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THE REAL MARRIAGE PENALTY: HOW WELFARE LAW DISCOURAGES MARRIAGE DESPITE PUBLIC POLICY STATEMENTS TO THE CONTRARY—AND WHAT CAN BE DONE ABOUT IT

Spencer Rand

INTRODUCTION

Couples regularly complain about marriage penalties, discovering that the tax consequences of marrying make the cost of marriage prohibitive. Although attempts were made in the last decade to reduce

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1 Although this article deals largely with marriage penalties outside of the tax system, a commonly discussed marriage penalty is increased federal income taxes that married couples must pay. The penalty stems from using a progressive tax system while at the same time trying to tax all married couples at the same rate. Though a marriage neutral system is theoretically possible with a flat tax system or in a system where family members are taxed individually, the federal system does not work this way. Generally, couples where both spouses work at similar income levels suffer marriage penalties where those in which one spouse earns substantially more than the other gets a tax bonus. See Leslie A. Whittington & James Alm, Marriage Penalty, in THE ENCYCLOPEDIA OF TAXATION AND TAX POLICY 251 (Joseph J. Cordes et al. eds., 2d ed. 2005), available at http://www.taxpolicycenter.org/taxtopics/encyclopedia/Marriage-Penalty.cfm.

2 Although taxes are disparate for people who marry from single wage earners, it is not clear that marriage always has a negative impact on income taxes. In fact, marriage bonuses are quite common. In 1996, 42% of couples had marriage penalties while 51% received marriage bonuses. See ROBERTON WILLIAMS & DAVID WEINER, CONG. BUDGET OFFICE, FOR BETTER OR FOR WORSE: MARRIAGE AND THE FEDERAL INCOME TAX (June 1997), http://www.cbo.gov/sites/default/files/marriage.pdf.
those penalties for the middle class, the poor were not helped by these changes. Along with tax penalties, including low-income wage earners facing severe decreases or becoming entirely ineligible for the Earned Income Tax Credit (EITC) when they marry, the most common penalties reduce or eliminate government benefits upon marriage.

It is paramount for many individuals to retain welfare benefits to survive economically. Most low-income individuals do not marry people of greater means, but rather spouses who themselves are often low-wage workers or close to the poverty line. The penalties hinder both people who want to marry for intrinsic reasons, like love, and those who want to marry as a practical step to alleviate poverty.

This outcome is ironic because it is directly counter to United States policies and priorities. In fact, some laws have policy statements enacted within them that explicitly state Congress’s intention to promote marriage, while those same laws contain programs with severe marriage penalties. For example, in the Personal Responsibility

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3 Since the mid 2000s, the federal income tax rates have been changed so that if individuals make about the same amount of money, their tax rates should not increase by marrying. See 26 U.S.C. § 1 (2013) (which includes the tax rates that are modified, as described in 26 U.S.C. § 1(f)(8) (2013), so that increases for spouses earning similar amounts do not come into effect until the couples earn $148,500 combined). Rev. Proc. 2013-35, 2013-47 I.R.B. 537 (2013).

4 Although the focus of this article is on welfare programs, income tax marriage penalties and bonuses are the most pronounced and are either problematic or beneficial to low-income families. In 1996, low-income people paid eight percent more in income taxes or gained five percent more in a marriage bonus, with bonuses being more common than penalties, creating a $3 billion net bonus. WILLIAMS & WEINER, supra note 2, at 15–17, 21 (noting, using 1996 numbers, that each individual head of household could take a deduction of $5,900 while a couple could only take a deduction of $6,700. Updating this to 2012, two heads of household could take an $8,700 deduction while a married couple could only take a $12,200 one). Although the marriage penalties can be due to the earned income tax credit that will be discussed below, it can also be due to two people not both being able to take credit for being head of household in their standard deductions. IRS PUBLICATION 501, INT. REV. SERV. tbl. 6, http://www.irs.gov/publications/p501/ar02.html.

5 Some suggest that many choose not to marry because eligible partners are poor enough that they are as likely to be taking on more economic issues than improving their financial condition. See Wendy Sigle-Rushton & Sarah McLanahan, For Richer or Poorer: Marriage as an Anti-poverty Strategy in the United States, 57 POPULATION 509 (2002) (suggesting that 46% of unwed fathers marrying unwed mothers would still be below 200% of the federal poverty line). See Deborah A. Harris & Domenico Parisi, Looking for “Mr. Right”: The Viability of Marriage Initiatives for African American Women in Rural Settings, 28 SOCIOLOGICAL SPECTRUM 338 (2008) (suggesting that poor people often have a goal of marrying but postpone it until they feel financially secure).
and Work Opportunity Act of 1996 (PRWORA), the new Temporary Assistance for Needy Families (TANF) program made marriage promotion an explicit goal of the program and Congress explicitly stated its hope that more marriages would reduce out-of-wedlock births and thereby reduce welfare rolls. Despite these goals, TANF benefits are greatly reduced when parents move in together. Marriage promotion policy continues today, through further legislation pushing marriage promotion and through government allocation of about two billion dollars to marriage promotion programs each year.

Marriage promotion policy does not take into account that when couples marry, at least in the short term, couples need the combined total income of both spouses in order to escape poverty. If couples lose welfare benefits when they marry, but do not lose benefits if they live apart or live together unmarried, the couples have no choice but to forgo marriage. Instead of gaining ground, these couples are more likely to be financially devastated if they marry. This is not a theoretical problem—it affects people every day. Consider the following examples from the author's practice:

1. Due to residual side effects of cancer that leave her with neuropathy so severe she cannot effectively use her hands, Ms. A receives $721 per month in Supplemental Security Income (SSI) disability benefits, the federal government's welfare program for people who have proven to the government that due to a disability, they cannot work to support themselves. Through this eligibility, she also receives Medical Assistance, a state administered federal health insurance program to cover her basic healthcare needs. She meets a parking lot attendant she wants to marry who earns $2,500 per month and has no health insurance through his job. If she marries him, his

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8 See 42 U.S.C. § 603(a)(2) (2006) (discussing funding to promote marriage and fatherhood programs). See also 42 U.S.C. § 603(a)(2)(D) (2014) (marriage and fatherhood funding continues with the 2012 fiscal appropriation being $75,000,000 for fatherhood programs and $75,000,000 for marriage promotion programs). A total of about two billion dollars is spent each year on marriage promotion programs under TANF. See infra note 90 and accompanying text.
income will be deemed to her. She will lose her SSI benefits,\textsuperscript{9} leaving the couple to survive on $2,500 per month before taxes instead of the $3,221 that they could have lived on if she kept her SSI benefits, cutting their income by more than 20%. Ms. A will lose most of her Medical Assistance benefits, as her potential spouse's income will be too high. No matter what income he makes, the couple will lose Ms. A's SSI benefits and Medical Assistance if together the couple has more than $3,000 in assets beyond their home and a few other items.\textsuperscript{10} For Ms. A, who needs medicine and therapy to control her symptoms, this is an untenable choice and she cannot marry. The couple must stay separated or if instead Ms. A lives with her potential spouse without marrying, she will either be able to keep her $721 per month check from SSI or if the government finds she is being supported by her spouse, she will be allowed to keep two-thirds of it.\textsuperscript{11} She will also keep her Medical Assistance. She will not, however, gain the other benefits of marriage.

2. Ms. B is on Medicare D and needs a very expensive drug to treat her blood cancer. The drug is covered under Medicare D but would cost $6,000 per month without Medicare D coverage. Because she worked before she got cancer, Ms. B qualifies for Social Security of $800 per month, which makes her income low enough that she qualifies for “Low Income Subsidy,” also called “extra help,” to help her meet copays.\textsuperscript{12} Further, as her income is low, she gets help with the “doughnut hole,” a part of the Medicare D program built in as a disincentive to overspending, under which after the first $2,950 in a year is spent on prescription drugs by the recipient and the insurer, the recipient is responsible for paying 50% of total drug costs until

\textsuperscript{9} As will be described in Part III of this article, a spouse’s income for SSI reduces the beneficiary’s SSI check one dollar for every two after the first $806 per month or less. 20 C.F.R. § 416.1163(d) (2006).

\textsuperscript{10} As SSI is a welfare program, there are resource caps to benefits. A couple cannot have more than $3,000 if they own in non-exempt property, an amount that has not changed in over 25 years. 20 C.F.R. § 416.1205 (2006).


total out of pocket costs reach $4,700. Ms. B wants to marry. However, Ms. B’s potential spouse has $30,000 set aside for his retirement. Because this puts the two $3,000 over the resource limit for a partial subsidy and $16,000 over the resource limit for a full subsidy, Ms. B would not qualify for the full or partial extra help subsidy, would get no help with her copays, and would have to come up with several thousand dollars once the doughnut hole hit. Similarly, if Ms. B’s potential spouse received more than $1,200 per month in income from most sources, they would be over income for these benefits and therefore ineligible. If the two live together without marrying or if they remain apart, she will continue to get the subsidy.

3. Because his disability began before he was 22 years old, Mr. C received $800 in Social Security disabled adult child benefits due to his cerebral palsy. He met and married a woman who worked full time as a nurse’s aide, bringing home about $1,500 per month. Marriage is an immediate bar for receiving disabled adult child benefits. Because he married, Mr. C is no longer eligible for benefits regardless of his spouse’s income unless his wife is also on Social Security or SSI. Instead of living together on a more survivable $2,300 per month, the married couple has only $1,500 per month, which is approximately 125% of the federal poverty level.

In each of these situations, poor people lose if they marry, and retain status quo public benefits if they do not marry. These penalties do not exist in all cases for all programs. For example, some people receive marriage bonuses under EITC rules while others receive penalties. In all cases, people must carefully consider whether marriage will cause financial harm, which is clearly an unintended consequence of U.S. policy.

The effect of discontinuing benefits upon marriage is that people choose not to marry, forfeiting the economic and legal gains they might achieve in the long term due to the short-term financial disincentive. Further, couples are giving up long-term financial

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16 Id.
17 See infra Part III.

benefits, like government benefits to which spouses are entitled later in life, inheritance benefits, spousal support on separation, and others because they rely on welfare benefits in the short term. A practical policy would eliminate or reduce these penalties and allow for the poor to take advantage of marriage and maintain their welfare benefits to raise their standard of living. The policy might even give additional benefits to those who marry as an incentive to do so.

Perhaps a worse side effect of these penalties is that marriage is becoming a social contract that only the rich can afford. The rich may lose some money through marriage penalties, but without significant impact on their standard of living. The poor lose huge percentages of their income when they marry. Rich and poor people should have an equal opportunity to reap the social, legal, and economic benefits of marriage. It is neither fair, nor what policymakers intended, for the poor to be unable to marry due to welfare penalties.

Part I of this article looks at how marriage promotion programs fit within the history of actions taken in the United States to alleviate poverty. In part, marriage promotion may be suggested because other attempts to address the roots of poverty have failed to make much difference, such as work programs. Part II looks at some reasons why opponents of marriage promotion think that encouraging people to marry is misguided and stems from racism and disrespect for the poor. However, there are strong reasons to believe that marriage has economic, legal, and social benefits. Whether marriage promotion programs should exist is a separate question from whether the poor should be able to choose to marry for pragmatic or emotional reasons. Part III looks at the penalties that exist in welfare programs and catalogues some of the welfare programs that are much harder for married people to obtain. These include many public assistance programs, like SSI and TANF. It also includes some social insurance programs, like some Social Security and Medicare programs. For many programs, couples are better off living together outside of marriage than marrying because it allows them to keep or retain benefits. Part IV suggests some solutions that would make marriage a

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19 See infra Part II.
20 The differences of marriage penalties, between public assistance and social insurance programs, are discussed infra Part III.
more viable option. These range from raising the amount of money married couples can earn or own before they lose benefits, to delaying deeming of income and resources to married couples to give them a chance to develop the pragmatic benefits of marriage.

