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Book Review: Why Smart Men Marry Smart Women by Christine B. Whelan Comforting Insights into What Should Be Obvious (but May Not Necessarily Be So)

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Book Review: *Why Smart Men Marry Smart Women* by Christine B. Whelan

Comforting Insights into What Should Be Obvious
(But May Not Necessarily Be So)

Theresa M. Beiner[†]

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INTRODUCTION

Christine B. Whelan's book *Why Smart Men Marry Smart Women*¹ is either an "uncommonly silly"² book or a comforting tome for women who are on the career track and are fearful that dedication to their careers will make marriage and family impossible. In reviewing this book, it is tough to choose between these two potential evaluations. Dr. Whelan should be applauded for taking on the common myth that the more education and career success a woman has, the less likely she will marry. The manner in which she does it, however, leaves open a number of issues, among them whether marriage should be the goal of these women. In fact, Whelan generally fails to consider the potential pitfalls of marriage, including high divorce rates. One is left wondering whether Whelan's time might have been more effectively spent writing an op-ed piece for the *New York Times* and researching what successful women should consider in creating a happy marriage.

Whelan's mission is to "shatter[] the bad news myths that smart, successful women can't have personal and professional happiness."³ In the course of the book, Whelan introduces her reader to SWANS—"Strong Women Achievers, No Spouse." These women are "powerful, driven professionals who flock to urban areas and high-status jobs."⁴ Whelan studies the marriage potential of these women in two ways: statistically and anecdotally. While Whelan commissioned a Harris Interactive survey of more than 3,700 Americans in 2006 on various issues related to her thesis,⁵ she also interviewed many SWANS and has peppered the book with descriptions of these conversations. This brings the numbers "convincingly to life"⁶ and helps situate the importance of her thesis to the women she interviewed who are searching for or considering searching for the perfect mate. She also includes a chapter on childbearing.

One question Whelan never really answers in the course of the book is why smart men marry smart women. Instead, Whelan's real thesis appears to be that high-achieving women eventually marry. She is correct: Studies have increasingly shown that women with more education do marry eventually—like most women. They just marry later. Whelan's message to women who wish to

1. CHRISTINE B. WHELAN, *WHY SMART MEN MARRY SMART WOMEN* (2006).

2. *Lawrence v. Texas*, 539 U.S. 558, 605 (2003) (Thomas, J., dissenting) (quoting *Griswold v. Connecticut*, 381 U.S. 479, 527 (1965) (Stewart, J., dissenting)).

3. WHELAN, *supra* note 1, at 2.

4. *Id.* at 9.

5. *See id.* at 201.

6. *Int'l Bhd. of Teamsters v. U.S.*, 431 U.S. 324, 339 (1977). In the context of establishing the systematic disparate treatment claim under Title VII of the Civil Rights Act of 1964, the United States Supreme Court approved of the plaintiff's reliance on a combination of statistical and anecdotal evidence in proving their case. Whelan takes a similar approach.

reach both career and marital satisfaction is extremely hopeful. Hidden in the statistics that support Whelan's thesis, however, is another group of women who are not faring so well in the marriage market: less educated women, particularly those with no degree beyond their high school diplomas. These women might benefit from the added income of a spouse; yet, their marriage rates are declining and are projected to be below those of more educated women in the future. This decline might be the real story that comes out of the statistics relevant to Whelan's thesis.

In the course of this Review, I will first describe Whelan's book. Second, I will look at subjects Whelan does not discuss or which she discusses cursorily that are relevant to the marriage decisions of SWANS. These subjects undermine the underlying premise of the book—that SWANS should marry. Included in my discussion will be data on a particular set of SWANS: women lawyers. Finally, I will look at the broader social implications of marriage data and ask whether SWANS are really the proper focus of public concern.

I. SWANS AND MARRIAGE PROSPECTS

Whelan takes on three main subjects in her book. First, she “debunk[s] the myth”⁷ that high-achieving successful women have trouble marrying. Second, she discusses what these women should consider in finding a mate. Finally, she addresses children and family life. In the latter two areas, Whelan tends to raise many more issues than she actually settles. And, while she is a consistent SWANS cheerleader, much of her “advice” (which is more like issue raising) may leave the average SWANS confused about what she should do to find a compatible mate.⁸ While Whelan acknowledges that today's women “can choose to marry or not,” this is not the choice she addresses in her book. Instead, she seeks to answer this question: “Are today's high-achieving women overqualified for love?”⁹ In early 2005, her research on the issue took a positive turn. She found articles debunking the marriage “success penalty”—that

7. HEATHER BOUSHEY, CTR. FOR ECON. & POL'Y RESEARCH, ARE WOMEN OPTING OUT? DEBUNKING THE MYTH (2005).

8. Whelan comes by her advice book bona fides honestly. Her mother wrote a book about the decision to have children in 1975. ELIZABETH M. WHELAN, A BABY . . . MAYBE: A GUIDE TO MAKING THE MOST FATEFUL DECISION OF YOUR LIFE (1975). Whelan's mother was proactive in finding a husband. Whelan tells her reader that her mother, a Ph.D. candidate at Harvard's School of Public Health, actually met Whelan's father by placing an ad in the *Harvard Crimson*. WHELAN, *supra* note 1, at 4.

9. WHELAN, *supra* note 1, at 4. Whelan recounts her own situation as she began her book: “27 years old, fresh from graduate school,” having just ended two long-term relationships. *Id.* at 5. After seeing her exes' marriage announcements in the *New York Times* and being “dumped” by yet another man, she commiserated with her girlfriends over tequila shots and ended the evening crying herself to sleep, “terrified I'd be alone forever because no one wanted to date a dorky PhD.” *Id.* at 5.

successful women do not marry.¹⁰ Not content with this research, she conducted her own study and found that, indeed, the “success penalty” no longer applied to successful women.¹¹

Whelan describes SWANS in more detail.¹² SWANS are broadly defined as “powerful, driven professionals who flock to urban areas and high-status jobs.”¹³ They are from a variety of professional, ethnic, and socioeconomic backgrounds. The unifying theme for SWANS (as Whelan puts it, the “one thing in common”) is that “[t]hey wonder why, in spite of their success, they are still single.”¹⁴ At this point, she makes a rare acknowledgment that some SWANS may not want to marry. However, this book is not for those SWANS. Instead, it is for SWANS who want to marry or who wonder why their love lives are lacking. These women, according to Dr. Whelan, want the facts. Whelan draws facts from three sources: the 2005 Current Population Survey, her own two opinion surveys specially commissioned of Harris Interactive (one of “1,629 high-achieving men and women ages 25 to 40 conducted in January 2006” and a follow-up “omnibus survey” of a nationally representative group of adults conducted in May 2006), and interviews with one hundred high-achieving men and women in nine cities across the country.¹⁵

Whelan breaks down the myth of the marriage-challenged successful woman. She begins by laying blame for current perpetuation of the myth on two highly successful women: Sylvia Ann Hewlett and Maureen Dowd.¹⁶ Hewlett wrote a book in 2002 that presented the grim results of a study on high-achieving women.¹⁷ Using data from 2001, Hewlett presented statistics that suggested that high-achieving women were remaining single at age thirty and had less than a ten percent chance of ever marrying.¹⁸ In 2005, *New York Times* columnist Maureen Dowd published the book *Are Men Necessary?*.

10. *Id.* at 5-6. As far as I can tell, she neither cites nor describes these studies. However, I will describe some studies that I found in subsequent sections of this Review.

11. As she put it, “C’m on girls, it’s time for some good news.” *Id.* at 6.

12. *Id.* at 9. Her use of the term “SWANS” is no accident. She alludes to the bird, letting her reader know that swans live one-third of their lives alone, “but when they mate, as most do, they generally do so for life.” *Id.*

13. *Id.*

14. *Id.* at 9-10.

15. *Id.* at 10. The cities included New York, Washington, Philadelphia, Boston, Chicago, San Francisco, Los Angeles, Tucson, and Houston. *Id.* at 10-11.

16. *Id.* at 25-26.

17. SYLVIA ANN HEWLETT, *CREATING A LIFE: PROFESSIONAL WOMEN AND THE QUEST FOR CHILDREN* (2002).

18. *Id.* at 87; see WHELAN, *supra* note 1, at 26. Whelan’s representation of Hewlett’s data is not quite accurate. Hewlett studied two generations of women: what she termed the “break-through generation” (women ages forty one to fifty-five in 2001) and their younger peers (ages twenty-eight to forty). Her poll, also using Harris Interactive polling, targeted the top ten percent of women in terms of earnings. HEWLETT, *supra* note 17, at 85. Looking at this group, she found that in the older group, only eight percent entered their first marriage after age thirty, and only three percent after age thirty-five. *Id.* at 87. She did not focus these statistics on the younger group, which would include many of Whelan’s SWANS.

Dowd opined that her high achievements have only hurt her in the mate market. As Dowd quips, “[h]ow odd . . . to find out now that being a maid would have enhanced my chances with men.”¹⁹ Dowd also wrote a column for the *New York Times* in which she described a 2004 University of Michigan study that found men would prefer to marry subordinates rather than superiors.²⁰ Dowd quotes Dr. Stephanie Brown, one of the authors of the study, as saying: “Powerful women are at a disadvantage in the marriage market because men may prefer to marry less-accomplished women.”²¹

According to Whelan, the “real story” is reflected in several studies that suggest SWANS are doing well in the marriage market; they just marry later.²² Indeed, studies show that the “success penalty” is now diminishing and has apparently disappeared as of the 2005 Current Population Survey for women with advanced degrees and for those who earn in the top ten percent for women wage earners in the same age group—the exact criteria Whelan uses in her definition of SWANS.²³ While fewer women with graduate degrees marry in their twenties (55% compared to 61% for other women), over time this trend shifts in favor of women with graduate degrees, who are more likely to marry in their thirties than women with a college degree or less.²⁴ Whelan buttresses her point with accounts from SWANS who have seen or experienced this phenomenon firsthand. Indeed, the statistics bear this out: “By ages 35 to 39, a higher percentage of high-achieving women have walked down the aisle than their less accomplished sisters.”²⁵

A. How Should SWANS Find Mates?

After introducing SWANS and laying out her thesis, Whelan transitions from her main message—that SWANS likely will marry—to discussing what SWANS need to do to “land a man.” Chapter three is devoted to exploring how

19. MAUREEN DOWD, ARE MEN NECESSARY? 48 (2005).

20. Maureen Dowd, Op-Ed, *Men Just Want Mommy*, N.Y. TIMES, Jan. 13, 2005.

21. *Id.* Whelan brushes this study aside, noting that it was based on a study of one hundred twenty male undergraduates. Thus, she concludes, this is not a representative sample of men who might be interested in SWANS as potential wives. She also discounts a study by British researchers that showed that the higher a woman’s I.Q., the less likely she would marry. This study suffered once again from the set of people it looked at—women and men who were born in 1921. This is, as Whelan points out, a vastly different age cohort than SWANS. WHELAN, *supra* note 1, at 28-29.

22. WHELAN, *supra* note 1, at 30-32.

23. *See id.* at 32. Whelan finally defines who SWANS are more precisely: Women with graduate degrees and incomes in the top ten percent for women in their age groups. Whelan acknowledges some difficulties with this categorization, including that in some areas of the country, earning less than her cut-offs would place a woman in the top ten percent of women in her area.

