

2017

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Haneman, Victoria J. (2017) "Marriage, Millennials, and Massive Student Loan Debt," *Concordia Law Review*. Vol. 2 : No. 1 , Article 6.

Available at: <https://digitalcommons.csp.edu/clr/vol2/iss1/6>

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MARRIAGE, MILLENNIALS, AND MASSIVE STUDENT LOAN DEBT

Victoria J. Haneman*

INTRODUCTION

Dating apps, contraception, abortion, medical advances that allow the delay of childbearing, changes in female pay, and crippling student loan debt are all factors that may weigh upon the Millennial¹ trend of cohabitation versus marriage.² Studies of cohabitation and marriage trends evidence that the Millennial generation is perfectly content in their unwedded bliss,³ with more than eight million couples cohabitating in the United States.⁴ According to 2010 Census data, there has been a 138% increase in cohabitation since 1990.⁵ Further, those who choose to marry are doing so later: the average age of marriage is 27 for women and 29 for men—as opposed to 23 and 26, respectively, in 1990.⁶

* Professor of Law, Concordia University School of Law. My heartfelt gratitude to my research assistant, Angela Harrigan, for taming my unruly footnotes.

¹ For purposes of this Essay, a Millennial is defined as a person who was born between 1982 and 2004. Philip Bump, *Here Is When Each Generation Begins and Ends, According to Facts*, THE ATLANTIC (Mar. 25, 2014), <https://www.theatlantic.com/national/archive/2014/03/here-is-when-each-generation-begins-and-ends-according-to-facts/359589/>.

² See Gabriela Barkho, *Why Are Millennials Putting Off Marriage? Let Me Count the Ways*, WASH. POST (June 6, 2016), https://www.washingtonpost.com/news/soloish/wp/2016/06/06/why-are-millennials-putting-off-marriage-let-me-count-the-ways/?utm_term=.e16155290354.

³ Jenny Kutner, *8 Brutally Honest Reasons Why Millennial Women Are Staying Single*, CONNECTIONS.MIC (Aug. 13, 2015), <https://mic.com/articles/123850/8-brutally-honest-reasons-why-millennial-women-are-staying-single#.hZhjTuyaA>. “Just 20% of Millennials ages 18 to 30 have tied the knot; compare that with 32% of Gen Xers and more than 40% of Baby Boomers were who married at that age.” Cathie Ericson, *Why Millennials Aren’t Rushing to the Altar Anytime Soon (Hint: It Has to Do with Money)*, FORBES (Nov. 25, 2016), <https://www.forbes.com/sites/learnvest/2016/11/25/why-millennials-arent-rushing-to-the-altar-anytime-soon-hint-it-has-to-do-with-money/#5959f73c33cf>.

⁴ Connor Donevan, *Millennials Navigate the Ups and Downs of Cohabitation*, NPR (Nov. 1, 2014), <http://www.npr.org/2014/11/01/358876955/millennials-navigate-the-ups-and-downs-of-cohabitation>.

⁵ *Living Together and the Law*, NOLO, <http://www.nolo.com/legal-encyclopedia/free-books/living-together-book/chapter1-1.html> (last visited Mar. 4, 2017).

⁶ Eleanor Barkhorn, *Getting Married Later Is Great for College-Educated Women*, THE ATLANTIC (Mar. 15, 2013), <http://www.theatlantic.com/sexes/archive/2013/03/getting-married-later-is-great-for-college-educated-women/274040/>. This number is higher in urban areas, such as New York City. Barkho, *supra* note 2.

This shifting attitude toward marriage coincides with another uniquely Millennial issue: the burden of student loan indebtedness. There are roughly 21 million students enrolled in American colleges and universities,⁷ and the vast majority of these students will graduate with student loan debt.⁸ The average class of 2016 graduate has \$37,172 in student loan debt,⁹ as compared to \$35,051 in 2015,¹⁰ \$33,000 in 2014,¹¹ and \$29,400 in 2013.¹² While many people view student loan borrowing as an individual problem, the number of borrowers and volume of debt raises this issue to a matter of national concern.¹³ Outstanding student loan debt has recently topped \$1.2 trillion in the United States, and it is likely that student loan indebtedness will have a significant drag upon the economy when saving, investment, and consumption are stunted.¹⁴ Furthermore, the rate of student loan default is rising at an alarming rate.¹⁵ A perfect storm of factors have coalesced: more

⁷ *Fast Facts*, NAT'L CTR. FOR EDUC. STAT., <http://nces.ed.gov/fastfacts/display.asp?id=372> (last visited Mar. 4, 2017). This constitutes an increase of 5.2 million students since fall 2000. *Id.*

⁸ “In 2012, 71% of all students graduating from four-year colleges had student loan debt.” *Quick Facts About Student Debt*, INST. FOR COLL. ACCESS & SUCCESS (Mar. 2014), http://ticas.org/sites/default/files/pub_files/Debt_Facts_and_Sources.pdf. “[W]ithin a generation, student loans have morphed from a manageable expense (the kind that baby boomers love to tell us you can pay off by mowing lawns over the summer) into a financial beast with very sharp teeth.” Maddie Eisenhart, *Student Debt Is Going to Be A Huge Problem for Millennial Marriages*, PRAC. WEDDING, <http://apracticalwedding.com/student-loan-debt-relationships/> (last visited Mar. 4, 2017).

