

Book Review

June Carbone & Naomi Cahn, *Marriage Markets: How Inequality is Remaking the American Family*, New York: Oxford University Press, 2014, pp. 258, \$29.95.

Reviewed By Deborah Zalesne and John Guyette

Why is marriage thriving for high-income, well-educated elites, and dying for low-income, less-educated couples? “[I]t’s the economy, stupid,” argue authors June Carbone and Naomi Cahn in their thoroughly investigated new book *Marriage Markets: How Inequality is Remaking the American Family* (5). Marriage, the authors posit, is a deal similar to other bargains, driven by market forces. For some, marriage is a more realistic “deal” to make, and comes with greater chances for a successful outcome. Yet for others, marriage is often viewed as a deal not worth making.

Marriage and the modern-day American family have changed dramatically over the years. The age at which people marry is going up, the rate of marriage is falling, almost half of all marriages fail, and the number of children born outside of marriage is on the rise (1). The percentage of children growing up in single-parent households is the highest in the developed world (1). Assistive reproductive technologies have become more advanced and commonplace, and at least 37 states and the District of Columbia have legally recognized same-sex marriage.¹

But these changes do not affect everyone the same way. Carbone and Cahn specifically suggest that “economic inequality is remaking the American family along class lines,” (1) with educated families better able to maintain the traditional, stable family model than their less educated and less financially secure counterparts. The vanishing “middle”—largely a result of the decline in decent-paying blue-collar jobs and mid-level management positions—has exacerbated already diverging marriage markets between the rich and the poor. The authors explain that “marriage has disappeared from the poorest

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1. See ProCon.org, <http://gaymarriage.procon.org/view.resource.php?resourceID=004857>, (last visited February 17, 2015).

communities, . . . [and], in a reversal of historical trends, elite women have become the most likely to marry” (2). In turn, divorce rates have dropped dramatically for the most educated, while continuing to rise for everyone else.²

In their highly acclaimed previous joint effort, *Red Families v. Blue Families: Legal Polarization and the Creation of Culture*, Carbone and Cahn went beyond purely political or value-based divides and examined emerging family models through the lens of a rapidly changing post-industrial economy.³ Picking up on this theme, *Marriage Markets* thoughtfully examines the links between evolving families, developments in family law, and growing class divisions, and highlights the role of class in “scripting our lives” (2). Of course culture (including ethnicity, race, sexuality, religion, and citizenship) also plays a distinct role in family formations, and can account for family wealth gaps among various groups of Americans. For example, the authors reveal how African-American families were the so-called “canaries in the mine,” early victims of social and economic inequality that has only become more widespread (27). But the authors’ primary focus is on class (either independently or in intersection with culture) as the true catalyst for the growing class chasm among American families. The authors illustrate how greater economic inequality together with increased participation of women in the labor market remade the terms of marriage, divorce, and child-rearing— “[p]ut the two strands together . . . and you have the elements of a new family strategy increasingly beyond the reach of the working class” (46).

The modern family model rests on a new “social script” that contemplates “spousal independence” (93)—but this “elite model of family law” (105) is out of reach for many families. Indeed, Carbone and Cahn depict two different social scripts that are more or less predetermined based on class. In one script, marriage and families thrive. For Tyler and Amy, a middle- to upper-class Midwestern couple in their late twenties/early thirties, marriage and having kids were in the cards. They met during their second year of law school, got married shortly after graduating, and had the benefit of financial support from their parents as they transitioned into their professional careers as attorneys. Despite accruing debt from law school, the chances that Tyler or Amy would ever need public assistance were slim to none.

In the other script, marriage is less accessible and often viewed as a deal that is less than preferable. For Lily, unmarried and four months pregnant, and her boyfriend Carl, jobless and living at home with his parents, marriage is unlikely. Both struggled financially, and while Lily believed she could handle the challenge of supporting herself and her child, the thought of marrying

2. The authors point out that, although families have always differed by class (the middle and elite have always been “more likely than the poor to marry before giving birth, less likely to divorce, and less likely to end up at the altar solely because of pregnancy”), the “trend lines” were more or less the same regardless of class (15). Starting in the ’80s, however, divorce rates started “dropping sharply” for the well-educated, while declining only “modestly,” and at some points even rising, for the rest of the population (16).

