

Book Review,  
June Carbone and Naomi Cahn, *Marriage Markets: How Inequality Is Remaking the American Family*, New York: Oxford University Press, 2014. Pp. 258. (ISBN hardback: 978-0-19-991658-0).

by  
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The Pew Research Center recently issued a report analyzing data from the Census Bureau and the National Center for Health Statistics that indicated that the birth rate for unmarried mothers, which had been steadily increasing since the early 1980s, peaked in 2008 and has declined 14 percent since—a rate that is more than the rate of decline for all women. The report went on to note that the declines were the sharpest among teenagers, black, and Hispanic women, and those without college degrees. The only group of unmarried women for whom the birthrate increased was for those age 35 and older, who presumably have more resources and education than the typical mother. According to the Pew Research Center, if these trends continue, single motherhood could become less a sign of family instability and instead, one of the new ways people are choosing to form families in an era when both marriage and divorce are declining.<sup>1</sup> Two law professors, June Carbone of the University of Minnesota Law School and Naomi Cahn of George Washington University Law School, have been closely analyzing these demographic developments for several years, first in their seminal study in 2010 of the political trends affecting family formation and parentage, *Red Families v. Blue Families: Legal Polarization and the Creation of Culture*, and now in their new book that is the subject of this book review. *Marriage Markets: How Inequality Is Remaking the American Family* is in some ways a sequel to their study of political trends, with this latest book

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<sup>1</sup> Claire Cain Miller, *Single Women's Birthrate Drops 14% Since 2008*, N.Y. TIMES, May 9, 2015 (as reported in the STAR TRIBUNE (Minneapolis), May 9, 2015, at A1, A5.

focusing on the economic trends that they see as dramatically impacting family demographics in the United States.

Why should family law professionals—attorneys, judicial officers, family court administrators, mental health providers and evaluators, mediators, and guardians ad litem—care about two academics' analyses of these trends? Because these trends that they analyze in relationship structuring and family formation are playing out in our practices and with our clients on a daily, ongoing basis, affecting the kinds of legal issues that our clients present to us and dramatically impacting the way the family justice system will operate in the decades to come. The trends that are closely analyzed by Carbone and Cahn are monumental and will no doubt affect the most basic and pervasive aspects of our family law practices; we ignore these trends at our own peril. This book provides an excellent overview of the demographic forces, primarily economic, that are currently affecting relationship structuring and family formation issues today, with substantial sections of the book focusing specifically on the impact of these trends on family law as we currently know it and family courts as they presently function.

As a study of the impact of economics on family formation and family relationships, these authors start with the premise that the real explanation for the changing American family is the recreation of class and the harder edged boundaries that separate winners and losers in the American economy. They believe that economic inequality is remaking the American family along class lines. A narrowly constructed study such as this that focuses in laser-beam fashion on a primary agent of causal change—in this case economic inequality—always raises the question of whether such an analysis can support the weight of the conclusions reached, or whether a more nuanced and multifaceted analysis would be more convincing. That might be a concern with this book if it were not for the breadth and depth of the research that these two scholars have undertaken in this study. The statistical trends underlying their analysis, all richly documented with a variety of historical and contemporary social scientific studies, are the following: the age of marriage is going up; the rate of marriage is falling; almost half of all marriages fail; same-sex marriage is becoming accepted; children born outside of marriage are

no longer as stigmatized as before; more children are growing up in single parent households.

Of particular interest to family law practitioners is that these authors, both of whom are law professors with family law experience, see family courts as they presently function and family law as it currently exists, locking in the growing class divisions that they believe drive these demographic developments. One suspects that in some ways the problems they highlight will not be terribly surprising to most family law practitioners, but the discussion of the impact of these trends on relationship and family formation is insightful. Their suggested remedies to address the issues will no doubt be controversial and rejected by substantial portions of our polarized society (which these authors so effectively described in *Red Families v. Blue Families*). For Carbone and Cahn ultimately propose dramatic governmental interventions and significant family law reforms as a remedy to the challenges that flow out of economic inequality.

