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Promoting Marriage Experimentation: A Class Act?

Julie Nice^{*}

As far as poor people are concerned, policy experimentation leads and knowledge follows, typically after a considerable lag in time and with far less fanfare. Subjecting welfare recipients to the vagaries of policy whims and experimental research is neither new nor, apparently, unconstitutional.¹ The federal welfare system has used recipients for policy experimentation indirectly by granting waivers allowing states to depart from compliance with federal rules, and directly by conducting federal experimentation. The last decade of federal welfare reform has produced a windfall of funding for social science research, especially for studies focusing on whether and how recipients move from welfare to work. More recently, the federal government has funded a new wave of programs designed to reshape the family structure of impoverished parents and children. The centerpiece of this new focus on the family is the Bush Administration's initiative to promote marriage.

This Article considers both the new marriage promotion policies and related social science research. The key question about marriage promotion concerns the link between welfare policy and social science data, specifically focusing on what policymakers will learn

^{*} Delaney Professor of Law, University of Denver Sturm College of Law. I especially thank Professor Susan Appleton for coordinating this symposium, and also all the participants at the Oxford Women's Rights Roundtable in March 2006 and the Law and Society Association panel in Baltimore in July 2006, where I presented versions of this paper.

1. Current constitutional interpretation effectively allows this human experimentation by affording poor people only the lowest level of constitutional protection. Because the Supreme Court has not held that poor people are a suspect class, or that socioeconomic class is a suspect classification, or that subsistence is a fundamental right, courts apply a rational basis review, which requires merely that a welfare policy be rationally related to some legitimate governmental interest. As the Court explained, "the intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court." *Dandridge v. Williams*, 397 U.S. 471, 487 (1970).

from emerging data generated by this grand experimentation with the lives of poor families.

MARRIAGE PROMOTION POLICY

The federal government recently reversed its nearly sixty-year-old federal policy of preventing or discouraging receipt of welfare benefits by two-parent families, replacing this prior marriage penalty with new policies to promote marriage.² In short, the federal government's policy has shifted from effectively discouraging marriage for welfare recipients to affirmatively promoting marriage.

Marriage myths abound, but few survive scrutiny. First, while the conventional view of marriage situates it in the so-called private sphere, scholars have demonstrated the unquestionably public character of marriage.³ As the late philosopher Susan Moller Okin

2. THEODORA OOMS ET AL., CTR. FOR LAW & SOC. POLICY, BEYOND MARRIAGE LICENSES: EFFORTS IN STATES TO STRENGTHEN MARRIAGE AND TWO-PARENT FAMILIES 7 (2004), available at http://www.clasp.org/publications/beyond_marr.pdf.

3. A funny thing happened on my way to present a version of this paper at the Oxford Women's Rights Roundtable, raising a question about the extent of a scholarly consensus on the public role of marriage. Wanting a small memento from the shelves of the Oxford University Press bookstore, I picked up a copy of DAVID MILLER, POLITICAL PHILOSOPHY: A VERY SHORT INTRODUCTION (2003). Imagine my surprise to see the profound insights of feminist scholarship treated as not properly "political" by one of our most prominent contemporary political theorists. See *id.* at 95. Professor Miller acknowledges the historical record of men exercising power over women by keeping them economically dependent, but he insists it does not follow that we should think of relations between the sexes as political. He argues bluntly: "What feminists are pointing out about relationships between men and women is not so much their inherently political nature as the *failure of politics* to address them." *Id.* at 97. Miller then defines freedom as "having a range of options open to one, but also having the capacity to choose between them." *Id.* at 98. While admitting that most women suffer from limited options, he argues that the internal capacity to choose remains the more difficult issue, as this question of internal capacity "becomes entangled with another question that feminists themselves disagree about: whether men and women have essentially a common nature, or whether there are deep differences between them which mean that there will always be contrasts in the way that men and women prefer to lead their lives." *Id.* at 99. Miller adds that "we should not be too quick to assume that when women choose to follow certain cultural norms, these choices are inauthentic." *Id.* On whether women have a different nature regarding internal capacity to choose, Miller punts the question, arguing that "the wisest course may be to follow John Stuart Mill and remain agnostic." *Id.*

Miller acknowledges the argument of the ongoing inequality between the sexes in the domestic sphere: "[W]ithout domestic justice, social justice is never going to be achieved for women." *Id.* at 106. Yet again, Miller refuses to pull his punch, responding, "[W]e should not be too quick to conclude that because men and women end up unequally placed in certain

once succinctly put it, “The issue is not whether, but *how* the state intervenes.”⁴ Two prominent scholars, historian Nancy Cott⁵ and family analyst Stephanie Coontz,⁶ separately presented exhaustive documentation of the government’s extensive regulation of marriage for various public policy purposes.