3. NAOMI CAHN & JUNE CARBONE, *RED FAMILIES V. BLUE FAMILIES* (2011).

Carl and the prospect of having to support him was too much. Although Tyler and Lily grew up near each other, shared the same ethnic heritage, and perhaps 50 years ago would have led similar lives with similar outcomes, today, the authors explain, their lives are dramatically different with respect to future job prospects, relationships, and childbearing.

Throughout their narrative of diverging social scripts, Carbone and Cahn portray the family in economic and market-based terms, treating the marriage partnership much like any other contract that comes with rights and obligations on both sides. Like other market exchanges, married partners trade economic responsibility for some degree of financial security. The authors plainly note that “relationships do occur as a result of an exchange, just like the purchase of the latest iPhone. . . . These exchanges, like other kinds of human interactions, also reflect supply and demand” (8). Using market rhetoric, the authors explain the real transaction costs and demand curves that bear on our human relationships. They put forward the unromantic but highly realistic notion that our intimate relationships are deeply driven by economics—when the available supply of economically suitable partners is insufficient or marriage imposes obligations that they cannot meet, for example, people opt against marriage.

There is perhaps an inherent discomfort in using the language of exchange for human commodities, as the authors do, turning “unique individuals into fungible entities with monetary values.”⁴ But the authors’ nuanced market-based arguments rightly take into account the distinct qualities of intimate relationships, recognizing that they inherently “depend on trust, . . . incorporate assumptions about gender, and . . . reflect community reinforcement (or obstruction in the case of same-sex couples) of institutions like marriage” (8). Those who might object to the commodification of families and human relationships in this way should rest assured that the authors’ market observations are backed up by in-depth research and solid statistical analyses. The authors deftly walk the line of analyzing couples as market actors as well as human and emotional actors.

In the most developed and perhaps most novel second section of the book, the authors examine the “gender bargain,” or the “terms on which men and women find it worthwhile to forge lasting relationships” (2). Whereas in 1960 the average age of marriage was 20 for women and 22 for men (61-62), today, on average, a first marriage occurs at ages 27 and 29, respectively.⁵ Individuals are increasingly investing in career and education before opting for marriage. The pill and abortion, the authors note, played a pivotal role in allowing women more autonomy over both family and career choices. In the process, these technologies have helped redefine marriage markets, expanding the timetable

4. Jennifer E. Rothman, *The Inalienable Right of Publicity*, 101 GEO. L.J. 185, 218 (2012) (quoting Margaret Jane Radin, *Market-Inalienability*, 100 HARV. L. REV. 1849, 1883-87 (1987)).

5. Kay Hymowitz et al, *In Brief*, KNOT YET, <http://twentysomethingmarriage.org/in-brief/> (last visited Feb. 17, 2015).

for marriage and thus increasing the information available for prospective couples thinking about forming families:

Women *have* achieved a measure of independence. With greater wariness of interdependent relationships, both men and women can now go it alone. They can live by themselves, choose an intimate partner with no strings attached, live with roommates of their choice, or move back in with mom and dad. Marriage is optional (124).

There is a lot riding on marriage today. In this “high stakes negotiation” to find the best partner, couples consider not only their emotional connection, but also the financial realities. For example,

A globe-trotting journalist, male or female, is not likely to marry a restaurant owner rooted to one place. This search builds in more uncertainty—the college student who plans to make a killing on Wall Street may enjoy better marital prospects at thirty-two than at twenty-two but only if he succeeds. The most ambitious of the women who may find him attractive will also wait to see how both of their lives turn out. Mating and dating have become a higher stakes game (43).