24. *Id.* at 33.

25. *Id.* at 35.

SWANS should discuss their careers with potential mates.²⁶ She explores the difficulties of the “dating game,” including describing how many of the SWANS she interviewed play down their careers.²⁷ In a section of the chapter entitled “The Price of Love,” Whelan describes how many SWANS approach relationships like business deals.²⁸ While many SWANS use online dating services, forty-five percent of the single women Whelan surveyed did not think this was a good way to meet a potential partner.²⁹ And then there’s the “man map,” a map of the United States created by a real estate company that details where single men live by income in major U.S. cities.³⁰ [At this point, it is reasonable to ask whether Whelan is helping or simply making SWANS more stressed.]

Whelan then discusses some of the current advice writers who “help” women who are interested in finding husbands. Some of these writers include advice about downplaying one’s success to avoid intimidating men.³¹ Whelan suggests that the costs of intimidation are a self-fulfilling prophecy, or perhaps an excuse, that high-achieving women use for their dating failures.³² She uses the statement of Ruth, a thirty-five-year-old married lawyer, to suggest an answer: “‘This whole idea that it’s hard for high-achieving women to meet men is silly. Don’t dumb yourself down, it’s not good for long-term happiness.’”³³ Ruth’s comments seem self-evident: “dumbing” one’s self down is dishonest, and one’s intelligence is bound to become evident down the road. It seems reasonable to assume that a man who does not want to date an intelligent woman will not want to date or marry a woman who “dumbs herself down” and then reveals her intelligence later.

Contrary to the dumbing down discussion in chapter three, in chapter four Whelan posits that “gentlemen prefer brains.”³⁴ She begins with an interview with Justin, a thirty-year-old associate in an international hedge fund in New York. Justin is looking for an intelligent wife, someone who uses her education “‘to pursue any range of intellectual interests.’”³⁵ Whelan uses this anecdote to

26. This is an odd chapter, given that Whelan’s premise seems to be that successful men like smart and successful women. Why should SWANS need advice on how to talk to men about how successful they are?

27. WHELAN, *supra* note 1, at 42-46.

28. *Id.* at 48-57. Apparently, Rachel Greenwald’s best-selling *Find a Husband After 35*, with its business school-inspired approach to finding a husband, hit a chord with many SWANS. Greenwald offers such practical advice as spending ten to twenty percent of one’s annual income on the quest for a husband. RACHEL GREENWALD, *FIND A HUSBAND AFTER 35: USING WHAT I LEARNED AT HARVARD BUSINESS SCHOOL: A SIMPLE 15-STEP ACTION PROGRAM* 22 (2003); WHELAN, *supra* note 1, at 49.

29. WHELAN, *supra* note 1, at 51.

30. *Id.* at 52.

31. *Id.* at 54.

32. *Id.* at 57-58.

33. *Id.* at 59.

34. *Id.* at 63. If this is the case, what was the point of chapter three, except to spur SWANS’ anxiety?

35. *Id.* at 64.

introduce recent survey data that show a shift in what men are looking for in a wife. Men of the 1930s were looking foremost for women who had “dependable character[s].”³⁶ Today’s men (most recently those surveyed in 1996) ranked love and attraction first on their list. And, good news for SWANS, education and intelligence jumped from eleventh in 1939 to fifth in 1996.³⁷ Further, a woman’s financial prospects ranked ahead of her chastity, cooking prowess, and housekeeping skills.³⁸ Indeed, 89% of the high-achieving men she surveyed wished to marry or already had married a woman who was as intelligent or more intelligent than they were.³⁹ Yet, Whelan spoke to many SWANS who were concerned about their marriage prospects.

Whelan argues that men are looking for three things in their future mates: “intelligence, self-confidence, and ambition.”⁴⁰ She supports this thesis primarily with anecdotes from several men she interviewed. In addition, her data support the idea that men like self-confidence: 97% of the single high-achieving men she surveyed want to marry a woman who is as or more confident than they are.⁴¹ Yet, what man would answer a survey question that he likes women who lack confidence? Survey questions of this sort suffer from response bias.⁴² People respond as they think they should, rather than based on their actual behavior. There is a difference between what people will do hypothetically and what they will do in reality. Thus, Whelan’s findings on this kind of survey question should be taken with a grain of salt.

What about women who make more money than most men? Are they attractive as mates? Apparently, it all depends on the man. Whelan uses research by Heather Koball, who found that men do not consider income a significant factor in marriage when they believe in equality and shared roles in their intimate relationships.⁴³ Whelan follows up with data from a Match.com

36. *Id.* at 65 (citing David M. Buss, et al., *A Half Century of Mate Preferences: The Cultural Evolution of Values*, 63 J. MARRIAGE & FAM. 491 (2001)).

37. *Id.*

38. *Id.* The statistics Whelan cites look good for SWANS’ marriage prospects. A Match.com poll found that 62% of men are not afraid to date or marry a career woman. *Id.* at 66 (citing Deborah Siegel, *The New Trophy Wife*, PSYCHOL. TODAY, Jan.-Feb. 2004, available at <http://www.psychologytoday.com/articles/pto-20040107-000008.html>). Similarly, her own data show 71% of “high-achieving men said a woman’s career or educational success makes her more desirable as a wife,” and 92% of men who describe themselves as successful or very successful were more attracted to successful career women. *Id.* at 66.

39. *Id.* However, how many men would admit that their wives are “less intelligent”?

40. *Id.* at 69.

41. *Id.* at 70.

42. There are different types of response bias. One involves whether the choice to respond to a survey skews the results. See, e.g., Kathleen M. Mazor et al., *A Demonstration of the Impact of Response Bias on the Results of Patient Satisfaction Surveys*, 37 HEALTH SERVICES RES. 1403, 1404 (2002). Another form is often referred to as social desirability bias, whereby people skew their responses to reflect what they believe is the socially desirable response. See, e.g., R.J. Fisher, *Social Desirability Bias and the Validity of Indirect Questioning*, 20 J. CONSUMER RES. 303, 303 (1993).

43. WHELAN, *supra* note 1, at 71; see Heather L. Koball, *Crossing the Threshold: Men’s Incomes, Attitudes Toward the Provider Role, and Marriage Timing*, 51 SEX ROLES 387 (2004). Koball used two items in her survey to identify these men: 1) “It is usually better for everyone involved if the man is the

survey in addition to her own data. Half of the men in the Match.com survey stated that they dated women who made as much money as they did.⁴⁴ A 2005 survey by MarieClaire and Match.com found 87% of the men surveyed (ages twenty-six to thirty-six) thought it was sexy to date a woman who earned more.⁴⁵ Whelan found that 97% of her single male respondents agreed that they would like to marry a woman whose earning potential was greater than or equal to their own. She does acknowledge, through interview anecdotes, that some men still view themselves in a provider role and that marriage to a woman who earns more may conflict with that role.⁴⁶ Having a wife who earns more money may prove good in theory, but will many or most men feel comfortable with this in reality?

The key may well be in finding a man whose mother was successful. Whelan's data found a statistically significant relationship between a high-achieving married man's mother's employment status while he was growing up and his wife's current income. As she puts it, "Men whose mothers were employed were almost twice as likely to marry women who earned \$50,000 or more a year as men whose mothers were not employed when they were growing up."⁴⁷ These men appear to believe successful women are attractive—75% of men whose mothers worked outside the home while they grew up agreed or strongly agreed that "[m]en are more attracted to women who are successful in their careers."⁴⁸ High-achieving men believe moms can successfully work as well: 62% disagreed with the statement: "Women who are stay-at-home parents are better mothers than women who work outside the home."⁴⁹

achiever outside the home and the woman takes care of the home and family," and 2) "Most women are happiest when they are making a home and caring for children." *Id.* at 390.

44. WHELAN, *supra* note 1, at 71; see Siegel, *supra* note 38.

45. WHELAN, *supra* note 1, at 71-72; Press Release, Match.com, New Research Shows Never-Married Single Men Want to Settle Down: Match.com and Marie Claire Join Forces to Find America's 50 Hottest "Ben Jones" Bachelors (July 14, 2005), available at http://corp.match.com/index/newscenter_release_detail.asp?auto_index=92. It may be sexier to these men, but that does not mean they want to compete with these women daily in a marriage.

46. WHELAN, *supra* note 1, at 72.

47. *Id.* at 73-74. The reader is left to ponder what that means in terms of real percentages. Even though it may be twice as likely, if the likelihood is low, this may not be a very meaningful statistic. For example, if the rate is two percent, then a mere four percent is double the rate. Still, the figures would remain low and the case relatively rare. Unfortunately, Whelan does not provide sufficient information for the reader to make that determination. How high a level of education the man's mother received was also related to a wife's education level. Here, Whelan provides more statistics: 78% of men whose mothers had college degrees married women with at least a college degree. 62% of men whose mothers had graduate degrees married women with graduate degrees, while another 27% of those men married women with college degrees—for a total of 89%! *Id.* at 74.

48. *Id.*

49. *Id.* Thirty-eight percent—over one-third—of high-achieving men thus agree, at least to some extent, with this statement. Whelan followed up with stories of individual SWANS and sons of achieving women that support her statistics. One notable discussion comes from a lawyer named Joseph, who is engaged to special education teacher, Ashley. *Id.* at 77. Ashley already has a masters degree and is planning on pursuing her Ph.D. down the road. In discussing their future, Ashley asked, "What's the most important thing I can do for you when we're married?" Joseph responded, "[L]et me live my life

At this point, Whelan provides her reader with the first in a series of what I will call “sidebars.” These sidebars occur throughout the text. This particular one is entitled “But darling, I just want you to be happy. . .”⁵⁰ In this brief section, Whelan addresses the role of well-meaning relatives who put pressure on SWANS to find a mate. Mothers of SWANS worry because successful women of earlier generations did have trouble finding husbands. Whelan’s message to these folks is clear: “Your successful 30-year-old daughter is not a spinster. Talk to her about these issues using data from this book. She’s a lot more than a statistic to you, but these good news numbers apply to her.”⁵¹

Chapters five and six shift from who will marry SWANS to whom SWANS should marry. Chapter five takes on a variety of subjects, including marrying up, marrying down, and statistics on what qualities women prefer in a mate. While SWANS are more likely to want to marry an equal, Whelan argues that they should consider men who “may not fit outdated social norms of ‘suitable mates.’”⁵² Whelan notes that there is societal derision of women who do not marry their “equals” or better. She explains the evolutionary biology perspective, which claims that women prefer intelligent and financially stronger men because these men will protect them.⁵³ More and more women are graduating from college and graduate school.⁵⁴ Indeed, not only will it be increasingly difficult for women to “marry up,” it will even be difficult for

and have the same social interactions we had before we were married.” *Id.* According to Joseph, Ashley wanted him to “stay focused on the need to put effort into the mutuality of our relationship and the stuff we do together.” *Id.* Okay, gentle reader, at this point I laughed out loud. These two people have totally different ideas of what marriage is about—he wants to continue doing what he wants to do, and she wants the couple to be a unit. These two are headed for divorce court.

50. *Id.* at 78.

