartnered. Compared to 30 years ago, men are now more likely than women to be unmarried and unpartnered and there has been a seismic shift in the number of unpartnered *lower-income* males.<sup>63</sup>

### B. College Attendance Rates, Household Income, and Marriage

Young adults are choosing not to marry and are specifically choosing not to marry lower-income males who do not have a college degree. Men with different educational levels were about equally likely to have never been married in the 1960s but marriage rates for male college graduates and non-college males now diverge sharply.<sup>64</sup> For example, five years after the end of the 2007-2009 Great Recession, non-college males were almost twice as likely to have never married than male college graduates (25% vs. 14%).<sup>65</sup> Marriage rates for non-college

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<sup>61</sup> Richard Fry & Kim Parker, *Rising Share of U.S. Adults Are Living Without a Spouse or Partner*, PEW RSCH. CTR. (Oct. 5, 2021), <https://www.pewresearch.org/social-trends/2021/10/05/rising-share-of-u-s-adults-are-living-without-a-spouse-or-partner/>. While all Millennials are more likely to be single and have no children at the same age relative to previous generations, Blacks are the least likely to live in their own family units (46%) relative to white and Latino Millennials (57%). Barroso et al., *supra* note 41. See generally Yeris Mayol-García et al., *Number, Timing, and Duration of Marriages and Divorces: 2016*, U.S. CENSUS Bureau 5–6 (Apr. 2021), <https://www.census.gov/content/dam/Census/library/publications/2021/demo/p70-167.pdf>.

<sup>62</sup> Richard Fry, *The Share of Americans Living Without a Partner Has Increased, Especially Among Young Adults*, PEW RSCH. CTR. (Oct. 11, 2017), <https://www.pewresearch.org/fact-tank/2017/10/11/the-share-of-americans-living-without-a-partner-has-increased-especially-among-young-adults/>.

<sup>63</sup> Fry & Parker, *supra* note 61; see Parker et al., *supra* note 51.

<sup>64</sup> In the 1960s, regardless of their educational levels, men were about equally likely to have never been married. While women were willing to marry non-college males at that time, males were reluctant to marry female college graduates as women with advanced degrees were more than four times as likely (31% vs. 7%) to have never married compared to women with a high school education or less. Parker et al., *supra* note 51; Aloni, *supra* note 34, at 45.

College-educated Millennial women are less likely to have a spouse with a college degree than are their male counterparts (70% vs. 82%). . . . [For the Boomers and Silent generation], men were less likely to marry someone with a college degree than woman. This reversal can be partially attributed to the fact that, during this time, fewer woman went to college, resulting in a smaller pool of college-educated women for men to marry

Barroso et al., *supra* note 41.

<sup>65</sup> Wendy Wang & Kim Parker, *Record Share of Americans Have Never Married*, PEW RSCH. CTR. 9

males have been dropping because: (1) more females are attending and graduating from college;<sup>66</sup> (2) young males are less likely to pursue a college degree;<sup>67</sup> (3) non-college workers have lower employment rates and earn less than college graduates; and (4) female college graduates are less likely to marry non-college males.

In the early 1980s, women and men attended college in roughly equal numbers, though males were slightly more likely (27%) than females (21%) to have earned a bachelor's degree.<sup>68</sup> Since then, college attendance rates increased for both men and women, but now female college attendance and graduation rates consistently exceed male rates, including at the graduate level.<sup>69</sup> Male college enrollment rates (particularly if they are lower-income) have lagged female rates by at least ten percent since the early 1990s.<sup>70</sup> By 2018, graduation rates for females surpassed graduation rates for men by more than five percentage points.<sup>71</sup>

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(Sept. 23, 2014), [https://www.pewresearch.org/wp-content/uploads/sites/3/2014/09/2014-09-24\\_Never-Married-Americans.pdf](https://www.pewresearch.org/wp-content/uploads/sites/3/2014/09/2014-09-24_Never-Married-Americans.pdf).

<sup>66</sup> See Richard Fry & D'Vera Cohn, *Women, Men and the New Economics of Marriage*, PEW RSCH CTR. (Jan. 19, 2010), <https://www.pewresearch.org/social-trends/2010/01/19/women-men-and-the-new-economics-of-marriage/> (“Among U.S.-Born-30-to 44-year-olds, women are now the majority both of college graduates and those who have some college education but not a degree”).

<sup>67</sup> Barroso et al., *supra* note 41.

<sup>68</sup> Richard V. Reeves & Ember Smith, *The Male College Crisis Is Not Just in Enrollment, but Completion*, BROOKINGS INST.: BLOG (Oct. 8, 2021) <https://www.brookings.edu/blog/up-front/2021/10/08/the-male-college-crisis-is-not-just-in-enrollment-but-completion/> (By 1982, the gap [in proportion of bachelor's degrees going to men compared to women] had closed.”); Barroso et al., *supra* note 41; Kristen Bialik & Richard Fry, *Millennial Life: How Young Adulthood Today Compares with Prior Generations*, PEW RSCH. CTR. (Feb. 14, 2019), <https://www.pewresearch.org/social-trends/2019/02/14/millennial-life-how-young-adulthood-today-compares-with-prior-generations-2/>.

<sup>69</sup> Roughly one-third of young adults (ages 25–34) now have a college degree compared to less than a quarter in 1975. Parker & Stepler, *supra* note 42. Women now receive 57% of bachelor's degrees and 52% of doctoral degrees (including PhDs, JDs and MDs). U.S. COUNCIL ECON. ADVISORS, ECONOMIC REPORT OF THE PRESIDENT 162 (2015) (available at <https://www.govinfo.gov/content/pkg/ERP-2015/pdf/ERP-2015-chapter4.pdf>). See generally Table 302.60. *Percentage of 18- to 24-Year-Olds Enrolled in College, by Level of Institution and Sex and Race/Ethnicity of Student: 1970 Through 2017*, NAT'L CTR. EDUC. STATS.: DIGEST OF EDUC. STATS., [https://nces.ed.gov/programs/digest/d18/tables/dt18\\_302.60.asp](https://nces.ed.gov/programs/digest/d18/tables/dt18_302.60.asp) (showing the percentage of young adults who enrolled in college from 1970-2017 by sex, race, and ethnicity).

<sup>70</sup> While men lag behind women in terms of high school and college graduation rates, recent research notes that *straight* women have made the most academic progress but that *gay* males (across racial groups) have better educational outcomes than straight women or men. Joel Mittleman, *Intersection the Academic Gender Gap: The education of Lesbian, Gay, and Bisexual America*, AMER. SOC. REV. 1, 14, 19 (2022).

<sup>71</sup> Kristen Bialik & Richard Fry, *Millennial Life: How Young Adulthood Today Compares with Prior Generations*, PEW RSCH. CTR. (Feb. 14, 2019), <https://www.pewresearch.org/social-trends/2019/02/14/millennial-life-how-young-adulthood-today-compares-with-prior-generations-2/>.

Lower male college attendance and graduation rates have caused male unemployment rates to increase even as overall labor market participation rates improved for young adults since the 1970s. The share of employed young men has either remained the same or has declined over the last several decades<sup>72</sup> and even before unemployment rates spiked during the COVID-19 recession roughly 20% of males ages 25-54 had permanently dropped out of the labor force.<sup>73</sup>

Despite consistently high worker productivity for all income groups,<sup>74</sup> wages have largely been stagnant for lower- and middle-income workers since the 1980s and inequality gaps between the richest workers and middle-income workers remain at record levels.<sup>75</sup> Average wages for full-time male workers started falling in the mid-1970s and that, combined with the gender college attainment gap, created an enormous earnings gap between college and non-college workers. Non-college males earn roughly \$900,000 *less* in average lifetime earnings compared to males with college degrees.<sup>76</sup>

Higher college attendance and graduation rates for higher-income young adults (who are disproportionately white) coupled with higher earnings for college graduates (who also are disproportionately white) continue to exacerbate income and wealth inequality gaps as well as racial inequality gaps.<sup>77</sup> The

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<sup>72</sup> Parker et al., *supra* note 51; *Marital Status*, *supra* note 51 (“Labor force participation among men—particularly young men—has fallen significantly over the past several decades. In 1960, 93% of men ages 25 to 34 were in the labor force; by 2012 that share had fallen to 82%.”).

<sup>73</sup> *Addressing America’s Crisis of Despair and Economic Recovery: A Call for a Coordinated Effort*, BROOKINGS INST. 2 (July 2021), <https://www.brookings.edu/wp-content/uploads/2021/07/Addressing-Americas-crisis-despair-economic-recovery.pdf>. Although unemployment rates increased for college graduates during the COVID-19 recession, rates for non-college workers were significantly higher. *Prepared Testimony on Economic Disparities and the Economic Challenges Facing American Families Before the H. Select Comm. on Economic Disparity and Fairness in Growth* 5, 117th Cong. 5 (2021) (statement of Jason Furman, Professor of Economics, Harvard University), <https://www.piie.com/sites/default/files/documents/furman2021-07-29.pdf>.

<sup>74</sup> See Heather Boushey & Kavya Vaghul, *Women Have Made the Difference for Family Economic Security*, WASH. CTR. FOR EQUITABLE GROWTH 5 (Apr. 4, 2016), <https://equitablegrowth.org/women-have-made-the-difference-for-family-economic-security/>; Heidi Shierholz, *Strengthening Labor Standards and Institutions to Promote Wage Growth*, HAMILTON PROJECT 4–6 (Feb. 2018), [https://www.hamiltonproject.org/assets/files/strengthening\\_labor\\_standards\\_shierholz\\_pp.pdf](https://www.hamiltonproject.org/assets/files/strengthening_labor_standards_shierholz_pp.pdf).

<sup>75</sup> See Jessica Semega et al., *Income and Poverty in the United States: 2019*, U.S. CENSUS BUREAU 5, 7 (Sept. 2020, revised Sept. 2021); *The State of Financial Security 2020: A Framework for Recovery and Resilience*, ASPEN INST. 13 (2020), <https://www.aspeninstitute.org/wp-content/uploads/2020/11/The-State-of-Financial-Security-2020-1.pdf>.

<sup>76</sup> *Education and Lifetime Earnings*, SSA (Nov. 2015), <https://www.ssa.gov/policy/docs/research-summaries/education-earnings.html>. Non-college young adults have been particularly hard hit in the labor markets over the last several decades. Wages for Millennial workers with college degrees are comparable to wages for older workers with college degrees, while wages for non-college young workers lag the wages non-college workers in prior generations earned at the same age. Bialik & Fry, *supra* note 75.