I. WELFARE AS WE NOW KNOW IT—WHY IT IS ABOUT MARRIAGE AND NOT JUST ABOUT WORK AND NEED

Marriage would generally not be considered an anti-poverty plan if welfare supports were stronger, or if work promotion or other strategies sufficiently alleviated poverty. Unfortunately, as this section will describe, welfare benefits are low and other strategies designed to alleviate poverty generally fail. Marriage is a tool that many must consider to address their needs.

It is not unusual for policymakers to pair decisions on distributing benefits with measures designed to lessen the need to do so. Often these decisions are put forward by legislators as a means to alleviate the causes of poverty before spending taxpayer dollars on welfare benefits, which seems laudable. Disability income programs, like the SSI program, have been considered in conjunction with programs that help people with disabilities develop work skills that could help them return to the workforce, such as programs under the Rehabilitation Act. The Affordable Care Act (ACA) provided government health

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21 One could argue that this was in part the rationale for marriage promotion during the Reconstruction: Marrying would improve people's morality and lessen the need for a welfare program for newly-freed slaves by providing financial support relationships between spouses. Husbands and fathers would be put in a position to support their families through work and thereby lessen the need to provide welfare. See Katherine M. Franke, Becoming a Citizen: Reconstruction Era Regulation of African American Marriages, 11 YALE J.L. & HUMAN. 251, 302–303 (1999) (describing Freedman's Bureau statements that one of the overriding concerns of their work was to make sure marriages could occur so husbands would relieve the state of the obligation to support wives and children. Noralee Frankel, Workers, Wives, and Mothers: Black Women in Mississippi, 1860–1870 (1983) (unpublished Ph.D. dissertation, George Washington University)). See also Angela Onwuachi-Willig, The Return of the Ring: Welfare Reform’s Marriage Cure as the Revival of Post-Bellum Control, 93 CALIF. L. REV. 1647, 1659–61 (2005) (discussing the use of marriage to legitimate children born during slavery so that the state did not have the duty to support them and suggesting that PRWORA and later marriage promotion laws pending in 2005 were designed both for economic purposes and by people who thought they must civilize blacks).

22 This is sometimes explicit or evident when legislation dealing with welfare passed in close proximity to the time that legislation is passed attempting to deal with issues that cause the need for the welfare program. For example, an
insurance coverage for many people, in part by providing expansions of public health insurance, but the ACA also included measures that would lower health care costs, including requirements that employers over a certain size provide health insurance for both the rich and poor, requirements that insurance companies provide preventative care in order to lessen the eventual cost of health care, incentives for employers to provide health insurance benefits, and penalties to large employers that do not provide health insurance benefits, all for the purpose of the government covering fewer people. Therefore, welfare programs that are designed to encourage actions by the poor can partly be seen as programs designed to lessen the need for the government to provide benefits. One could argue that with poverty programs, interpretation of the passage of the 1974 Supplemental Security Income program, 29 U.S.C. § 701 (2014), which provides benefits to those who cannot work due to their disabilities, is that it could not have been passed without first looking at addressing other issues affecting people with disabilities that prevent them from working and require the need for welfare benefits. This was done the year before in the Rehabilitation Act of 1973, which addressed both discrimination against people with disabilities in work and other contexts and also expanded vocational rehabilitation. Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355 (codified as amended at 29 U.S.C. § 701).

Individuals who have income up to 133% of the federal poverty line are covered under medical assistance, a large expansion of eligibility. 42 U.S.C. § 1396a(10)(i)(VIII) (2014). It is beyond the scope of the article to discuss how this has become an optional expansion of benefits. Clearly, this was only one of the ways that the Affordable Care Act expanded health care coverage, which included demanding that private insurance companies provide a full package of health care benefits. 42 U.S.C. § 300gg-6 (2010) (describing what private insurance companies must provide, which includes a package of benefits designed to provide a full range of health care at 42 U.S.C. § 18022(a) (2014)).


See 26 U.S.C. § 45R (2010), for an example of tax credits given to small employers to ensure that they are more likely to provide health insurance.

A primary reason this occurs is that United States policy looks at the problem of need by requiring examination of the individual and the reason why that individual has need in the first place. It does not have to be so. For example, instead of looking at people who are blind and asking if they could work or are working to support themselves, or if they have anyone else who can help them before choosing to offer help, it could be assumed that blindness causes people to have higher expenses. Subsidies could be given to all who are blind to supplement whatever other income they have put together to support themselves, like in social insurance programs. Similar assumptions could be made about all parents needing more money to live on when they have children—allowances could be paid to all parents without looking at whether the parents are poor, are working, or have set up economical
legislation that promotes work or marriage is just another one of these pairings.

The major way that the U.S. welfare system has designed effective work incentive programs that have lessened the need for welfare is by creating social insurance programs. Social insurance programs provide incentive to people who work with the promise that if they work long enough, they will later be supported at least at subsistence levels. The programs are funded by specific taxes taken out of the wages of the employees, taxes paid by employers on the employees' behalf, or a combination of the two. Most employers and employees are required to participate. Some of the best-known United States social insurance programs are Social Security, Medicare, and Unemployment Compensation.

Although there are other forms of welfare described below, social insurance programs are generally the most generous of the welfare programs. Through social insurance programs, people get higher or lower benefits based on their work history, receiving higher benefits if they earned higher salaries or worked more years. A Social Security recipient can receive up to $2,642 per month due to age or disability, with the average retired worker receiving $1,294 per month and the average qualifying person with a disability receiving $1,148 per living arrangements. Many other countries do this. For example, in more than half of the countries in the European Commission, need is not considered at all in distribution of family benefits. In many EU and other European Commission countries, for example, benefits are determined by fitting within a category, without looking at need. For example, one is eligible for family benefits in Austria, Belgium, Bulgaria, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Luxembourg, Norway, Poland, Slovakia, Sweden, or Switzerland. See Family Benefits, EUROPEAN COMM’N, http://ec.europa.eu/social/main.jsp?catld=863&langId=en (last visited Apr. 13, 2015); MISSOC Comparative Tables Database, MISSOC, http://www.missoc.org/INFORMATIONBASE/COMPARATIVETABLES/MISSOCDBASE/comparativeTableSearch.jsp (last visited Oct. 18, 2014).

It is beyond the scope of this article as to whether social insurance programs are welfare benefits or pension benefits. For the purpose of this article, social insurance programs act like welfare benefits and are thought of as such. For a further description of this, see Spencer Rand, Creating My Client’s Image: Is Case Theory Value Neutral in Public Benefits Cases?, 28 WASH. U. J.L. & POL’Y 69, 85 (2008).

Unemployment Compensation programs are administered by states and state law control benefit requirements. However, federal law provides some guidance as to how Unemployment Compensation laws must look through 42 U.S.C. § 503 (2013).
These amounts are substantially over the $972.50 per month federal poverty level, and are some of the only programs that pay enough to support people at subsistence levels or better.

Often, benefits are given only to people who are forced to stop work due to age or disability (Social Security, Medicare) or involuntary loss of a job (Unemployment). Other categories of eligibility that are not work related are not covered. For example, having a short-term disability, becoming pregnant, or needing to care for family members is not covered by social insurance programs.

Further, many of these programs require or encourage recipients to maintain a connection to the workforce. For example, Unemployment denies benefits to people fired for good cause, so that no matter how much they or their employers have paid to insure against the possibility of job loss, they are not covered if they have broken the inherent social contract to work when they can. Similarly, people cannot have voluntarily left work without a valid reason. Even after all this has been demonstrated, people on Unemployment must continue looking for work and be ready to take on work to get the benefits. Some programs do not pay benefits unless one has worked recently, like Unemployment Compensation and Social Security’s disability program only insuring people who get disabling conditions if they have worked within five years of developing that condition.

There are some ways that social insurance programs encourage marriage by providing benefits to workers’ families. An example is


34 The federal poverty level is published each year by the Department of Health and Human Services. In 2014, a family of one in the contiguous United States is considered in poverty if the family has less than $11,670 annually. That amount increases by $4,060 per person in the household. Annual Update of the HHS Poverty Guidelines, 79 Fed. Reg. 3593 (Jan. 22, 2014). It is beyond the scope of this article to discuss whether the poverty level is appropriate. Many suggest that the level is set so low that people must have twice the poverty level to meet their expenses. See Peter Edelman, So Rich, So Poor: Why It’s So Hard To End Poverty In America 26–29 (2012) (discussing how many suggest that people would be better defined as being below poverty at 200% of the federal poverty level). See also Rand, supra note 28, at 92.

35 To qualify for unemployment insurance, a person generally must have not been fired for misconduct or have left their job voluntarily.

36 To qualify for unemployment, you have to be able and available to work, meaning that you are looking for work and capable of performing work.

Social Security, which provides spousal and widow’s disability and retirement benefits that unmarried people with similar relationships to workers cannot share. However, for the most part, social insurance programs are about work. Although some social insurance programs include marriage penalties, as described in Part III, these programs do not generally consider among their policies how people should live their lives other than by encouraging work.

However, there are people who have not or cannot work who therefore do not qualify for social insurance programs or who stop working for reasons other than those that social insurance programs anticipate. There are public assistance programs that can help to support people in these situations. Public assistance programs are for individuals without a substantial work history or for those who leave work for reasons that the United States has not chosen to cover under its social insurance programs. The programs cover a variety of contingencies, like being parents who cannot support their children or being one of those children; being older and presumably aging out of the workforce; having a disability that would qualify for social insurance but not having worked enough to qualify for those benefits; or just not having a source of income. Mostly, the programs are very low-payment programs that often provide much less than subsistence level income to the people that the programs are intended to serve. The old, the blind, and the very disabled who have not worked enough to qualify for social insurance through Social Security qualify for a program that pays people $721 per month (74% of the federal

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38 42 U.S.C. § 402(b)-(f). Social Security is one of the first programs to be extended to gay spouses as well. See SOC. SEC. ADMIN., PROGRAM OPERATIONS MANUAL SYSTEM, GN 00210 (June 2014), https://secure.ssa.gov/apps10/poms.nsf/Inx/0200210000.

39 People with disabilities do not qualify for SSI (or Social Security disability, for that matter) unless they can show that their disabilities are so severe that the disability will last a year and will strongly impair work-related functionality. 20 C.F.R. §§ 416.920, 404.1520 (2012). One might think that a disability that raises a person’s expenses, such as a blind person who can work and has extra expenses to live or a incontinent person who needs to buy diapers would qualify for some income support just based on having a disability. They do not.


41 See SOC. SEC. ADMIN., SSI FEDERAL PAYMENT AMOUNTS, http://www.ssa.gov/oact/cola/SSlamts.html (last visited Oct. 23, 2014), for payment amounts. Some states supplement this amount. States which have their supplements administered by the federal government all pay less than $100 extra per month. SOC. SEC. ADMIN., SI 01415.001 STATE SUPPLEMENTARY PROGRAMS (Aug. 6, 2012), https://secure.ssa.gov/apps10/poms.nsf/lnx/0501415001. For a list of which states
poverty level of $972.50). TANF, the public assistance program for parents and their children, historically pays much less than SSI. The median TANF grant for a family of three is $426 per month, less than 25% of the federal poverty level for a family of three, which is $1,649.16 per month. These amounts are not growing—every state provides less than 50% of the federal poverty line in TANF benefits. People who are not working and do not fit into any of these categories of need get little and in some cases no assistance. As the political discussion exists today, it is unlikely that more money is going to be distributed to the poor any time soon.