⁹ *A Look at the Shocking Student Loan Debt Statistics for 2017*, STUDENT LOAN HERO (Mar. 10, 2017), <https://studentloanhero.com/student-loan-debt-statistics/>.

¹⁰ Jillian Berman, *Class of 2015 Has the Most Debt in U.S. History*, MKT. WATCH (May 9, 2015), <http://www.marketwatch.com/story/class-of-2015-has-the-most-student-debt-in-us-history-2015-05-08>.

¹¹ John Fortenbury, *How Much Student Loan Debt is Too Much?*, USA TODAY COLL. (Aug. 26, 2014), <http://college.usatoday.com/2014/08/26/how-much-student-loan-debt-is-too-much-2/>.

¹² Blake Ellis, *Average Student Loan Debt: \$29,400*, CNN (Dec. 5, 2013), <http://money.cnn.com/2013/12/04/pf/college/student-loan-debt/>.

¹³ AMERICAN STUDENT ASSISTANCE, *LIFE DELAYED: THE IMPACT OF STUDENT DEBT ON THE DAILY LIVES OF YOUNG AMERICANS* 4 (2013), http://www.asa.org/site/assets/files/3793/life_delayed.pdf.

¹⁴ Suzanne Woolley, *How Student Loans Could Cripple the U.S. Economy*, BLOOMBERG (Apr. 30, 2015), <http://www.bloomberg.com/news/articles/2015-04-30/how-student-loans-could-cripple-the-u-s-economy>.

¹⁵ See Robert C. Cloud & Richard Fossey, *Facing the Student-Debt Crisis: Restoring the Integrity of the Federal Student Loan Program*, 40 J.C. & U.L. 467, 469 (2014) (“Student-loan default rates have gone up relentlessly in recent years. In 2007, the United States Department of Education (“DOE”) reported a two-year default rate of just 4.6 percent on loans from the Fiscal Year 2005 cohort of students. In 2013, the DOE reported a two-year

students are borrowing more money to attend colleges and universities but will then struggle to find jobs that will help them to repay their sizable debt loads in a lagging economy.¹⁶

Despite all of this, research indicates that the lifetime earnings of those who are college educated far exceed the earnings of those who are not.¹⁷ Implicitly, however, staggering inequalities are created by and among those who graduate debt free versus those who graduate with student loan debt. An education may afford higher lifetime income and upward mobility in the long-term while taxing those who borrow in unquantifiable ways in the short-term. The borrower will theoretically lose time but gain money: meaning, major life decisions will be delayed as a cost attendant to the borrower earning the degree that will increase lifetime earnings.¹⁸ Borrowing generally precedes many significant life decisions for young adults, and may ultimately impact the personal choices of borrowers with regard to marriage, child bearing, home purchasing, retirement saving, and career choices.¹⁹

While saddling this generation with unprecedented levels of student loan debt will likely carry unintended consequences that impact family formation, social scientists have just recently started studying this issue and data is murky.²⁰ The purpose of this Essay is to explore the idea that the student loan indebtedness bearing down upon the majority of today's college graduates creates economic insecurity that forces borrowers to reject or significantly delay marriage, and that burden, taken together with an already

default rate for students who began paying back loans in October 2010 of ten percent, more than double the rate reported in 2007. According to the DOE's most recent report, 14.7 percent of student-loan debtors defaulted on their loans within three years after their repayment obligations began.").

¹⁶ *Id.* at 470.

¹⁷ Guillaume Vandenbroucke, *Lifetime Benefits of an Education Have Never Been So High*, REGIONAL ECONOMIST 10, 10 (2015), <https://www.stlouisfed.org/~media/Publications/Regional%20Economist/2015/July/education.pdf>. For the 1980 cohort (which means those who would turn 30 in 1980), college educated males earn 52% more over a lifetime as compared to those with only a high school diploma. *Id.* at 10–11.

¹⁸ Jonathan D. Glater, *Student Debt and Higher Education Risk*, 103 CALIF. L. REV. 1561, 1588 (2015).

¹⁹ *Id.*; see also AMERICAN STUDENT ASSISTANCE, *supra* note 13, at 3 ("Student debt weighs on every decision I make, from food shopping, to where I choose to live, to how I spend my free time, to what clothes I wear, and ultimately, what career I choose.") (quoting an American Student Assistance survey respondent).

²⁰ See Andrew Martin & Andrew W. Lehren, *A Generation Hobbled by the Soaring Cost of College*, N.Y. TIMES (May 12, 2012), http://www.nytimes.com/2012/05/13/business/student-loans-weighing-down-a-generation-with-heavy-debt.html?_r=0.

lukewarm Millennial attitude, may not bode well for the future of the institution. Record numbers of Millennials have rejected the traditional path of marriage-homeownership-children, and the percentage of Millennials who will marry by age 40 is projected to fall lower than the figure for any previous generation of Americans.²¹ To the extent that marriage is an evolving institution that is shaped by economic forces, current student loan policy may relegate marriage to the status of luxury—a ritual afforded only by the wealthy.²²