Second, marriage scholars have debunked the myth that states are the appropriate governmental regulators of marriage. As Cott recounted, the federal government vigorously used marriage for its regulatory goals, such as enforcing Christian norms of monogamy on Native Americans, newly freed slaves, and Mormons, among others.⁷ Governmental regulation of the marriages and family lives of poor people certainly has been ubiquitous throughout American history.⁸

Third, marriage is often glorified as an established, static, traditional institution. Yet Cott traced the consistently dynamic nature of marriage, revealing how the government has adapted its regulation of marriage for various public policy purposes throughout the eighteenth, nineteenth, and twentieth centuries.⁹ Coontz also pointed

respects, this must be an injustice. After all some unequal outcomes are none the less fair—for instance when they reflect the different choices people have made.” *Id.* at 107. On this question, Miller seems decidedly less agnostic about the role of nature, arguing that once social norms about women’s roles have disappeared, “the principle of free agreement will come into its own.” *Id.* at 108. He surmises that, to the extent it is true that women’s maternal nature makes them different from men, then “fairness in domestic relations ought to be compatible with flexibility in family life, where partners can choose to divide up work inside and outside the home according to their individual preferences and abilities.” *Id.*

Although Miller cites to the prominent feminist theorists Carole Pateman and Susan Moller Okin, he fails or refuses to incorporate their foundational insights. Carole Pateman provided a powerful expose of how sexual subordination of women is constitutive of liberalism’s social contract theory. *See, e.g.,* CAROLE PATEMAN, *THE SEXUAL CONTRACT* (1988). Susan Moller Okin argued, based on the very precepts of social contract theory, that it was inexplicable and inexcusable for theories of justice to neglect how and why women are treated differently from men and how this begins in the family. *See, e.g.,* SUSAN MOLLER OKIN, *JUSTICE, GENDER, AND THE FAMILY* (1989).

4. OKIN, *supra* note 3, at 131; *see also* Frances E. Olsen, *The Myth of State Intervention in the Family*, 18 U. MICH. J.L. REFORM 835, 836 (1985).

5. *See* NANCY F. COTT, *PUBLIC VOWS: A HISTORY OF MARRIAGE AND THE NATION* (2000).

6. *See* STEPHANIE COONTZ, *MARRIAGE, A HISTORY: FROM OBEDIENCE TO INTIMACY OR HOW LOVE CONQUERED MARRIAGE* (2005).

7. COTT, *supra* note 5, at 24–66.

8. *See id.* at 171–79, 221–24. *See generally* LINDA GORDON, *PITIED BUT NOT ENTITLED: SINGLE MOTHERS AND THE HISTORY OF WELFARE 1890–1935* (1994).

9. COTT, *supra* note 5, at 2, 157.

out that these changes have not developed in a linear direction. She concluded, “Almost every marital and sexual arrangement we have seen in recent years, however startling it may appear, has been tried somewhere before.”¹⁰

Given the longstanding history of active governmental regulation of marriage and family policy, it should come as no surprise that the federal government appears to have great faith in the efficacy of its initiative to promote marriage. In its overhaul of welfare in the 1996 Personal Responsibility and Work Opportunity Reconciliation Act, Congress gave states broad flexibility to meet four primary purposes, three of which relate to marriage promotion:

- (1) [to] provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
- (2) [to] end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- (3) [to] prevent and reduce the incidence of out-of-wedlock pregnancies . . . ; and
- (4) [to] encourage the formation and maintenance of two-parent families.¹¹

According to an analysis by the Center for Law and Social Policy, every state has made at least one policy change to promote marriage in the last decade.¹² Thirty-six states have eliminated barriers previously imposed on two-parent families seeking welfare benefits and now treat them the same as single-parent families.¹³ Forty states now offer government-funded programs to promote marriage.¹⁴ Notably, only nine states offer any financial incentive or “bonus” for recipients who marry.¹⁵ In fact, the major initiatives receiving significant funding are various advertising and educational programs

10. COONTZ, *supra* note 6, at 2.

11. 42 U.S.C. § 601(a) (2000).