46 As of 2011, only 30 states had General Assistance programs, 12 of which required adults seeking help to also have disabilities. See Liz Schott & Clare Cho, Ctr. on Budget & Policy Priorities, General Assistance Programs: Safety Net Weakening Despite Increased Need 1 (Dec. 19, 2011), http://www.cbpp.org/files/10-26-11pov.pdf. The number of states providing General Assistance has decreased by at least one, as Pennsylvania ended its program as of August 2012.

47 One of the reasons that funding for these programs remains so low is that many public assistance programs are block grants administered by the state and are kept low by state legislators to keep budgets balanced. For example, in Pennsylvania, TANF and General Assistance levels have not been increased since 1989. There has been a movement by some to provide much higher levels of assistance to people with extraordinary needs, like longtime homeless people, believing that high levels of support allow people to rebuild their lives and can be cheaper in the long term due to
Because it has been relatively successful with social insurance programs, one would think that social engineering by encouraging or requiring people to work on public assistance would be common and might be sufficient. Although work is regularly pushed, however, work programs and incentives for these people have generally failed. Along with job training, these programs have both carrot-and-stick job incentives built into their administration. TANF is largely an example of a program utilizing the stick method with both state grantees and recipients. Federal block grants require states to demonstrate that they have rules established that require 50% of all families and 90% of two parent families to have a family member working at least 30 hours per week.48 States have corresponding requirements for their recipients demanding that the recipient work,49 with heavy sanctions for people who do not comply with their rules.50 SSI uses more of a carrot approach, allowing recipients who find work on their own to remain on SSI with grants reduced by about one dollar for every two dollars earned, encouraging individuals to obtain work with the hope that aid can be reduced or eliminated.51

the large expenses of hospitalization and incarceration for those who cannot make it with little or no money. For a description of one of these programs, see Malcolm Gladwell, Million-Dollar Murray: Why Problems Like Homelessness May Be Easier To Solve Than To Manage, reprinted in MALCOLM GLADWELL, WHAT THE DOG SAW AND OTHER ADVENTURES 177, 187–192 (2009).


50 In Pennsylvania, a person who fails to comply with work requirements is denied assistance for 30 days or until they comply for the first occurrence, 60 or until they comply for the second occurrence, and permanently for the third. If the person has been receiving TANF for more than 24 months, not only will the person’s TANF benefits be cut off, their entire family’s benefits will be cut off. 55 PA. CODE § 165.61(b) (2002).

51 20 C.F.R. § 416.1112 (2004). For TANF, there is also a work incentive program that counts money at approximately one-third of earnings. In Pennsylvania, there is a 50% earned income disregard for people on TANF. 55 PA. CODE § 183.94
However, although welfare-to-work programs succeed to some extent in reducing welfare rolls, they do little to reduce poverty.\textsuperscript{52} Jobs for former welfare recipients are often low-wage jobs that leave former recipients below the poverty line.\textsuperscript{53} Women may fare worse than men, as they are already disproportionately represented in low-wage jobs and are often pushed into other low-wage jobs through work programs.\textsuperscript{54} Even those fortunate enough to obtain minimum wage jobs remain impoverished.\textsuperscript{55} As pointed out by President Obama in his (2014). However, as TANF grants are so low, it is difficult to say whether these programs provide much incentive, as any work that is substantial would likely cancel out any TANF grant.


\textsuperscript{53} See Chi-Fang Wu, Maria Cancian & Daniel R. Meyer, *Standing Still or Moving Up: Evidence from Wisconsin on the Long-Term Employment and Earnings of TANF Participants*, 32 SOC. WORK RESEARCH 90, 91–97 (2008). The article includes a good summary of research data on employment and earnings of welfare to work programs for mothers receiving TANF, and then reports a study of 14,150 women in a Wisconsin program over six years, concluding that most of the women did not end up with jobs with substantial earnings. Although 22% had earnings over $15,000 per year, only 13% had jobs averaging that much. See also Mickey Hepner & W. Robert Reed, *The Effect of Welfare on Work and Marriage: A View from the States*, 24 CATO J. 349 (2004), arguing that when welfare programs are considered in combination, single working mothers gain little from increasing their income due to disregards of income at lower earnings levels. But see Daniel T. Lichter & Martha L. Crowley, *Welfare Reform and Child Poverty: Effects of Maternal Employment, Marriage, and Cohabitation*, 33 SOC. SCI. RESEARCH 385 (2004), suggesting that work was more effective than marriage or cohabitation in raising children out of poverty and attributing half of the rise to women working.


\textsuperscript{55} See Maria Cancian et al., *UNIV. OF WISCONSIN-MADISON INST. FOR RESEARCH ON POVERTY, Income and Program Participation among Early TANF Recipients: The Evidence from New Jersey, Washington, and Wisconsin*, 22 FOCUS 2 (2003) (comparing TANF welfare to work outcomes in Wisconsin, New Jersey, and Washington and concluding that all average less than $10,000 per year in earnings
2013 State of the Union address, an individual working full time at minimum wage earns $14,500 per year, which is below the federal poverty line for a family of three.\textsuperscript{56} Even if the minimum wage were increased to $10.10 per hour, as suggested in President Obama's 2014 State of the Union Address,\textsuperscript{57} a family of three could hardly rise above the poverty level. Further, minimum wage jobs also leave people without necessary benefits, like health insurance. Fewer than 26% of people working jobs that pay less than $8.24 per hour have access to health insurance from work—and less than 13% take that insurance.\textsuperscript{58} Though there are exceptions, work has not been a good overall strategy\textsuperscript{59} to reduce poverty.\textsuperscript{60}

**II. WHY MARRIAGE MIGHT HELP ALLEVIATE POVERTY**

Because job creation has not been effective in addressing poverty, some have put forward marriage-promotion as a method to do so, particularly among people receiving public assistance.\textsuperscript{61} Although

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\textsuperscript{56} Barack Obama, President of the United States, State of the Union Address (2013), (transcript available at \texttt{http://www.whitehouse.gov/the-press-office/2013/02/12/remarks-president-state-union-address}). This figure can be calculated by multiplying the federal minimum wage of $7.25 per hour by 40 hours per week and 50 weeks per year. 29 U.S.C. § 206(a)(1)(C) (2007).

\textsuperscript{57} Barack Obama, President of the United States, State of the Union Address (2014), (transcript available at \texttt{http://www.whitehouse.gov/the-press-office/2014/01/28/president-barack-obamas-state-union-address}).


\textsuperscript{59} The number of people living below the federal poverty line has actually decreased since 1996, from 13.7% to 15% in 2012. The number of female-headed households in poverty has remained relatively constant and in fact has increased slightly since 1996, from 35.8% to 33.9% in 2012. U.S. CENSUS BUREAU, HISTORICAL POVERTY TABLES—PEOPLE, TABLE 2. POVERTY STATUS, BY FAMILY RELATIONSHIP, RACE, AND HISPANIC ORIGIN, \texttt{https://www.census.gov/hhes/www/poverty/data/historical/people.html} (last visited Oct. 23, 2014).

\textsuperscript{60} Left out of this discussion is the push by some for improving our education system toward getting people out of poverty. As improving education is tied to getting people better jobs, the points that have been made are similar.

\textsuperscript{61} For a description of particular marriage promotion programs that have been tried, see THEODORA OOMS, STACEY BOUCHET & MARY PARKE, CTR. FOR LAW &
motivation for promoting marriage that is expressed or implied in recent legislation may not be shared by all Americans, policymakers are correct that marriage could be a helpful way to reduce the level of poverty.

A. Marriage Promotion

The rhetoric around marriage promotion programs has escalated, as has government investment in those programs. The fight about whether marriage promotion policies should be funded has become separate from the issue of whether marriage can help alleviate poverty—which it may.

In large part, marriage promotion advocates have been successful in enacting laws explicitly pairing marriage with welfare benefits. In the Personal Responsibility and Work Opportunity Act of 1996 (PRWORA), welfare benefits for parents with children were considered and enacted, along with programs providing job training and programs encouraging marriage. PRWORA, which included the new TANF program and stated that it was designed to provide monetary assistance for children to be cared for in their own or in relatives’ homes, paired this assistance with programs designed to “end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage.” Some of the motivation for promoting marriage included reducing “out-of-wedlock” pregnancies and promoting two parent families. Marriage promotion was seen as an economic tool to ensure that two parents

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would be in the home to improve the chances that children would not be poor and would not need TANF.67

Pairing marriage with welfare, however, is different from asking people to work or to take other steps to alleviate poverty and often makes the poor and their advocates bristle for many reasons. For some, marriage promotion is anathema as it was put forward at a time when the United States was pushing morality legislation to promote marriage generally. The most prominent recent version of policy promoting marriage was the Defense of Marriage Act (DOMA).68 Passed in the same year by the same Congress as the PRWORA, DOMA is a good example of the moral values legislation that tied the receipt of government benefits (among other things) to a willingness to conform to a traditional version of marriage.69 To the extent that a marriage promotion in TANF supported heterosexual marriage, some questioned whether PRWORA was developed for economic reasons or to engineer poor families to resemble those of the majority of lawmakers in 1996.

Further, some of the concern that marriage promotion was just pushing majority morals on the poor is founded on its resemblance and possible connection to historical programs from Reconstruction. The Freedman’s Bureau pushed a welfare policy for former slaves that encouraged them to marry as almost a magical panacea to import them into “civilized” life. Former slaves, prevented from marrying prior to emancipation, were considered to have low moral standards for not having married. It was felt that these moral failings led to poverty.70 To quote the Freedman’s Bureau, “Marital relations are invaluable as a

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69 Although beyond the scope of this article, the Defense of Marriage Act among other things made it so that gay married couples could not obtain Social Security benefits based on each other’s records, a policy that continued until the Supreme Court allowed for recognition of these marriages. United States v. Windsor, 133 S. Ct. 2675 (2013).

70 See Franke, *supra* note 21 (arguing that some blacks were denied the right to marry because marriage implied that blacks had the rights of free citizens. It also discusses that during slavery, marriage would be impractical for slave owners from a business sense as marriage would make it more likely that families would have to be kept intact and family members would be less of a tradable commodity. When slavery was no longer possible, intact families were no longer banned but marriage was thought to be important for moral and economic reasons, leading to marriage promotion).
means of promoting industry. Morality encourages industry and prosperity. Immorality in the sexual relations produces idleness, intemperance, and apathy." 71 To the extent that welfare recipients today are caricatured as "welfare queens," an assumption that can be translated today as poor blacks seeking to live off the system, 72 or to the extent that welfare recipients are thought of as uncivilized or undisciplined people needing marriage to temper them, marriage promotion can be seen as an unwelcome personal attack. 73 Further, it is convenient to blame poor people, who are often pictured as minority women, for moral failings (such as unwed teen pregnancy) leading to poverty. This assumption of moral failure makes it less likely that others will feel compelled to address poverty. 74

In addition to the implied-morals insult of these marriage promotion initiatives, there are several other reasons marriage promotion is disliked. First, blaming the poor for their plight ignores the United States economic system which lacks opportunity for upward financial mobility. Focusing policy on marriage promotion suggests that the poor have a realistic opportunity (through marriage or other actions) to escape poverty. This assumption may itself be flawed. Although there are certainly individual cases where people have escaped poverty, these are not generalizable cases and indeed there are very few steps individuals can take that have been proven effective to improve economic circumstances. 75 According to studies, 70% of people who start out in the bottom earnings quintile remain in the

71 See Onwuachi-Willig, supra note 21, at 1661. See also Rachel Cohen, Two Steps Forward, One Step Back: Evaluating the Healthy Marriage Initiative in Light of America's Welfare History, 17 GEO. J. ON POVERTY L. & POL’Y 145 (2010) (looking at the issue as a marginalization of black men during Reconstruction and afterwards by providing them with less welfare and demanding that they work to support families).