I. THE DATA AVAILABLE ON MODERN MARRIAGE

A forward-looking discussion of marriage trends necessarily starts with a consideration of the evolving nature of the institution. The historical antecedent of the modern institution of marriage was a system of coverture in which the legal existence of a wife was literally covered by her husband, and she was under his protection and subsumed into his legal identity.²³ Starting in the mid-19th century with the passage of Married Women's Property Acts, married women started developing legal rights in the public sphere.²⁴ The divorce, child custody, and spousal support systems have gradually evolved to occupy a less gender-biased space.²⁵ If one embraces notions of traditional marriage as those that existed at the founding of this country, it is fair to say that the modern model of marriage in no way resembles the traditional model of marriage.²⁶

²¹ STEVEN P. MARTIN ET AL., FEWER MARRIAGES, MORE DIVERGENCE: MARRIAGE PROJECTIONS FOR MILLENNIALS TO AGE 40, at 1 (2014), <http://www.urban.org/sites/default/files/publication/22586/413110-Fewer-Marriages-More-Divergence-Marriage-Projections-for-Millennials-to-Age-.PDF>.

²² This Essay does not explore the more devastating idea that class divides will be highlighted by those who are married (the “haves”) as opposed to those who are not married (the “have nots”). *See id.* at 3–4.

²³ Amber Bailey, *Redefining Marriage: How the Institution of Marriage Has Changed to Make Room for Same-Sex Couples*, 27 WIS. J.L. GENDER & SOC'Y 305, 311 (2012). “[C]overture illustrates the ways in which married women were treated differently than both married men and single women under the law. . . . Blackstone . . . described coverture as suspending ‘the very being or legal existence of the woman’ and incorporating it into her husband’s legal existence.” *Id.* This generally resulted in limiting married women’s ability to contract and own property, and placed additional restrictions on women, including in criminal law. *Id.* Coverture stems from the idea that women control the domestic sphere, while men work and provide outside of the home. *Id.*

²⁴ *Id.* at 315.

²⁵ *See id.* at 311.

²⁶ For example, marriage in the 1960s in the U.S. has been described as follows:

Presently, the number of Americans who have never been married is at a record high.²⁷ In 2012, approximately 25% of adults over the age of 25 had never been married, as compared to only nine percent in 1960.²⁸ The average age of marriage has increased dramatically to 29 and 27 for men and women, respectively, up from 23 and 20 in 1960.²⁹ Additionally, the marriage rate is at a record low³⁰ while at the same time the birth of non-marital children is at a record high.³¹ Current statistics demonstrate that marriage is no longer the only acceptable gateway to childbearing.³² Unmarried mothers account for 40.6% of births in the United States.³³ A quarter of all births to women of child-bearing age (defined as 15 to 44 years of age) were to cohabitating, unmarried couples, which is more than double the rate from the decade earlier.³⁴ Cohabitating, unmarried parents now account for 59% of non-marital children.³⁵

Virginia wasn't always for lovers—Passionate love between husband and wife is considered unseemly: One Virginia colonist describes a woman he knows as “more fond of her husband perhaps than the politeness of the day allows.” Protestant ministers warn spouses against loving each other too much, or using endearing nicknames that will undermine husbandly authority.

Marriage, a History, PSYCHOL. TODAY (May 1, 2005), <https://www.psychologytoday.com/articles/200505/marriage-history>.

²⁷ Wendy Wang & Kim Parker, *Record Share of Americans Have Never Married*, PEW RES. CTR. (Sept. 24, 2014), <http://www.pewsocialtrends.org/2014/09/24/record-share-of-americans-have-never-married/>.

²⁸ *Id.*

²⁹ *Id.*

³⁰ By 2009, an estimated 66% of women cohabitated prior to marriage, as compared to 11% between 1965 and 1974. WENDY D. MANNING, TRENDS IN COHABITATION: TWENTY YEARS OF CHANGE, 1987-2010, at 2 (2013).

³¹ An estimated 57% of Millennials are having children outside of marriage. Although interestingly, sociologists state that this disproportionately occurs among Millennials who do not have college degrees and reside in areas with high income inequality, without great job prospects. Alexia Fernández Campbell, *Why Are So Many Millennials Having Children Out of Wedlock?*, THE ATLANTIC (July 18, 2016), <https://www.theatlantic.com/business/archive/2016/07/why-are-so-many-millennials-having-children-out-of-wedlock/491753/>.

³² Allison Hoover, *'Til Death Do Us Part: The End of Government Regulation of Marriage and the Emergence of Domestic Partnership Contracts*, PEOPLE, IDEAS, & THINGS J. (2011), <http://pitjournal.unc.edu/article/'til-death-do-us-part-end-government-regulation-marriage-and-emergence-domestic-partnership>.

³³ CARMEN SOLOMON-FEARS, NONMARITAL BIRTHS: AN OVERVIEW 26 (2014), <https://fas.org/sgp/crs/misc/R43667.pdf>.

³⁴ Neil Shah, *U.S. Sees Rise in Unmarried Parents*, WALL STREET J. (Mar. 10, 2015), <https://www.wsj.com/articles/cohabiting-parents-at-record-high-1426010894>.