Key to understanding how and why modern-day couples enter into marital bargains requires an understanding of the ratios of available men and women in a given market. Changing gender ratios reinforce class divides by affecting the marital bargains that underlie marriage markets. Just as the supply and demand of commodities drive prices, gender ratios are the catalyst behind both men’s and women’s choices about whom and whether to marry.

As the number of women increases beyond the number of desirable men (i.e., those who have the educational background and employment status to qualify as marriage material) in a particular area or market, the more desirable men in the market are free to “play the field” and generally do not have to commit in order to have a sexual relationship or to have children. In other words, the most eligible bachelors in such markets are less inclined to commit to marriage and can afford to wait longer to marry if they choose. Similarly, where the number of eligible men is greater in a given market, the most eligible women can be choosier before committing to a long-term mate.

Higher-income couples that have college degrees, have started their respective careers, and have waited to have children have the benefit of choosing among the best marital bargains. They also enjoy a greater likelihood of family stability. Meanwhile, both men and women on the lower rungs of the economic ladder have far fewer choices when it comes to marriage. For women like Lily, with limited choices of marriageable men, the costs of the marital bargain may exceed the benefits. The net result of these gender ratios is a sharpening class divide. While higher-earning adults tend to marry other educated high-income adults, low-income, less educated adults tend either not to marry or to marry other similarly situated adults. Couples who pursue education and career first and wait to get married reflect and reinforce existing

class structures. The elite marry the elite, which in turn creates a “feedback loop” of advantages for their children, and reinforces economic inequality between families at the top and those at the bottom (87).

Another central component to Carbone and Cahn’s thesis is the role that family law plays in reinforcing diverging marriage markets and affecting other personal choices people make. Section III richly details how legal developments have contributed to the class divide in family life (103-140). Despite the existence of two distinct social scripts, the law mirrors only one of them. The authors explain how new legal rulings “reflect the assumptions of the upper third” while “reject[ing] the contingent arrangements of the marginalized groups who have given up on marriage altogether” (110). Shifts in family law, while responding to the changing needs of higher-income families, simply reinforce for low-income couples the notion that marriage offers more burden than benefit.

Historically, family law has reflected and reinforced patriarchal cultural norms, perpetuating defined gender roles, with women being financially dependent on their husbands as they raise families together. As women have become more autonomous and greater financial contributors, family law has slowly responded. The new legal model contemplates shared financial and domestic contributions, without distinguishing between the two when assessing and measuring relative contributions to the family. The model also assumes joint responsibility for finances and child-rearing. Most notably, the law has moved toward equal division of property, decreased support awards that are limited generally to long-term homemaker, and shared parenting. The authors expose how this new “egalitarian family law” works well for high-earning couples, or couples who make relatively equal marital contributions, but tends not to work for lower- and working-class couples, further contributing to diverging marriage markets (111).

As the book’s fictional couples move further apart, the law has failed to evolve in a way that responds to both couples’ developing needs. Formal family law decisions now give voice to the new marital script followed by Tyler and Amy, supporting, for example, their possible divorce:

. . . Tyler would automatically be treated as a father. The parties would be expected to split their joint assets. Alimony would be rare, particularly after a marriage of less than ten years. The judge would ask them to list any children born during the marriage and before the court would approve a divorce, it would make arrangements for both parents to continue to be involved in the children’s lives. . . . If they were to part, the law would reflect the commitment they made to each other as an on-going obligation (104).

On the other hand, the authors reasonably conclude that the “mandated sharing of assets, children, and lives can be a threat to those whose lives are unstable and unequal” (119). If Lily and Carl were to split, for example, though the formal law that would apply to them would be the same, it would not provide the same mutual benefit as provided to their married counterparts:

[Formal family law] would apply only if Carl establishes paternity and gets himself to court. Lily, proud of her independence, has no duty to identify Carl as the biological father or to list him on the birth certificate. If after their child is born Carl wants to see the baby, Lily would have no obligation to let him do so in the absence of a court order. . . . In the meantime, Carl is most likely to have any relationship with the child at all only if he keeps Lily happy—contributing financially, offering to help with childcare, and staying out of the rest of her life. Lily in turn already distrusts Carl and she will be even less likely to welcome his involvement if she starts to see another man (105).