Given that this is ultimately an economic study of parentage, marriage, and the family, these authors use class as a functional category that explains the structure of marriage markets (i.e., how partners or spouses connect with each other and establish their relationships), educational expectations, and possibilities of moving up and down the socio-economic ladder. They view class as a social construct often correlated with income and the way society creates expectations about behavior and channels wealth and income. The authors put flesh on the bones of their economic theories by introducing at the outset of the book several couples with whom the authors have had contact and who can illustrate the authors' hypotheses. They return to these same couples throughout the book to both test and illustrate their hypotheses and conclusions. The various couples all fit into one of the three primary categories of family arrangements that are analyzed in the book: the college educated; the middle of the population made up mostly of high school graduates who did not start or complete college; and the poor and marginalized, mainly consisting of high school dropouts. The authors observe that twenty years ago, family patterns of the middle category looked much like the top category, while now, they look more like the lower level. Carbone and Cahn believe the consequences of these shifts are likely to be devastating to family stability and child suc-

cess. Ultimately, it is the thesis of this book, developed in four large sections, that increasing inequality has re-made the pathways into the middle class much more difficult to obtain and sustain, and that this trend will have a negative impact on family formation and function unless certain reforms are put in place.

The first of the four sections of the book is entitled “The Puzzles of Today’s Families.” This section builds the thesis that class differences are remaking the family. It starts with the documented demographic premise that college graduates are presently more likely to marry each other and remain married than are the lower and middle groups in society. Divorce and non-marital births have become markers of class, with the well-educated and prosperous upper third of the country embracing marriage and more traditional values, while marriage has all but disappeared in the poorest communities where stable marriage and family relationships have become increasingly difficult to obtain for much of the country. It remains true that for those who make marriage work, the arrangement pays off handsomely for the future of children born to such parents and their progeny. In reaching these conclusions, these authors mine and critique important scholars of the past, such as Daniel Patrick Moynihan, who focused on the role of government policy, and more conservative policy analysts of the present, such as Charles Murray, who assert the deterioration of the moral character of much of society explains the changes. Throw in discussions about the impact of the birth control pill, the women’s liberation movement, and increasing numbers of educated and employed women with their own independent means of support, and the stage is set for an assuredly provocative view of the impact of economic forces remaking marriage and the family.

Section 2, entitled “The New Terms,” looks at how economic forces skew marriage markets. These authors believe this trend has largely been the result of the transformation in women’s roles in society and the growing economic inequality across society. While the demographic data are clearly showing a decline in the number of persons at the lower social economic scale who get married, Carbone and Cahn still find much of value in the institution of marriage, stating that for those who do it right—invest in women’s and men’s earning capacity, avoid early marriage and childbirth, achieve a measure of economic independence, and

find the right life partner—marriage still works and remains the most reliable way to raise well adjusted and healthy children and to channel resources to the next generation. For those who fail to follow what the authors refer to as “the new prescription,” family stability is increasingly difficult to obtain. Despite these authors’ apparent ongoing faith in the ability of these family institutions to provide these hoped for results, economic inequality remains an intractable problem. Why? In the view of Carbone and Cahn, that answer lies in both ideological polarization (conservatives view everything as a failure to instill the right values, while liberals object to any effort to pass judgment) and the fact that existing accounts of these challenges facing families rarely connect and compare the changing family strategies of the elite with the changing behaviors of all the others. It is these authors’ thesis that what they call “family scripts” have been rewritten along diverging lines of gender, class, and culture, illustrated, for example by the fact that even educational achievement differences among children are class and income driven, as are issues for parentage and family formation and the selection of partners and spouses.

Section 3 of the book is entitled “Legalizing Inequality: the Class Divide in the Meaning of Family Law.” This section of the book will be of special interest to family law attorneys and judges presiding in family courts since it discusses how trends in family law and family court practices are institutionalizing these trends among the various strata of society as discussed above. As Carbone and Cahn see it, family laws and their application at the present are ultimately replacing what used to be a culture of dependence with new found interdependence. This transformation of substantive family law and its implementation in practice has had a profound impact on how parentage, custody, parenting time, property division, and support provisions get decided when couples split up and the family court intervenes.