73 For a description of this opinion that the 1996 welfare reform laws were passed because legislators clearly felt that welfare recipients were primarily lazy black women, see A. Mechele Dickerson, America's Uneasy Relationship With the Working Poor, 51 HASTINGS L.J. 17, 27–32 (1999).


75 In fact Koons, supra note 67, suggests that marriage promotion is designed to keep women in low-income subservient roles.
bottom-two income quintiles. An individual's race may be most predictive of his or her chance to escape poverty. Education seems to give only a small boost, and for the most part helps only those who obtain a four-year college degree. There is little (including employment as discussed in Part I of this article) that has been proven to help a person change economic status. Asking the poor to marry or to take other steps to alleviate poverty is questionable.

Second, it does not necessarily follow logically that because married people are often richer than poorer people, marrying itself will make poorer people richer as a matter of course. It may be instead that richer people marry more often because they can afford to do so while the poor cannot, meaning that having money is a prerequisite to marrying, not that marrying brings money. In fact, people may wait until they are in a better economic circumstance to marry, making marriage a sign of better economic standing and not the cause of it.

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77 URAHN, supra note 76, at 18–22.

78 Id. at 23–26. See also Bengali & Daly, supra note 76 (the authors note the dramatic change in economic status when the poor get college degrees but note that only seven percent of the poor do so).

79 Economic segregation tends to preclude economic mobility. For example, a large middle class in areas in which the poor reside seems to allow for larger economic mobility for all. See BEN OLINSKY & SASHA POST, CTR. FOR AM. PROGRESS, MIDDLE-OUT MOBILITY: REGIONS WITH LARGER MIDDLE CLASSES (Sept. 4, 2013), http://cdn.americanprogress.org/wp-content/uploads/2013/08/MiddleOutMobility.pdf. Though where one lives is not as immutable as race, it is unlikely the poor can do anything to increase the middle class in their region other than to move places where they likely cannot afford housing where the middle class is larger.

80 See Daniel T. Lichter, Deborah Roempke Graefe & J. Brian Bowen, Is Marriage a Panacea? Union Formation Among Economically Disadvantaged Unwed Mothers, 50 SOCIAL PROBLEMS 60, 74 (2003) (suggesting that women who marry and stay married have a better chance of escaping poverty, while those who marry and divorce may be worse off).

81 See Harris & Parisi, supra note 5.

82 See Katrina Running & Louise Marie Roth, To Wed Or To Work? Assessing Work And Marriage As Routes Out Of Poverty, 17 J. OF POVERTY 177, 193 (2013)
Alternatively, it may be that something else, such as education or maturation, correlates with more money and ability to marry. If it is true that richer people marry, poor people marrying may just mean more poor married people. It is also not necessarily true that if marriage promotion programs make it so fewer children are born into poverty-stricken families that those children will not become poor as adults. In fact, studies show that children born to married parents are not necessarily protected from poverty as adults.\textsuperscript{83}

Third, assuming that marriage itself provides escape from poverty, marriage promotion programs would likely not be necessary to show poor people that marrying would improve their economic status. In the marriage penalty area, the Social Security Administration understands this and has written about poor people not marrying particularly to avoid penalties.\textsuperscript{84} It is unlikely that if marriage were the key to ending poverty, poor people would need a rocket scientist or a social worker to tell them so.

Fourth, no one likes being told what to do. Studies suggest that marriage promotion programs fail because people do not want to get married for a variety of legitimate reasons. For example, one study shows that women find marriage will limit their independence, be

(suggesting that black women in particular are more likely to wait until they are more financially secure to marry).

\textsuperscript{83} See Jens Ludwig & Susan Mayer, "Culture" and the Intergenerational Transmission of Poverty: The Prevention Paradox, 16 FUTURE OF CHILDREN 175 (2006) (which suggests that poor adults come from both poor and non-poor families and that addressing poverty for some children does not address poverty in the next generation). But see Paul R. Amato & Rebecca A. Maynard, Decreasing Nonmarital Births and Strengthening Marriage to Reduce Poverty, 17 FUTURE OF CHILDREN 117 (2007) (suggesting that if poor children were wealthier and healthier including by decreasing nonmarital births, poverty would be reduced by their estimates up to 29%); Adam Thomas & Isabel Sawhill, For Love and Money? The Impact of Family Structure on Family Income, 15 FUTURE OF CHILDREN 57 (2005) (showing through simulation that marriages between low income couples produce fewer children in poverty and suggesting that at least coupling would reduce poverty).

\textsuperscript{84} In an amazingly troubling study, authors working with the Social Security Administration’s Office of Policy found that (1) couples may not always report whether they are married; (2) non-married cohabiting SSI recipients are more likely to live above the poverty level while married ones are more likely to live below it; and (3) non-married cohabiting SSI recipients who try to work are more likely to be in poverty than married couples who do so. Melissa Koenig & Kalman Rupp, SSI Recipients in Households and Families with Multiple Recipients: Prevalence and Poverty Outcomes, 65 SOCIAL SECURITY BULLETIN 14 (2003/2004), available at http://www.ssa.gov/policy/docs/ssb/v65n2/v65n2p14.pdf.
unlikely to increase their financial stability, and may tie them to people with whom they do not want to be connected. 85

Fifth, focusing welfare policy on marriage diverts attention from other strategies that might be used to alleviate poverty. 86 It does not address problems such as there not being enough well-paying jobs for men or women to make marriage more economically helpful. 87 It also does little to improve the economic system or other circumstances for all, including those who cannot or do not want to marry. 88

Finally, it is clear that the programs instituted have largely failed to increase the numbers of poor people marrying or leaving welfare. In practice, the programs are expensive and generally ineffective. 89 In 2012, for example, federal and state governments spent over two billion dollars on marriage promotion programs, while at the same time spending only nine billion dollars more on providing actual aid and services to people in need. This means that about 18% of money that is spent on addressing need is not going to meet needs directly, but instead on a speculative hope that marriage will decrease the need. 90 This might not be problematic to all if there was any evidence that the

86 See EDELMAN, supra note 34, at 4–5 (implying using marriage penalties as an excuse for failed welfare policy is a copout. Edelman is reacting to comments by Robert Rector of the Heritage Foundation in a congressional committee hearing where he stated that many welfare programs have anti-marriage (and anti-work) effects, that “[t]he single, strongest cause of poverty in the United States today is the lack of marriage,” and he continues by dividing the United States into the rich caste of married people with college degrees and the poor caste of unmarried people with high school degrees. See Duplication And Inefficiencies In Federal Social Welfare Programs: Hearing Before the S. Comm. on Regulatory Affairs, 112th Cong. 1 (2011).
89 See JUDITH A. LEVINE, AIN’T NO TRUST: How BOSSES, BOYFRIENDS, AND BUREAUCRATS FAIL LOW-INCOME MOTHERS AND WHY IT MATTERS 157–58 (2013) (looking at reasons why women do not trust men in their life and why they choose to marry them, and citing studies suggesting that numbers of marriages have not increased since welfare reform) (citations omitted).
marriage promotion programs were actually lowering the number of unmarried people in the country or lowering the number of people in poverty. Unfortunately, there is no evidence to show any impact in these outcomes. Despite marriage promotion and fatherhood programs written directly into the TANF program since 1996, the rates of marriage among poor people is not increasing and may be decreasing. In 2013, just under 50% of all people were married and living with a spouse. For low-income people, the numbers are significantly lower: About 32% of women with income of less than $5,000 are married and living with a spouse, while about 41% of women with income between $5,000 and $14,999 do so, with the statistics being even lower for men. When these numbers are compared to studies done prior to the marriage promotion funding in the 2005 Deficit Reduction Act, it is clear that the numbers are not improving and may be getting worse. In 2003, 30.5% of people with incomes below $10,000 were married and 46% of people with incomes between $10,000 and $14,999 were married. Either poor people are not getting the message, or something is getting in the way of people choosing to marry.

Not only are fewer people marrying, but marriage has not necessarily proven to be an effective way to get off of welfare. Only between two and nine percent of people leaving welfare do so due to getting married. Although this might seem like a substantial number,

93 Id.
95 JASON FIELDS, U.S. CENSUS BUREAU, CURRENT POPULATION REPORTS, AMERICAN FAMILIES AND LIVING ARRANGEMENTS: 2003 15 (2004), https://www.census.gov/prod/2004pubs/p20-553.pdf. Table 6 interprets results of the U.S. Census Bureau, Current Population Survey, Annual Social and Economic Supplement, 2003, and demonstrates that 117,172,000 out of 225,257,000 people over 15, or about 52% of people, were married and living with their spouses in 2003. The number of people married by income level is described in Table 2 and the percentages above are math calculations based on those tables.
96 For an explanation of these rules, see GENE FALK & JILL TAUBER, CONG. RESEARCH SERV., RL31170, WELFARE REFORM: TANF PROVISIONS RELATED TO
it is the same as the number of people leaving welfare because they find that they feel hassled by the welfare system, and the number is well below those leaving because they do not want to be on welfare or they cannot figure out or do not manage to comply with redetermination requirements. As of 2011, despite marriage promotion, and the two-parent family policy, only 5.3% of TANF grants go to two-parent families, a number that has not significantly changed over the years.

B. The Benefits Of Marriage

With marriage promotion programs failing and with all of the reasons to oppose them as disrespectful and illogical, there still may be good reason for the U.S. to support marriage among all economic classes. There are economic, legal, and social reasons why marriage benefits individuals and society, were marriage penalties not as onerous.

1. Economic Benefits

One of the most prominent economists to have considered whether marriage can be an economic boon is Gary Becker, in his *Treatise on the Family*. Becker considers marriage to have huge economic value. In part, Becker bases this idea on each spouse’s ability to specialize in certain activities for the benefit of the family unit. His vision of marriage is as a heterosexual union and when he talks of specialization, he divides tasks in part based on biological differences between men and women.


Devere, supra note 96, at 12.


Gary S. Becker, A Treatise on the Family (enlarged ed., 1993). This work might not have focused as much on heterosexual coupling had it been written a few decades later. Becker clearly feels that differences between men and women complement each other economically, in part due to biological childbearing roles and in part due to difference assumed from stereotypical male/female roles.

Id. at 39, 62.
between men and women. He sees women specializing in household chores, particularly during childbearing and childrearing years. Although he attributes some of this to the time and energy many women spend raising a family, he attributes some to earnings discrepancies between men and women, suggesting that if men earn more than women, it is more efficient for men to be the ones in the workforce.

Alongside specialization, Becker also looks at how altruism works in married families to increase the couple’s economic position. Becker suggests that it is not necessarily selflessness that leads to this altruism but that by working together to assist each other, married couples raise the entire family income, making life better for all of the family.

Becker is not alone in theorizing that there can be large economic benefits from marriage. Linda J. Waite and Maggie Gallagher suggest many economic gains. Along with agreeing with Becker that specialization in marriage is a large advantage to married couples, Waite and Gallagher believe that being married “until death do us part” is quite significant. They consider this a type of “marriage insurance,” making it so that each person helps the other in bad times.