<sup>77</sup> The earnings premium that college-educated workers receive exacerbates income and wealth racial inequality gaps because college graduates are disproportionately white and born in upper-income families. See

income inequality gap has dramatically expanded since the 1980s. For example, between 1979 and 2015, the richest top 1% of earners increased their income by approximately 242%, while wages for middle-income workers only increased by 46%.<sup>78</sup> While the top 1% of households received 10% of total earned income (and the bottom 20% earned 3% of earned income) in 1979, by 2017 the top earners garnered 18% of total earned income (and the share of income earned by the bottom 20% dropped to 2%).<sup>79</sup> Wealth inequality gaps, even more extreme than income gaps, expanded after the 2007-2009 Recession particularly for young adults.<sup>80</sup> Although low unemployment rates helped lower- and middle-income workers recover most of their income and wealth losses by 2016, the disproportionately negative effect the COVID-19 recession had on lower- and middle-income families erased many of the gains these financially vulnerable households made after the 2007 Recession.<sup>81</sup>

The college attainment gap makes it less likely that young adults will marry and live in traditional husband-at-work and wife-at-home households. As noted earlier, Black single mothers were never encouraged to bypass the paid labor market to remain at home and provide uncompensated care for their children. In addition, because Black males have *always* earned less than white males, Black married couple households have generally consisted of dual-earners.<sup>82</sup> Now, however, the decrease in the number of lower-income white male college

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Table 302.60. Percentage of 18- to 24-Year-Olds Enrolled in College, by Level of Institution and Sex and Race/Ethnicity of Student: 1970 Through 2017, NAT'L CTR. EDUC. STATS.: DIGEST OF EDUC. STATS., [https://nces.ed.gov/programs/digest/d18/tables/dt18\\_302.60.asp](https://nces.ed.gov/programs/digest/d18/tables/dt18_302.60.asp).

<sup>78</sup> Alex Fox, *America's Income Inequality Gap is Growing*, THE HILL (Nov. 5, 2019), <https://thehill.com/changing-america/466911-americas-income-inequality-gap-is-growing-heres-why-thats-a-bad-situation>.

Income shares for the top earners have consistently increased since the Great Recession and the rising income share for the Top 3% of all earners in 2013 was a mirror image of the declining income share of the bottom 90% of all earners. Jesse Bricker, et al., *Changes in U.S. Family Finances from 2010 to 2013: Evidence from the Survey of Consumer Finances 10, 11* FED. RESRV. BULL. (2014), <http://www.federalreserve.gov/pubs/bulletin/2014/pdf/scf14.pdf>.

<sup>79</sup> *Prepared Testimony on Economic Disparities and the Economic Challenges Facing American Families Before the H. Select Comm. on Economic Disparity and Fairness in Growth 5, 117th Cong. 5* (2021) (statement of Jason Furman, Professor of Economics, Harvard University), <https://www.piiie.com/sites/default/files/documents/furman2021-07-29.pdf>; see Elise Gould, *State of Working America: Wages 2018*, ECON. POL'Y. INST. 1, 3-4 (Feb. 20, 2019), <https://files.epi.org/pdf/161043.pdf> (noting that inequality, particularly for women and non-whites, widened pre-COVID even though unemployment rates were low and labor market participation was high.).

<sup>80</sup> See Ana Hernandez Kent et al., *Are Millennials a Lost Generation Financially?*, (Dec. 17, 2019) <https://www.stlouisfed.org/on-the-economy/2019/december/millennials-lost-generation-financially>.

<sup>81</sup> See Patricia Cohen, *Bump in U.S. Incomes Doesn't Erase 50 Years of Pain*, N.Y. TIMES, (Sept. 16, 2017), <https://www.nytimes.com/2017/09/16/business/economy/bump-in-us-incomes-doesnt-erase-50-years-of-pain.html>.

<sup>82</sup> See e.g., Brown, *supra* note 35, at 5, 9-10, 53.

graduates,<sup>83</sup> overall declining male employment rates, and stagnant wages have made it harder for many white wives to afford the luxury of being a “traditional” stay-at-home mother<sup>84</sup> and many are now forced to work in the paid labor market.

As noted on Figure 1, the employment rates between women and men have narrowed significantly since the 1960s.

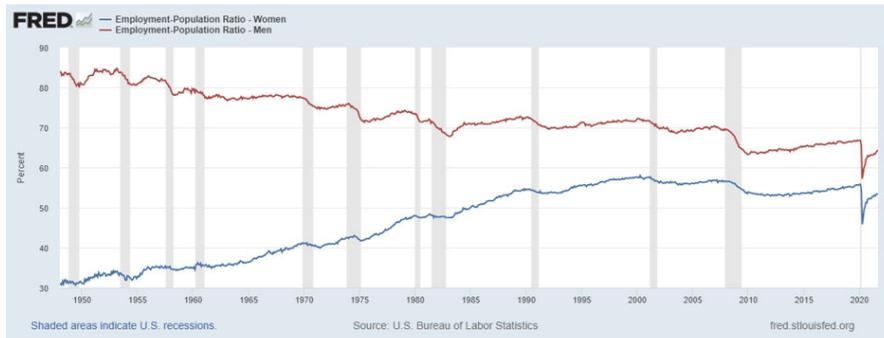


Figure 1

Male wages generally remain higher than female wages because of historical discrimination against women in the labor market and because women are disproportionately employed in lower-wage service sector jobs.<sup>85</sup> With more women working in the paid labor market, however, that gender wage gap is shrinking<sup>86</sup> and lifetime earnings for female workers are increasing, particularly

<sup>83</sup> The growing college attainment disparities are particularly stark for white males who historically had the highest graduation rates. Asians now hold the highest percentage of students with bachelor’s degrees. See Cavanagh & Fomby, *supra* note 11, at 495.

<sup>84</sup> See Jonathan Vespa, *The Changing Economics and Demographics of Young Adulthood: 1975-2016*, U.S. CENSUS BUREAU 10 (April 2017), <https://www.census.gov/content/dam/Census/library/publications/2017/demo/p20-579.pdf>.

<sup>85</sup> See generally Boushey & Vaghul, *supra* note 74. The recent focus on the economic and emotional plight of non-college white males who lost their high-wage blue collar jobs often ignores the additional story of the number of non-college wives who took low-wage jobs in the paid labor market and the fact that their low-wage jobs did not pay them enough to make up for their husbands’ lost wages. See Campbell Robertson, *In Coal Country, the Mines Shut Down, the Women Went to Work and the World Quietly Changed*, N.Y. TIMES, (Sept. 14, 2019), <https://www.nytimes.com/2019/09/14/us/appalachia-coal-women-work-.html>.

<sup>86</sup> *Contra* Elise Gould, *Looking at the Latest Wage Data By Education Level*, ECON. POL’Y INST.: WORKING ECONS. BLOG (Sept. 1, 2016), <https://www.epi.org/blog/looking-at-the-latest-wage-data-by-education-level/>. See generally U.S. COUNCIL ECON. ADVISORS, *ECONOMIC REPORT OF THE PRESIDENT 157–202* (2015) (available at <https://www.govinfo.gov/content/pkg/ERP-2015/pdf/ERP-2015-chapter4.pdf>) (discussing increased participation of women in the labor force and provides policies that could make workplaces more family-friendly).

for female workers with college and graduate degrees.<sup>87</sup> In fact, much of the increase in household income for lower- and middle-income families has occurred because of higher female wages, *not* because of rising male wages.<sup>88</sup>

A recent demography report explains that “[t]he rise in female labor force participation has transformed gender relations, changed patterns of marriage and childbearing, and is often viewed as a key indicator of women’s progress toward gender equality at home and in the workforce.”<sup>89</sup> As women became more economically self-sufficient, they also became less convinced that they would only find emotional fulfillment and financial security if they lived in a traditional household. Likewise, the greater economic security female college graduates attained by working in the paid labor market gave them less of a “need” to depend on a husband for economic security.

Many young women view getting their college degree as a higher priority than getting married.<sup>90</sup> Because of this, they are choosing to avoid or delay getting married and having children at rates that exceed the rates for women in prior generations. Marriage rates for female college graduates now exceed rates for non-college female workers but, when they marry, they are choosing to marry males who are financially secure.<sup>91</sup> That is, females with post-graduate degrees were more than four times as likely to have never married in 1960 compared to non-college women (31% vs. 7%), but by 2012, female college graduates had higher marriage rates than non-college females and the never-married gap between those groups had largely disappeared.<sup>92</sup> In addition to making women feel less economically dependent on males, higher educational attainment rates for females and lower overall wages for males has created the perception that lower-income non-college males are not marriage material.

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<sup>87</sup> See Elise Gould & Julia Wolfe, *Income Growth in 2016 is Strong, But Not as Strong as 2015 and More Uneven*, ECON. POL’Y INST.: WORKING ECONS. BLOG (Sept. 12, 2017, 12:04 PM), <https://www.epi.org/blog/income-growth-in-2016-is-strong-but-not-as-strong-as-2015-and-more-uneven/>; see Cavanagh & Fomby, *supra* note 11. The gender wage gap for millennials, better educated than prior generations, is smaller than gaps for prior generations at their age in large part because millennial women were the first generation to earn college degrees in higher numbers than men. Bialik & Fry, *supra* note 75.

<sup>88</sup> See Boushey & Vaghul, *supra* note 74.

<sup>89</sup> Mather & Jarosz, *supra* note 53.

<sup>90</sup> See Wang & Parker, *supra* note 65; Field, *supra* note 75; Francine D. Blau et al., *Understanding Young Women’s Marriage Decisions: The Role of Labor and Marriage Market Conditions*, 53 INDUS. & LAB. REL. REV. 624, 625 (2000).

<sup>91</sup> Cavanagh & Fomby, *supra* note 11, at 494–96.

<sup>92</sup> Wang & Parker, *supra* note 65.