12. OOMS ET AL., *supra* note 2, at 10.

13. *Id.*

14. *Id.* at 11.

15. *Id.*

designed to encourage couples to marry and to stay together, which especially target adult couples, high school students, and low-income parents.¹⁶

The Bush Administration bolstered these state efforts by declaring that the promotion of “healthy” marriages would be a top priority for reauthorization of the Temporary Assistance for Needy Families (TANF) program and also by providing various sources of federal funding to states for marriage promotion.¹⁷ Administration officials pledged \$1.5 billion to support Bush’s healthy marriage initiative.¹⁸ Moreover, the President made no secret of his desire to link marriage promotion with his faith-based initiative to involve more religious organizations in providing social services.¹⁹

When Congress replaced Aid to Families with Dependent Children with TANF in 1996, it scheduled reauthorization by 2001. Rather than address the tricky politics inherent in comprehensive review and reform, Congress repeatedly extended TANF for temporary intervals from 2001 through 2005. At the end of 2005, the House of Representatives and Senate finally enacted a budget reconciliation conference agreement that effectively reauthorized TANF²⁰ in this Deficit Reduction Act of 2005. The Deficit Reduction Act mandated the imposition of penalties against states that fail to enforce the thirty-five-hour weekly work requirement on at least 90% of two-parent families.²¹ This 90% work rate for two-parent families

16. *Id.* at 17.

17. See Press Release, White House, Working Toward Independence (Feb. 2002), available at <http://www.whitehouse.gov/news/releases/2002/02/welfare-reform-announcement-book.html>.

18. Robert Pear & David D. Kirkpatrick, *Bush Plans \$1.5 Billion Drive for Promotion of Marriage*, N.Y. TIMES, Jan. 14, 2004, at A1.

19. See George W. Bush, President, U.S. Remarks at St. Luke’s Catholic Church (Feb. 26, 2002), available at <http://www.whitehouse.gov/news/releases/2002/02/20020226-11.html>. The Bush administration’s Healthy Marriage Initiative features a fact sheet highlighting faith-based marriage promotion activities offered by the U.S. Department of Health & Human Services’ Administration for Children & Families. See ACF Health Marriage Initiative, Faith-Based Marriage Promotion and Education, http://www.acf.hhs.gov/healthymarriage/about/factsheets_faithbased.html (last visited Apr. 10, 2007).

20. See Press Release, U.S. Dep’t of Health & Human Servs., Welfare Reform Reauthorized (Feb. 8, 2006), available at <http://www.dhhs.gov/news/press/2006pres/20060208.html>.

21. SHARON PARROTT, CTR. ON BUDGET & POLICY PRIORITIES, DESPITE INCLUSION OF “MARRIAGE-PROMOTION” FUNDING, BUDGET BILL WOULD PENALIZE STATES THAT PROVIDE

compares to a far more lenient 50% work rate for TANF families generally.²² Congress further mandated that the 90% two-parent work rate must apply to state programs that are funded entirely with state funds, eliminating the prior loophole for states to evade federal penalties.²³

The more stringent two-parent work rate effectively restores the prior marriage penalty, which cannot be justified by assuming that two-parent families would have an easier time meeting the work requirement. State governmental officials have reported that two-parent families face barriers and challenges to work as great or greater than those experienced by single parents.²⁴ For example, some two-parent impoverished families include one disabled parent with the other parent providing critical care.²⁵ According to the Center on Budget and Policy Priorities, most experts, including researchers, state officials, and even the Bush Administration, opposed the 90% two-parent work rate precisely because they believed it would be virtually impossible for even the best state programs to meet.²⁶

Judging by its effect, restoration of the welfare marriage penalty appears to be a cost-cutting measure. Indeed, the marriage promotion funds generally are not used to directly increase the income of impoverished two-parent or married-parent families.²⁷ This is especially ironic considering that the same federal legislation restoring the welfare marriage penalty also provided substantial new funding for marriage promotion.

TANF ASSISTANCE TO POOR MARRIED FAMILIES (2006), available at <http://www.cbpp.org/1-31-06+anf.pdf>.

22. *Id.* at 2.

23. *Id.* at 4.

24. See U.S. GEN. ACCOUNTING OFFICE, WELFARE REFORM: WITH TANF FLEXIBILITY, STATES VARY IN HOW THEY IMPLEMENT WORK REQUIREMENTS AND TIME LIMITS 19–20 (2002).