As discussed above, these authors contend that large parts of the country are moving in opposite directions in terms of both legal and societal developments, with ideological division (red and blue) preventing the emergence of new, broadly shared cultural norms. Legal rulings and practices reflect the assumptions of the upper third, outright reject the contingent arrangements of the marginalized bottom groups who have given up on marriage

altogether, and completely fail to institutionalize the still emerging practices of the broad middle sector of society, many of whom are beginning to share views of marriage and practices of family formation that are similar to the bottom sector of society. The new script widely accepted by statutory and judicial developments in the area of family law is based on interdependence: equal division of property based on an assumed equal contribution by two functional and working spouses; spousal support limited to long-term homemakers and thus rarely awarded because both partners are viewed as capable of independently supporting themselves; and with shared parenting being the norm, based on an assumption that there are two qualified, interested, and involved parents. The underlying assumptions for this interdependent view, in the eyes of these authors, simply does not exist across the demographic spectrum of our society. The book contains a fascinating look at the marital presumption and how this still widely applied doctrine has not kept pace with current values, interests, and practices. Also interesting is the examination of how parentage is being determined and how this dramatically varies from state to state and region to region, with some parentage based on function, some on the marital presumption, and some on biological/DNA determinism. Criticism is even directed at the United States Supreme Court which these authors contend has missed its opportunity to clarify these divisive issues with a unifying decision that could apply across the country.

The final section of the book, Section 4, is entitled "Rebuilding Community: Inequality, Class, and Family." This section attempts to provide concrete suggestions and a road map to get us out of this quagmire of inequality that is remaking the American family. Their suggested solution is built on the premise that rebuilding the family requires starting from the top and making the policies that produce inequality visible and morally suspect. This would start with a focus on greater support for children from the beginning of pregnancy through early adulthood. The authors believe that agreement on sex and marriage is unlikely and the focus should change to preparation for parenting, emphasizing the importance of employment for both men and women, management of women's fertility as a medical system that begins at puberty and ends at menopause irrespective of sexual activity or marriage, and strategies for the selection of the right partner in

creating a child. Finally, these changes, if they are to succeed, will require a re-examination and revamping of the foundations of family law, starting with the recognition that while relationships among adults will increasingly be a matter of choice, the relationship of parent to child is still a matter of public concern. Defining parenthood, both inside and outside of marriage, takes on increased significance. Greater care must be taken in establishing the facts of biological parenthood, recognizing multiple parents who might play a role in the child's life, and protecting the child's interest in any ongoing functional relationships that may be unrelated to marriage or biology—all with the goal of providing children with a measure of security even as they adapt to new institutions.

Many of the ideas to address societal inequality as put forth in this book will rankle some readers of a more conservative political persuasion, while others will see it as “pie in the sky” social planning with no reasonable hope of ever being enacted in our current political climate. Family law professionals, however, should not be so put off by the suggested remedies that we miss the rich and important descriptions of what is happening demographically to the clients who come to us for our assistance when their relationships and families fall apart. There are dramatic changes occurring in both substantive family law and family law practice that result from the various demographic and economic shifts described in this book. For example, more families are being purposely created outside of marriage. Same sex couples are getting married, giving birth to children, and adopting children. Many states are re-examining the very purpose of spousal maintenance and when it should be awarded. Parentage is being determined based on function, genetics, and long-standing legal presumptions. The trends are varied and uniformity seems to be in scarce supply at the moment. As a result, we as practitioners must always be cognizant of whether the laws, practices, and procedures of our jurisdictions are keeping up with the changing demographics of family and relationship formation and then be prepared to adjust our practices so as to effectively represent our clients. This book provides a valuable tool for family law professionals to better understand these trends and to enhance the legal representation we are called upon to provide.