### C. *Marriagibility and “Assortative Mating”*

Most Americans across income groups, educational levels, and races report that they would like to be married, but shifts in what constitutes a marriageable partner has caused fewer young adults to say “I do.”<sup>93</sup> Young adults of all races and genders now consider financial stability when deciding whether to marry and will avoid marriage if they conclude that they (or a potential spouse) have not met certain baseline economic standards. Increasingly, women are avoiding marriage because of their perception that there are no marriageable males.<sup>94</sup>

Men and women of marriageable age (too old to be college students, but not yet old enough to retire) are viewed as unmarriageable for a range of reasons, though the main disqualifier is the appearance of economic instability. Some males are deemed unmarriageable because they are incarcerated,<sup>95</sup> while others are deemed unmarriageable because they have felony convictions that limit their employment options.<sup>96</sup> Potential mates are also deemed unmarriageable if they have stopped working (or looking for work), have unstable employment,<sup>97</sup> or if they do not have savings or other sources of personal wealth (like a car or home) and generally appear incapable of financially supporting themselves or a family. *Particularly* for people born after the 1980s when credit card availability became almost universal and college costs started to skyrocket, high credit card and student loan debts also deem potential spouses to be unmarriageable.<sup>98</sup>

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<sup>93</sup> See Barroso et al., *supra* note 45; Vespa, *supra* note 84 (noting that Americans now place higher values on educational and economic accomplishments over marrying and having children).

<sup>94</sup> Black women are more likely to be never married because of their perception that there are fewer “marriageable” Black males. Deirdre Bloome & Shannon Ang, *Marriage and Union Formation in the United States: Recent Trends Across Racial Groups and Economic Backgrounds*, 57 DEMOGRAPHY 1753, 1757 (2020) (available at <https://read.dukeupress.edu/demography/article/57/5/1753/168376/Marriage-and-Union-Formation-in-the-United-States>). Men are more likely than women to have never married but also have higher overall marriage rates. Rates vary by race with Black males having the highest never married rates among males. Wang & Parker, *supra* note 65; see *Marital Status*, *supra* note 51.

<sup>95</sup> The Moynihan Report and more recent research find that higher unemployment rates and significantly higher incarceration rates for Black males has depressed Black marriage rates. See Harry J. Holzer, *Why Are Employment Rates so Low Among Black Men?*, BROOKINGS INST. (Mar. 1, 2021), <https://www.brookings.edu/research/why-are-employment-rates-so-low-among-black-men/> (noting that unemployment rates undercount incarcerated Black males and indicating that declining employment rates correlate with declining marriage rates).

<sup>96</sup> Ryan Larson et al., *Felon History and Change in U.S. Employment Rates*, 102 SOC. SCI. RSCH. 1, 2 (2021), [http://users.soc.umn.edu/~uggen/Larson\\_Shannon\\_Sojourner\\_Uggen\\_SSR\\_21.pdf](http://users.soc.umn.edu/~uggen/Larson_Shannon_Sojourner_Uggen_SSR_21.pdf) (noting that while the overall employment rate for adults with incarceration records is 8%, rates for Blacks overall (23%) and Black males specifically (33%) are significantly higher).

<sup>97</sup> Cavanagh & Fomby, *supra* note 11, at 497.

<sup>98</sup> See Fenaba R. Addo, *Debt, Cohabitation, and Marriage in America in Young Adulthood*, 51 DEMOGRAPHY 1677, 1678, 1680 (2014) (indicating that acquiring debt in young adulthood contributes to fewer marriages). Young adults with higher-than-average credit card debt are more likely to cohabitate than young

In the 1950s, when young adults married at earlier ages and overall marriage rates were higher, partners did not seem concerned if their spouse's educational background was different from theirs.<sup>99</sup> When today's young adults choose a spouse, however, they are more likely to date and marry someone with a similar socio-economic and educational background, and they are increasingly unwilling to marry someone who is not financially independent. For example, a recent survey showed that slightly more than half (51%) of never-married young (18-29-year-olds) adults report delaying or avoiding marriage because of concerns about their potential spouse's financial stability.<sup>100</sup> The share (63%) of young men who were financially independent (based on their annual income) in 1980 dropped to 52% by 2018 and dropped as low as 45% just after the Great Recession ended in 2010 while the share of financially independent women *increased* from 38% to 42% during this same period. This financial stability mismatch increasing causes women to avoid marrying males if they conclude their potential spouse does not satisfy the financial-stability marriageability criteria.<sup>101</sup>

Marriage rates for non-college males (whose earnings potential is lower given stagnant income for all but the highest earners) relative to rates for male college graduates are lower now than comparable rates for college/non-college males in prior generations.<sup>102</sup> Relative to their lower-income peers, higher-income young adults seem less concerned about their partner's financial stability, which is not surprising as they tend to select partners with similar economic attributes. The combination of the gender college attainment gap, declining wages for non-college males, and assortative mating has had a dramatic effect on marriage rates and the formation of traditional households. Assortative mating also exacerbates income and wealth inequality gaps since

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adults with less debt and women with student loans are less likely than women without educational debt to marry.  
*Id.*

<sup>99</sup> Miller & Bui, *supra* note 54. This phenomenon is not unique to the United States. According to 2011 data on 34 different countries from the Organization for Economic Cooperation and Development, for couples where both partners work, "40% [of couples] belong to the same or neighboring income bracket, up from 33 percent two decades ago," and "two-thirds [of couples] have the same level of education." *Id.*

<sup>100</sup> Vespa, *supra* note 84, at 2-3, 6.

<sup>101</sup> Amanda Barroso et al., *Majority of Americans Say Parents are Doing Too Much for Their Young Adult Children*, PEW RSCH. CTR. (Oct. 23, 2019), <https://www.pewresearch.org/social-trends/2019/10/23/majority-of-americans-say-parents-are-doing-too-much-for-their-young-adult-children/>; see Cavanagh & Fomby, *supra* note 11, at 496. Non-college adults are less likely to marry and more likely to move from one cohabitating relationship to another because of concerns that their partner is unmarriageable or that marriage itself is economically infeasible. Addo, *supra* note 104, at 1680; see Karen Benjamin Guzzo, *Trends in Cohabitation Outcomes: Compositional Changes and Engagement Among Never-Married Young Adults*, 76 J. MARRIAGE & FAM. 826, 835, 840 (2014).

<sup>102</sup> Bialik & Fry, *supra* note 75.

college graduates (who prefer to marry each other) are more likely to be white and are significantly less likely to be poor compared to non-college adults.<sup>103</sup>

### III. THE NEW “TRADITIONAL” HOUSEHOLD WITH (OR WITHOUT) CHILDREN

As discussed in detail in Part I, traditional households are favored and subsidized because of the belief that it is better for children to be reared by their married parents in the same household. Despite the idealized traditional household where the married mother remains home to care for young children while her husband earns enough money in the labor market to support his family, today’s “traditional” household is more likely to consist of a multi-generational family, single parents, unmarried partners, childless married couples, and married parents who both earn income in the paid labor market.

#### A. *Inability to Form Households*

Historically, most parents in this country financially supported their children until they graduated from college or became financially independent adults. Because it is taking longer for young adults to become financially independent and form their own separate households, many parents have dramatically changed their lifestyles to provide support for their adult children. For example, more parents are now paying for their children’s college expenses because it is no longer common (as it was before the 1980s) for young adults to work their way through college. Soaring college costs have made it nearly impossible for students to pay for a bachelor’s degree, which has caused more lower- and middle-income parents to take out high-cost Parent PLUS loans to help their children attain a college degree.

While noble, parents are now sacrificing their own long-term financial well-being to help their children become financially independent. Repaying PLUS loans often causes parents to deplete their retirement savings, cease saving for their *own* retirement, or use their current income to repay loan debt rather than pay their current expenses.<sup>104</sup> Unlike the loans students take out for themselves, parent loans are payable immediately and cannot be deferred until the student graduates, even if parents temporarily or permanently lose their jobs.<sup>105</sup> Parents

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<sup>103</sup> Miller & Bui, *supra* note 54; Mather & Jarosz, *supra* note 53, at 12.

<sup>104</sup> Aloni, *supra* note 33, at 26–27 (noting that middle-class families typically give their children financial transfers during their lifetimes not as bequests); Michelle Fox, *Parents are Sacrificing Their Own Financial Wellness to Support Their Adult Children, Survey Finds*, CNBC (May 5, 2021, 8:00 AM), <https://www.cnbc.com/2021/05/05/parents-are-sacrificing-their-own-financial-wellness-to-support-their-adult-children.html>.

<sup>105</sup> Although Parent PLUS loans are a small percentage of total current federal student debt, parents who

(unlike students) cannot participate in debt restructuring programs that reduce monthly loan payments or partially forgive debt and also cannot participate in federal income-based repayment (IBR) programs even though PLUS loans are often approved after a rudimentary credit check and without regard to the parents' ability to repay the loan.<sup>106</sup> Like student borrowers, however, parent borrowers generally cannot discharge student loan debt in bankruptcy and, if they default on the loans, they risk having their federal tax returns confiscated or their social security benefits garnished.<sup>107</sup>

Because it is taking longer for young adults to become financially independent, parents now routinely subsidize their adult children's short- and long-term living expenses and sometimes agree to repay their children's students loans in addition to their own PLUS loans.<sup>108</sup> For example, nearly 40% of young adults (ages 18 to 24, and nearly 20% between ages 25 and 29) in 2019 reported that they received financial support from someone who lives outside their home, typically their parents.<sup>109</sup> During the COVID-19 pandemic, roughly 45% of parents in households (across all income groups) gave their adult children money to pay their debts or to pay for basic necessities like food, housing, transportation and cellular phone service.<sup>110</sup>

Although young Latino adults are more likely (45%) to live with their parents than young Black (27%) or white (21%) adults,<sup>111</sup> young adults generally are struggling to establish their own households and are increasingly living with relatives.<sup>112</sup> Adult children now live in their parents' home at rates that far

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borrow Parent PLUS loans constitute increasingly large shares of people (students and parents) who have higher interest rate loans. "At the end of [2020], there were 3.6 million loan recipients with nearly \$101 billion in parent PLUS loans—an increase of about 40 percent from \$72.2 billion (adjusted for inflation) at the end of 2014." Tara Siegel Bernard, *A Federal College Loan Program Can Trap Parents in Debt*, N.Y. TIMES, (June 6, 2021, updated Sept. 10, 2021), <https://www.nytimes.com/2021/06/06/your-money/parent-plus-loans-debt.html>.

<sup>106</sup> Cf. Tara Siegel Bernard, *A Federal College Loan Program Can Trap Parents in Debt*, N.Y. TIMES, (June 6, 2021, updated Sept. 10, 2021), <https://www.nytimes.com/2021/06/06/your-money/parent-plus-loans-debt.html> (stating PLUS loan borrowers only have access to the most expensive income-driven repayment plan).