³⁵ *Id.* “Young mothers are no longer afraid of the stigma of divorce or living ‘in sin,’ and they see marriage as an aspirational goal: they have no time to deal with deadbeat husbands

It is relevant to consider the impact that education has upon marriage data. While college educated women were the least likely to be married in the 1940s, the opposite is now true.³⁶ In 2011, 60% of college-educated women were married as compared to less than 50% of women with a high school degree or less.³⁷ And while birthing non-marital children may be the new normal for women under the age of 30, college graduates continue to resist this trend.³⁸ College-educated women tend to marry later and have fewer children.³⁹

A relationship between marriage, cohabitation, divorce, and educational attainment is clear. Current statistics show that about 50% of first marriages end in divorce.⁴⁰ Divorce rates by age 46 are twice as high among high-school-or-less graduates as opposed to college graduates.⁴¹ In fact, college-educated women are not only the least likely to divorce, but have also seen a substantial decrease in divorce rates since the 1970s.⁴² Young adults from lower-income, high-school-or-less households are much more likely to graduate from college if raised in a two-parent household, and yet, the divorce rates in these households are significantly higher.⁴³ Those who cohabit with children do not escape the consequences of divorce simply by avoiding the institution of marriage: cohabitating parents are more likely to split than married parents.⁴⁴

if they don't have to." Katie J.M. Baker, *Marriage is Now a 'Luxury' for Most Women*, JEZEBEL (Feb. 18, 2012), <http://jezebel.com/5886234/marriage-is-now-a-luxury-for-most-women>.

³⁶ Allison Linn, *The Class Divide: Marriage as a 'Luxury Good'*, CNBC (Oct. 26, 2013), <http://www.cnbc.com/2013/10/24/age-as-a-luxury-good.html>.

³⁷ *Id.*

³⁸ Jason DeParle & Sabrina Tavernise, *For Women Under 30, Most Births Occur Outside Marriage*, N.Y. TIMES (Feb. 17, 2012), <http://www.nytimes.com/2012/02/18/us/for-women-under-30-most-births-occur-outside-marriage.html>. More than half the births occurring to American women under the age of thirty are outside of marriage. *Id.*

³⁹ Adam Isen & Betsey Stevenson, *Women's Education and Family Behavior: Trends in Marriage, Divorce and Fertility*, NAT'L BUREAU ECON. RES. (Feb. 2010), <http://www.nber.org/papers/w15725>.

⁴⁰ CASEY E. COPEN ET AL., FIRST MARRIAGES IN THE UNITED STATES: DATA FROM THE 2006–2010 NATIONAL SURVEY OF FAMILY GROWTH 1 (2012).

⁴¹ Derek Thompson, *Stop Calling Marriage a 'Luxury Good'*, THE ATLANTIC (Oct. 30, 2013), <http://www.theatlantic.com/business/archive/2013/10/stop-calling-marriage-a-luxury-good/280996/>.

⁴² Isen & Stevenson, *supra* note 39.

⁴³ Thompson, *supra* note 41.

⁴⁴ Shah, *supra* note 34.

II. THE IMPACT OF STUDENT LOAN REPAYMENT UPON MARRIAGE

Marriage is not merely the legally recognized union of two individuals, it is also a rite of passage that is riddled with expenses. And while the priority shift from the unencumbered single to “adulting”⁴⁵ couple may lead to stable finances over the long-term, it has the potential to create significant financial strain in the short-term—in the form of home ownership, retirement savings, and childbearing.⁴⁶ Newly married couples tend to purchase a home within a couple years of being married.⁴⁷ While singles often defer focus upon retirement savings until their 40s, married couples start saving for retirement much earlier.⁴⁸ Often, in the wake of marriage and home ownership comes reproduction—and children are a staggering drain upon financial resources.⁴⁹

As of 2010, two-thirds of college graduates are leaving school with student loan debt.⁵⁰ New graduates are in the early stages of their careers when loan repayment begins.⁵¹ Facing student loan debt payments for the first time, concerns about liquidity may have a substantial influence upon life choices—for example, those with greater levels of debt are more likely to accept a higher paying job after graduation, and less likely to apply for graduate school.⁵² To the extent that financial liquidity influences decision-making, it stands to reason that new college graduates would defer marriage until a new career is on solid footing.⁵³

⁴⁵ “Adulting describes acting like an adult or engaging in activities usually associated with adulthood—often responsible or boring tasks.” Mignon Fogarty, *2014 Word of the Year: Adulting*, QUICKANDDIRTYTIPS.COM, <http://www.quickanddirtytips.com/education/grammar/2014-word-of-the-year-adulting> (last visited Mar. 4, 2017).

⁴⁶ Tom Van Riper, *The Cost of Being Married Versus Being Single*, FORBES (July 25, 2006), http://www.forbes.com/2006/07/25/singles-marriage-money-cx_tvr_06singles_0725costs.html.

⁴⁷ *Id.* “While there are plenty of renting couples and home-owning singles, married people account for 77% of all homeowners, according to the Center for Politics.” *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* (“Once children enter the picture, married couples are really in financial trouble: The costs to raise and educate children are staggering.”).

⁵⁰ Robert Bozick & Angela Estacion, *Do Student Loans Delay Marriage? Debt Repayment and Family Formation in Young Adulthood*, 30 DEMOGRAPHIC RES. 1865, 1866 (2014). This number was less than 50% in 1993. *Id.*

⁵¹ *Id.* at 1867.