51. *Id.* at 80.

52. *Id.* at 85. At this point, she reintroduces Antoinette, a thirty-eight-year-old black businesswoman and public speaker, who suffers her girlfriends’ raised eyebrows for dating a divorced white stage designer with two kids from a previous marriage. Antoinette is frustrated with the social forces that make her girlfriends raise their eyebrows at her new-found love:

People ask what your boyfriend does. If you say he’s an attorney people get all excited. But what if he doesn’t call me or treat me well? It’s very easy to get caught up in it. The suit doesn’t make the man. The media say it’s OK to be the high-powered corporate woman and date the construction worker. We don’t talk about the fact that it’s good to have someone who truly loves you.

Id. at 85-86.

53. *Id.* at 86-87. However, for financially secure women, this should not be a concern. They do not “need a man” for financial protection.

54. According to data compiled by the U.S. Department of Education and detailed by the Chronicle of Education, the six-year college graduation rates for women and men who were freshmen at four-year institutions in 1997-1998 were 51.3% for men and 56.8% for women. 53 CHRON. HIGHER EDUC., 2006 Almanac, at 14 (Aug. 25, 2006). Broken down by race, graduation rates were 59.8% for non-Hispanic white women and 42.4% for black women. For men, the rates were 54.4% for non-Hispanic white men and 32.8% for black men. *Id.* Department of Education projections predict that by 2013, the number of doctorates conferred on women and men will be the same, and by 2014, women will outnumber men in terms of doctorates awarded. *Id.* at 16. In terms of master’s degrees, women were projected to have outnumbered men by 2006, with 350,000 women receiving master’s degrees and 229,000 men receiving master’s degrees. *Id.* For bachelor’s degrees, women were projected to exceed men in the number of degrees awarded by 2006, with women receiving 845,000 degrees and men receiving 586,000. *Id.*

women to marry “equals” in terms of educational attainment. According to Whelan’s data, however, SWANS are not looking to marry up, but instead to “date a diverse group of men.”⁵⁵ Whelan never directly takes on why society chides women for not marrying their equals or better.

Whelan recounts survey data that show shifts in women’s mate preferences from 1939 to 1996.⁵⁶ What tops the list for the 1996 survey? Like the data for men, mutual attraction/love tops the list.⁵⁷ But good financial prospects jumped from thirteenth to eleventh place—so modern women are paying attention to the bottom line.⁵⁸ Of course, the general population data are not restricted to SWANS. SWANS, Whelan explains, are looking for “supportive, motivated, and intelligent partners who ‘just click’ with their values and their view of the world.”⁵⁹ This is a diverse group of potential mates; the only “deal breaker,” according to Whelan, is “apathy.”⁶⁰ SWANS are looking for men with “passion . . . for a career or calling, and for the relationship”⁶¹

A section of this chapter is devoted to a subject Whelan noted earlier—“marrying down.” Whelan argues that society places too much emphasis on judging a person’s worth by his income. Instead, emphasis should be placed “on a man’s character or ability to emotionally support a family.”⁶² Emphasizing men’s incomes devalues caretaking work that men are quite capable of doing. In particular, she castigates feminists: “Feminist groups are often the ones that complain the loudest about their daughters’ inability to find a suitable man. It’s hypocritical and elitist for feminists to complain that successful women are having to marry ‘below their station.’”⁶³ If men can marry women with less education or income, why can’t women? The key for SWANS, according to Whelan, is that the potential mate must be passionate

55. WHELAN, *supra* note 1, at 87-88. There may be differences between men who SWANS find acceptable as marriage partners and who they find acceptable to date.

56. *Id.* Whelan’s data come from David M. Buss, et al., *A Half Century of Mate Preferences: The Cultural Evolution of Values*, 63 J. MARRIAGE & FAM. 491, *supra* note 35, at 499, tbl.6 (2001).

57. WHELAN, *supra* note 1, at 89. In 1939, emotional stability/maturity topped the list, with a dependable character coming in second. Ranked third was ambition/industriousness. By 1996, ambition/industriousness slipped to seventh place. *Id.*

58. *Id.*

59. *Id.* at 91.

60. *Id.* From there, the analysis breaks down. The reader finds out that 92% of SWANS want to marry men who are likely to be a good parent. Only fourteen percent of SWANS are looking for a man who is more attractive. Yet, 80% would like to marry or are already married to a man “who is as attractive as they are.” It would be odd for a large number of women to admit that they married men who are “less attractive.” Another 73% report that they prefer to marry or have already married a man who is as intelligent as they are. *Id.* at 92-93. It is unclear what the reader is supposed to take from these statistics, but Whelan is quick to point out that intelligence for SWANS can take many forms—an Ivy League-type resume may not be necessary. *Id.*

61. *Id.* at 91.

62. *Id.* at 99.

63. *Id.* She provides no citations to these feminists.

about something—he cannot simply wait around for her to support him. That he makes less money is not a deal breaker.⁶⁴

Continuing this theme, Whelan explores “Who is Mr. Right?” in chapter six. In a section addressing race, Whelan explores interracial marriages and what SWANS are thinking about marrying interracial.⁶⁵ She mentions, but does not explore in-depth, a variety of ideas associated with interracial dating, including the purported dearth of educated black men to date, the purported desire of black men to provide for the household, and complaints by black women when black men date white women. There is no analysis of these complex issues.⁶⁶

Whelan ends with a sidebar titled “Always a bridesmaid?” In this section, she describes three waves of marriages: the group who marry after college, the group who marry in their early thirties, and a third group who wait until their forties.⁶⁷ Although this section is unfortunately named (playing on the saying “always a bridesmaid, never a bride”), it ends very hopefully in terms of marriage possibilities for SWANS. The message is clear: There are plenty of opportunities (well into one’s forties) to meet the right man.

B. Children and Family Time

In the last chapters of the book, Whelan addresses two issues of timing: when to marry and when to have children. She starts with anecdotes from three women in their late twenties who are feeling pressure from family and friends to marry. Whelan suggests that there is no rush and reiterates her primary point: 90% of women in the United States will marry by age forty-four.⁶⁸ Whelan embellishes the facts with her theory as to why SWANS stay single longer: it takes time to build a career. According to Whelan’s data, 60% of SWANS aged twenty-five to thirty-four considered educational or career success their top priorities. By the time SWANS reach thirty-five to forty, that number drops to 42%. Thus, she suggests that younger women are prioritizing their career opportunities—not their love lives—during their twenties and early thirties.⁶⁹

64. *Id.* at 100-01.

65. Importantly, she notes that it is increasingly difficult for black women to marry men at the same educational level. According to one survey she cites, there are “166 black women enrolled in college for every 100 men.” *Id.* at 124. Whelan notes that the good news about marriage rates for white SWANS might not hold up for black women.

66. She ends this section on an ambivalent note, describing the relationship between a white SWANS and her black lawyer boyfriend. Although the relationship is not what the woman “envisioned,” it works well for her. Whelan ends with a quote from the woman’s mother, who is concerned that being in an interracial marriage might cause problems for the couple, depending on where they live. What are SWANS to take away from this discussion? *See id.* at 123-26.

67. *Id.* at 135-37.

68. *Id.* at 142.

69. If this is indeed what younger women are doing, they really do not need Whelan’s book. They have made a choice to privilege career in an effort to establish their careers and will concentrate on love

The downside of this career focus is that some SWANS do not have much time or energy to date. Whelan consults matchmaker Nancy Slotnick about this phenomenon. Slotnick is concerned that women who want to marry but work hard may not have the time or make the effort to find the right man. In a section entitled "Balancing Choices," Whelan finally suggests that maybe SWANS need not marry. Quoting a thirty-seven-year-old lawyer named Julia, "We don't have to get married. Our mother's generation had to get married."⁷⁰ The quote from Julia ends with her lamenting all the choices women have: "It's a bit overwhelming"⁷¹ Whelan recounts tales from several SWANS who have cut back on work to achieve balance between their careers and their personal lives.

Children are introduced in this chapter in a conversation between late-twenties SWANS, two of whom are having "baby pangs" as the first wave of their friends begin to have children. This leads Whelan to another end of the chapter sidebar, where she takes on the question: "Am I too old to get married?"⁷² Whelan reiterates that more men and women are marrying older. Whelan opines that there are advantages to these older marriages—they will be more stable and happier. She cites no studies to that effect, but certainly one would hope that people with more life experience would make better choices in mates. Her advice to those who are discouraged: "Make an effort to look and feel your best at any age. Pamper yourself into believing you are beautiful (a manicure-pedicure and a free makeover at the cosmetics counter always does wonders for me)."⁷³ On the issue of children, she advises not to marry just to have a child. While one must pay attention to her biological clock, there is always adoption.

This provides a nice segue to the chapter on childbearing. In chapter eight, Whelan takes on Sylvia Hewlett's book directly. She argues that the "myth" of the female executive who concentrates so much on her career that she neglects to have children until it is too late, is just that—a myth. This myth comes from a belief that women who work are not as nurturing as those who stay home full-time. Historically, in terms of the number of women with both children and careers, this "myth" has some basis in fact. As Whelan explains, higher percentages from previous generations of women who were college graduates and worked full-time did indeed remain childless.⁷⁴

However, like the statistics on marriage rates, this too is changing. Relying in part on a study by Professor Elaina Rose, Whelan explains that married

later. This raises the question of what Whelan's book is designed to do. These women do not need her advice.

70. *Id.* at 151.

71. *Id.*

72. *Id.* at 156.

73. *Id.* at 158.

74. *Id.* at 160.

career women are increasingly likely to have children. The difference in the percentage of women with sixteen years of education (roughly, college degrees) and those with professional or doctorate degrees who have children has been decreasing. Beginning with data from 1980, there was an 18.2% difference in childbearing rates between these two groups. By 2000, this difference fell to 5%.⁷⁵ This is good, because high-achieving women want to have children. Whelan's study shows that 76% of high-achieving women age twenty-five to thirty-four want to have children.⁷⁶ The question becomes when to fit those children into busy careers. While many of the high-achieving women she interviewed are concerned about having children, Whelan's message is, once again, not to panic. Her research suggests high-achieving women do have children: "In 2005, 73 percent of married high-earning women ages 40 to 44 had children, and 77 percent of married women with advanced degrees had children."⁷⁷

Some of these high-achieving women are worried that if they wait too long, they will encounter fertility problems. Whelan includes a section entitled "The Facts on Fertility" to edify her audience on this issue. On this, Whelan is realistic, citing statistics that show that by age forty, fertility rates begin to drop precipitously. She reports that only 5% of women who are forty-five-years old are fertile.⁷⁸ She is also realistic about technologically-aided options. For example, she explains that the success rate for in vitro fertilization is only 10-12% for each embryo transfer.⁷⁹ The success rate for reproductive technologies drops to 5.3% for women who are forty-three.⁸⁰ In spite of these numbers, Whelan includes positive anecdotes from OB/GYNs who furnish fertility treatments. Whelan's final point is well-taken: "If having children is a priority, doing so in your twenties or early thirties is much more advisable than waiting until your late thirties or beyond."⁸¹ One possibility for women who have reached their mid-thirties and have not married that Whelan explores is having a baby prior to marriage.⁸²

75. Elaina Rose, *Education and Hypergamy, and the "Success Gap"* 15 (Am. Econ. Ass'n Annual Meeting, Jan. 9, 2005), available at http://www.acaweb.org/annual_mtg_papers/2005/0109_1300_0701.pdf.