101 Id. at 39.
102 Id. at 64.
103 Id. at 41. Becker points out that in 1977, men worked more hours, earned more per hour, and worked more weeks than women. These statistics likely hold true today. In 2012, women earned 81% of what men did on a weekly basis and 77 per cent of what they did on an annual basis. See ARIANE HEGEWISCH ET AL., INST. FOR WOMEN’S POLICY RESEARCH, FACT SHEET: THE GENDER WAGE GAP: 2013: DIFFERENCES BY RACE AND ETHNICITY: NO GROWTH IN REAL WAGES FOR WOMEN (Mar. 2014), http://www.iwpr.org/publications/pubs/the-gender-wage-gap-2013-differences-by-race-and-ethnicity-no-growth-in-real-wages-for-women. See also Joni Hersch, Male-Female Differences in Hourly Wages: The Role of Human Capital, Working Conditions, and Housework, 44 INDUS. & LAB. REL. REV. 746, 749–56 (1991), cited in LINDA J. WAITE & MAGGIE GALLAGHER, THE CASE FOR MARRIAGE: WHY MARRIED PEOPLE ARE HAPPIER, HEALTHIER, AND BETTER OFF FINANCIALLY (2000). Much of Hersch’s article deals with wage gaps between men and women and suggests that men may earn more for a variety of reasons ranging from previous work experience and the likelihood that women select jobs with better conditions that may pay less to discrimination against women.
104 BECKER, supra note 99, at 281.
105 Id. at 281–82.
107 Id. at 25–30, 102–3.
times. Because marriages make clear to each spouse that there is a primacy to the relationship, trust develops that makes the general benefits that couples gain by living as households of two more certain. Among the general couple’s benefits, they note how much cheaper it is to live as a couple than to maintain two separate households. They note that looking at poverty guidelines, two people can live at about 130% of the sum of the cost of each living separately. Waite and Gallagher further suggest that marriage itself may be the sort of encouragement that allows people to make better short and long term economic choices that help them develop a better standard of living, such as saving more and purchasing real estate—things that help build wealth. They also find that statistically, men in particular do better economically when married, citing a study that men who marry make 17% more than non-married men.

Other studies suggest further reasons marriage may be economically beneficial. Married couples stay together longer than cohabiting ones. About half of cohabiting couples separate in the first year and nine out of ten separate within five years. This is in contrast to marriages, which have a median length of over 20 years.

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108 Id. at 31. See also BRADFORD WILCOX & ANDREW J. CHERLIN, CTR. ON CHILDREN & FAMILIES AT BROOKINGS W., THE MARGINALIZATION OF MARRIAGE IN MIDDLE AMERICA 2 (2011) (citing studies suggesting that at least when they have children, a larger percentage of couples stay together for more than 12 years beyond their children’s birth than do non-married couples who have children).


110 Id. at 30 (According to the author’s calculations, it is presently closer to 135%, as the federal poverty line for two is $15,730, which is almost 135% of the federal poverty line for one of $11,670). See Annual Update of the HHS Poverty Guidelines, 79 Fed. Reg. 3,593 (Jan. 22, 2014).

111 WILCOX & CHERLIN, supra note 108, at 102 (citing Hersch, supra note 103).

112 For a summary of economic studies that have been done looking to whether marriage is likely to increase economic survival, see ROBERT I. LERMAN, U.S. DEP’T OF HEALTH & HUMAN SERV., OFFICE OF THE ASSISTANT SEC’Y FOR PLANNING & EVALUATION, MARRIAGE AND THE ECONOMIC WELL-BEING OF FAMILIES WITH CHILDREN: A REVIEW OF THE LITERATURE (2002), http://www.urban.org/uploadedpdf/410541_litreview.pdf.

113 See Daniel T. Lichter, Zhenchao Qian & Leanna M. Mellott, Marriage or Dissolution?: Union Transitions Among Poor Cohabiting Women, 43 DEMOGRAPHY 223, 231 (May 2006) (suggesting that 50% of cohabitations without marriage end within one year and that 90% end within five years, and that poor couples are less likely to end their relationships in marriage).

It is much more likely that couples that stay together for twenty years will be able to obtain the economic benefits of coupling.

There are economists, however, who question whether marriage is likely to significantly improve the economic status of people, and find the entire proposition questionable. Although many of these economists agree with data that suggests that married couples tend to be in poverty much less than single people and more children in single-parent families live in poverty, many find it unclear whether having single mothers marry the fathers of their children will do much to change this. Unmarried men who father children are often younger and poorer than their married counterparts, and unmarried women already have less income to contribute to the family than married women. It is not clear that poor women marrying poor men would develop the same economic characteristics as the women who presently marry and have children.

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115 Carmen DeNavas-Walt et al., U.S. Census Bureau, Income, Poverty, and Health Insurance Coverage in the United States: 2011 17 (2012), http://www.census.gov/prod/2012pubs/p60-243.pdf (describing that 6.3% of married couples are in poverty while 31.7% of female headed households with no husband present and 15.8% of male headed households with no wife present are in poverty).


117 See Cassandra Chaney & Pamela Monroe, Transitions to Engagement Among Low-Income Cohabiting African American Couples: A Family Perspective for Policy, 32 J. FAMILY ISSUES 653 (2011) (suggesting that it is in part the economic and educational limitations of men that are keeping low income couples from marrying). See also Cohen, supra note 71 (suggesting that marriage promotion programs do nothing to improve the economic well-being of men with jobs programs for them but focus only on women’s jobs and marrying, making it unlikely that men will have more money to support their new spouses; and recommending programs focused on keeping men out of jail and work programs to make them otherwise more similar economically and educationally to women).

118 Rushton & McLanahan, supra note 5. In this article, the authors interpret data from the Fragile Families and Child Well-Being Study of Columbia and Princeton Universities and conclude, among other things, that unless marrying changes the earning characteristics of people, adding the income of unwed fathers to that of their unwed mothers would still leave 46% of families below the federal poverty line (FPL), as compared to the 15% of current married couples below that line. They also conclude that only 32% of families would be able to earn over 200% of the FPL if they married and men worked full time at their current earnings while
2. Legal Benefits

Because marriage has been a privileged relationship in American law, the law provides for many long-term benefits that poor people must forgo if they do not marry, particularly regarding rights to property and income. A policy that would allow people to marry without the severe short-term consequences would allow for these long-term benefits to assist people later in life.

A primary benefit that married couples gain is a right to each other’s assets. Although some couples give each other rights to property from the beginning of their relationship by naming one another on the title of their assets so they are jointly owned, and although some write wills benefiting a partner, marriage makes it so that spouses inherit property on death by operation of law. Designed to ensure a fair division of property in part to replicate divorce property settlement laws, recent changes to the Uniform Probate Code state that a surviving spouse is entitled to the first $75,000 of their deceased spouse’s estate on death, and if the estate is more than $150,000, up to 50% of marital property on death. There is no such provision for people who live together without an extensive legal action to prove some type of equitable ownership.

women worked half time (accounting for child rearing), as opposed to 68% of currently married couples.

Some have questioned whether privileging marriage in the law and particularly the tax system is appropriate. See Sharon Motro, A New “I Do”: Toward a Marriage Neutral Income Tax, 91 IOWA L. REV. 1509 (2006), in which Motro suggests that looking at whether families economically partner is a better way to address tax issues than whether they marry. See also Katharine K. Baker, Homogenous Rules For Heterogeneous Families: The Standardization Of Family Law When There Is No Standard Family, 2012 U. ILL. L. REV. 319 (2012).


UNIF. PROBATE CODE § 2-202 (amended 2014). All of the deceased spouse’s income may not be considered part of the marital estate, although under one alternative in the Uniform Probate Code it would be if the couple is married 15 years (with a smaller percentage paid otherwise) and under another, the marital estate is designed to replicate what would be marital property under divorce law. UNIF. PROBATE CODE § 2-203 (amended 2013).

Although it is possible that people who do not marry would be able to use lawyers, including low-income legal services attorneys, to plan for these issues, there is such a dearth of legal services available to the poor that it is unlikely that estate planning among non-married couples or taking legal action to enforce equitable
Similarly, married people gain support and property rights from each other upon marriage that determine division of property if the parties separate. Currently, the best way to secure support rights from a partner, or to gain an interest in property that a partner obtains during a relationship, is to be part of a traditional married couple. The law predominantly recognizes rights of partners in traditional marriages (for example there are alimony and spousal support rules in every state). Further, although property rights are different in community property and separate property states, there are property division laws with some form of equitable distribution in every state.

3. Rights to Government Benefits

Although this article’s main point discusses the government benefits that people lose in the short term when they marry, government benefits do provide incentive to marry in the long term. These benefits are only small incentive in many cases because, for the most part, a person has to be of retirement age to qualify. Primarily, these are social insurance benefits, the most common being Social Security benefits. For example, spouses married for at least a year who are 62 or older and qualify for Social Security can get their own separate check based on their spouse’s work records if the amount they

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125 There is a question as to whether this is appropriate and whether non-traditional families that are much more common today should receive government benefits for people who are dependents in other types of family structures. See Stephen D. Sugarman, What Is A Family? Conflicting Messages From Our Public Programs, 42 FAM. L.Q. 231 (2008).
are entitled to, based on their own work record, is very small or they do not qualify for the benefit on their own. These benefits are also available to divorced people, although the couple must have been married for ten years before divorcing, and to widow and widowers as early as age 60 or as early as age 50 if the widow or widower is themself disabled. Without marrying, partners are not entitled to any of these benefits. For persons in their twenties, thirties, or forties, these benefits are so sufficiently distant that they are unlikely to incentivize marriage or help any time soon, even though they could be very helpful in the long term.

Similarly, spouses can qualify for Medicare benefits based on their spouse’s eligibility; and though there may be a waiting period analogous to that for individuals with disabilities, widow(er)s and divorced people may also qualify.

4. Rights to Employee Benefits

A married person is often entitled to pension or health insurance coverage through their spouse’s employer, sometimes based on the policy options of the employer and sometimes by operation of federal law. As of 2010, 57.5% of people with incomes between 139% and 250% of the federal poverty level purchased health insurance for their spouse, compared to 68% of those with incomes between 250% and 400%. Health insurance benefits are quite valuable and would not be available to unmarried partners. Health benefits are so important that federal law protects these benefits for spouses even after job loss or if the couple separates. Similarly, a spouse may have rights to

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129 Although this article does not focus on the rights of homosexuals, gay married couples can now qualify for these benefits as well. See GN 00210.002 Same-Sex Marriage—Determining Marital Status for Title II and Medicare Benefits, SOC. SEC. ADMIN. (June 2014), https://secure.ssa.gov/apps10/poms.nsf/lnx/0200210002.
130 42 C.F.R. § 406.6 (1996).
pension benefits (even after death or divorce) that are not available to unmarried partners.\textsuperscript{134}

5. Social Benefits

Some people just want to be married because it makes them happy or as a way to solidify their relationship. Marriage is clearly celebrated in many religions and cultures in the United States, including dominant ones, as sacred partnerings, often with huge celebrations. The idea in many of these is solidifying values or spiritual and emotional connections, not economic self-sufficiency.

Further, marriage makes many people happier\textsuperscript{35} and clearly many people choose marriage because they think it will make them happier. Married people live longer than their non-married counterparts, suggesting that there is an impact on health.\textsuperscript{136} There are also data that suggests that there is less domestic violence between partners who are married,\textsuperscript{137} with married women reporting abuse less than one-third as often as unmarried, divorced, or separated women.\textsuperscript{138} Removing barriers to marriage for these reasons could be of great benefit to the poor.