⁵² DORA GICHEVA, IN DEBT AND ALONE? EXAMINING THE CAUSAL LINK BETWEEN STUDENT LOANS AND MARRIAGE 3 (2013) (on file with Concordia Law Review).

⁵³ Kaitlin Mulhere, *Is Student Debt Really Keeping Millennials From Growing Up?*, MONEY (Aug. 5, 2015), <http://time.com/money/3984498/student-debt-keeping-millennials->

Student loan policy is complex and inefficient and may be fairly characterized as an assault upon traditional marriage.⁵⁴ Four income-based repayment plans are presently available to borrowers:⁵⁵ Revised Pay as You Earn Repayment Plan (REPAYE); Pay As You Earn Repayment Plan (PAYE); Income-Based Repayment Plan (IBR); and Income-Contingent Repayment Plan (ICR).⁵⁶ Payments under the four income-based repayment systems are calculated by taking a percentage of the borrower's discretionary income (or the borrower's adjusted gross income (AGI) after first deducting 150% of the federal poverty guidelines) and dividing it by 12.⁵⁷ If a borrower is married, the non-borrowing spouse's income will be taken into account in determining this monthly loan payment under PAYE, IBR, and ICR if the couple files a joint tax return.⁵⁸ Under REPAYE, all married borrowers must determine student loan payments on the basis of cumulative household income—which means that non-borrowing spouse's income will be taken into account regardless of whether joint or separate tax returns are filed.⁵⁹ The income of the borrower's spouse may only be excluded if documentation can be provided that the borrower is separated from the non-borrowing spouse, or the borrower is unable to reasonably access his or her spouse's income.⁶⁰

from-life-events/ (“Young adults with student debt are postponing life events like buying a home or car, getting married, and having babies at higher rates than other age groups did, according to a new survey. Overall, 45% of respondents who ever had student loan debt said they had put off life events because of it. For borrowers currently between 18 and 29, that number rises to 56%, according to the survey from Bankrate.com.”).

⁵⁴ Victoria J. Haneman, *The Collision of Student Loan Debt and Joint Marital Taxation*, 35 VA. TAX REV. 223, 268 (2016) (“[S]tudent loan policy is moving towards an alternative approach . . . requiring all married borrowers to determine student loan payments on the basis of cumulative household income.”).

⁵⁵ INCOME-DRIVEN REPAYMENT PLANS: QUESTIONS AND ANSWERS (2016), <https://studentaid.ed.gov/sa/sites/default/files/income-driven-repayment-q-and-a.pdf>. A fifth plan, income-sensitive repayment (ISR), is only available to federal family education loan borrowers to adjust payments for a period of five years. Payments are based upon the borrower's gross monthly income, and a spouse's income is not taken into account unless the spouse is also a co-borrower on the loan. Betsy Mayotte, *Income Sensitive Repayment: The Forgotten Student Loan Plan*, U.S. NEWS (Mar. 30, 2016), <http://www.usnews.com/education/blogs/student-loan-ranger/2016/03/30/income-sensitive-repayment-the-forgotten-student-loan-plan>.

⁵⁶ Mayotte, *supra* note 55.

⁵⁷ For further explanation, see Haneman, *supra* note 54.

⁵⁸ *See id.* at 238.

⁵⁹ INCOME-DRIVEN REPAYMENT PLANS: QUESTIONS AND ANSWERS, *supra* note 55.

⁶⁰ *Id.*

Less than a decade has passed since income-based repayment of student loan debt became available to borrowers through the College Cost Reduction and Access Act, signed into law in September 2007.⁶¹ It is likely that these policies will have an impact on the decision-making of young borrowers with regard to marriage even though there is a dearth of reliable data in the decade since income-based repayment policies were adopted.⁶² To the extent that student loan payments are based upon cumulative household income, a borrower in a two-earner household will see an increase in his or her student loan payments. When monthly student loan payments increase as a result of marriage, the non-borrowing spouse will likely suffer a direct (through contribution toward loan payments) or indirect (through an unequal contribution toward household expenses) consequence. While some income-based repayment plans allow the income of the non-borrowing spouse to be excluded when separate tax returns are filed, this may come at the expense of tax savings that would be earned if a joint return were filed.⁶³

III. PREDICTING THE COURSE OF CURRENT TRENDS: THE COLLISION COURSE BETWEEN STUDENT LOAN DEBT AND MARRIAGE

The past few decades have evidenced that conservatives have lost and are losing the culture war on a number of different fronts: obscene rock lyrics, sex education, contraception, abortion, homosexuality, working mothers, prayerless schools, recreational drug use, and transgender rights.⁶⁴ In this

⁶¹ Sarah Kliff, *The Bush-Era Backstory on Obama's Student Debt Proposal*, WASH. POST (Oct. 26, 2011), https://www.washingtonpost.com/blogs/ezra-klein/post/the-bush-era-backstory-on-obamas-student-debt-proposal/2011/10/26/gIQAr6dgJM_blog.html?utmterm=.fff027b3b7ae.

