

## REFLECTIONS ON SINGLEHOOD

Naomi R. Cahn \*

### ABSTRACT

Singlehood is becoming an increasingly important social identity category. Thousands of people are members of Facebook groups such as I am my Own Soulmate or Community of Single People. Sologamy, marrying oneself is on the rise. The growing social movement to bring attention to voluntarily single people is creating pressure on the law.

Single people are also highly visible when it comes to categories for the allocation of government benefits: eligibility requirements may well differ based on whether an applicant is single or married. This occurs, for example, in the qualifications for long-term care under Medicaid or various public welfare benefits, the availability of portability in utilizing the estate and gift tax, or even in the choices for filing income tax returns. This categorization reflects core assumptions about the privatization of dependency during marriage rather than taking singlehood seriously.

Nonetheless, this legal treatment and the growing number of voluntarily single people lead to questions about whether singlehood should be a distinct legal category, a basis for analyzing legal distinctions. Indeed,

---

In consultation with the author, we are publishing the Reflection in its current form; please note that this means that the Reflection may not, in all ways, conform to Journal guidelines. The Editorial Board of the Washington University Journal of Law & Policy remains incredibly grateful for Professor Naomi R. Cahn's consideration, as well as the scholarship and research that went toward authoring this piece.

\*. Justice Anthony M. Kennedy Distinguished Professor of Law, Nancy L. Buc '69 Research Professor in Democracy and Equity, University of Virginia School of Law. Thanks to Makenna Cherry, Veronica Cihlar, and Max Larson for research assistance, to Albertina Antognini, Susan Frelich Appleton, Kathy Baker, Chao-ju Chen, Ketaki Chowkani, Adrienne Davis, Bella DePaulo, Laura Rosenbury, Kaipo Matsumura, participants at the 2022 Nonmarriage Roundtable for comments and support, Nicholas Armstrong and other members of the Wash. U.J. L & Pol'y for careful and thoughtful editing, and to Bella DePaulo and Bobbie Spellman for inspiration.

single people are still not yet adequately explored in legal scholarship. This may be a reflection of cultural (and legal) images of single people that are often negative: single people are lonely, have not yet met the right person, are reluctantly un-partnered, singlehood status is seen as something that is temporary and subject to control—or a reflection that singlehood is such an indeterminate legal category, difficult to define, that it would be too difficult to establish it as a distinct category.

In this brief essay, I set out a research agenda for areas for further analysis. In addition to legal issues, the essay explores cultural images of singlehood, discusses the growing movement of voluntarily single people, and then turns to the promises and difficulties of a legal singlehood status. The essay catalogues the ambivalence with which singlehood is treated, both the legal assumptions about the disabilities of being single and also the benefits occasionally accorded to single people. The essay suggests questions about whether, and how, the law might move forward in responding to this increasingly critical social category, either by equalizing treatment, or dissolving entirely categories based on coupledness.

## INTRODUCTION

Until the nineteenth century, *loneliness* referred to solitude; it lacked emotional associations, although it was considered important for religious reflection and any form of introspection.<sup>1</sup>

That has changed. “One is the loneliest number that you’ll ever do,” sang Three Dog Night in the late 1960s.<sup>2</sup> In her iconic 2008 song, *Single Ladies (Put a Ring on It)*, Beyoncé begins by repeating the song title seven times.<sup>3</sup> Rather than celebrating single ladies, the verses are a plea for love and respect—from a partner. The song urges women to get married, albeit to a partner who will treat them right. Or consider what happened when singer Ariana Grande broke off an engagement and seemed to be reveling in singlehood; even positive articles praised her self-care and suggested

---

1. See Fay Bound Alberti, *One is the Loneliest Number: The History of a Western Problem*, AEON (Sept. 12, 2018), <https://aeon.co/ideas/one-is-the-loneliest-number-the-history-of-a-western-problem> [<https://perma.cc/UC3X-QX7Z>].

2. Of course, the song continued: “Two can be as bad as one.” THREE DOG NIGHT, *One, on THREE DOG NIGHT* (Dunhill Records 1968).