76. WHELAN, *supra* note 1, at 162.

77. *Id.* at 163. This is based on Whelan's own research.

78. *Id.* at 164 (citing Telephone Interview with Dr. Robert Howe (Feb. 24, 2006)).

79. WHELAN, *supra* note 1, at 165.

80. *Id.*

81. *Id.* at 166. Whelan acknowledges that some SWANS are childless by choice. She has testimonials from several SWANS for whom the "whole marriages and babies thing" is not "[their] thing." *Id.* at 171. Indeed, Whelan notes that from her study, "eighty-eight percent of high-achieving women—and 92 percent of single high-achieving women—said they agree that '[a] person can lead a satisfying life without having children.'" *Id.* This is especially interesting in contrast with non-high-achievers, only sixty-six percent of whom agreed with this statement. *Id.* at 172. Thus, it appears that many high-achieving women affirmatively choose not to have children.

82. Whelan then briefly explores the cultural implications of single motherhood for black and Latina SWANS. Whelan explains that "for high-achieving minorities, being a single mom often carries a

To her credit, Whelan explores another angle on the child question: How do you balance careers with children? She notes that high-achieving women are torn between staying home or continuing with their careers after they have children. Sixty-three percent said they would prefer to stay home with their children if money were no object.⁸³ Whelan advises her reader not to assume that this means women do not value their jobs, but instead to take this statistic “with several grains of salt.”⁸⁴ Many of the men she surveyed—60%, to be precise—agreed with the women. In addition, she notes that some studies suggest that women enjoy their jobs.⁸⁵ Furthermore, “the vast majority of women with children *do* work outside the home.”⁸⁶ And, of Whelan’s high-achieving working moms surveyed for the book, 93% were employed or self-employed.⁸⁷ Media stories that suggest young women at elite colleges are considering opting to stay home with children notwithstanding,⁸⁸ many mothers today work. Whelan cites a study by economist Heather Boushey, which suggests that women with children are increasingly working.⁸⁹

Whelan opines that high-achieving women may well be in the best position to have the flexibility to balance work and kids. Some SWANS that Whelan spoke to who are not yet married were already considering alternative career tracks in order to accommodate a family down the road. Others had children and had found a balance, although not always easily. Indeed, two women she interviewed who had children either took some time off work or worked less than full-time.⁹⁰

Whelan ends the book with a chapter entitled “Futures and Options.” She begins with the tale of Olivia, a thirty-year-old high-achieving woman who has a husband, two children, and her own real estate business. Essentially, Olivia has “done it all.” Olivia has a full-time nanny to help meet her childcare needs,

social stigma.” *Id.* at 169. She does not explore that stigma in depth, but instead notes, through various SWANS’ statements, that these women would prefer, in part due to family constraints, to have husbands and fathers for their children. She notes that this is “especially” a struggle for black SWANS. *Id.* at 170.

83. *Id.* at 174.

84. *Id.*

85. *Id.* Whelan notes that a survey by Catalyst in 2002 “found that 67 percent of women in dual-career marriages would continue working whether or not they needed the money.” *Id.* (citing Catherine Arnst, *Commentary: Women Work. The Support System Doesn’t*, BUSWK, Nov. 4, 2002, available at http://www.businessweek.com/magazine/content/02_44/b3806046.htm).

86. *Id.*

87. *Id.* at 175.

88. See, e.g., Louise Story, *Many Women at Elite Colleges Set Career Path to Motherhood*, N.Y. TIMES, Sept. 20, 2005, at A1.

89. In addition, high-achieving moms are more likely to be married. Whelan cites Boushey’s finding that 91.2% of mothers with advanced degrees are married compared to 78.3% of all mothers age twenty-five to forty-four. See WHELAN, *supra* note 1, at 175. Contrary to popular belief, “the overwhelming majority of thirty-something women with advanced degrees do not opt out if they have kids, but if they do opt out, they have kids.” *Id.* at 176 (quoting BOUSHEY, *supra* note 7, at 10).

90. One described having a “major meltdown” as she tried to balance her child and her job. *Id.* at 177.

but she still does bathtime and reads her children stories at night.⁹¹ Olivia is conflicted by meeting both her role as mom and her role as high-achieving woman. Olivia sees herself as selfish in choosing either career or kids.⁹² Whelan holds Olivia out as one of the many high-achieving women who have shattered the myth: She is married, she has children, and she has not opted out of the workforce. But it is unclear whether Olivia is happy.

Whelan eschews ending her book with a call for workplace change—as she states, such endings “really bother me. ‘Give me practical advice, not utopian dreams of social change,’ I’d mutter when I got to these final chapters.”⁹³ Curiously, given her earlier criticism of Sylvia Hewlett, Whelan opts to adopt some of Hewlett’s advice. Included in Hewlett’s advice is: “Ask yourself what you want your life to look like at 45. If you see children in the picture, you need to become ‘seriously proactive.’”⁹⁴ In addition, Hewlett advises to prioritize finding a partner in your twenties, have a child before thirty-five, choose a career that allows flexibility, and choose an employer who does as well.⁹⁵ While Whelan calls these suggestions “good,” she is clear that they are not required. She ends with the story of Christina and Josh, who married at ages thirty-five and thirty-six, respectively. As for children, the couple will “see if it happens.”⁹⁶ They are hopeful and happy—what Whelan envisions for SWANS.

II. DEBUNKING THE MYTH

Whelan’s book is clearly intended for a popular audience of high-achieving or would-be high-achieving women who are concerned about their marriage prospects. To the extent that Whelan “debunk[s a] myth”⁹⁷ that might discourage women from achieving in an effort to marry and have children, she deserves to be applauded. However, her effort might have been more effective as an op-ed piece in the *New York Times* (to counter, for example, the problematic Maureen Dowd column). Her main point did not require two hundred pages, and what she fills those pages with is a sometimes-confusing jumble of almost-advice with little in-depth analysis of the many issues surrounding the marriage choices of these high-achieving women. Sure, SWANS will marry, but once they marry, balancing work and family commitments becomes the real problem.

91. *Id.* at 187-88.

92. *Id.* at 188. As Olivia states, “When I leave my kids and go to work, I cry for them. But at the same time, I’ve been so well educated and have so much to offer society, I should be in the workforce. . . . Doesn’t it make you selfish either way?” *Id.*

93. *Id.* at 197.

94. *Id.* (citing HEWLETT, *supra* note 17, at 301).

95. *Id.* at 197-98.

96. *Id.* at 200.

97. BOUSHEY, *supra* note 7.

There are two main things I will discuss about Whelan's book. First, I will point out what is missing or only treated in a cursory fashion in her book that might be helpful to SWANS facing the marriage question. Second, I will discuss some broader implications of demographic marriage trends that are hopeful for the marriage prospects of Whelan's SWANS, but might be problematic for other women.

A. Issues Whelan Skirts

The most glaring omission from Whelan's book is her failure to answer the question in her title. Why do smart men marry smart women? Indeed, it is not precisely clear that smart men do marry smart women.⁹⁸ While she does tell her reader that smart women (by her definition) will marry, it is not clear whom they will be marrying, and, if they are indeed marrying smart men, why such men are choosing smart women. A more accurate title would have been "Smart (Heterosexual White) Women Will Marry."

In addition, Whelan provides very little insight into an underlying premise of her real thesis: that these high-achieving women *should* marry. Although the book does contain some perfunctory statements suggesting that not all women may want to get married,⁹⁹ there is no meaningful discussion of the pros and cons of marriage for SWANS. Indeed, this is a bit curious, given that being single has always been a fact of life for some portion of the female population, whether by choice or accident. Single women historically have been viewed as a destabilizing force because they undermine the fundamental nature of marriage as the marker of women's legal and social lives in the United States. Further, as her book is a sort-of self-help book,¹⁰⁰ it is odd that Whelan does not try to help SWANS weigh the pros and cons of marriage in order to make an informed choice.

Law professor and historian Ariela Dubler has chronicled the historical status of unmarried women as a legal construct.¹⁰¹ In the nineteenth century, law sought to deny the legal existence of single women, instead opting to conceive of all women as wives. As Dubler explains: "Denying single women's

98. There are data suggesting that men are increasingly likely to marry at the same educational level. *See infra* notes 131-133 and accompanying text.

99. *See, e.g.,* WHELAN, *supra* note 1, at 10, 151.

100. It is difficult to determine Whelan's ultimate goal in writing this book. Is she seeking to provide advice to SWANS? If so, it is not clear that they need her advice. Many younger SWANS are concentrating on their careers and will marry later. Is she trying to comfort SWANS? If so, it would not take an entire book to make her point that SWANS marry later. If she is looking at broader societal marriage trends (her gathering of data suggests this may be so), she is remiss in not commenting further on the broader societal implications of her data.

101. *See* Ariela R. Dubler, "Exceptions to the General Rule": *Unmarried Women and the "Constitution of the Family,"* 4 THEORETICAL INQUIRIES L. 797 (2003) [hereinafter Dubler, *Exceptions*]; Ariela R. Dubler, *In the Shadow of Marriage: Single Women and the Legal Construction of the Family and the State*, 112 YALE L.J. 1641 (2003).

existence allowed the law to ignore the potential threat they posed to a marriage-centric socio-legal order.”¹⁰² This approach to the legal status of women is no more evident than it is in the case of women lawyers. In *Bradwell v. Illinois*,¹⁰³ the United States Supreme Court infamously upheld the denial of Myra Bradwell’s application to become a member of the bar. Justice Joseph Bradley’s concurrence in that case expresses the position well:

Man is, or should be, woman’s protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony, not to say identity, of interest and view which belong, or should belong, to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband.¹⁰⁴

Not only did Justice Bradley consider married women unsuited to an existence independent of their husbands, but he also considered the thorny problem of those single women. As he explained, there are many women who are unmarried,

but these are exceptions to the general rule. The paramount destiny and mission of woman are to fulfil the noble and benign offices of wife and mother. This is the law of the Creator. And the rules of civil society must be adapted to the general constitution of things, and cannot be based upon exceptional cases.¹⁰⁵

Thus, single women were an “exception,” and not to be the basis for any legal rules governing the status of women.

Dubler recounts how, in the 1930s and 1940s, single women became difficult to ignore. The passage of the Nineteenth Amendment, which gave women the right to vote, as well as other social forces, including an increasing number of both married and unmarried women in the workforce,¹⁰⁶ made Justice Bradley’s position obsolete. However, rather than opening up a variety of ways of conceptualizing women’s legal and social existence, Dubler argues that “alternative nonlegal discourses arose to explain why women living outside marriage would not overturn marriage’s dominion.”¹⁰⁷ Thus, advice manuals for single women in the 1930s and 1940s, “[u]nlike nineteenth-century jurists . . . approached this task [of minimizing the threat single women posed for marriage] . . . by pointing to the ways in which the choice of some women

102. Dubler, *Exceptions*, *supra* note 101, at 797.

103. *Bradwell v. Illinois*, 83 U.S. 130 (1872).