⁶² See GICHEVA, *supra* note 52. "The only study of which we are aware is Gicheva's (2011) unpublished analysis of the Survey of Consumer Finances 1995-2007 in which she finds that adults with higher levels of student loan debt are less likely to be married." Bozick & Estacion, *supra* note 50, at 1868.

⁶³ See Haneman, *supra* note 54, at 268 ("[S]tudent loan policy is moving towards an alternative approach . . . requiring all married borrowers to determine student loan payments on the basis of cumulative household income.").

⁶⁴ As Hillary Clinton explained in her 2016 presidential concession speech:

Our constitutional democracy demands our participation, not just every four years, but all the time. So let's do all we can to keep advancing the causes and values we all hold dear. Making our economy work for everyone, not just those at the top, protecting our country and protecting our planet. And breaking down all the barriers that hold any American back from achieving their dreams. We spent a year and a half bringing together millions of people from every corner of our country to say with

(admittedly hyperbolic) battle between good and evil, it appears at first glance as if marriage is surviving admirably as an institution.

Data shows that marriage is gradually becoming a class privilege, however, with marriage rates declining as education and income-levels decrease.⁶⁵ Despite this, almost 90% of Americans get married at some point in their lifetimes,⁶⁶ and marriage continues to do well among the college-educated and relatively affluent.⁶⁷ Therefore, marriage itself will serve to further exacerbate economic divides as married couples tend to be financially better off.⁶⁸ While many factors beyond marital status drive wealth and poverty, “[t]here are relatively few relationships that are more fully documented than those between economic well-being and marriage.”⁶⁹ Married households are in a significantly better financial position—more likely to own homes and have retirement and emergency savings.⁷⁰

Across all social classes, young adults agree upon reaching certain benchmarks prior to committing to marriage and childbearing: stable employment, some savings, financial security, and the ability to repay debt

one voice that we believe that the American dream is big enough for everyone. For people of all races, and religions, for men and women, for immigrants, for LGBT people, and people with disabilities. For everyone.

Tara Golshan, *Hillary Clinton's Concession Speech Full Transcript: 2016 Presidential Election*, VOX (Nov. 9, 2016), <http://www.vox.com/2016/11/9/13570328/hillary-clinton-concession-speech-full-transcript-2016-presidential-election>.

⁶⁵ Linn, *supra* note 36.

⁶⁶ Iris Krasnow, *Who Needs Marriage? It Seems A Lot of Us Do.*, HUFFINGTON POST (Mar. 22, 2016), http://www.huffingtonpost.com/iris-krasnow/who-needs-marriage_b_9459838.html. “Fewer Americans who are older than 25 are married than ever before, and by the time they’re middle-aged, a record 25 percent will have never tied the knot.” Gene Demby, *Marriage Rates Are Falling, and for Some Faster than Others*, NPR (Sept. 26, 2014), <http://www.npr.org/sections/codeswitch/2014/09/26/351736134/marriage-rates-are-falling-and-for-some-faster-than-others>.

⁶⁷ “That’s one of the biggest findings in the marriage and wealth research: those Americans getting married today are better educated and wealthier. It’s not marriage itself that affords some financial advantage.” Kimberley Bainbridge, *Getting Married Can Be a Wealthy Proposition*, CNBC (Sept. 15, 2015), <http://www.cnn.com/2015/02/14/getting-married-can-be-a-wealthy-proposition.html>.

⁶⁸ Andrew L. Yarrow, *Falling Marriage Rates Reveal Economic Fault Lines*, N.Y. TIMES (Feb. 6, 2015), <http://www.nytimes.com/2015/02/08/fashion/weddings/falling-marriage-rates-reveal-economic-fault-lines.html> (“It’s a plain fact that people who are married have more income, wealth and savings that last into their retirement.”).

⁶⁹ *Id.*

⁷⁰ *Id.*

obligations.⁷¹ Absent these benchmarks being met, cohabitation becomes more attractive than marriage—cohabitators usually maintain their financial independence from one another while reaping the financial advantage of cost sharing and economies of scale.⁷² If meeting benchmarks prior to marriage continues to be important to this generation of young student borrowers, marriage will only be likely when student loan debt is low, or one has found a spouse with financial resources to assume responsibility for the student loan debt (through gradual repayment or balance-in-full repayment).⁷³

To the cash-strapped college graduate, student loan policy further incentivizes cohabitation over marriage.⁷⁴ Those borrowers who have enrolled in one of the four income-based loan repayment plans will generally be forced to aggregate the non-borrowing spouse's income with their own income to calculate monthly student loan payments.⁷⁵ Cohabitation instead of marriage will allow young graduates to retain their own economic identity for the purposes of calculating monthly payments, while also allowing them to share household expenses. Unfortunately, cohabitating parents are more likely to split and develop tangled family webs, with a number of relationships, children, and child support obligations.⁷⁶

Data supports the idea that those suffocating under the weight of student loan debt will delay marriage until they are less financially constrained by student loan balances.⁷⁷ One study concludes that student loan

⁷¹ Fenaba R. Addo, *Debt, Cohabitation, and Marriage in Young Adulthood*, 51 DEMOGRAPHY 1677, 1680 (2014).

⁷² *Id.* at 1681.