3. BEYONCÉ, *Single Ladies (Put a Ring on It)*, on I AM... SASHA FIERCE (Columbia Records 2008).

“that society places *a lot* of expectation and focus on people pairing up—but being in a serious relationship is not for everyone, all of the time.”<sup>4</sup> The theme was that being single might be therapeutically beneficial as a break from relationships and a time for self-focus, but it is not a long-term status to be embraced. Indeed, as a New York Times 2022 headline proclaimed, *As Gen X and Boomers Age, They Confront Living Alone*.<sup>5</sup> The title of the article gives a big hint as to how living alone is going to be characterized: It is something to be “confronted.”

This view of singlehood, of reluctantly unpartnered or unparenting people, is echoed in the law, which approaches single people with discomfort, ambivalence, and sometimes (perhaps inadvertently) indifference or support.<sup>6</sup> Nancy Leong identifies being single as a paradigmatic negative identity because of the significance of marriage, a status reaffirmed by Justice Kennedy in his *Obergefell* opinion.<sup>7</sup> There is a

---

4. Susan Devaney, *Ariana Grande’s Vow to Stay Single is the Self-Care Trend we Need in 2019*, *STYLIST* (2019), <https://www.stylist.co.uk/people/ariana-grande-single-twitter-self-care-trend-2019-celebrities/244144> [<https://perma.cc/3RDQ-4G8N>]. Or consider the August 2022 tweet by Shane Morris (which prompted tens of thousands of responses): *Millennials who are very cavalier about not having children are in for a shock when they enter their 40s & realize life is only half over. What do you do at that point? Keep trying to be sexy & have fun? I expect to see a lot of sadness & confusion about what to do at that point.* Shane Morris (@GShaneMorris), TWITTER (Aug. 23, 2022, 12:05 PM), <https://twitter.com/GShaneMorris/status/1562108779818254340> [<https://perma.cc/Z8MW-LY2Z>]. See also Lyz Lenz, *The Joy of Being Alone*, *MEN YELL AT ME* (Aug. 24, 2022), [https://lyz.substack.com/p/the-joy-of-being-alone?utm\\_source=email](https://lyz.substack.com/p/the-joy-of-being-alone?utm_source=email) [<https://perma.cc/8HKX-MWVS>] (reflecting on the significance of “living a life outside of the binary”).

5. Dana Goldstein & Robert Gebeloff, *As Gen X and Boomers Age, They Confront Living Alone*, *N.Y. TIMES* (Nov. 27, 2022), [https://www.nytimes.com/2022/11/27/us/living-alone-aging.html?campaign\\_id=9&emc=edit\\_nn\\_20221127&instance\\_id=78653&nl=the-morning&regi\\_id=57884714&segment\\_id=114327&te=1&user\\_id=da7a15d6d1a856cd9bf42b014631b281](https://www.nytimes.com/2022/11/27/us/living-alone-aging.html?campaign_id=9&emc=edit_nn_20221127&instance_id=78653&nl=the-morning&regi_id=57884714&segment_id=114327&te=1&user_id=da7a15d6d1a856cd9bf42b014631b281) [<https://perma.cc/72QL-UZM2>]. Bella DePaulo notes that “[t]he title of the article gives a big hint as to how living alone is going to be characterized: It is something to be ‘confronted.’” Bella DePaulo, *The Unsung Joy of Living Alone*, *PSYCH. TODAY* (Dec. 10, 2022), <https://www.psychologytoday.com/intl/blog/living-single/202212/the-unsung-joy-of-living-alone> [<https://perma.cc/8WJ4-8Z33>].

6. Cf. Elizabeth F. Emens, *Compulsory Sexuality*, 66 *STAN. L. REV.* 303, 306 (2014) (“What might our legal system look like through the eyes of someone who does not experience sexual attraction?”). That is, adapting those words, consider how our legal system would look from the perspective of a single person (who might experience sexual attraction). On the other hand, there are questions, explored in this essay, of whether singlehood really is a group identity. See Lihi Yona, *Identity at Work*, 43 *BERKELEY J. EMP. & LAB. L.* 139, 147-49 (2022) (discussing the development of legal categories and the “ladder” of group recognition, ranging from “no” to “full” recognition of a group with “special protected status”); see also Kaiponanea T. Matsumura, *The Marital Habitus*, 99 *WASH. U. L. REV.* 2033, 2060 (2022) (discussing how singles are—with other groups—at the bottom of the marital habitus).