III. WELFARE MARRIAGE PENALTIES THAT DISCOURAGE MARRIAGE

With the economic benefits to encourage marriage and with American welfare policy explicitly stating that the country wants to encourage marriage, one would think that welfare laws would reinforce the benefits of marriage. However, as described in this

\textsuperscript{134} Legal procedures exist in every state based on federal law that anticipates spouses gaining these rights through qualified domestic relations orders. 26 U.S.C. § 414(p)(1)(A)(2014).
\textsuperscript{135} See Waite & Gallagher, supra note 106, at 65–77 (suggesting not only that married people are on average happier but also that it is not just happy people that marry, but the marriage itself that makes people happier).
\textsuperscript{136} Id. at 47–64.
\textsuperscript{137} Id. at 150–160.
\textsuperscript{138} Shannan Catalano, U.S. Dep’t Of Justice, Bureau of Justice Statistics, Intimate Partner Violence, 1993–2010 2 (2012), http://www.bjs.gov/content/pub/pdf/ipv9310.pdf (showing an overall decline in domestic violence and suggesting that two out of every 1,000 married people 12 or older have been victims of domestic violence while eight of every 1000 never married people, 6.5 of every 1,000 divorced or widowed people, and 59 of every 1,000 separated people were victims in 2010).
section, the application of welfare law does the exact opposite by removing welfare benefits that make up a necessary part of a couple’s income.

This is true primarily for public assistance programs, which are designed to provide support to those without other sources of income. Insofar as a new spouse can provide support to an individual, it is not unreasonable to assume that a married person would require less outside support than an unmarried person. As discussed in Part I, every state requires that spouses support one another financially. However, as will be seen with most of the programs, incorrect assumptions are made regarding the value of pooled assets versus need resulting in welfare benefits being removed quite quickly, impoverishing both spouses.

As will also be seen, it is also true for some social insurance programs. Although those programs are designed for workers and often do not consider income or resources when determining a person’s eligibility, there are some limited aspects of social insurance programs which are based on need and where benefits are reduced by marriage penalties. Further, some eligibility criteria for these programs are based on being single and on the presumption that a person needing this social insurance benefit would not need the help once they married, as they could rely on their spouses’ income alone. This is a presumption that can be flawed.

A. Social Insurance Programs

1. Social Security

Social Security is designed to support those who need help based on disability or age, and also to support their dependents. Among those who are supported as dependents are children under 18; adult children who themselves have disabilities that began before age 22; spouses, widows, and widowers; and dependent parents. Perhaps because the rationale for these benefits stems from being dependent on

139 See Family Law in the 50 States, AM. BAR ASS’N, http://www.americanbar.org/groups/family_law/resources/family_law_in_the_50_states.html.
the primary beneficiary, many of the benefits end upon a new marriage based on the assumption that the new spouse will provide additional resources. Under each of these programs, marriage can eliminate needed benefits even if the new spouse has little or no income. Below is a partial list of Social Security programs where benefits are withdrawn from a former dependent recipient at the time of marriage:

i. Disabled Adult Children

People who receive these benefits as disabled adult children lose these benefits upon marriage. The benefits can be substantial. A disabled adult child can receive up to half of what their parent is receiving or up to three-quarters of what their deceased parent would have received. As a maximum benefit amount for an adult in 2014 was $2,642, a disabled adult child could have received up to $1,981 per month.

This benefit, however, is completely eliminated if the recipient marries. Once married, that beneficiary is seen as no longer the dependent of their parent and therefore is ineligible for Social Security benefits. Although there is an exception if the beneficiary marries another person who also qualifies for Social Security, marrying another person in similar need is perhaps not the type of marriage that a marriage promotion policy is looking to encourage. A disabled adult child therefore has financial incentive to live with a partner outside of marriage.

ii. Survivors

In most cases, widows and widowers who remarry do not lose benefits. Although they generally have to be unmarried to obtain these benefits in the first place, there are exceptions that allow people to retain benefits after marriage if over age 60. This covers most

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147 Id.
widows and widowers, as people cannot qualify for these benefits until they reach age 60 or unless they reach age 50 and have a disability. Social Security does not cover people who remarry while seeking benefits, unless they can show that the disability began prior to the remarriage.

iii. Parents

Parents of workers who qualify for Social Security have marriage disincentives. These individuals, after attaining age 62, become eligible for up to 82.5% of the amount of Social Security that their child would have received if their child was paying at least half of their support at the time they died. If they are already married before their child died and they still relied on that child for support, there is no ban on receiving the benefits. However, if people marry between the time that the child dies and they apply for benefits, they cannot receive them, no matter how much the person they marry earns. Further, once on the benefits, people lose those benefits if they marry unless they marry another person on Social Security, again without any consideration of how much the working spouse earns.

2. Medicare “Extra Help” for Part D

Medicare Part D pays for prescription medication for people eligible for Social Security based on age or a disability. Because Medicare D does not pay the entire cost of prescription drugs, Medicare D has a low-income subsidy program sometimes called “extra help,” which requires states to subsidize recipients who are low income and cannot pay those costs. Although some of the subsidies are to lower costs of all prescriptions covered under the plan, a large part of the subsidy deals with the “donut hole” portion of the plan, under which beneficiaries are required to pay a substantial percentage of the cost of medication. As described in one of the examples in the introduction to this article, the asset and income limits that a person

\[149\] Id.
\[150\] 20 C.F.R. § 404.335(e) (2011).
\[152\] 20 C.F.R. § 404.370(c) (2011).
\[156\] 42 C.F.R. § 423.104(d) (2012).
can have to qualify for a full or partial subsidy include a spouse's income. For example, a person who is close to the asset limit may exceed that limit after marriage thereby resulting in an increase in cost of medications far greater than the increase in assets. Further, because people must be below 135% of the federal poverty level for a full subsidy and 150% for any subsidy, spouses who add around $500 total income to the household can render both spouses ineligible for benefits. This is a marriage disincentive for older people on fixed incomes who cannot afford these expenses and need medication, particularly if they have or anticipate extraordinary medical needs. Couples that do not marry can keep their income and assets separate even if they live together and may qualify for these benefits.

B. Public Assistance Programs

1. Supplemental Security Income

If there were a place where it is clear that marriage penalties could only be counterproductive, it is the SSI program. To qualify for SSI, people must be over 65 years old, blind, or have a disability that has been found by a disability determination agency or administrative law judge to be so severe that it precludes work for at least twelve months or is expected to result in death. By this definition, people qualified for SSI have a condition that affects them so severely that they are unlikely to be able to support themselves through work.

Yet marrying someone of low income or another person on SSI carries such a stiff penalty that many choose not to marry. A person on SSI receives $721 per month with a possible small state supplement depending on the state of residence. If the person marries another person on SSI, they both lose one quarter of their check, receiving $1,081 total per month and leaving them below the $1,310.83 per month poverty line. If instead the couple does not marry but lives together, they would each receive $721 per month, totaling $1,442. Marrying, therefore, decreases the couple's income by 25%. Although


159 For a summary of some of these penalties, see Rains, supra note 145, at 566-570.
it is a large assumption that people can live comfortably just above the poverty line, this couple’s only choice to live above the poverty line is to live together without marrying.\textsuperscript{160}

If instead of marrying another recipient the SSI beneficiary marries a person who is working, the couple will still suffer a large loss of combined income. First, if the worker has any significant savings, the couple will not be eligible for SSI at all. A person cannot receive SSI if they and their spouse own more than $3,000 in non-exempt assets.\textsuperscript{161} This means that if the worker has $3,000 in the bank or a life insurance policy with significant face value, among other things, the person’s SSI is cut off entirely. This makes it so that the couple must live entirely on the spouse’s income. A couple with a minimum wage worker making $1,200 per month would have their joint income reduced by the $721 SSI check (37% of their income) which would drive the minimum wage worker into poverty. A minimum wage worker family making $1,685 per month would lose 30% of their income and a $2,500 per month worker’s family would lose 22% of their income. This same result occurs if the couple is unfortunate enough to develop savings while together, savings that government policy would probably wish to encourage. Clearly, each of these families would be financially better off living together out of wedlock thereby avoiding these penalties but preventing the couple from obtaining the benefits of marriage.

However, if the marrying couple does not have $3,000 in assets, there are still many instances in which married couples lose a large percentage of their income. For the person marrying the minimum wage worker at $1,208 per month, the person’s SSI check at least would drop over $200 due to spousal deeming rules, leaving the couple’s total income at about $1,710 per month.\textsuperscript{162} This couple,

\begin{itemize}
\item \textsuperscript{161} 42 U.S.C. § 1382(a)(3)(A)(2013).
\item \textsuperscript{162} For these SSI calculations, it is assumed that the person on SSI has no other income. By regulation, the calculations are made by subtracting the federal benefit rate of $721 per month from the worker’s income, giving the worker an $85 credit
\end{itemize}
which is now slightly over the poverty line, would have been better off living together and not marrying, where they would have received $1,918 per month, those $200 per month representing more than 10% of the couple’s income being taxed away for the privilege of marrying and being quite significant for a couple living on such little money. If the worker earned $1,685 per month, the person’s SSI check would drop about $440, lowering household income from what could have been $2,406 to $1,966, or 18%. If the worker earned $2,500 per month, the spouse would lose the entire SSI benefit or 29% of the couple’s combined income. Although this couple is living at 185% of the federal poverty level, losing 29% of income is a very large amount that most cannot afford when living on $2,500.

The penalties are less severe if the family has children. A family with a child does not have benefits lowered until the family earns about $1,530 per month, although families with children qualifying for some other government assistance do not get this favored status. Again, in most cases, a couple is better off not marrying or not living together at all.

2. TANF

TANF is a block grant administered differently in different states, and how marriage affects TANF eligibility varies among states as well. It is an interesting program for the purpose of considering marriage penalties because it is the one where explicit policy states that encouraging marriage and two parent families is a specific goal of the program, as discussed above. The grants are incredibly low, averaging $426 per month for a family of three. This makes having other money coming in extremely important to a family, so important that the family may be willing to forgo the grant for hopes of even a minimum wage job. However, even a grant this small could boost for deductions, and then subtracting one dollar from every two dollars beyond that earned by the worker. See 20 C.F.R. § 416.1163 (1996).


Not discussed above is the presumed value rule, which penalizes people by one-third of their SSI check who live with another and who are not paying their pro-rata share of basic necessities. 20 C.F.R. § 416.1131. However, assuming a person can show they are paying half of the rent and food out of their $721 per month SSI and potential SNAP food benefits, they are not penalized this way.

See supra text accompanying note 43.
family income by 25% for a minimum wage earner and give the family the chance to reach the poverty level if they could keep the money.167

However, despite the stated goals of supporting marriage, marriage penalties are still abundant in TANF programs. Although it is not practical to go through all of the variations for all of the states and how they deal with spouses, there are several generalizations that can be made. First, in a survey of TANF rules, Robert A. Moffitt describes that in all fifty states, if a mother and father are living together with their children, both the mother and father's income is included in determining eligibility.168 This means that there is an incentive for parents to separate and not to live together to raise their children, something the TANF law was not trying to accomplish. There is no disincentive to marry if a couple wants to live in the same household, but they are better off not doing that in the first place. A father not living in the household will likely be sued for child support if he does not live in the household, but the family will get a higher TANF amount and the family will likely have higher income.

Moffitt continues by looking at several other types of families. In blended families, where the couple each has children in the household, 33 states include the father in the family unit whether or not he is married to the mother, again making it so that there is no disincentive to marrying if the couple plans to live together, but perhaps creating an incentive for the father to leave the home entirely. Five states allow the father's income to be excluded from the household income if the adults are not married, clearly a marriage disincentive. In 12 states and the District of Columbia, the father's income can be excluded from the eligibility calculation if the father's income would preclude the family from receiving benefits.169

In cases where people who cohabit are not related, many states do not consider the cohabiter's income at all, with four or five states penalizing beneficiaries who receive help from these cohabiters by lowering their grants.170 Perhaps assuming that an unrelated male is in a romantic relationship if he lives in the household with a female and

167 See supra text accompanying note 55 (showing that a minimum wage job leaves people at 75% below the federal poverty level for a family of three).