The “new elite model of family law” simply makes marriage even less attractive for the lower third, who will often prefer to realize their relationships on their own terms, limiting the role the law plays in their relationships.

As solutions, in Section IV, the authors’ proffer two strategies: (1) rebuilding from the top down, which involves examining the family in the context of inequality in employment; and (2) rebuilding from the bottom up, which requires directly addressing the needs of children (141–201).

First, rebuilding from the top down requires rebuilding the foundation of the middle class through employment and improved labor markets. According to the authors, reforming corporate culture, creating stable jobs, reforming the minimum wage, and subsidizing job creation, among other means of rebuilding employment, will have the result of strengthening the American family, so that couples like Lily and Carl can access the more preferable life script.

Rebuilding from the bottom up necessitates “rebuilding the infrastructure that supports investment in children from early childhood through early adulthood” (143). The authors unveil the growing class gap in children’s “cognitive achievements, civic engagement, and athletic participation” (158). The solution, they say, is greater support for mothers during pregnancy, and going forward through early childhood and beyond secondary education. “Supporting the next generation means supporting parents” (164). With the reintegration of women into the workforce, seventy percent of children now live in houses in which all the adults work. To access the more preferable life script, these dual-income families must earn enough “to pay others to provide childcare and ‘enrichment’ activities” (159). For those who do not, this paradigm requires family-friendly workplace reforms such as expanded family leave, increased flexibility for parents to use sick leave benefits to care for their children, and enhanced work-week flexibility. Additionally, Carbone and Cahn advocate for a more flexible family law regime that recognizes and adapts to changes in the American family—e.g., same-sex parents, multi-parent and stepparent families, non-biological parents, and the like—and thus works for all families regardless of social script.

The authors offer vitally important economic solutions to closing the class gap in family formations. One thing they do not take on, however, is a critique of the institution of marriage as a legitimate construct in the first

place. The authors clearly recognize that the legal parameters of marriage may exacerbate the existing class inequity in family structures. Their solutions, however, involve reforms such as expanding the social safety net, creating better-paying blue-collar jobs, and reforming traditional family law structures, without tackling an underlying threshold problem of the state's involvement with intimate relationships and its role in promoting marriage. Although the authors critique the existing marriage model, representing it as an exclusive institution for higher earners that further entrenches the class divide, they still idealize a more egalitarian marriage construct as the sought-after optimal outcome. Of course, challenging the entire institution of marriage may be beyond the scope of a book that deals thoroughly with the vast inequities in the existing framework, and is perhaps better left for another discussion.

Timely, poignant, extremely readable, and highly recommended for any Family Law or even Contracts class, *Marriage Markets* tells the story of what has happened to the economics of the American family in a compelling, concise narrative supported by rock-solid statistical evidence. Although the book has an audience potentially much wider than law professors, the value for law faculty cannot be overstated. *Marriage Markets* brings to light the socio-economic factors that underlie many of the family law decisions found in the traditional casebook offerings, even when not explicitly acknowledged in the cases themselves. Bringing this factual context into the classroom would facilitate discussions of class, race, and cross-cultural sensitivity, and allow for a more enriching discussion of the cases overall. This book is necessary reading for the next generation of law students, who will ultimately play an integral part in assuring that family law keeps pace with evolving family norms.

More so than ever, class is the catalyst for diverging marriage markets. To help close this chasm, the authors argue for a rethinking of legal and economic structures that reflects changing family structures. As the authors plainly state, "any analysis or proposed solution that does not take growing inequality into account is based on a lie" (5). Indeed, recognizing and acknowledging the effects of this inequality on family structures is a critical first step.