25. PARROTT, *supra* note 21, at 6.

26. *Id.* at 4 (“Researchers and state officials have long noted that even the best-run, high-performing state programs cannot meet a 90-percent participation rate because there are numerous legitimate reasons why more than 10 percent of these families cannot attend every hour of scheduled activities every week of every month . . . a 90-percent participation rate is widely understood to be unattainable.”).

27. OOMS ET AL., *supra* note 2, at 11, 16.

The new marriage promotion funds primarily have funded the relatively cheaper marketing and educational programs designed to encourage poor Americans to marry and to stay married.²⁸ Here, the irony is that the funding of a “public relations” campaign to promote marriage turns out to be entirely unnecessary. A recent longitudinal study of 162 low-income single mothers revealed that single mothers repeatedly express both their reverence for the institution of marriage and their aspiration to be married one day.²⁹ Sociologists Kathryn Edin and Maria Kefalas demonstrated that the problem is not that poor women do not revere or aspire to marry, but rather that they delay or avoid marriage because they see it as a “luxury” they cannot afford.³⁰ In contrast, poor women do not delay having children because they see children as a “necessity” for their senses of identity and meaning.³¹ Thus, as currently structured, marriage promotion policies simply fail to speak to the reality of poor women’s lives. Poor women have placed marriage on a pedestal; marriage might be over-romanticized as the prize at the end of the personal responsibility road.

The myth of marriage is that it always has been an institution that serves as the ultimate fulfillment of romantic love. In her synthesis of historical materials, Stephanie Coontz convincingly refuted this myth, revealing instead that marriage primarily has been about property and class. As Coontz summarized:

For centuries, marriage did much of the work that markets and governments do today. It organized the production and distribution of goods and people. It set up political, economic, and military alliances. It coordinated the division of labor by gender and age. It orchestrated people’s personal rights and obligations in everything from sexual relations to the inheritance of property. Most societies had very specific rules

28. *Id.* at 15, 18.

29. KATHRYN EDIN & MARIA KEFALAS, PROMISES I CAN KEEP: WHY POOR WOMEN PUT MOTHERHOOD BEFORE MARRIAGE 6 (2005).

30. *Id.*

31. *Id.*

about how people should arrange their marriages to accomplish these tasks.³²

Regarding today's marriage promotion policies, Coontz agreed with Edin and Kefalas's finding that low-income men and women "are much more likely to view marriage as the preferred state, but they are also less likely to get married."³³ In Coontz's analysis, the real barrier to marriage for low-income women is that it is risky:

A woman who marries a man with few job prospects may end up having to support him as well as their children. Even if the marriage does improve her economic well-being, its stability may be undermined by chronic economic and neighborhood stress. Low-income women who marry and divorce later have higher poverty rates than women who never marry at all, and their children may suffer more emotionally as well. In these circumstances, getting married can be risky. Impoverished women understand these risks better than many of the marriage promoters trying to convince them of the benefits of marriage.³⁴

While poor women may hold their own views of both the romantic ideal and the realistic risk of marriage, a policy analysis necessarily turns on what the social science data demonstrate about the relationship between marriage and poverty.

SOCIAL SCIENCE DATA REGARDING MARRIAGE AND POVERTY

Policymakers and researchers across the political spectrum have framed the decline of marriage as a public policy problem and a social crisis. Consider the following statements from some prominent policy analysts. The conservative Heritage Foundation boldly asserts that the "erosion of the institution of marriage over the past four decades has had large-scale negative effects on children and adults and lies at the heart of many social problems with which government

32. COONTZ, *supra* note 6, at 9.

33. *Id.* at 287.

34. *Id.* at 288.

is currently grappling.”³⁵ The liberal Center for Law and Social Policy focuses on its “Marriage-Plus” platform: “1) to help more children grow up in healthy, married families, and 2) when this isn’t possible, to help parents—whether unmarried, separated, divorced, or remarried—cooperate better in raising their children.”³⁶ Some independent scholars apparently agree, as exemplified by the recent conclusion from Sara McLanahan and Elisabeth Donahue of Princeton University and Ron Haskins of the Brookings Institution: “There seems to be nearly universal agreement, based on years of research, that lone-parent child rearing imposes serious costs on individuals and society.”³⁷