<sup>107</sup> Adam Looney & Vivien Lee, *Parents are Borrowing More and More to Send Their Kids to College—and Many Are Struggling to Repay*, BROOKINGS INST., (Nov. 27, 2018), <https://www.brookings.edu/research/parents-are-borrowing-more-and-more-to-send-their-kids-to-college-and-many-are-struggling-to-repay/>.

<sup>108</sup> FINRA, *Financial Capability in the United States*, 12 (2016) [https://www.usfinancialcapability.org/downloads/NFCS\\_2015\\_Report\\_Natl\\_Findings.pdf](https://www.usfinancialcapability.org/downloads/NFCS_2015_Report_Natl_Findings.pdf). Amanda Barroso et al., *supra* note 101.

<sup>109</sup> Bialik & Fry, *supra* note 75.

<sup>110</sup> Fox, *supra* note 104 (defining adult children as ages 18-29).

<sup>111</sup> BD. OF GOVERNORS, FED. RSRV. SYS., REPORT ON THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2017 33 (May 2018), <https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf>.

<sup>112</sup> Richard Fry et al., *U.S. Household Growth Over the Last Decade was the Lowest Ever Recorded*, PEW RSCH. CTR. (Oct. 12, 2021), <https://www.pewresearch.org/fact-tank/2021/10/12/u-s-household-growth-over-last-decade-was-the-lowest-ever-recorded/>; see Richard Fry et al., *A Majority of Young Adults in the US Live*

exceed rates for prior generations and they are remaining in their parents' homes for extended periods.<sup>113</sup> Job losses, college shutdowns during the early months of the COVID-19 pandemic, and declining college attendance rates for males (particularly lower-income non-white males) caused, for the first time since the Great Depression, a majority of young adults (particularly males) to live with their parents.<sup>114</sup> Because even young and employed college graduates have returned home to live with their parents,<sup>115</sup> household growth from 2010-2020 was the lowest *ever* recorded (the previous low was from 2000-2010).<sup>116</sup> More alarming, for the first time since 1850, there has been an *increase* in the size of the average U.S. household but a *decrease* in the rate of household growth.<sup>117</sup>

One reason young adults seem willing to live in their parents' home is because the norms concerning what it means to be an adult have changed. Compared to earlier generations, young adults no longer view moving out of their parents' home as an important part of adulthood and many appear to be satisfied with their lives even if they still live in their parents' home. A recent study reveals that "most parents with coresidential adult children are just as

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*with Their Parents for the First Time Since the Great Depression*, PEW RSCH. CTR. (Sept. 4, 2020), <https://www.pewresearch.org/fact-tank/2020/09/04/a-majority-of-young-adults-in-the-u-s-live-with-their-parents-for-the-first-time-since-the-great-depression/> (explaining that the largest increase in young adults who returned home to live with their parents are white, non-college young adults).

<sup>113</sup> Bialik & Fry, *supra* note 75; see BD. OF GOVERNORS, *supra* note 111.

<sup>114</sup> *A Majority of Young Adults*, *supra* note 112; see Bialik & Fry, *supra* note 75. COVID-19 widened the gender college attainment gap. While college enrollments dropped for all races and genders, the decrease in male undergraduate enrollment was almost three times the drop for female enrollment. *Compare Current Term Enrollment Estimates: Spring 2021*, NAT'L STUDENT CLEARINGHOUSE RSCH. CTR., <https://nscresearchcenter.org/current-term-enrollment-estimates/> (last updated Jan. 13, 2022), with *Current Term Enrollment Estimates: Spring 2018*, NAT'L STUDENT CLEARINGHOUSE RSCH. CTR., <https://nscresearchcenter.org/current-term-enrollment-estimates/> (last updated Jan. 13, 2022). Enrollment declines were most pronounced for male students of color who attended community colleges as data show the Black, Latino, and Indigenous male enrollment at public two-year colleges plummeted by 19.2%, 16.6% and 20.1%, respectively. Kelly Field, *The Missing Men*, CHRON. HIGHER EDUC. (July 1, 2021), <https://www.chronicle.com/article/the-missing-men>.

<sup>115</sup> One in three young people ages 18 to 34 lived in their parents' home in 2015 and 15% of Millennials (ages 25 to 37) were living in their parents' home in 2018 as compared to 8% of Baby Boomers and 9% of Gen Xers at the same age. Vespa, *supra* note 84, at 1–2; Bialik & Fry, *supra* note 75. Similarly, one in four of the 25- to 34-year-olds who lived in their parents' home in 2015 are classified as "idle" because they did not have jobs and were not in school. Vespa, *supra* note 84, at 2.

<sup>116</sup> Richard Fry et al., *U.S. Household Growth Over Last Decade Was the Lowest Ever Recorded*, PEW RSCH. CTR. (Oct. 12, 2021), <https://www.pewresearch.org/fact-tank/2021/10/12/u-s-household-growth-over-last-decade-was-the-lowest-ever-recorded/>.

<sup>117</sup> Richard Fry, *The Number of People in the Average U.S. Household is Going up for the First Time in Over 160 years*, PEW RSCH. CTR. (Oct. 1, 2019), <https://www.pewresearch.org/fact-tank/2019/10/01/the-number-of-people-in-the-average-u-s-household-is-going-up-for-the-first-time-in-over-160-years/>; see Solana Rice et al., *Whose Bad Choices? How Policy Precludes Prosperity and What We Can Do About It*, PROSPERITY NOW SCORECARD 7–8 (2018), [https://prosperitynow.org/sites/default/files/resources/2018-Prosperity-Now-Scorecard-Main-Findings-Report\\_0.pdf](https://prosperitynow.org/sites/default/files/resources/2018-Prosperity-Now-Scorecard-Main-Findings-Report_0.pdf).

satisfied with their living arrangements as parents whose adult children live somewhere else.”<sup>118</sup> Indeed, many adult children and their parents now embrace (or at a minimum, grudgingly accept) the concept of an “emerging adulthood” where young adults may not reach financial or emotional independence until they are 30.<sup>119</sup>

Although young adults may be *willing* to live with their parents, most would still like to start their own households in a home they own.<sup>120</sup> Young adults appear to be avoiding homeownership for several reasons. Some young adults fear buying homes because they watched their parents lose their homes during the 2007-2009 Great Recession. Others (particularly young, college-educated professionals) who may want to move to another town for a better job opportunity often prefer being mobile to being tied to a mortgage loan. The main reason young adults are not buying homes, though, is that they cannot afford to be a homeowner.

Overall homeownership rates for young adults increased slightly in 2015<sup>121</sup> and high-income young adults purchased homes during the COVID pandemic when interest rates plunged. However, overall homeownership rates (like marriage and childbearing rates) for young adults remain at historic lows<sup>122</sup> given their stagnant wages, low household savings, and crushing student loan debt (particularly if they attended college but did not graduate).<sup>123</sup> Moreover,

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<sup>118</sup> Vespa, *supra* note 84, at 3.

<sup>119</sup> See generally Anthony P. Carnevale et al., *If Not Now, When? The Urgent Need for an All-One-System Approach to Youth Policy*, GEO. UNIV.: MCCOURT SCH. PUB. POL’Y 9 (2021), <https://cew.georgetown.edu/cew-reports/allonesystem/>; Shelly Kreiczler-Levy, *Parents and Adult Children: The Elusive Boundaries of the Legal Family*, 44 L. & SOC. INQUIRY 519, 523 (2019) (explaining that adult children who live with their parents during periods of financial crises are not perceived as immature or financially irresponsible if they contribute to the household by paying expenses or they provide help with household duties or chores). Amanda Barroso et al., *supra* note 101, at 2 (explaining that despite the concept of emerging adulthood, polls indicate that most people believe that young adults rely too much on their parents and should be financially independent by the time they are twenty-two years old).

<sup>120</sup> See BD. OF GOVERNORS, *supra* note 111; see also *New Survey Reveals Affordability Challenges for Renters and Homeowners*, FREDDIE MAC: CONSUMER RSCH. (June 26, 2019) [http://www.freddiemac.com/research/consumer-research/20190626\\_new\\_survey\\_affordability.page](http://www.freddiemac.com/research/consumer-research/20190626_new_survey_affordability.page) (explaining that most people now see renting as more affordable than home-owning).

<sup>121</sup> See BD. OF GOVERNORS, FED. RSRV. SYS., *supra* note 111.

<sup>122</sup> For example, just over 41% of all households headed by someone younger than the age of 35 were homeowners in 1982. By 1994, that number dropped to just over 37% and as of 2016 stood at just over 35%. Similarly, the share of new homeowners under the age of 30 declined from 29% in 2001 to approximately 15% in 2015). Richard Fry & Anna Brown, *In a Recovering Market, Homeownership Rates Are Down Sharply for Blacks, Young Adults*, PEW RSCH. CTR. 4 (Dec. 15, 2016), <https://www.pewresearch.org/social-trends/wp-content/uploads/sites/3/2016/12/Home-ownership-report-FINAL.pdf>.

<sup>123</sup> *Student Loans Owned and Securitized*, FRED ECON. DATA, <https://fred.stlouisfed.org/series/SLOAS> (last accessed Feb. 17, 2021); Jean Song, *Student Debt “Feels Like Quicksand.” Is Loan Forgiveness the*

given the dearth of affordable housing, particularly in high opportunity cities,<sup>124</sup> it is virtually impossible for lower- and middle-income young adults to qualify for a mortgage and buy a home.<sup>125</sup>

Rising housing costs, particularly since the 2007-2009 Recession, has made it more likely that even middle-income young married couples with children will be renters<sup>126</sup> rather than homeowners.<sup>127</sup> As a result of soaring housing prices, homeowners are now more likely to be older, white, married, higher-income college graduates.<sup>128</sup> But since even young college graduates are struggling to buy homes, high income and wealthy parents are stepping in to help their adult children become homeowners.

As was true during the mid-2000s housing bubble, many young buyers in hot housing markets find themselves engaged in bidding wars for homes listed at prices that exceed the appraised value of the home. Lenders generally refuse to approve mortgage loans for amounts that exceed the market value of the home, so buyers must make all-cash offers to be competitive. Cash-strapped young buyers with wealthy parents or grandparents are now turning to their older relatives for money to make down payments or to make all-cash offers. Wealthy relatives who lack cash savings to loan (or give) their younger relatives often

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*Answer?* CBS NEWS (Mar. 25, 2021, 6:59 AM), <https://www.cbsnews.com/news/student-loan-debt-forgiveness-dilemma/>.