169 Id.

170 Id. at 10 (Some of those states include California, Kansas, Minnesota, North Dakota, and West Virginia).
her children, Oklahoma considers all males in the home as if they were the fathers of the children and deems their income.\textsuperscript{171} And in stepfather families, all but three states deem a stepfather’s income to the family, making it better to cohabit without marrying.\textsuperscript{172}

Deeming the spouse’s income and resources in making TANF calculations is a huge marriage disincentive because TANF amounts decrease to nothing quite quickly. For example, in Pennsylvania, if parents are married and the household now has more than $1,000 in assets, the entire family is excluded from benefits.\textsuperscript{173} If the man was not the father of the child in the household and they did not marry, the man’s assets would not necessarily be counted as he could be excluded from the budget unit.\textsuperscript{174} Further, although the state would increase the family’s TANF grant by $90 if a father moved in with his family, the family would be penalized as soon as he began working by deducting from the grant amount by $1 for every $2 earned, meaning that if the man earns more than $180 per month, the benefit is decreased from what it was before he moved in and if he earns more than $806 for a three person family, the family becomes ineligible for benefits.\textsuperscript{175}

Because there is a specific mandate within TANF to try to abolish marriage penalties, some steps have been taken to do so. Before TANF, under the old Aid to Families with Dependent Children two-parent program, a family was ineligible if either parent worked more than 100 hours per month. Further, there was a waiting period to be eligible for the program where an employed parent had to be unemployed for 30 days before they would qualify.\textsuperscript{176} Each of these might discourage marriage to someone who was trying to work. However, at the same time that these rules were being dropped in many states,\textsuperscript{177} TANF was putting in place rules that required 90% of two parent households to meet thirty-hour per week requirements while only 50% of single parent households had to do so, making it

\textsuperscript{171} Id.
\textsuperscript{172} Id. at 11.
\textsuperscript{173} 55 PA. CODE § 177.31 (1988).
\textsuperscript{174} 55 PA. CODE § 177.21(a)(1) (1988).
\textsuperscript{175} 55 PA. CODE § 183.94 (1999).
\textsuperscript{176} For an explanation of these rules, see FALK & TAUBER, supra note 96, at 10–12.
\textsuperscript{177} See Moffitt et al., supra note 168, at 13 (stating that although three-quarters of states had 100 hour work rules and 30 day unemployment requirements in 1996 when TANF replaced AFDC, only one-fifth of states still had these rules in 2006).
less likely that a second parent would be encouraged to move into the home and discouraging marriage.\textsuperscript{178}

Other policies that have been put in place in some states to encourage TANF families to marry include policies in eight states that have some income disregards for newly-married couples. As described by Moffitt, Oklahoma and Idaho have some form of a special earned income disregard for stepfathers, five states disregard income for newly-married couples, and two other states have higher disregards for new spouses.\textsuperscript{179} Generally, however, marriage will decrease a TANF benefit.

3. Supplemental Nutrition Assistance Program (SNAP)

Supplemental Nutrition Assistance Program (SNAP) (also known as “food stamps”) benefits are some of the most important benefits that people can receive. Forty-seven million people rely on these benefits for help in 23 million households.\textsuperscript{180} In 2005, for example, the SNAP program was responsible for raising 1.6 million children out of deep poverty.\textsuperscript{181}

SNAP benefits are distributed by household. This means that if people live separately, they may be eligible for separate SNAP benefits and the individual and thus total benefits may be higher. Further, although a person can live in the same house and not be considered part of a household, SNAP regulations require that a spouse be considered a household member.\textsuperscript{182} Therefore, although a person moving in and not marrying would also be considered a household member if the couple shares meals,\textsuperscript{183} their income and assets are not considered when calculating the SNAP benefit grant if the person argues they are not sharing meals or if they do not move in at all.

This is a large disincentive to marry. Due to changes in the law, not all states have asset limits when calculating SNAP benefits and

\textsuperscript{179} Moffitt, \textit{supra} note 168, at 13.
\textsuperscript{181} See \textit{EDELMAN, supra} note 34, at 82 (citing ARLOC SHERMAN, \textit{SAFETY NET EFFECTIVE AT FIGHTING POVERTY BUT HAS WEAKENED FOR THE VERY POOREST} (July 6, 2009), http://www.cbpp.org/files/7-6-09pov.pdf (defining deep poverty as being below 50% of the federal poverty level)).
\textsuperscript{183} See 7 C.F.R. § 273.1(a)(2) (2010).
some have higher benefits than first set out in the law. However, many states do have asset limits, and they can be as low as $2,000 for a household. Marrying a person with even these limited assets makes the couple ineligible for benefits.

Income rules are complex for SNAP benefits. Increased household income, however, often lowers benefits and marrying can easily cause a penalty, causing a severe reduction in benefits. For example, if after deductions and expenses a married couple merging into one household has income over 130% of the federal poverty level, SNAP benefits are entirely eliminated.

4. Medical Assistance

Because Medical Assistance programs are administered by each state differently and because there are so many different ways to qualify for Medical Assistance, marriage penalties vary greatly between programs and between states. The United States Department of Health and Human Services Centers for Medicare and Medicaid Services counts over 70 ways that a person can be found eligible for Medicaid mandatory programs alone. Without going through all of them, however, it is clear that there are marriage penalties in many of the programs. For the Medical Assistance program categories that are tied to SSI eligibility, the penalties are the same as SSI marriage penalties. At present, there are 40 states and the District of Columbia that use SSI criteria to determine if many of their potential recipients are eligible. For 10 other states, called 209(b) states, restrictions can be, and sometimes are, harsher than those in the SSI program.
all of these cases, the marriage penalties are at least as severe as those for the SSI program.

Although eligibility for Medical Assistance is greatly expanded under the Affordable Care Act, eligibility continues to depend on a person having relatively low income to qualify. For this reason, marriage penalties remain an issue in those states that have opted to expand eligibility for Medical Assistance. For example, a couple with combined income over $1,800 per month, which is 138% of the federal poverty level, is over the income threshold to qualify for Medical Assistance. It is hoped that those people might be able to buy insurance from a health insurance exchange, but that is an expense that acts as a marriage penalty for those who might have qualified for Medical Assistance otherwise.

C. Some Other Government Benefit Programs

1. Earned Income Tax Credit (EITC)

The EITC is a program under which income tax filers are given a subsidy or negative tax based on the amount they earn. Under EITC in 2014, people could obtain up to $496 per year if they had no children, $3,305 if they had one, $5,460 if they had two, and up to $6,143 per year if they had three or more children. It is a significant source of income for many workers and a program that is touted by many as an effective means of transferring income to low-income brackets.

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190 Although the author might catalogue EITC and the Affordable Care Act benefits as public assistance, it is thought that this is both beyond the scope of this article and could be distracting from the argument. They are, however, funds that come from the general tax base to support people who cannot fully support themselves through work.

191 26 U.S.C. § 32 (2013). Section 209(b) states are those states that use criteria more restrictive than SSI criteria to determine if a person qualifies for benefits. See SSI Program, supra note 188.

people who need it while encouraging the recipient to continue to work.\(^{193}\)

The marriage penalty in the EITC is well understood and it upsets many.\(^{194}\) The statute itself now has specific language addressing the penalty and giving an extra $5,000 disregard on spouse’s income in order to begin to deal with the penalty.\(^{195}\) Nevertheless, the marriage penalty remains and the credit phases out quickly when people marry. For example, a person with a child will see their credit begin to phase out if they earn at least $17,830, while a couple will see the same credit begin to phase out at $22,360.\(^{196}\) Two people who each earn $15,000, for example, would be much better off not marrying and getting the almost full tax credit rather than being assessed as a couple with an income of $30,000 and ineligible.\(^{197}\)

Marriage can create an EITC bonus, as it is possible that a couple’s joint earnings can qualify them for a higher credit, most often if their incomes are disparate.\(^{198}\) However, marriage causes penalties twice as often as it provides bonuses,\(^{199}\) making the EITC a large marriage disincentive for low-wage workers.

2. Medical Insurance Subsidies Through the Affordable Care Act


\(^{196}\) TAX LAW UPDATES, supra note 192.

\(^{197}\) See Jennifer Bird-Pollan, Who’s Afraid of Redistribution? An Analysis of the Earned Income Tax Credit, 74 MO. L. REV. 251, 266–272 (2008), for a further look at how this penalty works and considerations around reforming the EITC to account for having more children and for other family structures.

\(^{198}\) Id. at 266–67.

\(^{199}\) See WILLIAMS & WEINER, supra note 2. See also STEVE HOLT, BROOKINGS INST., THE EARNED INCOME TAX CREDIT AT AGE 30: WHAT WE KNOW 15–16 (Feb. 2006) (citations omitted).
The Affordable Care Act’s health care premium reductions and cost subsidies can be significant for people under 400% of the poverty level, a subsidy that can be easily lost by marrying. People pay between 2% to 9.5% of their income toward their health insurance premium, dependent on their income. The amount of the subsidy increases quickly. People with income of 100–133% of the federal poverty level receive a tax credit for the amount of the insurance premium that exceeds 2% of their monthly income. There is a sliding scale for people who earn between 133–400% of the poverty level. Those people receive a tax credit for the amount that the insurance premium that exceeds 3–9.5% of their income. Beyond this, there is reduced cost-sharing of expenses ranging from two-thirds to one-third of costs for people, again with higher subsidies given for people closer to 100% of poverty than 400% of poverty.

Although it would be difficult to go through the myriad of examples that would show how marriage can decrease these subsidies, it is clear that marrying someone who puts the family into a new income bracket can significantly reduce the government help that people receive from this program. For instance, a recently published example in the Atlantic describes a couple earning $45,000 each, who would individually qualify for a premium reduction and subsidies if they did not marry. If they did marry, however, they would lose the help entirely, as married couples earning as little as $62,000 are ineligible.

As this example describes people who are significantly over the federal poverty line, it may not seem as important. Further, as the Atlantic article points out, people who make this much money may be more likely to get health insurance as a benefit from their jobs.

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203 Id. (According to Franke-Ruta, 15.4% of married couples are uninsured compared to 33.4% of single ones (citing studies from the Kaiser Family Foundation)). See also HUBERT JANICKI, U.S. CENSUS BUREAU, EMPLOYMENT-BASED HEALTH INSURANCE: 2010: HOUSEHOLD ECONOMIC STUDIES 7 (Feb. 2013), http://www.census.gov/prod/2013pubs/p70-134.pdf (showing that people who work with earnings below 138% of the federal poverty level have a 43.3% chance of having their employer offer health insurance benefits while people who earn over
However, it can be a large increase in health premium that can discourage marriage.\(^{204}\)

3. Other Programs

Clearly, the above cases are not an exhaustive inventory of all types of welfare and their marriage penalties. Some other benefits that were not described above that are very important to families include public housing subsidies. Housing subsidies were left out of this article mostly because the program is so poorly funded that it is relatively small and getting smaller, making it less likely that people are on the program in the first place. Still, this is a highly important program to many people and the only way people can afford to live on the small amounts of government assistance they receive or on low wages.\(^{205}\)

For those who can get onto the housing subsidies program, there are several programs sponsored by HUD that deliver affordable housing to individuals by charging them 30% of their income for rent.\(^{206}\)

Qualifying for housing is based on having income below a certain percentage of income limits, where those qualifying have extremely low-income and are more likely to be eligible for housing if earning 50% or less of the median local average income. In Philadelphia, for example, a single person has to earn less than $16,600 per year to

\(^{204}\) 401% of the federal poverty level who would not qualify for a subsidy have an 80.8% chance of having health insurance offered).