104. *Id.* at 141 (Bradley, J., concurring).

105. *Id.* at 141–42.

106. See Dubler, *Exceptions*, *supra* note 101, at 811.

107. *Id.* at 801.

to remain single actually bolstered marriage's appeal and power in a modern, democratic society."¹⁰⁸ Marriage was conceived of as a choice, which the existence of single women made real. As such, "[m]arriage's power, in other words, rested not on the denial of single women's existence, but, rather, on their very visibility."¹⁰⁹

Whelan's uncritical acceptance of the basic premise that successful women want to marry sounds little different than the approach of her counterparts from the 1930s and 1940s. While she occasionally states that some women may not want to marry,¹¹⁰ she does little to assess the downsides of marriage for her SWANS—including high divorce rates.¹¹¹ Instead, marriage is presented as the goal. And, although the book will no doubt be comforting to high-achieving women who wish to marry, it does little to support the life choices of those who choose not to marry.

1. *Should SWANS Marry?*

Recent scholarly and political debate on same-sex marriage brings the complexity of a SWANS's decision to marry into sharper focus. Whelan assumes heterosexuality among her SWANS. Lesbian and bisexual SWANS are entirely absent from her discussion. This is unfortunate for numerous reasons. First, there are, no doubt, SWANS who are lesbian and bisexual. Second, same-sex marriage literature helps identify the problems with marriage as a source of patriarchy and oppression of women. Finally, "[m]arriage creates a two-tier system that allows the state to regulate relationships."¹¹² Rather than liberating women, marriage creates a system of "'haves' and . . . 'have nots.'"¹¹³ Marriage entitles its adherents, for example, to receive health insurance coverage under a spouse's policy and to social security benefits.¹¹⁴ By accepting marriage and heterosexism as the baseline, Whelan reifies heterosexual marriage's power as the favored relationship and accepts any resulting inequities in relationships that do not fit within this paradigm.

Whelan does not critique marriage as an institution, instead accepting it as a given good. Like advocates of conservative politics, Whelan "assumes the universality and normative superiority of marital heterosexual relationships,"¹¹⁵

108. *Id.* at 815.

109. *Id.* at 816.

110. WHELAN, *supra* note 1, at 10, 151.

111. Women lawyers, who are included in Whelan's definition of SWANS, have particularly high divorce rates. *See infra* notes 191-193 and accompanying text.

112. Paula L. Ettelbrick, *Since When Is Marriage a Path to Liberation?*, OUT/LOOK, Fall 1989, at 9, 16.

113. *Id.* at 17.

114. Nancy D. Polikoff, *We Will Get What We Ask For: Why Legalizing Gay and Lesbian Marriage Will Not "Dismantle the Legal Structure of Gender in Every Marriage,"* 79 VA. L. REV. 1535, 1535-36 (1993).

115. Lisa Duggan, *Queering the State*, 39 SOC. TEXT 1, 4 (1994).

missing an opportunity to critique these norms and recognize a broader range of relationships for women. As Martha Fineman has pointed out:

The patriarchal family is an “assumed institution” with a well-defined, socially constructed form complete with complementary roles—husband/head of household, wife/helpmate, child. The significant family tie is the sexual affiliation that, when legally sanctified, creates marriage. The assumed inevitability and primacy of this form of intimate connection reinforces patriarchy in that it defines male presence as essential and dominant within the family.¹¹⁶

Whelan does not consider that there might be other ways for these high-achieving women to arrange their intimate relationships that may be more liberating and consistent with their needs.

One section of Whelan’s book that could benefit from this critique is her section on “marrying down.” A close look at traditional marriage’s perpetuation of gender hierarchy should generate a deconstruction of traditional gender roles, which might provide insight into society’s obsession with “marrying up.” Lesbian activists have argued that allowing gays and lesbians to marry will lead to the same oppression and gender hierarchy that exists in heterosexual marriages, rather than transforming marriage itself into a more egalitarian institution.¹¹⁷ “Injustice within marriage has been a rallying cry for feminist activists since the nineteenth-century suffrage-seekers made men’s ‘absolute tyranny’ over woman in marriage one reason why women needed the vote.”¹¹⁸ Yet, Whelan does not discuss, or even acknowledge, that marriage is an institution of potential oppression for women. Such discussion could have provided helpful insight into why some SWANS appear so obsessed with marriage as well as what other options might provide meaningful relationships for these successful women.

There are some positive aspects of marriage (or, perhaps, relationships). Studies have shown that being married generally has a positive psychological effect for most of the population.¹¹⁹ Having a positive relationship with a spouse or significant other can buffer the effects of stress in comparison to

116. MARTHA ALBERTSON FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES* 23 (1995).

117. As Nancy Polikoff explains:

Advocating lesbian and gay marriage will detract from, even contradict, efforts to unhook economic benefits from marriage and make basic health care and other necessities available to all. It will also require a rhetorical strategy that emphasizes similarities between our relationships and heterosexual marriages, values long-term monogamous coupling above all other relationships, and denies the potential of lesbian and gay marriage to transform the gendered nature of marriage for all people.

Polikoff, *supra* note 114, at 1549.

118. Katharine T. Bartlett, *Feminism and Family Law*, in *WOMEN AND THE LAW* 307, 309 (Jane Campbell Moriarty ed., 2005).

119. See Connie J.A. Beck, Bruce D. Sales & G. Andrew H. Benjamin, *Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers*, 10 J. L. & HEALTH 1, 7 (1995).

people who live alone.¹²⁰ In addition, studies suggest that women also benefit from workforce participation.¹²¹ So, a relationship (though not necessarily marriage) and work are both good for women.

One obvious option that provides the support without perhaps the same limitations of marriage is cohabitation. Yet, nowhere are the pros and cons of this alternative arrangement discussed. Researchers have assumed that couples who are less committed, or less confident of their success as a couple, select cohabitation.¹²² Initial studies of cohabitation suggest that in terms of frequency of conflict, perceptions of equity, and relationship satisfaction, legally married persons fare better than cohabitants.¹²³ Yet, a recent study of long-term cohabitants found, in most respects, cohabitants and legally married couples did not differ significantly in terms of the frequency of conflict between the couple, perceptions of equity in the relationship, and relationship satisfaction.¹²⁴ Interestingly, the number of biological children had a negative effect on all of these measures for both married and cohabiting couples.¹²⁵ Prior cohabitation by a partner or spouse also had a negative impact on frequency of conflict.¹²⁶ This study ultimately suggests that the experiences of married and long-term cohabiting couples do not differ significantly on these measures related to relationship satisfaction. (Although one study found that cohabiting men with plans to marry spent more time on housework than cohabiting men without plans to marry.¹²⁷) On the other hand, cohabitation is also associated with the risk of divorce should the cohabitating couple marry.¹²⁸ Thus, cohabitation does not necessarily lead to increased marital stability. This does not, however, suggest that cohabitation is not a viable option for some women; perhaps it is a better option for women who are unsure of their relationship with a potential future mate. Moreover, cohabitation is the only option in most states for lesbian SWANS.

Studies of the effects of marriage on lawyers, however, are somewhat mixed. In a study of 1976 to 1979 graduates of the University of Michigan law

120. See *id.* at 58.

121. See Robert Schoen, Stacy J. Rogers & Paul R. Amato, *Wives' Employment and Spouses' Marital Happiness: Assessing the Direction of Influence Using Longitudinal Couple Data*, 27 J. FAM. ISSUES 506, 511 (2006) (citing and describing studies).

122. See Marion C. Willetts, *Union Quality Comparisons Between Long-Term Heterosexual Cohabitation and Legal Marriage*, 27 J. FAM. ISSUES 110, 111 (2006).

123. See *id.* at 112 (citing studies). Two of these studies involved short-term cohabitants, that is, those who have been cohabiting less than five years.

124. *Id.* at 118, 121.

125. *Id.* at 121.

126. *Id.*

127. See Teresa Ciabattari, *Cohabitation and Housework: The Effects of Marital Intentions*, 66 J. MARRIAGE & FAM. 118, 118 (2004). Interestingly, the intention to marry has no effect on the household obligations of cohabiting women. *Id.*

128. See Claire M. Kamp Dush, Catherine L. Cohan & Paul R. Amato, *The Relationship Between Cohabitation and Marital Quality and Stability: Change Across Cohorts?*, 65 J. MARRIAGE & FAM. 539, 539 (2003).

school, David Chambers found that married respondents, regardless of gender, were much more satisfied with their family lives than those who were single.¹²⁹ Yet, another study of lawyers did not find this to hold true. Instead, having a relationship at home “does not appear to benefit many of the lawyers in our study. Of those that have a primary relationship, a significant number of lawyers find these relationships unsatisfactory.”¹³⁰ Specifically, “female lawyers report significantly less satisfaction with their relationships than does the normal population.”¹³¹ One difference between the studies is that Chambers surveyed married and single lawyers, whereas Beck, Sales, and Benjamin surveyed lawyers married or living with a significant other. Perhaps the inclusion of cohabiting relationships not involving marriage affected the data. Marriage also may have implications for income. In their study of women lawyers, doctors, and academics, Theresa M. Cooney and Peter Uhlenberg found that among the thirty-five- to thirty-nine-year-old group of women lawyers they studied, marriage resulted in a nineteen percent decrease in income compared to women living alone.¹³²

Whelan also encourages SWANS to look to all types of men to marry—not just those who can match their educational and career achievements. Dr. Elaina Rose studied hypergamy, the tendency of women to marry men with higher socioeconomic indicators (such as education or income).¹³³ Hypergamy is decreasing as more women marry men with the same educational attainment.¹³⁴ In 2000, the plurality of married people, 41.7%, were married to spouses at the same educational level. (Hypergamy declined to 30.9%, and hypogamy—women marrying men with less education—was the lowest at 27.4%).¹³⁵ Thus, while some SWANS might choose to marry someone with less educational attainment, they are more likely to marry someone with the same level of education.

There are other considerations that go into having another person in one's household. Having a husband can create added work. Sylvia Hewlett, canvassing data related to the “second shift,”¹³⁶ found that 43% of the older,

129. David L. Chambers, *Accommodation and Satisfaction: Women and Men Lawyers and the Balance of Work and Family*, 14 L. & SOC. INQ. 251, 264 (1989).

130. Beck et al., *supra* note 119, at 58.

131. *Id.* at 30. One interesting factor in this study was the enormous standard deviation for women lawyers in this finding. The mean for women lawyers was 90.87, whereas the mean for the general population was 104.26. The standard deviation for women lawyers on this finding was 30.90, however, whereas the standard deviation for the general population was 9.73. *Id.* This suggests that women lawyers are essentially all over the map when it comes to satisfaction with their primary relationship.

132. Teresa M. Cooney & Peter Uhlenberg, *Family-Building Patterns of Professional Women: A Comparison of Lawyers, Physicians, and Postsecondary Teachers*, 51 J. MARRIAGE & FAM. 749, 756 (1989).

133. See Rose, *supra* note 75, at 2.

134. *Id.* at 5-6.

135. *Id.* at 44, tbl.17.