The decline of marriage is blamed for a myriad of social problems, and many analysts cite a link between marriage and poverty as foundational for building public policy. The Heritage Foundation uses the language of causation in its assertion that the “collapse of marriage is the principal cause of child poverty in the United States.”³⁸ Sara McLanahan and her fellow researchers for the Fragile Families longitudinal study are more cautious, describing the correlation between marriage and poverty as one of disproportionate risk: unmarried parents and their children face “a higher risk of poverty and family dissolution than traditional families.”³⁹ Whether framed as cause or correlation, this link between marriage and poverty is now the focus of over eighty million dollars in government contracts to study the effectiveness of programs designed to encourage impoverished couples to choose marriage and to avoid divorce.⁴⁰

35. ROBERT RECTOR, HERITAGE FOUND., MARRIAGE PROMOTION (2006), *available at* <http://www.heritage.org/Research/features/issues/pdfs/MarriagePromotion.pdf>.

36. PAULA ROBERTS, CTR. FOR LAW & SOC. POLICY, BUILDING BRIDGES BETWEEN THE HEALTHY MARRIAGE, RESPONSIBLE FATHERHOOD, AND DOMESTIC VIOLENCE MOVEMENTS: ISSUES, CONCERNS, AND RECOMMENDATIONS 1 (2006), *available at* http://www.clasp.org/publications/buildingbridges_brief7.pdf.

37. RON HASKINS ET AL., THE DECLINE IN MARRIAGE: WHAT TO DO 7 (2005), *available at* http://www.futureofchildren.princeton.edu/briefs/briefs/05_fall_marriage.pdf.

38. PATRICK F. FAGAN, HERITAGE FOUND., MARRIAGE AND THE FAMILY 9 (2006), *available at* <http://www.heritage.org/Research/Features/issues/Issuearea/Family.cfm>.

39. SARA MCLANAHAN ET AL., THE FRAGILE FAMILIES AND CHILD WELLBEING STUDY, BASELINE NATIONAL REPORT 1 (2003), *available at* <http://www.fragilefamilies.princeton.edu/documents/nationalreport.pdf>.

40. HASKINS ET AL., *supra* note 37, at 3.

Does social science data support a causal or correlative link between marriage and poverty? The greatest challenge with regard to evaluating existing research is that much of it suffers from the failure to control for selectivity from omitted variables and reverse causality.⁴¹ While the most probative longitudinal studies are ongoing, recent reviews synthesizing available social science data reveal both serious limitations in the data itself as well as critical gaps in knowledge.

Research analyst David Ribar critically reviewed the body of data related to the benefits of marriage, finding strengths and weaknesses in each empirical methodology. For example, Ribar found that the research purporting to show that marriage is associated with better outcomes for children is “based mainly on analyses that failed to account for selectivity,” that is, excluding variables relating to other family characteristics or circumstances.⁴² Ribar also determined that the research purporting to show that marriage is associated with positive physical health benefits “still has to be judged to be methodology weak” and therefore “its findings have to be interpreted with a fair degree of caution.”⁴³ Ribar recognizes one exception to his overall caveat about the limitations for drawing conclusions from research to date, and it relates to interpersonal interactions between spouses: “The research on marital interactions, as opposed to marriage status and family structure, contains more solid evidence of a causal link to health outcomes.”⁴⁴ Ribar therefore concludes that

41. DAVID C. RIBAR, WHAT DO SOCIAL SCIENTISTS KNOW ABOUT THE BENEFITS OF MARRIAGE? A REVIEW OF QUANTITATIVE METHODOLOGIES, at iv (2004). Ribar states:

Marriage is positively associated with a large number of outcomes including improved cognitive, emotional and physical well-being for children, better mental and physical health for adults, and greater earnings and consumption for family members. While the associations between marriage and various measures of well-being have been convincingly established, they do not, by themselves, make a compelling case that marriage has beneficial effects. As with many other types of social science data, the empirical relationships are likely to be confounded by problems of reverse causality and spurious correlation from omitted variables. Because of this, we cannot be sure whether the observed relationships reflect marriage making people better off, better-off people being more likely to marry, or some combination of the two.

Id.

42. *Id.* at 30.

43. *Id.* at 52.