\(^{205}\) Besides discouraging marriage, some believe that the Affordable Care Act discourages work, too. They fear that people will not seek better paying employment because they will lose health insurance. They also fear small employers will stop choosing to provide health insurance under any circumstances they can. See David Gamage, *How The Affordable Care Act Will Create Perverse Incentives Harming Low and Moderate Income Workers*, 69 TAX L. REV. 669 (2012). Although it has been raised in other contexts that work is often a disincentive when people fear losing welfare benefits due to working, some fear it is particularly pronounced with healthcare as there are fewer people who would be better off getting welfare than working a low to moderate income job, while there are more who they fear will not be able to afford healthcare on a low salary.


\(^{206}\) Although this is available in regulations, it is most clearly set out by HUD. See HUD'S PUBLIC HOUSING PROGRAM, http://portal.hud.gov/hudportal/HUD?src=/topics/rental_assistance/phprog.
qualify for an apartment. However, a couple has to earn below $18,950 per year, meaning that marrying someone who brings in only $2,350 per year can put a person’s public housing at risk. Even if the couple moves into a one bedroom house renting at $1,000 per month, the couple loses $700 in income help per month or $8,400 per year, even if their income is $19,000 per year. It is a significant marriage penalty.

Also not included in the survey of programs with marriage penalties are pharmaceutical assistance programs, attendant care and other Medical Assistance waiver programs, and the Women, Infants, and Children (WIC) program among others.

III. SOME POTENTIAL SOLUTIONS

The penalties described in this article do not have to be so harsh. In fact, many do not have to exist at all. Assuming that the United States wants to promote marriage or that it would like to remove financial

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208 According to the Centers for Medicare & Medicaid Services, there are 21 states and the Virgin Islands that have these programs. See State Pharmaceutical Assistance Programs, MEDICARE.GOV, http://www.medicare.gov/(X(1)S(lrvi4551baqdf55j1bdsmsr))/pharmaceutical-assistance-program/state-programs.aspx?AspxAutoDetectCookieSupport=1. Each program has its own restrictions. For example, in Pennsylvania, a single person can have up to $14,500 in annual income while a couple can have up to $17,700, creating a marriage penalty.

209 Under waiver programs, states can provide medical assistance to people making higher amounts of income or with higher resources for specific purposes often related to keeping people from being institutionalized and providing services for them in their home and the community. 42 U.S.C. § 1396n (2010). These programs have their own guidelines and generally have marriage penalties at much higher levels of income as they allow for earning and having more money. However, the author can report several examples of people wanting to marry who cannot because of potential spouses having money set aside for things such as college expenses for children or saving toward a home where keeping these benefits has precluded marriage.

210 WIC, or the “Special Supplemental Nutrition Program for Women, Infants, and Children,” provides nutrition and counseling to new mothers. 42 U.S.C. § 1786 (2013). Many qualify based on eligibility for other programs or by meeting school lunch income eligibility guidelines (42 U.S.C. § 1786(d) (2013)), which are set at 185% of the federal poverty level. 42 U.S.C. § 1758(b)(1) (2011). Adding another person to a household allows that person to earn about $425 more per month before a person close to the income limit loses this benefit.
barriers to marriage for the poor so that decisions regarding marriage can be based on economic, legal, or emotional reasons, policies could reflect this desire.

A. **Adopt a Spousal Impoverishment Standard for More of our Welfare Programs, Similar to the Standard for Institutionalized Spouses Under Medical Assistance**

One of the largest problems for many of the programs described in this article is that when couples marry, the income and resources of the spouses who have assets to bring to the marriage are considered available to poorer spouses before it is considered whether the spouses with income and assets have enough money to support the couple without government help. One way to protect against this problem would be to use a reasonable spousal impoverishment standard to assess whether spouses have enough money to support themselves before their income and resources are deemed to their spouses. Once a richer spouse who does not seek independent welfare assistance reaches a more reasonable standard, what is left could be deemed to the non-moneyed spouse.

This is not a radical idea but is an idea that is already used in some welfare programs, including the Medical Assistance benefit for institutionalized spouses. This program is most often used when a spouse must go into a nursing home and needs Medical Assistance to pay for it. For this program, the federal government agrees with a concept described earlier in this article that the poverty rate is set too low and sets a higher standard to try to ensure that spouses are not impoverished by trying to enable the spouses to take care of each other. Under the Medical Assistance's spousal impoverishment guidelines for this program, the non-institutionalized spouse, or "community spouse," is allowed to have assets and income in his or her own name which are not attributed to the calculation of the assistance to which the institutionalized spouse is entitled.\(^2\) It is a marriage promotion statute itself, designed to ensure that couples do not have to divorce to save the resources of the non-institutionalized spouse or to require the non-institutionalized spouse's resources to go toward nursing home care.

Under this program, community spouses are entitled to a "minimum monthly maintenance needs allowance" of 150% of the

federal poverty level with a potential extra housing allowance.\textsuperscript{212} Community spouses are also entitled to resources in their own name and are entitled to transfer joint assets into the community spouses' names at much higher rates than are allowed for other welfare programs.\textsuperscript{213} Because the 150\% level fluctuates with the consumer price index along with the resource limitations, a community spouse is allowed to have $1,966.25 with a potential $589.88 housing allowance for a total of $2,556.13 per month in income. At the states' prerogative, the community spouse can also have an amount set between $23,448 and $117,240 in resources excluding a home that can be valued at the states' choice at up to between $543,000 and $814,000.\textsuperscript{214}

This could be done with other programs as well and reduce the effect of marriage penalties. Allowing spouses to keep income in their own name up to $2,556.13 before deeming income to new spouses and allowing spouses to have $117,240 in their own name, plus their homes, before counting it against their spouses would accomplish a few things. This modification would allow people to live at 150\% of the federal poverty level before any welfare benefits were subtracted from joint income, which may not be enough on which to live,\textsuperscript{215} but might not devastate the new family hoping to marry. The changes would also allow couples to begin to develop assets together, as the economic theorists promoting marriage have hoped, by allowing a spouse to develop assets without fear of losing needed welfare benefits.

B. Make the Income and Resource Limits for Couples Double That of Those for Individuals and More Generous if Families are Larger

This is also not a radical concept, but something that has been done with the tax system for several years. In order to reduce marriage penalties for the middle class, tax rates were adjusted to deal with the problem that when two single people married, their tax rate would increase as they move up in tax brackets. To deal with this, the law

\begin{itemize}
  \item \textsuperscript{212} 42 U.S.C. §1396r-5(d)(3) (2008).
  \item \textsuperscript{215} See Edelman, supra note 34 (suggesting that the poverty level should really be set at about 200\% of what it is now).
\end{itemize}
was changed so that that married couples pay the same rate of tax as they would pay if they had not married and were single, up until a couple earns $148,500. This makes it so that people in lower income brackets who do not rely on welfare can marry with no income tax penalty.

This could be applied similarly to people who need welfare benefits to make ends meet. Welfare benefits are often reduced upon marriage if both people are on welfare, even though they are clearly at a low income level. For example, if two people on SSI who would get $721 per month each received $1,421 per month when they married instead of being penalized and having their joint income lowered to $1,081 per month, those people could marry and work toward taking advantage of what marriage offered them. Monthly income of $1,421 puts the couple slightly over the federal poverty level, while $1,081.50 leaves them more than $200 short of it. Marriage would be incentivized, not penalized.

Similarly, if resource and income limitations were made double what they were for an individual when a couple married, it would be of great benefit to clients. Using SSI again as an example, a single person is allowed to have $2,000 in assets while a couple can only have $3,000 in assets. It would be a small step to allow a couple to have twice the assets of an individual to qualify for the program and have $4,000.

C. Raise the Particularly Low Income and Resource Limits to Receive Public Assistance Benefits in All Programs, but Particularly for Spouses

Income and resource limits for many programs have been kept very low for many years, in part because they have not been set to alter with inflation. SSI, for example, has not increased its resource limitations since 1989. In 1989, the SSI monthly amount was set at $368 for an individual and $553 for a couple, based on cost of living increases that happened during some, but not all, years. Because


there have been consistent cost of living increases, an SSI grant is 96% more today than it was in 1989. At the same time, resource limits have not been increased since 1989, from $2,000 for an individual and $3,000 for a couple. If they had been increased to reflect the cost of living, people would be allowed to own resources worth $4,000 for individuals and $6,000 for couples, avoiding some marriage penalties.

This is true for other programs as well. It is common for TANF programs to have $1,000–$3,000 asset limits that have not been increased in many years.\(^{220}\) Were these asset limits increased, some of the marriage penalties would disappear. Some are advocating for asset limits to be eliminated entirely, seeing them as an outdated way to ensure that the rich are not getting welfare benefits. Eliminating these asset limit restrictions would give people incentives to accumulate resources to get out of poverty.\(^{221}\) Increasing asset limits or eliminating them entirely would go a long way toward reducing marriage penalties.

D. Do Away with Automatic Marriage Penalties

There are some programs where marriage itself automatically prevents a person from keeping their welfare benefits. A program discussed above is the disabled adult child benefit for Social Security, where people who receive benefits because their disabilities impaired them while they were still dependents of their parents lose those benefits on marriage, in many cases even if their spouse is unemployed.\(^{222}\) These penalties do not consider whether beneficiaries are at all better off when marrying, and could be eliminated or tempered by using more factors in determining whether people should remain eligible.\(^{223}\)


\(^{221}\) Id. at 1.

\(^{222}\) 20 C.F.R. § 404.352(b)(4) (2010).

\(^{223}\) As discussed above, people are not cut off if they marry other people receiving Social Security benefits, but there are many more situations than this.
E. Delay Deeming of Income and Resources when People Marry, Perhaps Even Giving Marriage Incentives

This is also not a new idea. As discussed above in Moffitt’s survey of TANF regulations, eight states have some type of marriage exception to income and resource rules.²²⁴ Some of these exceptions include Oklahoma’s earned income disregard for stepfathers. Five states disregarding income of a new spouse temporarily, including Idaho deeming only half of a stepfather’s income, Alabama giving new spouses easier earned income disregards, and Wyoming raising the earned income disregard if married and allowing for a second car.²²⁵ In these cases, at least the immediate effect of marriage is not economic damage. In some cases, marriage may even be a bonus, as spouses get benefits that cohabitants may not.

F. Give Marriage Bonuses or Tax Credits

If the government truly wants to encourage marriage in its policy, it could give true incentives for people to marry. The government does this for many things. There are incentives to buy a home in the form of a tax deduction because the government wants people to own property.²²⁶ There are incentives for people to buy hybrid cars to protect the government’s interest in the environment.²²⁷ If the government wants people to marry, it could create an extra deduction for married couples that is more than twice that which single people receive. Alternatively, just as the EITC program encourages poor people to work, a marriage credit program could encourage people who work to marry, by either increasing the EITC credit or just giving credit for the marriage itself, unrelated to an individual’s employment status.

CONCLUSION

The United States does not always enact laws that are consistent with its stated policies; the area of marriage promotion is no exception to this observation. Large amounts of resources (political, financial, and intellectual) have been expended in the consideration of the value

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²²⁴ Moffitt et al., supra note 168, at 13.
²²⁵ Id.
of promotion of marriage. It may be more productive to consider ways in which existing welfare policy actually discourages marriage among the poor and take steps to remove those disincentives.