<sup>124</sup> See also Richard Fry et al., *supra* note 112.

<sup>125</sup> See BD. OF GOVERNORS, *supra* note 111, at 28–31; see also *New Survey Reveals Affordability Challenges for Renters and Homeowners*, *supra* note 128 (explaining that most people now see renting as more affordable than home-owning).

<sup>126</sup> Between 2010 to 2018, households with earnings that exceeded \$75,000 accounted for 76% of the growth in renter households and high-income households now make up nearly a quarter of all renter households. *America's Rental Housing 2020*, JOINT CTR. FOR HOUS. STUD. OF HARVARD UNIV. 10, 11 (2020), [https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard\\_JCHS\\_Americas\\_Rental\\_Housing\\_2020.pdf](https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2020.pdf).

<sup>127</sup> Renters now outnumber homeowners in almost half (47%) of the major cities in this country, roughly double (21%) the number in 2006. See BD. OF GOVERNORS, FED. RSRV. SYS., REPORT ON THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2019, FEATURING SUPPLEMENTAL DATA FROM APRIL 2020, 30–41 (May 2020) <https://www.federalreserve.gov/publications/files/2019-report-economic-well-being-us-households-202005.pdf> (showing that only 25% of 18- to 29-year-olds owned homes in 2019 while 85% of people over the age of 60 were homeowners); Fry & Brown, *supra* note 122 (explaining that as the average age of first-time home buyers increases, the proportion of homeowner households headed by younger adults decreases).

<sup>128</sup> Meredith Dunn, *Throwback Thursday: First-Time Homebuyers Then and Now*, NAT'L ASS'N REALTORS: ECONOMISTS' OUTLOOK (Jan. 10, 2019), <https://www.nar.realtor/blogs/economists-outlook/throwback-thursday-first-time-homebuyers-then-and-now> (explaining that only 54% of first-time buyers were married couples, consistent with overall lower marriage rates and noting the increase in young adults who lived with parents, relatives, or friends); Mather & Jarosz, *supra* note 53, at 7 (“The gap in housing affordability between owners and renters exacerbates the economic divide between older and younger age groups because older Americans are more likely to be homeowners.”); BD. OF GOVERNORS, *supra* note 127 (showing 71% of white adults owned their homes in 2020 while just over 50% of Latinos and only 48% of Blacks were homeowners).

take out a mortgage loan or home equity line of credit (or refinance an existing mortgage) on their home to give their younger relatives enough money to outbid other less resourced competitors.<sup>129</sup>

While having access to family wealth is particularly crucial for young potential home buyers in expensive housing markets, renters who receive even modest (\$5,000) financial support from their older relatives: (1) are 15% more likely than young adults who do not have access to wealthy relatives to become homeowners; (2) buy homes sooner; and (3) make larger down payments.<sup>130</sup> In fact, one recent study found that the financial transfer itself – *not* the young adult’s or the parents’ income, wealth or educational attainment – increases the likelihood that a young renter will become a homeowner.<sup>131</sup> Because the young adults who are now most likely to buy homes and establish a traditional household are higher-income or have access to family wealth and those young adults typically are white, fewer non-white and lower-income young adults are buying homes and establishing their own independent households.

### B. *More Single-Parent Households*

Public policies continue to encourage and subsidize traditional two-parent households because they are viewed as more financially<sup>132</sup> and emotionally stable<sup>133</sup> than single-parent households,<sup>134</sup> and recent polls suggest that Americans increasingly believe that it is bad for society when single women raise children on their own (or when unmarried couples cohabit).<sup>135</sup> Children typically experience “poorer outcomes when their parents are not married”<sup>136</sup> and children reared in single-mother households are more likely to live in

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<sup>129</sup> See Leigh Kamping-Carder, *Millennials’ New Weapon in Bidding Wars: A Parent’s Home Equity*, WALL ST. J. (Oct. 13, 2017, 2:46 PM), <https://www.wsj.com/articles/millennialss-new-weapon-in-bidding-wars-a-parents-home-equity-1507645135> (explaining that after closing, the young buyer takes out a mortgage on the newly acquired (debt-free) home and uses the loan proceeds to repay their older relative(s)).

<sup>130</sup> See Hyojung Lee et al., *The Role of Parental Financial Assistance in the Transition to Homeownership by Young Adults*, 47 J. HOUS. ECON 2, 3 (Mar. 2020).

<sup>131</sup> See *id.*

<sup>132</sup> Married parents are the least likely to be in poverty followed by nonmarital partners then single parents. Livingston, *supra* note 37. Although the increase in single-parent households accounted for much of the increase in child poverty in the 1970s and 1980s, parents’ inability to find stable jobs has also increased child poverty. Mather & Jarosz, *supra* note 53.

<sup>133</sup> See Cavanagh & Fomby, *supra* note 11, at 497.

<sup>134</sup> For example, in discussing the rise in Black single-mother households, the Moynihan Report observed that children’s “dependence on the mother’s income undermines the position of the father and deprives the children of the kind of attention, particularly in school matters, which is now a standard feature of middle-class upbringing.” The Moynihan Report, *supra* note 49, at 25.

<sup>135</sup> Hurst, *supra* note 42.

<sup>136</sup> Matsumura, *supra* note 18, at 482.

poverty,<sup>137</sup> have poorer educational outcomes,<sup>138</sup> and less wealth as adults<sup>139</sup> compared to single-person (particularly single-mother) households.<sup>140</sup>

Despite positive public sentiments for marriage and the economic advantages married mothers who live in a traditional household receive, women are increasingly choosing to remain unmarried and to rear their children in single-parent households.<sup>141</sup> Black, lower-income and non-college mothers are more likely to have children but not marry the fathers of their children, while higher-income mothers with bachelor's degrees are significantly more likely to be married (90%) when they have children compared to women with a 2-year degree (57%) or women who never attended college (41%).<sup>142</sup>

Women are rearing their children in single-parent households for a range of reasons. Some unmarried mothers were married to the fathers of their children and became single parents through widowhood or divorce. Other mothers chose

<sup>137</sup> Mather & Jarosz, *supra* note 53.

<sup>138</sup> A recent longitudinal study that analyzed 30 years of national data found that Black children who are reared in two-parent households do not receive the same benefits as other children reared in two-parent households and that living apart from a biological parent does not impose the same cost on Black children as it does for white children. Christina Cross, *Racial/Ethnic Differences in the Association Between Family Structure and Children's Education*, 82 J. MARRIAGE & FAMILY 691, 708 (2020). For example, while living in a two-parent family increases the likelihood that a white child will finish high school and be upwardly mobile, this is not the case for Black children primarily because of the socioeconomic stresses Black two-parent households face and the fact that Blacks are more likely to live in poverty due to decades of structural racism. Given this, Black children face economic barriers whether they live with one- or two parents. *Id.* The study also found that living in a single-mother household was not as harmful to Black children educationally because they are more likely to be embedded in an extended family network that helps mitigate any potential harm that results from living with just one parent. *Id.*

<sup>139</sup> Blau et al., *supra* note 90. In addition, girls reared in lower-income households are less likely to marry as adults and are more likely to have children outside of marriage (often with multiple partners). Cavanagh & Fomby, *supra* note 11, at 503.

<sup>140</sup> Mather & Jarosz, *supra* note 53. The increase in single mother households contributed to the overall increase in income inequality over the last several decades though the gap was somewhat reduced by an increase in the number of single mothers who worked in labor markets. *Id.* Black and Latino two-parent families do not have as much wealth as white two-parent families and, in fact, have half the wealth of white single parents. Amy Traub et al., *The Asset Value of Whiteness: Understanding the Racial Wealth Gap*, DEMOS 7 (Feb. 6, 2017), [https://www.demos.org/sites/default/files/publications/Asset%20Value%20of%20Whiteness\\_0.pdf](https://www.demos.org/sites/default/files/publications/Asset%20Value%20of%20Whiteness_0.pdf). Recent research finds that, while the Black-White mobility gap shrinks for Black children who grow up in low-poverty neighborhoods where there is a large presence of fathers, less than 5% of Black children grow up in these neighborhoods. Raj Chetty et al., *Race and Economic Opportunity in the United States: An Intergenerational Perspective*, 135 Q. J. ECON. 711, 711 (2020), <https://academic.oup.com/qje/article/135/2/711/5687353>.

<sup>141</sup> See Kearney et al., *supra* note 56, at 8–9.

<sup>142</sup> One reason the children of upper-income and college-educated mothers are more likely to live in two-parent households is because those mothers have higher marriage rates and college graduates typically marry people with college degrees. *Cf. Births to Unmarried Women: Indicators on Children and Youth*, CHILD TRENDS: DATA BANK 9 (Dec. 2015), [https://www.childtrends.org/wp-content/uploads/2015/03/75\\_Births\\_to\\_Unmarried\\_Women.pdf](https://www.childtrends.org/wp-content/uploads/2015/03/75_Births_to_Unmarried_Women.pdf) [<https://perma.cc/STP8-8AY2>].

to rear children in single-parent households because the fathers of their children did not marry them or they deem those males to be unmarriageable.<sup>143</sup> In addition, just as no-fault divorce laws de-stigmatized divorce and weakened the social norm that marriage is a permanent relationship,<sup>144</sup> the increase in the number of divorced women (particularly white women) rearing children helped de-stigmatize single motherhood and made it more likely that women would choose to be single mothers.<sup>145</sup> While the share of single-parent families has roughly tripled since the 1960s, the share of unmarried single mothers has not significantly increased because of overall declining birth rates.<sup>146</sup>

### C. More Childless Households

Women of all races and ages, whether married or single and across the socioeconomic spectrum, are avoiding or postponing having children or are having fewer children. Although most women in the United States are mothers, as shown on Figure 2, birth rates have been falling since the 1960s.

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<sup>143</sup> See Baker, *supra* note 14, at 225–26; Kearney et al., *supra* note 60, at 15 (“[I]mprovements in men’s labor market conditions lead to increases in birth rates.”).

<sup>144</sup> Matsumura, *supra* note 18, at 477.