44. *Id.*

this research generally supports the Bush Administration's emphasis on programs that improve relationship skills and interactions.⁴⁵ He also offers an optimistic observation regarding the whole body of research, concluding that potential benefits from "cross-pollination" of insights among the various studies would increase the usefulness of the data.⁴⁶

Another overview of the available social science research, conducted by researchers with Abt Associates led by David Fein, highlighted troubling gaps in knowledge based on their review and synthesis of existing data regarding marriage and poverty.⁴⁷ Emphasizing the multiple factors affecting marriage and cohabitation, this team categorized the various influences into four primary types: (1) demographic, (2) economic, (3) socio-cultural, and (4) psychological.⁴⁸ Based on weaknesses in the current data, they called for further research on important questions related to each of these types of influences.⁴⁹

Regarding demographic influences, the report revealed serious gaps in knowledge about (1) why early and non-marital childbearing "substantially diminished long-term marriage prospects"; (2) why parents who marry nonetheless experience a decline in marital quality during the first two years following birth; and (3) why the increase in cohabitation does not appear to have increased the likelihood of marital disruption.⁵⁰

The data provide mixed indicators regarding economic influences and therefore do not yet answer two important questions: (1) whether increased employment among low-income women causes fewer women to marry, and (2) why improving men's economic status, which does correlate positively with becoming and staying married,

45. *Id.*

46. *Id.* at 58. Ribar's conclusions are confirmed by other analysts. *See, e.g.*, DAVID FEIN & THEODORA OOMS, CTR. FOR LAW & SOC. POLICY, WHAT DO WE KNOW ABOUT COUPLES AND MARRIAGE IN DISADVANTAGED POPULATIONS? REFLECTIONS FROM A RESEARCHER AND A POLICY ANALYST 27 (2006).

47. *See* DAVID J. FEIN ET AL., THE DETERMINANTS OF MARRIAGE AND COHABITATION AMONG DISADVANTAGED AMERICANS: RESEARCH FINDINGS AND NEEDS, (2003), available at http://www.abtassociates.com/reports/litrev_abt.pdf.

48. *Id.* at iii.

49. *Id.*

50. *Id.* at iii-v.

does “not explain very much of the variation in marriage at any given time, over time, or across racial and ethnic groups.”⁵¹

The report calls for studies to explore why poor people set high financial and relational expectations for marriage, and why traditional gender role expectations correlate to marriage while egalitarian expectations correlate to cohabitation.⁵² These specific questions also trigger the broader inquiry of whether public policy can influence how couples adapt their families to changing cultural norms.

Finally, regarding psychological influences, studies of white middle-class couples have shown a strong correlation between positive interpersonal interactions and marital success.⁵³ Researchers do not yet know whether these results will be replicated for diverse, low-income populations.⁵⁴ Moreover, very little data exist explaining how demographic and personality characteristics relate to couple interaction, or how various environmental stresses influence this interaction.⁵⁵

Fein and his colleagues provide a succinct summary of what researchers need to accomplish to improve knowledge about marriage and poverty. Their recommendations call for more and better information regarding disadvantaged populations, including men and women, in varied types of unions, both at the onset of the relationship and longitudinally.⁵⁶ They underscore the need for standard definitions for key measurements such as “union quality,” and also for better methods of establishing causation.⁵⁷ Finally, they emphasize the need for data comparing influences across cohorts, and also analyzing interactions between influences.⁵⁸

Regardless of the need for caution regarding the limitations of data and gaps in knowledge, government funding of experimentation with the family lives of poor people continues, especially for “marriage education” programs. These programs emerged from the

51. *Id.* at v.

52. *Id.* at vi.

53. *Id.* at vi–vii.

54. *Id.* at vii–viii.

55. *Id.* at vi–vii.

56. *Id.* at viii–ix.

57. *Id.* at ix–x.

58. *Id.* at viii–x.

research finding that higher quality interpersonal interactions of white, middle-class couples increase the longevity of the relationship.⁵⁹ Considering how this finding regarding quality of marital interactions might apply to racially diverse, low-income couples, Fein succinctly admits: “we have no idea whether the data apply to other ethnic or income groups.”⁶⁰

To answer this question, the federal government has funded two major longitudinal research experiments to analyze marriage education programs for low-income couples. Supporting Healthy Marriage is being evaluated by MDRC to study the effect of marriage education in helping low-income married parents stay married. In an initial report from this study, Fein, the lead researcher, concluded that the “weight of evidence suggests that marital quality is at most only slightly lower for poor couples than for more advantaged ones” and surmised that this finding “should alleviate worries that vast numbers of disadvantaged couples are too distressed to benefit from prevention-oriented marriage skills programs.”⁶¹