136. This term was coined by Arlie Hochschild and Anne Machung. See ARLIE HOCHSCHILD WITH ANNE MACHUNG, *THE SECOND SHIFT: WORKING PARENTS AND THE REVOLUTION AT HOME* (1989).

high-achieving women and 37% of the younger, high-achieving women in her study "*feel that their husbands create more work for them around the house than they contribute.*"¹³⁷ Her older group of high achievers included women age forty-one to fifty-five who earned over fifty-five thousand dollars or sixty-five thousand dollars, depending on age. The younger group was aged twenty-eight to forty.¹³⁸ Like Whelan, she relied on a nationwide survey by Harris, although Hewlett's was also in partnership with the National Parenting Association.¹³⁹ When it comes to helping with chores—cooking, laundry, housecleaning—many of these women had primary responsibility. Fifty percent stated that they had prime responsibility for meals, while only nine percent of their husbands or partners did. Likewise, 56% took prime responsibility for laundry, while only 10% of husbands did. Finally, when it came to house cleaning, 45% said they took prime responsibility, while only 5% of husbands did.¹⁴⁰ While younger wives do slightly less and younger husbands do slightly more, Hewlett points out that "slight" means "slight." For example, while only 8% of older husbands take responsibility for laundry, 13% of younger husbands have taken on this task.¹⁴¹ This is not a huge increase. The so-called "second shift" "persists."¹⁴² Adding children to the mix generally increases working mothers' at-home work. One study estimated that married women with small children work a minimum of seventy or eighty hours a week.¹⁴³

2. Children

There are several aspects of childbearing that SWANS ought to consider if they wish to marry before having children, which, as I explain below, is the likely course for SWANS. First, what are the benefits of having children in terms of careers and happiness? Second, what is an appropriate point in one's career to have children? The second question has to take into consideration biological realities. Finally, how easily can one maintain a successful career and a happy home life that includes children? Just as the media plays a role in shaping perceptions of whether SWANS marry, it also plays a role in shaping perceptions of working women's choices with respect to children. Indeed, Whelan notes a study of women at Yale that suggests these women will put

137. HEWLETT, *supra* note 17, at 107.

138. *Id.* at 85. She had another group of ultra-achievers, who made over one hundred thousand dollars per year. Her statistics held for ultra-achievers, 39% of whom felt the same way, even though half of these women were married to men who earned less than they did. *Id.* at 107.

139. *Id.* at 85.

140. *Id.* at 106-07. This is according to the high-achieving women surveyed.

141. *Id.* at 107.

142. See HOCHSCHILD WITH MACHUNG, *supra* note 136, at 4.

143. See Rebecca Korzec, *Working on the "Mommy-Track": Motherhood and Women Lawyers*, 8 HASTINGS WOMEN'S L.J. 117, 125 (1997) (citing Margaret Benston, *The Political Economy of Women's Liberation*, in ROLES WOMEN PLAY: READINGS TOWARD WOMEN'S LIBERATION 194, 199 (Michele Hoffnung Garskof ed., 1971)).

their careers on hold for family and children.¹⁴⁴ These types of studies get air time, but the reality is that most mothers work.¹⁴⁵

Studies show that working moms are happier than mothers who do not work. Hewlett recounts studies that show “women are happiest when they are able to have both a career and a family.”¹⁴⁶ Indeed, in a study of women lawyers, women with children were the most satisfied group of those studied, which included single women without children.¹⁴⁷ One 1994 study of lawyers in Canada suggested that women with pre-school age children actually have less strain-based conflict than women without children.¹⁴⁸ The author of this study suggested that access to resources for childcare and help with household duties might reduce the conflict for these women.¹⁴⁹ So, having children appears to add to a working mom’s happiness, but that does not mean life is easy.

There is a potential caveat on data concerning working mothers, and one that some of Whelan’s married former SWANS have encountered. Some research suggests that working mothers fare better in part-time work. Hewlett recounts a 2000 study by University of Chicago sociologists Qin Chen and Ye Luo suggesting that “[m]others who work long-hour jobs tend to be significantly less happy than mothers who work reduced-hour jobs, because fifty to sixty-hour-a-week jobs heighten conflict between work and family.”¹⁵⁰ Thus, maintaining a full-time career may not be the best choice for high-achieving women who marry.¹⁵¹

While these part-time working moms are happier, their careers may suffer. The “mommy-track,” with its connotations that women drop out of the

144. See WHELAN, *supra* note 1, at 174-75.

145. See *id.* at 174; see also Valerie Kincade Oppenheimer, Hans-Peter Blossfeld & Achim Wackerow, *United States of America*, in *THE NEW ROLE OF WOMEN* 150, 152 (Hans-Peter Blossfeld ed., 1995) (“By 1990, almost 70 percent of wives between the ages of 20 and 54 were in the labor force . . .”).

146. HEWLETT, *supra* note 17, at 292.

147. David L. Chambers, *supra* note 129, at 274. Chambers studied graduates of the University of Michigan Law School from the classes of 1976 to 1979. *Id.* at 260. Single persons were the least satisfied group, and women with children were the most satisfied group. *Id.* at 272. See also Kathleen E. Hull, *The Paradox of the Contented Female Lawyer*, 33 L. & SOC’Y REV. 687, 696 (1999) (finding that children have a positive effect on women’s satisfaction in work). In addition, married lawyers were more satisfied with the balance of work and family than were unmarried lawyers. Chambers, *supra* note 129, at 272.

148. Jean E. Wallace, *Work-to-Nonwork Conflict Among Married Male and Female Lawyers*, 20 J. ORG. BEHAV. 797, 811 (1999). “Strain-based conflict refers to the extent to which an individual is preoccupied with one role when attempting to meet the demands of another role.” *Id.* at 799.

149. See *id.* at 812-13.

150. HEWLETT, *supra* note 17, at 295 (citing Qin Chen & Ye Luo, *What Matters More, Jobs or Children? A Study of Time Use and Experience of Happiness Among Dual Earners* (Univ. of Chi., Sloan Center on Parents, Child. & Work, Working Paper No. 00-13, 2000)).

151. Indeed, Whelan recounts several of her working mom high-achievers who opted to take time off or find more flexible jobs to balance work and children. See WHELAN, *supra* note 1, at 176-77.

workforce once they have children, has pervasive force with employers.¹⁵² As one source notes, “‘Mommy-tracking’ can be viewed as leading to second-class status. In a survey of three thousand women in the nation’s largest law firms, sixty-seven percent of the respondents reported that part-time work results in lesser opportunities.”¹⁵³ For women lawyers, part-time work often means losing quality assignments and harming advancement opportunities.¹⁵⁴ In a recent study of Massachusetts lawyers at the top one hundred firms, a group of researchers from MIT found that “[a]mong junior or non-equity partners . . . a third of the women leave firm practice, compared to only 15% of the men.”¹⁵⁵ Further, of the women who left law firm practice, twenty-two percent were unemployed, compared to only three percent of the men.¹⁵⁶ For women who leave firm practice, “the most cited reason is ‘difficulty integrating work and family/personal life.’”¹⁵⁷ This may be why more women lawyers do not have children. In their study of women doctors, lawyers, and academics, Cooney and Uhlenberg found “[b]etween 20% and 30% of the ever-married professional women aged 35-39 are childless, compared to only 9% of the general population.”¹⁵⁸ Once again, Whelan might argue that these data are from an earlier age cohort as these researchers used 1980 census data.¹⁵⁹ However, not all the data Whelan relies on show huge increases in childbearing by high-achieving women.

Looking at the statistics upon which Whelan relies,¹⁶⁰ particularly those of Dr. Rose,¹⁶¹ it appears that the decrease in the difference in childbearing rates between college educated women and those with advanced degrees is not so much a result of a large increase in childbearing by high-achieving women (as measured by educational attainment), but instead is due in large part to a drop in childbearing rates for women with sixteen years of education (roughly, those with college degrees). In Table 14, Rose details that the percentage of women with sixteen years of education who had children by ages forty to forty-four

152. See DEBORAH L. RHODE, ABA, COMM’N ON WOMEN IN THE PROFESSION, THE UNFINISHED AGENDA: WOMEN AND THE LEGAL PROFESSION 15 (2001) (“[W]orking mothers, unlike working fathers, are often assumed to lack the commitment necessary for demanding legal positions.”); *id.* at 17-18. See also TASK FORCE ON WOMEN WHO TRY CASES, DRI, A CAREER IN THE COURTROOM: A DIFFERENT MODEL FOR THE SUCCESS OF WOMEN WHO TRY CASES 14 (2004), available at http://www.dri.org/dri/webdocs/Women_in_the_Courtroom.pdf (noting that one lawyer interviewed in a study of female lawyers felt that the attitude of firms toward women lawyers was “why bring you along when you’re just going to leave anyway or work will no longer be priority?”).

153. Korzec, *supra* note 143, at 127.

154. *Id.*

155. MONA HARRINGTON & HELEN HSI, MIT, WOMEN LAWYERS AND OBSTACLES TO LEADERSHIP: A REPORT OF MIT WORKPLACE CENTER SURVEYS ON COMPARATIVE CAREER DECISIONS AND ATTRITION RATES OF WOMEN AND MEN IN MASSACHUSETTS LAW FIRMS 8 (2007).

156. *Id.* at 10.

157. *Id.* at 12.

158. Cooney & Uhlenberg, *supra* note 132, at 757.

159. *Id.* at 750.

160. See WHELAN, *supra* note 1, at 160.

161. Rose, *supra* note 75, at 15.

dropped from 81.7% in 1980 to 71.9% in 2000.¹⁶² The increase in the rate of childbearing for women with graduate degrees (nineteen years of education) was modest: from 63.5% in 1980 to 66.9% in 2000. This is an overall increase of only 3.4%. So, the converging of childbearing rates for these two groups of women is not due to a sudden rise in childbearing rates for women with graduate and professional degrees.¹⁶³ While the declines in difference lead Rose to conclude that “[o]verall, for women, education is becoming less of an impediment to motherhood as well as to marriage,”¹⁶⁴ it certainly is not the case, at least according to Rose’s study, that there has been a large increase in childbearing rates for highly educated women.

Whelan also relies on a study based on the 2001 Current Population Survey (“CPS”) and a study of one hundred eighty-seven women attending a Fortune Magazine Most Powerful Women in Business Summit.¹⁶⁵ These data were generated in response to Hewlett’s book, which was controversial and received public attention at the time it was released.¹⁶⁶ The CPS data were analyzed by an economist, Heather Boushey. Dr. Boushey used a larger sample than Hewlett’s survey and based it on CPS data, so it should be more generalizable.¹⁶⁷ Writing for *The American Prospect*, a magazine that “was founded in 1990 as an authoritative magazine of liberal ideas,”¹⁶⁸ Garance Franke-Ruta details Boushey’s findings. It also is worth noting that Hewlett has conservative ties. Franke-Ruta explains that Hewlett is a board member for the Institute for American Values, a “private, nonprofit, nonpartisan organization that contributes intellectually to strengthening families and civil society.”¹⁶⁹ Thus, there are two competing political perspectives displayed in this debate. Hewlett’s data are flawed because she fails to compare the childbearing rates of

162. *Id.* at 41 tbl.14. The statistics on this point are a bit unclear. Rose has two groups of data—one labeled “Pooled Data” and one that isn’t. The 81.7% figure is in the column not labeled “pooled” for 1980. The pooled data set indicate that 80.2% of women in 1980 had children.