<sup>145</sup> See Kearney et al., *supra* note 56, at 14; Sabrina Tavernise et al., *Why American Women Everywhere Are Delaying Motherhood*, N.Y. TIMES (June 16, 2021, updated Sept. 30, 2021), <https://www.nytimes.com/2021/06/16/us/declining-birthrate-motherhood.html>. While Black mothers remain more likely to be single parents than other mothers, single-mother household rates have increased for all races. *Births to Unmarried Women: Indicators on Children and Youth*, *supra* note 142. Indeed, while most discussions about single-mother households presume the mother is Black, the most dramatic shift in household formation involves middle- or working-class whites. Cavanagh & Fomby, *supra* note 11, at 497 (noting that white children who are not rich are increasingly less likely to live in a traditional household are more likely to live with cohabitating adults).

<sup>146</sup> Eleanor Krause & Isabel V. Sawhill, *Seven Reasons to Worry About the American Middle Class*, BROOKINGS INST. (June 5, 2018), [https://www.brookings.edu/blog/social-mobility-memos/2018/06/05/seven-reasons-to-worry-about-the-american-middle-class/?utm\\_medium=social&u](https://www.brookings.edu/blog/social-mobility-memos/2018/06/05/seven-reasons-to-worry-about-the-american-middle-class/?utm_medium=social&u); JOYCE A. MARTIN ET AL., CDC: NAT’L VITAL STATS. REPS., BIRTHS: FINAL DATA FOR 2019 (Mar. 23, 2021), <https://stacks.cdc.gov/view/cdc/100472>; *Births to Unmarried Women: Indicators on Children and Youth*, *supra* note 142.

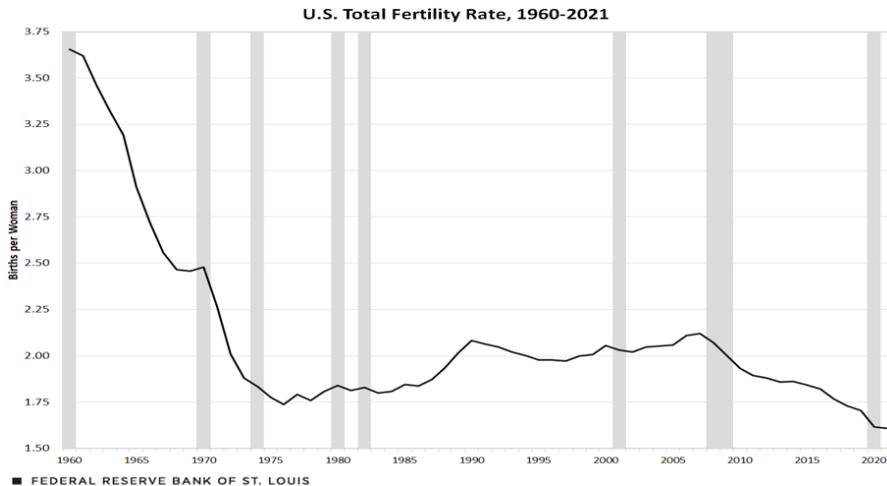


Figure 2

Birth rates for women between ages 15 and 44 fluctuated (sometimes wildly) between 1980 and 2007 and teen birth rates have declined precipitously (by 75%) since the 1990s.<sup>147</sup> Pre-COVID fertility rates (the average number of children women have over a lifetime) of 1.64 children/woman<sup>148</sup> were already lower than the “replacement fertility” rate (2.1 children/woman) demographers believe is needed for strong and stable economic growth.<sup>149</sup> Birthrates, which typically drop during recessions, declined after the 2007 Great Recession<sup>150</sup> and the COVID-19 pandemic “baby bust” may have resulted in up to 60,000 fewer children.<sup>151</sup>

<sup>147</sup> See Kearney et al., *supra* note 56, at 5–6.

<sup>148</sup> Melissa S. Kearney & Phillip Levine, *Will Births in the US Rebound? Probably Not.*, BROOKINGS INST. (May 24, 2021), <https://www.brookings.edu/blog/up-front/2021/05/24/will-births-in-the-us-rebound-probably-not/>; see generally Martin et al., *supra* note 146 (documenting 5-year decline in general fertility rate); Laura D. Lindberg et al., *Early Impacts of the COVID-19 Pandemic: Findings from the 2020 Guttmacher Survey of Reproductive Health Experiences*, GUTTMACHER INST. 4, 10 (June 2020), <https://www.guttmacher.org/report/early-impacts-covid-19-pandemic-findings-2020-guttmacher-survey-reproductive-health>.

<sup>149</sup> See Kearney & Levine, *supra* note 148; Lindberg et al., *supra* note 148.

<sup>150</sup> See Kearney et al., *supra* note 56, at 17.

<sup>151</sup> Kearney et al., *supra* note 56, at 17; Eliana Dockterman, *Women Are Deciding Not to Have Babies Because of the Pandemic. That’s Bad for All of Us*, TIME (Oct. 15, 2020), <https://time.com/5892749/covid-19-baby-bust/>; Lindberg et al., *supra* note 148; see Anna Brown, *Growing Share of Childless Adults in U.S. Don’t Expect to Ever Have Children*, PEW RSCH. CTR. (Nov. 19, 2021), <https://www.pewresearch.org/fact-tank/2021/11/19/growing-share-of-childless-adults-in-u-s-dont-expect-to-ever-have-children/>; Melissa S. Kearney & Phillip Levine, *The Coming COVID-19 Baby Bust is Here*, BROOKINGS INST. (May 5, 2021), <https://www.brookings.edu/blog/up-front/2021/05/05/the-coming-covid-19-baby-bust-is-here/>.

The largest declines in birth rates have been for highly educated women, women in their late 30s and early 40s, and women who were already mothers.<sup>152</sup> In addition to not having children, women are delaying having children. Because more women are attending college and choosing not to have children until they are married, the median age for first-time mothers increased from 22.7 years in 1980 then to 26.9 years in 2018.<sup>153</sup> Female college graduates constitute the largest percentage of women giving birth over the age of 25 though they have fewer children compared to non-college mothers.<sup>154</sup>

Women are deciding not to have children, are delaying having children, and are having fewer children for both emotional and economic reasons. Just as female college graduates realize they no longer need to be married to be viewed as successful, women who value their work are less likely to sacrifice their careers (or personal lives) to have children.<sup>155</sup> Young adults generally find parenthood less attractive because they understand the substantial amount of time modern childrearing (now generally referred to as “parenting”) requires and they have concluded that being a parent impinges on their leisure time and personal freedom.<sup>156</sup> More recently, young adults report that they do not want to have children for social or political reasons, including climate change or the state of the world generally.<sup>157</sup>

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<sup>152</sup> Melissa S. Kearney & Phillip Levine, *Early Evidence of Missing Births from the COVID-19 Baby Bust*, BROOKINGS INST. (Dec. 13, 2021), <https://www.brookings.edu/research/early-evidence-of-missing-births-from-the-covid-19-baby-bust/>.

<sup>153</sup> See Kearney & Levine, *supra* note 152; Sabrina Tavernise et al., *supra* note 145.

<sup>154</sup> T.J. Mathews & Brady E. Hamilton, *Educational Attainment of Mothers Aged 25 and Over: United States, 2017*, CDC: NAT'L. CTR. HEALTH STATS. 1, 4 (Feb. 2019), <https://www.cdc.gov/nchs/data/databriefs/db332-h.pdf> (explaining that “[t]he largest percentage of births by educational attainment was for mothers with a Bachelor’s degree,” who made up 25% of mothers giving birth over the age of 25, but further stating that, “[t]he lowest mean numbers of live births were for mothers with a Bachelor’s degree (1.87) and with an advanced degree (1.80)”).

<sup>155</sup> Sabrina Tavernise et al., *supra* note 145.

<sup>156</sup> See Kearney et al., *supra* note 56, at 29–30.

Changing norms regarding the intensity of parenting might change people’s views toward how many children to have or whether to have them at all. Such changes are particularly relevant in an era where parents, including mothers, work longer hours outside the home, clashing with career aspirations or a desire for more leisure time.

*Id.* (describing the second demographic transition as a shift that involves “a decoupling of marriage and childbearing, a change in the relationship between education and childbearing, a rise in childlessness, and the establishment of a two-child norm for those having children”).

<sup>157</sup> Alex Williams, *To Breed or Not to Breed?* N.Y. TIMES (Nov. 20, 2021, updated Dec. 2, 2021), <https://www.nytimes.com/2021/11/20/style/breed-children-climate-change.html> (noting that in summer of 2021, “Morgan Stanley analysts concluded that the ‘movement to not have children owing to fears over climate change is growing and impacting fertility rates quicker than any preceding trend in the field of fertility decline’”). *But see* Brown, *supra* note 161 (noting that “[a] majority (56%) of non-parents younger than 50 who say it’s

The main reason women are delaying having children and fertility rates have plunged is the same reason marriage rates are declining: young adults are no longer convinced that becoming a parent is economically feasible.<sup>158</sup> Recent surveys and reports reveal that a key reason young adults are choosing not to have children is they understand that children “come with associated costs, broadly defined, including both time and money.”<sup>159</sup> Birthrates are particularly low in regions with higher-wage jobs, in part because higher-income college-educated women are opting to avoid the “earnings penalty” the labor market imposes on working mothers.<sup>160</sup> That is, despite anti-discrimination laws, overall lifetime earnings for highly educated, higher-income mothers are lower because some employers still pay mothers less based on their (illegal) view that mothers are less committed to their jobs than men or single female workers.<sup>161</sup>

The juggling act parents, especially working single-mothers, performed during the COVID pandemic exemplifies why young adults are avoiding parenthood. Some couples feared having a child during the early months of the pandemic because of concerns about giving birth in a hospital that might ban family or spouses from the delivery room or that might expose the mother, baby or family members to the coronavirus.<sup>162</sup> In addition to health concerns about giving birth to a child during a global health pandemic, the lives of virtually all working parents were completely upended when daycare facilities and K-12 schools abruptly closed at the start of the pandemic.<sup>163</sup>

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unlikely they will have children someday say they just don’t want to have kids,” but further explaining that “[a]mong childless adults who say they have some other reason for thinking they won’t have kids in the future, no single reason stands out” – though some provided examples included not wanting to have kids because of: (1) medical reasons (19%); (2) financial reasons (17%); (3) partner’s age (10%); (4) state of the world (9%); and (5) environmental concerns (5%).