The other major federally funded study is Building Strong Families, being evaluated by Mathematica Policy Research, Inc., and focusing on increasing marriage among unwed couples who are new parents or expecting a child. An early report from this study found that participants in marriage education programs expressed their beliefs that the group workshops helped them with communication, problem solving, conflict management, self-understanding, and connection and commitment to their partner.⁶²

Another specific area of caution relates to the intersection of class with other traits such as race and sexual orientation. On the one hand, some prevalent stereotypes about the decline of marriage among poor people may reflect a conflation of low-income couples with racial

59. OOMS ET AL., *supra* note 2, at 13, 17.

60. FEIN ET AL., *supra* note 47, at 41.

61. David J. Fein, *Married and Poor: Basic Characteristics of Economically Disadvantaged Married Couples in the U.S.* 9, 11 (MDRC, Working Paper No. SHM-01 2004), available at <http://www.supportinghealthymarriage.org/publications/6/workpaper.pdf>.

62. M. ROBIN DION ET AL., MATHEMATICA POLICY RESEARCH, INC., IMPLEMENTING HEALTHY MARRIAGE PROGRAMS FOR UNMARRIED COUPLES WITH CHILDREN: EARLY LESSONS FROM THE BUILDING STRONG FAMILIES PROJECT 67 (2006), available at http://www.acf.hhs.gov/programs/opre/strengthen/build_fam/reports/implementing_healthy/implementinghealthy.pdf.

minorities. Researchers and policymakers must distinguish between low-income couples, who are as likely to marry as others, and various racial minority couples, who tend to marry at lower rates.⁶³ On the other hand, this lower rate of marriage for some racial minorities, and same-sex couples' current legal inability to marry, means that the diversion of funding from direct anti-poverty relief to marriage promotion disproportionately diverts welfare funding away from impoverished racial and sexual-orientation minorities.⁶⁴ Policy analysts and social science researchers must consider both the practical and potential constitutional implications of these disproportionate effects.⁶⁵

CONCLUSION

As with the earlier political consensus supporting a requirement of work in exchange for welfare, policymakers and researchers recently have coalesced in support of promoting marriage for disadvantaged couples. This new consensus has generated a second wave of research funding for social science researchers who study impoverished families. While this popular bandwagon may be tainted by unfounded assumptions and myths about marriage and poverty, the goal now must be to study the major lessons and complex nuances emerging from the data. The data thus far makes clear that marriage is only one among the many choices and factors influencing the family lives of poor people, and that little is understood about the

63. Fein, *supra* note 61, at 12.

64. Laura Wherry & Kenneth Finegold, *Marriage Promotion and the Living Arrangements of Black, Hispanic, and White Children*, URB. INST. SERIES B, NO. B-61, Sept. 2004, at 1, 6, available at http://www.urban.org/UploadedPDF/311064_B-61.pdf.

65. For policy implications, see *id.* and SEAN CAHILL & KENNETH T. JONES, POLICY INST. OF NAT'L GAY & LESBIAN TASK FORCE, *LEAVING OUR CHILDREN BEHIND: WELFARE REFORM AND THE GAY, LESBIAN, BISEXUAL, AND TRANSGENDER COMMUNITY* (2001), available at http://www.thetaskforce.org/downloads/reports/fact_sheets/WelfarefactSheet/pdf. Regarding constitutional implications, while courts typically review governmental programs discriminating based on race under strict scrutiny, the Supreme Court rejected strict scrutiny review and upheld the funding of various public benefits programs against a challenge based on statistical evidence showing disproportionate racial impact in *Jefferson v. Hackney*, 406 U.S. 535 (1972). The courts have not yet held that sexual orientation minorities constitute a suspect class or that sexual orientation is a suspect classification, and therefore courts typically apply rational basis review and uphold governmental discrimination based on sexual orientation.

role of marriage among the many other challenges and barriers confronting impoverished families.

Structuring families around heterosexual marriage is an end in itself for some. For the evaluation of welfare policy, however, the eyes must remain on the prize: whether marriage promotion reduces poverty and increases the well-being of disadvantaged families. Failure to evaluate the marriage promotion experiments based on whether they decrease poverty effectively reduces welfare recipients to mere social science guinea pigs, a phenomenon that is constitutionally allowed precisely because of their class.