163. Looking at other age ranges yields the same phenomenon—the differences in the percentage of women ages thirty-five to thirty-nine and ages thirty to thirty-four with children is converging for those with sixteen years of education and those with graduate degrees. Gains in motherhood rates for women with graduate degrees in those age ranges are similarly modest: from 62.4% in 1980 to 64.7% in 2000 for those age thirty-five to thirty-nine and 43.8% in 1980 to 45.2% in 2000 for age thirty to thirty-four. *Id.* at 42-43 tbls.15-16.

164. Rose, *supra* note 75.

165. See WHELAN, *supra* note 1, at 160-61.

166. See Garance Franke-Ruta, *Creating a Lie: Sylvia Ann Hewlett and the Myth of the Baby Bust*, AM. PROSPECT, June 30, 2002, available at http://www.prospect.org/cs/articles?article=creating_a_lie. This attention also included a front page story in *Time Magazine* and two columns by Maureen Dowd. See *id.*

167. See *id.* Boushey’s sample included 3.8 million high-achieving women and 29.8 million other women working full-time in the twenty-eight to forty age group. *Id.* High-achieving women in their survey included women with graduate degrees and those who earned more than fifty-five thousand dollars per year. *Id.*

168. American Prospect, About the American Prospect: Our Mission, http://www.prospect.org/cs/about_tap/our_mission (last visited Oct. 30, 2007).

169. Institute for American Values, http://www.americanvalues.org/html/institute_at_a_glance.html (last visited Oct. 30, 2007).

working high-achieving women with other working women. Boushey's data revealed that high-achieving women, just as they tend to marry later, also have children later—in their late thirties. As Franke-Ruta explains, “married high-achieving women are exactly as likely to have had kids by ages 36 to 40 as are all other married women who work full time.”¹⁷⁰ According to Franke-Ruta, Hewlett's numbers were skewed because she failed to separate women into married and never-married subsets and lumped the age thirty-six to forty group with the under-thirty-five group. The real upshot of this data is that high-achieving women are much less likely to have children out of wedlock.¹⁷¹ This should mean that as marriage rates for SWANS increase, so too will their childbearing rates. However, SWANS who do not marry are very unlikely to have children.

Another issue that Franke-Ruta raises is that Hewlett's polemic on childbearing ignores male fertility issues. Contrary to popular belief, male fertility rates actually drop with age. According to one study discussed by Franke-Ruta, by age thirty-five to thirty-nine, men have a “significantly reduced . . . pregnancy probabl[ity] relative to younger men.”¹⁷² The message to SWANS is that they should marry younger men to boost their odds of having children. This is an issue that Whelan never discusses.

Boushey's data apparently do not isolate black women, for whom childbearing rates are down. While the childbearing rates for high-achieving white women have been creeping up slowly, only 43% of Hewlett's high-achieving black women had children.¹⁷³ Franke-Ruta provided no data that counter this statistic. Further, Hewlett's data suggest a decline for these women: “[O]nly 45% of younger women have had a child by age 35, while 62% of older women have had a child by this time.”¹⁷⁴

Once women have children, they feel the pull as they try to juggle career and family. While men who excel in their careers are more highly regarded as fathers, a woman who excels “is apt to feel that she is not doing her job as a mother and that she may be harshly judged by others in society as an inferior mother.”¹⁷⁵ The inequity in men's and women's situations, something Whelan ignores, is not lost on other commentators. As sociologist Michael Kimmel points out:

[W]omen must choose to put career or family first. “Having it all” has become a symbol of the modern woman—she can have a glamorous career and a loving family. (Of course, until now men have always

170. Franke-Ruta, *supra* note 166.

171. *Id.* According to Boushey's data, only 7% of high-achieving women had children out of wedlock, whereas 32% of other never-married working women had children out of wedlock.

172. *See id.*

173. HEWLETT, *supra* note 17, at 88.

174. *Id.* at 90.

175. Korzec, *supra* note 143, at 125-26.

“had it all.” Women have done the homework. Men have had it all because women have not.)¹⁷⁶

The situation is not as simple as Professor Kimmel’s quote suggests. Men lose the benefit of time spent with children when they focus on careers. While society might laud them as career achievers, the reality is that they may lose connections with their children that would make them, in the long run, happier human beings. Indeed, the studies showing that working moms are happier suggest that mothers benefit from interactions with children. In addition, a recent study suggests that women are getting better at juggling work and family. A study by Jacquelyn Slotkin found that a more recent sample of women lawyers in San Diego, while still experiencing role conflict, experienced less than a sample twenty years ago.¹⁷⁷

3. *What About Divorce?*

A glaring omission from Whelan’s book is divorce. While she does occasionally interview divorced SWANS, she does not take on high divorce rates and what they might mean for SWANS’ long-term marital happiness. The proportion of marriages ending in divorce has continuously increased.¹⁷⁸ And there is little doubt that divorce causes emotional and physical damage.¹⁷⁹ The main demographic predictors of divorce are age at marriage (the younger the couple, the more likely they will divorce), length of marriage (the longer the marriage, the less likely the couple will divorce), marriage order (first marriages have a lower chance of divorce), and race (African-Americans are at higher risk of divorce in first marriages than whites).¹⁸⁰ Also, higher socioeconomic status is associated with lower divorce rates.¹⁸¹ So, demographically, the prospect of divorce would appear to be lower for SWANS than for others. Their older ages at marriage and higher socioeconomic status suggest lower divorce rates.

However, there are other indications that SWANS, or at least certain SWANS, may have higher divorce rates. One study shows that “[w]omen who

176. *Id.* at 126 (quoting Michael S. Kimmel, *Issues for Men in the 1990s*, U. MIAMI L. REV. 671, 673 (1992)).

177. Jacquelyn H. Slotkin, *You Really Have Come a Long Way: An Analysis and Comparison of Role Conflict Experienced by Women Attorneys Today and By Educated Women Twenty Years Ago*, 18 WOMEN’S RTS. L. REP. 17, 38 (1996).

178. Initially, it was thought that the increase in divorce rates was related to the increase in women’s economic activity. However, one group of researchers concluded that “rising marital instability seem[s] to be part of the economic development and modernization process in the United States, long preceding major changes in married women’s employment.” Oppenheimer et al., *supra* note 145, at 154.

179. See Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 878 (1999) (detailing the physical and psychological effects of divorce).

180. See Schoen et al., *supra* note 121, at 515 (citing studies).

181. See *id.*

have completed six or more years of college have significantly higher rates of divorce than women at all other education levels, except for those who have dropped out of high school.”¹⁸² Another study with implications for SWANS found that “[w]omen with more education than their husbands were significantly more likely to divorce than women” with equal or lesser amounts of education than their husbands.¹⁸³ These researchers reasoned that educational parity led to a husband understanding his wife’s career choices and therefore greater marital success.¹⁸⁴ In addition, in a study of women who graduated college around 1972, divorce was much more common for women who had careers.¹⁸⁵ While having children did have some effect on these divorce rates, it was the career that had the most significant effect. “College graduate women with both family and career had a divorce rate 20 to 30 percent higher than average for the entire group of college women.”¹⁸⁶ For this group of women, who would be a generation or two ahead of Whelan’s SWANS, only 13-17% had achieved “family and career” at the time of the study.¹⁸⁷

Some research suggests that wives’ employment and wages are related to an increased chance of divorce,¹⁸⁸ although other research has found no or even positive links between wives’ economic activity and marriage. In addition, studies suggest that gender ideology plays a significant role. In a study of men entering early adulthood in the 1980s, Heather Koball found that income had an effect on marriage for men who did not support shared gender roles.¹⁸⁹ It had little effect on men who supported shared gender roles. In addition, prior studies found that men with more education and those with better career prospects are the most likely to support shared gender roles.¹⁹⁰ This is good news for SWANS. However, figuring out who these men are may not be easy. Also, while divorce rates are highest among women who do not work, the second highest divorce rates are for women who work full-time.¹⁹¹ Divorce

182. Beck et al., *supra* note 119, at 8 (citing Cooney & Uhlenberg, *supra* note 132, at 749).

183. See Cooney & Uhlenberg, *supra* note 132, at 754 (citing Sharon K. Houseknecht, Suzanne Vaughan & Anne S. Macke, *Marital Disruption Among Professional Women: Timing of Career and Family Events*, 31 SOC. PROB. 273 (1984)).

184. See *id.*

185. Claudia Goldin, *Career and Family: College Women Look to Past*, in GENDER AND FAMILY ISSUES IN THE WORKPLACE 20, 48 (Francine D. Blau & Roland G. Ehrenberg eds., 1997).

186. *Id.*

187. *Id.* at 22-23.

188. Schoen et al., *supra* note 121, at 509-10 (citing studies).

189. Koball, *supra* note 43, at 392-93.

190. See *id.* at 393 (citing Andrew Cherlin & Pamela Barnhouse Walters, *Trends in United States Men’s and Women’s Sex-Role Attitudes: 1972 to 1978*, 46 AM. SOC. REV. 453 (1981)). Koball’s citation to the Cherlin and Walters study supports the link between education and sex roles. However, while she does not support the link to better career prospects with a study, it is not too far a leap to link more education with better career prospects.

191. See Schoen et al., *supra* note 121, at 510, 519.

odds appear to be lowest for women who work part-time.¹⁹² Whelan might suggest that this is no big deal; the generation of SWANS she is writing about will have lower divorce rates. However, there is little indication that divorce rates are going down.

One group of SWANS with a particularly high divorce rate is women lawyers. These SWANS have twice the divorce rate of doctors and about a 25-40% higher divorce rate when compared to postsecondary school teachers.¹⁹³ This study also supported the theory that women marrying men with less education were more likely to divorce. The women lawyers in this study had a higher rate of marrying men with less education than did doctors and academics.¹⁹⁴ Once their first marriages end, women lawyers are the least likely of three groups studied (doctors, lawyers, and postsecondary school teachers) to remarry.¹⁹⁵ Thus, for this particular group of high-achievers, divorce and single life are more likely. The possibility of divorce is out there for any marriage and is something that should be considered in any decision to marry.

B. Marriage Demographics and Societal Implications

Whelan's findings are not revolutionary. Studies since 2001 have suggested Whelan's main thesis: that more educated women marry at rates that are as high as or, in some cases, even higher than their lesser-achieving sisters. There is a large group of women for whom Whelan's statistics are not good news: women who are not high-achievers. Indeed, studies show that marriage rates are decreasing for these women. Some of the implications of this will be explored in this section.