<sup>158</sup> Sabrina Tavernise et al., *supra* note 145; see Martin et al., *supra* note 146; Kearney et al., *supra* note 56, at 6.

<sup>159</sup> Kearney et al., *supra* note 56, at 6.

<sup>160</sup> Sabrina Tavernise et al., *supra* note 145 (“The birthrate is falling fastest in places with the greatest job growth—where women have more incentive to wait.”)

<sup>161</sup> See Tavernise et al., *supra* note 145 (explaining that, today, employers “expect[] employees to be available around the clock,” despite there being few “policies to help parents combine work and family”); Claire Cain Miller, *Americans are Having Fewer Babies. They Told Us Why.*, N.Y. TIMES (July 5, 2018), <https://www.nytimes.com/2018/07/05/upshot/americans-are-having-fewer-babies-they-told-us-why.html>.

<sup>162</sup> Lindberg et al., *supra* note 148; Christina Capatides & Caitlin O’Kane, *Pregnant Women Are Being Forced to Give Birth Alone as Hospitals Restrict Visitors During Coronavirus*, CBS NEWS (Mar. 26, 2020) <https://www.cbsnews.com/news/coronavirus-pregnant-women-hospitals-give-birth-alone/>.

<sup>163</sup> Aliyya Swaby, *Texas Day Cares are Closing Just When Some Parents Need Them More Than Ever*, TEX. TRIB. (Mar. 24, 2020), <https://www.texastribune.org/2020/03/24/coronavirus-closes-texas-day-cares-some-parents-need-them-more-ever/>.

Even when daycare centers and K-12 schools reopened, parents were never sure if they could work (from home or in person) on any given day because of the constant risk that a COVID outbreak would trigger a school closing. Moreover, prolonged school and day care closures added to the anxiety and stress young workers faced, particularly since many were unsure when unemployment rates spiked during the 2020 COVID-19 recession if they would keep their jobs.<sup>164</sup> While most women are employed in the paid labor market, employment rates remained lower for women in 2021 and many mothers stopped working when they found they could not simultaneously handle working (from home, or in person) and rearing their children.<sup>165</sup>

Young adults who are concerned that they may not find stable high-wage jobs or who question whether they will be able to rear their children in a home they own are rationally responding to those fears by delaying or avoiding having children. Likewise, young adults who fear they will not be able to afford health insurance or childcare, or whose jobs do not provide paid leave when their children are born, are avoiding becoming parents.<sup>166</sup> These fears and concerns are well-founded, as a 2015 report by the U.S. Department of Agriculture calculated that a middle-income married-couple family will likely spend between \$12,350 and \$13,900 each year (in 2015 dollars) on their child, or a total of \$233,610 from birth through age 17.<sup>167</sup> Pre-COVID studies found that, in almost half of the states in this country, one year of tuition at the public

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<sup>164</sup> See Dockterman, *supra* note 151.

<sup>165</sup> Nicole Bateman & Martha Ross, *Why Has COVID-19 Been Especially Harmful for Working Women?*, BROOKINGS INST. (Oct. 2020), <https://www.brookings.edu/essay/why-has-covid-19-been-especially-harmful-for-working-women/> (observing that the pandemic “upended the labor market, with disastrous consequences for working women and their families”); Misty L. Heggeness et al., *Tracking Job Losses for Mothers of School-Age Children During a Health Crisis*, U.S. CENSUS BUREAU (Mar. 3, 2021), <https://www.census.gov/library/stories/2021/03/moms-work-and-the-pandemic.html#:~:text=Tracking%20Job%20Losses%20for%20Mothers,Children%20During%20a%20Health%20Crisis&text=Around%2010%20million%20U.S.%20mothers,new%20U.S.%20Census%20Bureau%20data> (finding that “[w]orking mothers are either willingly leaving jobs or are being forced out in extraordinary numbers” during the COVID pandemic and observing that these “employment patterns are becoming prolonged and more severe.”). When childcare centers and K-12 schools closed, employment rates dropped by almost 10 percentage points (from 76.1% in September 2019 to 67.4% one year later) for unpartnered mothers. Amanda Barroso & Rakesh Kochhar, *In the Pandemic, the Share of Unpartnered Moms at Work Fell More Sharply Than Among Other Parents*, PEW RSCH. CTR. (Nov. 24, 2020), <https://www.pewresearch.org/fact-tank/2020/11/24/in-the-pandemic-the-share-of-unpartnered-moms-at-work-fell-more-sharply-than-among-other-parents/>. Because Black and Latino mothers are more likely to be unpartnered, they had the greatest employment declines during the pandemic. *Id.*

<sup>166</sup> Kearney et al., *supra* note 56, at 13–14 (noting that “birth rates decrease for renters when housing prices increase” but that birth rates are lower in high-income cities).

<sup>167</sup> Mark Lino et al., *Expenditures on Children by Families, 2015*, USDA 10, 19 (Jan. 2017, revised Mar. 2017), [https://cdn2.hubspot.net/hubfs/10700/blog-files/USDA\\_Expenditures%20on%20children%20by%20family.pdf?t=1520090048492](https://cdn2.hubspot.net/hubfs/10700/blog-files/USDA_Expenditures%20on%20children%20by%20family.pdf?t=1520090048492).

university cost less than full-time preschool.<sup>168</sup> As evidenced by the childcare crisis during the COVID pandemic, childcare remains unaffordable and costs exceed more than 7% of household income for over 80 percent of families.<sup>169</sup>

Ironically, one reason this country is facing a childcare crisis is because of the disintegration of the “traditional” American household. Young working parents cannot always find kin to provide free childcare, particularly if they do not live near extended family. But with more mothers earning wages in the paid labor market and fewer women marrying the fathers of their children, there are fewer stay-at-home mothers available to care for their children. Though the number of grandparents who both work in the paid labor market and take care of their grandchildren has increased since the 1970s and some older workers quit their jobs or retired during COVID to provide childcare for their grandchildren,<sup>170</sup> decades of wage stagnation make it financially impracticable for some grandparents to stop working and provide unpaid care for their grandchildren.<sup>171</sup>

#### D. More Dual-Earning Households

While state and federal laws continue to favor the “traditional” household, dual-income married couples now outnumber the number of traditional husband-at-work/wife-at-home households. Most married couples (particularly if they have children) simply cannot afford the luxury of having a stay-at-home spouse. In 1920, only 24% of women worked outside the home and this share roughly

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<sup>168</sup> See *The US and the High Price of Child Care: An Examination of a Broken System*, CHILD CARE AWARE AM., <https://www.childcareaware.org/our-issues/research/the-us-and-the-high-price-of-child-care-2019/Parents-and-the-High-Cost-of-Child-Care>, CHILD CARE AWARE AM. at 20 (2017), [https://www.childcareaware.org/wp-content/uploads/2017/12/2017\\_CCA\\_High\\_Cost\\_Report\\_FINAL.pdf](https://www.childcareaware.org/wp-content/uploads/2017/12/2017_CCA_High_Cost_Report_FINAL.pdf).

<sup>169</sup> Cf. Julie Yixia Cai & Algernon Augstin, *Family Policies in the Build Back Better Act Would Reduce Burdens on Families and Provide a Better Buffer to Economic Instability*, CTR. FOR ECON. & POL’Y RSCH. (Dec. 14, 2021), <https://cepr.net/family-policies-in-the-build-back-better-act-would-reduce-burdens-on-families-and-provide-a-better-buffer-to-economic-instability/>.

<sup>170</sup> *Id.*; Leanne Italie, *Working Families Enlist Grandparents to Help With the Kids*, PBS: NEWS HOUR (Aug. 20, 2020, 12:01 PM), <https://www.pbs.org/newshour/nation/working-families-enlist-grandparents-to-help-with-the-kids>.

<sup>171</sup> See Brooks, *supra* note 36.

Affluent conservatives often pat themselves on the back for having stable nuclear families. They preach that everybody else should build stable families too. But then they ignore one of the main reasons their own families are stable: They can afford to purchase the support that extended family used to provide—and that the people they preach at, further down the income scale, cannot.

*Id.*

doubled by 1970.<sup>172</sup> While approximately 12% of married mothers with young children earned wages in the labor force in the 1960s, that number increased to almost 73% by 2000.<sup>173</sup> Most married women, including mothers, now earn wages in the labor force.<sup>174</sup> By 2019, 70% of married mothers earned income in the paid labor market and, by 2021, 63% of children ages 5 and under lived in households where their parents work.<sup>175</sup> Although, as noted earlier, Black wives have typically worked in the paid labor market, since the 1970s lower- and middle-income white wives have also been forced to leave their traditional households to earn income.<sup>176</sup>

Though employment rates and overall income is higher for white males than Black males, white families have seen the most dramatic increase in the number of women who work outside the home largely because declining male wages (particularly for non-college males) made it impossible for their families to maintain their lifestyle based solely on their husband's stagnant or declining income. Thus, while 65% of white children lived in households with a stay-at-home mother in 1969, by 2014 only 51% of white children lived in dual-parent but single-income households.<sup>177</sup>

#### IV. RESTORING "TRADITIONAL" HOUSEHOLDS AND CREATING NEW TRADITIONS

Laws and norms that encourage Americans to live in a "traditional" household have failed to convince young adults to make what they perceive to be unaffordable marital, childbearing, and home buying decisions. Even if marriage provides the most stable economic (and potentially emotional) environment for young adults and children, young adults no longer feel they must marry and have children to lead a fulfilling life. Stagnant income and job instability make it nearly impossible for most people, particularly if they are

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<sup>172</sup> U.S. COUNCIL ECON. ADVISORS, ECONOMIC REPORT OF THE PRESIDENT 157 (2015), <https://www.govinfo.gov/content/pkg/ERP-2015/pdf/ERP-2015-chapter4.pdf>.

<sup>173</sup> Pamela B. Gann, *Abandoning Marital Status as a Factor in Allocating Income Tax Burdens*, 59 TEX. L. REV. 1, 34 (1980); *Women in the Labor Force: A Databook*, U.S. BUREAU LAB. STATS. (2010), <https://www.bls.gov/cps/wlf-intro-2010.htm>.

<sup>174</sup> *Women in the Labor Force: A Databook*, U.S. BUREAU LAB. STATS. 1 (Apr. 2021), <https://www.bls.gov/opub/reports/womens-databook/2020/pdf/home.pdf>.