⁷³ *Id.*

⁷⁴ According to Andrew J. Cherlin, Benjamin H. Griswold III Professor of Public Policy at John Hopkins University:

For the college educated, “marriage used to be the first step into adulthood,” . . . “Increasingly, it’s the last step. A college educated young adult goes to graduate school, invests in their careers, starts work, often lives with a partner, but only marry when they think they’re finally ready Marriage is kind of the capstone, the last brick put in place.”

Cara Newlon, *Hooking Up and Marriage: Luxury Goods for Educated Millennials*, FORBES (June 19, 2014), <http://www.forbes.com/sites/caranewlon/2014/06/19/hooking-up-and-marriage-luxury-goods-for-educated-millennials/#296efa911abd> (quoting Andrew J. Cherlin).

⁷⁵ Haneman, *supra* note 54, at 226.

⁷⁶ Shah, *supra* note 34.

⁷⁷ The Catholic Archbishop of Boston, Cardinal O’Malley, has also recognized student loan debt as one of the challenges impacting the sacrament of marriage. See *Cardinal O’Malley: Cohabitation and Student Debt Threaten Marriage*, NAT’L CATH. REG. (Nov. 20, 2013), <https://www.ncregister.com/daily-news/cardinal-omalley-cohabitation-and-student->

debt impedes family formation in the years immediately following college for both genders⁷⁸ while a second study concludes that student loan debt only affects the probability of marriage for women.⁷⁹ Although a topic for another day, it is important to note that the liquidity constraint presented by student loan debt may have a more deleterious effect upon family formation for women over men.⁸⁰

Though marriage has proven itself to be a flexible institution that accommodates prevailing norms, this confluence of factors has the potential to cause an outright rejection of marriage by the mainstream.⁸¹ Increased urbanization in the United States around 1850 led to the gendered husband-as-breadwinner/wife-as-homemaker model of marriage.⁸² The contemporary model of marriage is less gendered, with both spouses free to pursue careers or activities intended to support the family and facilitate personal growth.⁸³

debt-threaten-marriage. (“Part of the problems are economic . . . our educational system is so expensive, people graduate from college or graduate school facing huge debts If you have a \$150,000 debt when you graduate law school, are you going to marry a girl who has a \$130,000 debt and start off your marriage with over a quarter-million dollars’ debt? . . . So people are postponing marriage—are postponing a decision to go into the seminary or religious life—because they’re saddled under these tremendous debts which former generations didn’t have,” he said.”).

⁷⁸ GICHEVA, *supra* note 52, at 26.

⁷⁹ Bozick & Estacion, *supra* note 50, at 1866. “We find that, among female bachelor degree recipients, an increase of \$1,000 in student loan debt is associated with a reduction in the odds of first marriage by 2 percent a month during the first four years after graduation. This relationship does not hold for men.” *Id.* at 1866–67.

⁸⁰ Although there is no data to confirm this speculation, and it is outside of the scope of this Essay, perhaps the desire to procreate weighs more heavily upon female borrowers than male borrowers. With each passing year, the negative impact of student loan debt becomes less significant—salaries raise while balances shrink. If a woman wishes to leave the workforce temporarily or permanently after having children, it becomes imperative that student loan debt balances be substantially reduced before she do so.

⁸¹ The contemporary model of marriage has changed dramatically over the past two centuries. Hilary Hurd Anyaso, *Marriage’s ‘Haves’ and ‘Have Nots’: Changing Expectations and Rising Inequality Make Today’s Marriages Better than Ever*, NW. NOW (Feb. 13, 2014), http://www.northwestern.edu/newscenter/stories/2014_02/marriages-haves-and-have-nots.html.

⁸² Rick Nauert, *High Marital Expectations Challenge Many Relationships*, PSYCH CENTRAL, <https://psychcentral.com/news/2014/02/14/high-marital-expectations-challenge-many-relationships/65884.html> (last visited Mar. 4, 2017).

⁸³ Of course, this contemporary model of marriage may also look quite different based upon socioeconomic class. As Emma Green explains:

Taking a stand against patriarchy is much easier if you’re well-educated, have a stable income, and live in a community where you could theoretically find an educated, employed man to marry. For poor, uneducated women, especially those who have kids, the question of

Millennial attitudes toward marriage may exacerbate a move away from marriage altogether, in favor of conscious coupling in the form of serial monogamy and cohabitation.⁸⁴ In a survey conducted by the Pew Research Center, 39% of respondents age 18 to 29 believe that marriage is becoming obsolete.⁸⁵ Pew Research Center projections, based upon this survey, suggest that a record number of today's young adults will be unmarried in their mid-forties to mid-fifties.⁸⁶

Social advancement on issues, such as the legalization of abortion, no-fault divorce, affordable and accessible contraception, educational equality, and efforts to address gender inequality in the workplace, has caused the modern couple to tailor marriage to individual needs, as opposed to being rigidly shaped by obligation to cultural and religious norms.⁸⁷ Love is now predicated on autonomy rather than mutual dependence.⁸⁸ Economic systems that impose financial obligations upon married Millennials because of an

whether to get married looks a lot different: It's the choice between raising children on one or two incomes, between having someone to help with household chores and child-rearing alone while working multiple jobs For a poor woman, deciding whether to get married or not will be a big part of shaping her economic future. For a wealthier woman, deciding whether to get married is a choice about independence, lifestyle, and, at times, "fighting the patriarchy."