Throughout this book, Whelan writes about her new study that shows that there is good news for the marriage prospects of SWANS. Sociologists Joshua R. Goldstein and Catherine T. Kenney studied marriage trends and published an article in 2001 that predicted, based on the Current Population Survey from 1995, not only that the gap between the marriage rates for women with more education and those with less would disappear, but instead that they would be reversed: "Marriage will become more common for women with a college education."¹⁹⁶

Goldstein and Kenney also situated the recent marriage decline in trends over the past century, and theorized why women with more education were less likely to marry. They describe two theories on why people marry. First, there is the institutional theory, which emphasizes "that marriage, like the family as a

192. *See id.*

193. *See Beck et al., supra note 119, at 8 (citing Cooney & Uhlenberg, supra note 132, at 751).*

194. Cooney & Uhlenberg, *supra* note 132, at 754.

195. Beck et al., *supra* note 119, at 8 (citing Cooney & Uhlenberg, *supra* note 132, at 752).

196. Joshua R. Goldstein & Catherine T. Kenney, *Marriage Delayed or Marriage Forgone? New Cohort Forecasts of First Marriage for U.S. Women*, 66 AM. SOC. REV. 506, 509 (2001).

whole, is supported by a 'structure of norms, values, laws, and a wide range of social pressures.'"¹⁹⁷ There is also an economic theory of marriage, which suggests that "marriage is a rational arrangement between individuals who would be more productive (in a general sense) as a joint economic unit than they would be if they remained single."¹⁹⁸ This theory, in particular, has been used to explain the increase in divorce rates and the overall decrease in marriage rates. Referred to by one study as the "independence argument"¹⁹⁹ or "independence hypothesis"²⁰⁰ this theory posits that as women become more economically independent, they have less need to marry. This, along with the increased economic cost of children for these working women, leads to fewer marriages.²⁰¹

This has not been borne out by the statistics on marriage rates for college-educated women.²⁰² Instead, for the birth cohort born between 1960 and 1964, it was predicted that 94% of college graduates would marry, compared with approximately 89% of women without college diplomas.²⁰³ For blacks, marriage rates in general have been declining. However, that decline has most affected women without college diplomas. Although Goldstein and Kenney could not predict marriage rates for black women with college degrees, they did find that "black college graduates are indeed marrying at higher levels" than their sisters without college degrees.²⁰⁴ For white women, the chance that those with college degrees born between 1960 and 1964 will marry is an incredible 97.3%!²⁰⁵ Rose's study, on the other hand, shows that of black women aged forty to forty-four in 2000 with sixteen years of education, 76.3% have married at some time in their lives.²⁰⁶ For black women with nineteen years of education, 73.4% have married at some point.²⁰⁷

This is consistent with the decline of hypergamy, the tendency of men to marry women with less educational attainment. Through Rose's study Whelan shows that between 1980 and 2000, spouses' education levels became more similar, with hypergamy declining. Interestingly, "the decline in hypergamy was confined to the upper portion of the education distribution."²⁰⁸ Thus, more educated women were less likely to "marry up." Instead, the decline in U.S.

197. *Id.* at 508.

198. *Id.*

199. Oppenheimer et al., *supra* note 145, at 150.

200. *E.g., id.* at 164.

201. See Goldstein & Kenney, *supra* note 196, at 508.

202. See Oppenheimer et al., *supra* note 145, at 164-65.

203. Goldstein & Kenney, *supra* note 196, at 514.

204. *Id.*

205. *Id.*

206. Rose, *supra* note 75, at 36 tbl.9.

207. *Id.* The percentage currently married is much lower. For black women aged forty to forty-four in 2000, 55.3% of those with sixteen years of education were married at the time of data collection, and 55.2% of those with nineteen years of education were married. See *id.* at 35 tbl.8.

208. *Id.* at 6.

marriage rates recently “has been driven mainly by women at lower levels of education.”²⁰⁹ So, the marriage story has been good for well-educated white women in the United States. As one source sums up: “Evidence from first marriages and remarriages indicates that women’s education, actual earnings, and earnings potential are positively related to the likelihood that they will marry.”²¹⁰ Thus, having a career with high income increases a woman’s marriage potential.

At the same time, several marriage phenomena are decreasing the economic progress of women with less education. Increasingly, rather than marrying women with less education, men are marrying women with the same level of education.²¹¹ That means that more educated men are marrying more educated women, decreasing the opportunity for less educated women to marry men with more education and, therefore, with better economic prospects. In addition, socioeconomic status, through earning potential, is increasingly having an effect on a woman’s marriage prospects. A woman’s earnings have a positive effect on her marriage probabilities once she reaches her late twenties.²¹² Furthermore, “there was evidence that women in the worst labor-market position were *less* likely to marry—for example, high school dropouts, those in unskilled jobs, and those not working at all in a year.”²¹³ Some studies have shown that women with less education are more likely to cohabitate,²¹⁴ so perhaps a cohabiting partner provides additional economic benefit. There is also a higher risk of marriage disruption for couples of lower socioeconomic status.²¹⁵ This information also suggests that marriage is generally more prevalent in the middle to upper classes. The decrease in marriage rates for women with lower educational attainment, because they are more likely to be at a socioeconomic disadvantage as compared to SWANS, is troubling. Often these women rely on husbands to increase their socioeconomic status. Yet, Whelan does not discuss them in her book. Indeed, these women are unlikely to buy Whelan’s book given that her advice is not aimed at them.

Like the marriage prospects of less educated women, studies show that marriage rates for black women decreased substantially between 1980 and 2000, declining from 66% in 1980 to only 50% by 2000.²¹⁶ While black

209. *Id.* at 12.

210. Schoen et al., *supra* note 121, at 510 (citing Zhenchao Qian & Samuel H. Preston, *Changes in American Marriage, 1972 to 1987: Availability and Forces of Attraction by Age and Education*, 58 AM. SOC. REV. 482 (1993)). Qian and Preston support the increased importance of education. However, other studies support the increased importance of financial prospects. See, e.g., Buss et al., *supra* note 56, at 501 (noting “the increasing importance that men attach” to the “importance of good financial prospects in a potential marriage partner”).

211. See Rose, *supra* note 75, at 5-6.

212. See Oppenheimer et al., *supra* note 145, at 159.

213. *Id.*

214. See *id.* at 160.

215. See Schoen et al., *supra* note 121, at 515.

216. Rose, *supra* note 75, at 8.

SWANS may have higher marriage rates, this is not the case for black women on the lower end of the educational spectrum.²¹⁷ It is also noteworthy that Rose's study shows declining marriage rates for black women with higher levels of education as well.²¹⁸

Unlike Whelan, Goldstein and Kenney note the downsides of increased marriage rates for educated women and decreased marriage rates for less educated women:

Our finding in the most recent cohorts—that women who are college graduates are more likely to ever marry than less educated women—may add to the transmission of inequality that is already generated by assortative mating. Higher rates of eventual marriage by college graduates endow the children of such women with a threefold advantage: a highly educated mother, a higher likelihood of being born within a marriage, and a father who is likely to be highly educated.²¹⁹

By ignoring these women, like her avoidance of lesbian and bisexual women, Whelan's book becomes relevant only to the most elite in American society. While she does make an effort to include the experiences of SWANS of color, her principal focus is on privileged white heterosexual females. What about these "other" women? As Nancy Dowd explains, "Resistance to essentialism requires thinking through the challenges of all women, not simply white, middle-class women. It requires understanding work/family in race

217. See *id.* at 35-36 tbls.8-9.

218. See *id.* Rose found little of a success gap for black women, except for those with nineteen years of education. *Id.* at 14. In 2000, essentially the more educated a black woman was, the higher her chances of marrying. *Id.* at 36 tbl.9. For black women with nineteen years of education in the forty to forty-four age range, 86.2% had ever married in 1980, whereas only 73.4% had ever married in 2000. *Id.* It is unfortunate that Whelan does not pay more attention to black women in particular for another reason: these women historically have successfully balanced work and family. While black women generally have higher divorce rates, they also "understand being a 'good' mother to include being a strong breadwinner and a role model who emphasizes self-reliance and independence." Mary Blair-Loy & Gretchen DeHart, *Family and Career Trajectories Among African American Female Attorneys*, 24 J. FAM. ISSUES 908, 911 (2003). While white women tend to be the focus of research on work/family balance, it appears that much could be learned from the experiences of black women.

219. Goldstein & Kenney, *supra* note 196, at 517. There is also bad news for men at the lower end of the educational spectrum. Like the declining marriage rates for women, declining marriage rates for men have been driven by men at the lower end of educational attainment. Rose, *supra* note 75, at 13. For men, the more education, the more likely they will marry. This holds for educated black men, who have marriage rates that are similar to those of white men. *Id.* at 14. While the marriage pattern shifted to accommodate more women at the upper ends of the education spectrum, men have not fared well at the bottom. "The likelihood of marriage for men with less than high school education declined substantially over the period [from 1980 to 2000]." *Id.* at 17. Women with the same range of education were more likely to marry more educated men or remain single. *Id.* Income is another factor that has been studied in terms of men's marriage rates. One study found that lower income had a negative effect on marriage rates for men who entered adulthood in the 1980s. In particular, income had a strong effect on marriage for men who did not support shared gender roles, while there was almost no relationship between the income of men who supported shared gender roles and marriage rates. Koball, *supra* note 43, at 392-93.

terms.”²²⁰ While these women are not the focus of Whelan’s book, their situation should be the focus of more public attention.²²¹

CONCLUSION

Dr. Christine B. Whelan has given hope to successful career-oriented women who wish to marry. The news for them is good: most SWANS will marry, they just will do so a bit later. For debunking this popular myth that no doubt leads to panic among the elite class of successful women, Whelan should be applauded. However, Whelan misses the opportunity to discuss whether marriage is the best course for these women and women generally. While there are data that suggest women are happier working and that married people are happier than single people, she does little to examine these studies and their implications for SWANS. Her lack of discussion of the pros and cons of marriage may support a patriarchal view of marriage and family life and does little to legitimize the position of women who choose not to marry. She also ignores facts that work against her point (such as high divorce rates) and only treats in a cursory fashion issues that will prove difficult for SWANS, such as balancing work and family.

Moreover, we should not forget the marriage situation of women whom Whelan does not address—less educated women, women of lower socioeconomic status, lesbian and bisexual women, and black women. If marriage is something most women want, the news is not good for these women. For some of these women, the loss of opportunities to marry is a direct result of SWANS’ gains. With hypergamy decreasing, women with less education are seeing the pool of men they can marry who will boost their economic circumstances dwindling. So, while the outlook is good for SWANS, perhaps more attention should be paid to understanding what is happening with their less-achieving sisters. Additionally, the experiences and critiques of lesbian and bisexual women may lead to questioning marriage as the sole means of ordering one’s romantic relationships, freeing women to consider alternatives. In the end, while Whelan attacks one stereotype—that successful women won’t find mates—she does little to undermine another—that a woman is unfulfilled without a man in her life.

220. Nancy E. Dowd, *Resisting Essentialism and Hierarchy: A Critique of Work/Family Strategies for Women Lawyers*, 16 HARV. BLACKLETTER L.J. 185, 187 (2000).

221. There is some important research on the situation of those living in poverty that would be helpful to bring to the attention of both the public and policymakers. See, e.g., ANNA MARIE SMITH, WELFARE REFORM AND SEXUAL REGULATION (2007); Cynthia Y. Davis, *Welfare Reforms’ Misdiagnosis of What Ails the Poor: The Consequences for Income, Employment and Family Structure* (Nov. 2, 2006) (unpublished Ph.D. dissertation, Florida State University) (on file with the Yale Journal of Law and Feminism); Alexis Yamokoski, *Wealth Inequality: Effects of Gender, Marital Status, and Parenthood on Asset Accumulation* (2007) (unpublished Ph.D. dissertation, Ohio State University) (on file with the Yale Journal of Law and Feminism).