<sup>175</sup> *Id.*; *National and State Child Care Data Overview*, BIPARTISAN POL'Y CTR. (Aug. 15, 2021), <https://bipartisanpolicy.org/report/national-child-care/>.

<sup>176</sup> See Boushey & Vaghul, *supra* note 74.

<sup>177</sup> See D'Vera Cohn et al., *After Decades of Decline, A Rise in Stay-at-Home Mothers*, PEW RSCH. CTR. (Apr. 8, 2014), <https://www.pewresearch.org/social-trends/2014/04/08/after-decades-of-decline-a-rise-in-stay-at-home-mothers/>.

non-white and non-college, to live in a husband-at-work and wife-at-home-raising-children “traditional” household. Notwithstanding laws and policies that are designed to encourage people to live in traditional households, most young adults simply cannot find stable jobs that pay them enough to marry, have children, buy homes, and form their own households.

Federal and state laws and assistance programs that encourage and subsidize the status of being married are no longer defensible now that the personal lifestyle choice to rear children in a “traditional” household is one that only the most economically privileged members of society can afford to make. Given the financial vulnerabilities lower- and middle-income families are facing, state and federal laws should neither encourage nor subsidize “traditional households” and should instead award financial benefits on a household-neutral basis that considers whether members of the household provide the type of “care, services, and mutual help” that traditional households historically provided for spouses and minor children.<sup>178</sup> Specifically, laws and policies should focus on how households function *not* whether the residents are married, cohabitants or a single mother and children.<sup>179</sup>

Tax scholars have argued, since at least the early 1980s, that there is no tax justification for encouraging or subsidizing marriage because a taxpayer’s marital status is “irrelevant in determining what portion of the federal tax burden the individual should bear.”<sup>180</sup> These scholars argue that *all* taxpayers should be required “to file a separate return under a single rate schedule and to report on that return only his or her income”<sup>181</sup> because the choice to marry “should be viewed like other personal consumption choices that have no effect on the individual’s income tax burden, such as purchasing a Mercedes instead of a motorcycle.”<sup>182</sup>

Social security laws also should not award benefits simply because the retiree was married to someone who earned income in the paid labor market.

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<sup>178</sup> See West, *supra* note 16, at 189.

<sup>179</sup> See *id.* at 186 (arguing that same-sex couples should receive the same “federally bestowed benefits” that accrued at that time only to heterosexually married couples and arguing that the only issue should be whether the family is “defined by long-term commitment and the dedication to raising and caring for children.”); see also Baker, *supra* note 14, at 208 (arguing that child support formulas that “are based on estimations of the average amount of money a normative two-parent family would spend on a child if the two parents lived together” harm people who rear children outside of a marriage by assigning responsibilities “as if they were living in a marital-like relationship”).

<sup>180</sup> Gann, *supra* note 173, at 6.

<sup>181</sup> Gann, *supra* note 173.

<sup>182</sup> *Id.*; see also Brown, *supra* note 34, at 59–61. See generally Aloni, *supra* note 33, at 3 (discussing theories for marriage neutrality).

Most Americans (unless they are rich) who are nearing retirement do not have private retirement savings and likely will not receive income from an employer-provided retirement plan.<sup>183</sup> Specifically, half of older households (age 55 or older) lack private retirement savings from an IRA or 401(k) plan and few participated in an employer-provided defined benefit plan or have other non-retirement savings they can use when they stop earning income.<sup>184</sup> Because federal social security benefits provide most of the income for roughly half of households age 65 or older, these benefits should be awarded based solely on financial need, not on the recipient's current or former marital status.<sup>185</sup>

Awarding enhanced social security benefits based on a recipient's marital status may have been justified when most households consisted of husbands who earned wages in the labor market and wives who reared children but either did not or could not earn wages outside the home. But, as noted earlier, most wives now earn wages in the labor market and unmarried women (particularly if they are single Black mothers) are expected to work outside the home to qualify for government assistance. Because fewer wives are stay-at-home spouses and marriage rates are highest for upper-income, white college graduates, awarding federal assistance based on marital status harms lower- and middle-income adults (the least likely to be married) even though they have the greatest financial need for retirement income when they stop working.

Given the shrinking number of traditional households and the looming retirement savings crisis in this country, calculating retirement income based on marital status rather than financial need exacerbates economic disparity gaps among older Americans. Indeed, providing retirement income subsidies for people who live in traditional households reinforces and amplifies "the preexisting power and wealth inequalities that serve as the foundation" of marital wealth and income gaps.<sup>186</sup> Because the occupants of traditional households are disproportionately white, higher-income college graduates,

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<sup>183</sup> NAN MOONEY, (NOT) KEEPING UP WITH OUR PARENTS: THE DECLINE OF THE PROFESSIONAL MIDDLE CLASS 134 (2008).

<sup>184</sup> See *Retirement Security: Most Households Approaching Retirement Have Low Savings* at 1, GAO (Mar. 26, 2019), <https://www.gao.gov/assets/gao-19-442r.pdf>. See generally BD. OF GOVERNORS, *supra* note 127 (finding that social security was the most common source of retirement income but noting that 8 in 10 retirees received some income from a pension, interest, dividend, rental income, or wages)

<sup>185</sup> *Id.* Likewise, the tax treatment for IRAs is more favorable for married taxpayers and distribution requirement vary depending on whether the beneficiary is the account holder's spouse. See Cassidy J. Seamon, *Killing the Security Blanket Goodbye: How the Secure Act will Affect IRA Beneficiaries' Long-term Financial Security*, 62 B.C. L. REV. 357, 372–373 (2021).

<sup>186</sup> Aloni, *supra* note 33, at 3.

marriage subsidies and the laws and policies that favor the traditional household exacerbate inequality (particularly racial) gaps.<sup>187</sup>

While benefits generally should not be awarded based on marital status, if state and federal policymakers continue to believe that “traditional” households provide value and benefits to society, they should make it easier for lower- and middle-income young adults to marry, have children, and buy their own homes. For example, as discussed earlier, some financially unstable non-college adults are viewed as unmarriageable. If we truly value traditional households, educational institutions must find ways to encourage lower-income youth (particularly males) to graduate from high school and attend college, and they must make college more affordable to ensure that young adults are not saddled with onerous student loan debt that may deem them unmarriageable.<sup>188</sup> Likewise, states and the federal government must develop additional post-secondary training programs and apprenticeships to help workers find higher-wage jobs that do not require a bachelor’s degree.

To reduce high incarceration rates for lower-income (particularly non-white) males, legislators should continue to reduce penalties for people arrested and charged with low level drug offenses. Similarly, to address high Black male unemployment, businesses should be prohibited from demanding that job applicants disclose their arrest or conviction records unless the business has conditionally offered the applicant a job. Likewise, the business should be prohibited from refusing to hire an applicant based on their criminal history unless the applicant’s arrest or conviction background disqualifies the worker from holding the job.<sup>189</sup>

The COVID childcare crisis is a glaring display of the government’s failure to adopt policies that would help increase the number of traditional households. If we truly value traditional households, local, state, and federal governments must enact more “pro-natalist” policies, like the Build Back Better plan, that provide subsidized childcare, paid parental leave, and child tax credits.<sup>190</sup> Until

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<sup>187</sup> See Aloni, *supra* note 33, at 3.

<sup>188</sup> Women, Blacks, and younger adults are most likely to have student loan debt. Michael D. King et al., *COVID-19 Adds to Economic Hardship of Those Most Likely to Have Student Loans*, LAKE CNTY. NEWS (Aug. 19, 2021), <https://www.lakeconews.com/news/70049-covid-19-adds-to-economic-hardship-of-those-most-likely-to-have-student-loans>.

<sup>189</sup> See generally Christopher Uggen & Robert Stewart, *Piling On: Collateral Consequences and Community Supervision*, 99 MINN. L. REV. 1871, 1878–79 (2015) (discussing challenge workers with felony convictions face when searching for jobs).

<sup>190</sup> See generally Kearney et al., *supra* note 56, at 35 (“The evidence about pronatalist policies that have been implemented and evaluated in the United States and in other high-income countries suggests that these types of policies lead to modest increases in birth rates in the short-term, but are unlikely to lead to sustained

politicians enact policies that make childcare more affordable and make it possible for young adults to take paid leave to care for their sick children, even young adults who are willing to bring children into a politically turbulent world facing severe global warming will rationally avoid having children.

Finally, if traditional households are deemed beneficial to society, local, state, and government leaders must tackle the affordable housing crisis.<sup>191</sup> While housing unaffordability affects more than just young potential home buyers, there will continue to be fewer traditional households if the only young adults who can afford to buy homes are rich or have wealthy relatives who can subsidize their home buying expenses. Localities can make it easier for young adults to establish their own households by removing “exclusionary” zoning laws that increase the price of housing (both to rent and to purchase) and that decrease the supply of small starter homes that would appeal and be affordable to young adults.

Generally, exclusionary zoning policies increase housing prices by: (1) imposing large minimum lot or floor sizes for single-family homes; (2) excluding multi-family housing from certain neighborhoods; (3) imposing massive minimum lot sizes (or minimum living space requirements) for multi-family housing buildings; and (4) preventing existing owners from building a smaller, additional rental unit on their property or in their homes by, for example, building a garage apartment unit.<sup>192</sup> If we truly value traditional households, we must find ways to make it possible for young adults to establish these households.

## CONCLUSION

While public policies should neither encourage nor subsidize a lifestyle choice to live in a “traditional” household, the inability of most young adults to live in that type of household is alarming and potentially catastrophic for their long-term financial stability and the long-term stability of the U.S. economy. Young adults of all races are delaying marriage and childrearing or are choosing to rear children in unpartnered or cohabitating households because they realize that it may be economically infeasible for them to marry and have children. Rather than continuing to reward the largely homogeneous and demographically

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higher birth rates.”).

<sup>191</sup> See, e.g., Vespa, *supra* note 84, at 3.

<sup>192</sup> See David Schleicher, *Exclusionary Zoning's Confused Defenders*, 2021 WIS. L. REV. 1315, 1317 (2021) (noting that “excessive land use regulations result in high housing costs, causing huge rent burdens, homelessness, and economic inequality through capital appreciation for homeowners.”)

shrinking “traditional” household, the government should focus on stabilizing young, financially fragile households and should ignore whether those households consist of married couples with one or two-earners, single-parents, or childless households.