Emma Green, *Wealthy Women Can Afford to Reject Marriage, but Poor Women Can't*, THE ATLANTIC (Jan. 15, 2014), <http://www.theatlantic.com/business/archive/2014/01/wealthy-women-can-afford-to-reject-marriage-but-poor-women-cant/283097/>.

⁸⁴ See Andrew J. Cherlin, *Americans Prefer Serial Monogamy to Open Relationships*, N.Y. TIMES (May 21, 2013), <http://www.nytimes.com/roomfordebate/2012/01/20/the-gingrich-question-cheating-vs-open-marriage/americans-prefer-serial-monogamy-to-open-relationships>. It is unlikely that conscious coupling will take the form of open relationships any time soon. Americans have not seemed to embrace open marriage or open cohabitation. *Id.*

⁸⁵ D'VERA COHN ET. AL., BARELY HALF OF U.S. ADULTS ARE MARRIED – A RECORD LOW: NEW MARRIAGES DOWN 5% FROM 2009 TO 2010, at 10 (2011), <http://www.pewsocialtrends.org/files/2011/12/Marriage-Decline.pdf>.

⁸⁶ Wang & Parker, *supra* note 27.

⁸⁷ Nancy Cook, *For Richer (Not For Poorer): The Inequality Crisis of Marriage*, THE ATLANTIC (Mar. 14, 2012), <http://www.theatlantic.com/business/archive/2012/03/for-richer-not-for-poorer-the-inequality-crisis-of-marriage/254523/> ("The traditional path of marriage, homeownership, and children--strictly in that order--is no longer regarded as de rigueur. This has left Americans more choices in how to live their lives--to cohabit instead of to marry, to have children with or without a partner, to remain single and live by themselves. One in four Americans are now going it alone."); see also Jennifer M. Silva, *The 1 Percent Ruined Love: Marriage Is for the Rich*, SALON (July 27, 2013), http://www.salon.com/2013/07/27/the_1_percent_ruined_love_marriage_is_for_the_rich/.

⁸⁸ Silva, *supra* note 87.

attachment to antiquated ideas about marriage—as are seen with both the joint tax-filing system and the use of a non-borrowing spouse’s income to calculate student loan payments—will undermine this notion of autonomy.⁸⁹ Forcing marriage into a model of financial mutual dependence for student loan borrowers could potentially reshape marriage into a luxury for the rich, with mainstream rejection of an institution cast as an economically impractical ritual.

IV. CONCLUSION

Millennials are unique in a myriad of ways: the most racially diverse generation, with unprecedented student loan debt balances, linked by social media, relatively unattached to organized religion, and in no hurry to marry.⁹⁰ While 95% of Americans presently view education, employment, and financial independence to be important steps into adulthood, only half believe that it is necessary to marry.⁹¹ Against this backdrop, student loan policy has carved a marriage penalty into income-based student loan repayment: if a borrower opts into an income-based repayment plan to manage student loan debt, marriage generally means that the repayment burden will be (perhaps significantly) higher.⁹² The added burden of factoring a non-borrowing spouse’s income into student loan repayment may cause the cash-strapped borrower to lean further into cohabitation⁹³—which affords many of the

⁸⁹ According to a recent study by University of Virginia and Harvard University researchers, titled *Intimate Inequalities: Love and Work in a Post-Industrial Landscape*, those who find it difficult to meet financial obligations are less likely to marry. Fariss Samarrai, *Love and Work Don’t Always Work for Working Class in America, Study Shows*, UVA TODAY (Aug. 13, 2013), <https://news.virginia.edu/content/love-and-work-don-t-always-work-working-class-america-study-shows>. The researchers quote Sarah Corse: “Working-class people with insecure work and few resources, little stability, and no ability to plan for a foreseeable future become concerned with their own survival and often become unable to imagine being able to provide materially and emotionally for others.” *Id.*

⁹⁰ *Millennials in Adulthood*, PEW RES. CTR. (Mar. 7, 2014), <http://www.pewsocialtrends.org/2014/03/07/millennials-in-adulthood/>.

⁹¹ Silva, *supra* note 87. “[A]mong younger Americans, marriage really is looking more and more like something you’d have to buy at Tiffany’s.” Jordan Weissmann, *Sorry, Marriage Is a ‘Luxury Good,’* THE ATLANTIC (Oct. 30, 2013), <http://www.theatlantic.com/business/archive/2013/10/sorry-marriage-is-a-luxury-good/281016/>.

⁹² See Haneman, *supra* note 54.

⁹³ While this Essay focuses upon marriage, student loan indebtedness will likely impact early relationship formation. Though it is unlikely that student loan borrowers on the dating scene will be forced to wear a giant red letter “D,” a question regarding student loan indebtedness may arise early in the courtship as a screening mechanism.

economic advantages of marriage without the accompanying (potentially staggering) impact upon student loan payments.⁹⁴ Marriage may soon become a luxury to be enjoyed later in life or not at all—a ritual enjoyed by those with sufficient means to not be concerned with student loan debt repayment.

⁹⁴ “A Corvette. A home in the Hamptons. A Hermes handbag. Oh, and marriage. Because marriage, too, is fast becoming a luxury good.” Cook, *supra* note 87.