7. Nancy Leong identifies singlehood as a negative “identity marked by indifference or

label for the prejudice and discrimination that single people experience because they are not married: singlism.<sup>8</sup>

The increasing population of single people and the social category of singlehood pose challenges for numerous areas of the law.<sup>9</sup> Just as social and cultural change preceded legal change with the recognition of nonmarital parenthood,<sup>10</sup> a similar dynamic may be occurring with singlehood. This essay poses questions about how respecting singlehood might change the law. It assesses the existing legal distinctions in areas including employment, housing, taxation, and health care, and suggests that more formal recognition of singlehood might challenge the primacy of group membership, marriage, or coupledness in the law.<sup>11</sup>

---

antipathy to something that much of society considers fundamental.” Nancy Leong, *Negative Identity*, 88 S. CAL. L. REV. 1357, 1358-59 (2015); see *Obergefell v. Hodges*, 576 U.S. 644, 681 (2015).

8. Singlism is the “stereotyping, stigmatizing, and discrimination against people who are single.” Bella DePaulo, *Definitive Guide to Singlism, Matrimania, and Related Biases*, PSYCH. TODAY (Nov. 15, 2019), <https://www.psychologytoday.com/us/blog/living-single/201911/definitive-guide-singlism-matrimania-and-related-biases> [https://perma.cc/3V63-M6CK]. See Bella M. DePaulo & Wendy L. Morris, *Singles in Society and in Science*, 16 PSYCH. INQUIRER 57 (2005). DePaulo has called for “taking singles seriously,” rather than perpet “singles-shaming myths.” Bella DePaulo, *For the First Time in my Lifetime, Signs of Real Progress for Single People*, MEDIUM (Dec. 21, 2022), <https://belladepaulo.medium.com/for-the-first-time-in-my-lifetime-signs-of-real-progress-for-single-people-3aec83bdcca9> [https://perma.cc/T78Y-P9RT].

9. On the increasing number of single adults, see Richard Fry & Kim Parker, *Rising Share of U.S. Adults Are Living Without a Spouse or Partner*, PEW RSCH. CTR.7 (Oct. 5, 2021), <https://www.pewresearch.org/social-trends/2021/10/05/rising-share-of-u-s-adults-are-living-without-a-spouse-or-partner/> [https://perma.cc/E45N-ZJZD]; Bella DePaulo, *The Rise of Single People*, MEDIUM (Sept. 19, 2021), <https://medium.com/fourth-wave/the-rise-of-single-people-739c4d838bd1>; Amelia Thomson-DeVeaux, *Americans are Increasingly Single and OK With It* (Feb. 14, 2023), <https://fivethirtyeight.com/features/more-americans-are-choosing-to-stay-single/>. More than half of women in the US are not married, compared to 7% in 1900. Abha Bhattarai, *Single Women Take an Outside Role in the Workforce and Economy*, WASH. POST (March 8, 2023), <https://www.washingtonpost.com/business/2023/03/08/single-women-jobs-economy/>. Their increasing numbers show the importance of further study. For example, in a 2007 study of the Black middle class, the researchers noted that “SALAs [single and living alone] . . . [are] overshadowed in the literature by the attention paid both to married-couple households and to single (never-married) households with children.” Kris Marsh, et al., *The Emerging Black Middle Class: Single and Living Alone*, 86 SOCIAL FORCES 2, 20 (2007). For further exploration see Kris Marsh, *Opinion: Where is the Black Middle Class? You Don't Have to Look Far*, CNN (Jan. 4, 2012), <http://inamerica.blogs.cnn.com/2012/01/04/where-is-the-black-middle-class-you-dont-have-to-look-far/> [https://perma.cc/U6ZG-EJ88]. While this essay focuses on the concept of singlehood, it reports on studies that use the gender binary in reporting results. On the complexities of doing so, see, e.g., Jessica A. Clarke, *Sex Assigned at Birth*, 122 COLUM. L. REV. 1821, 1855 (2022); Noa Ben-Asher, *Transforming Legal Sex*, N.C.L. REV. (forthcoming 2024), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4019707](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4019707).

10. E.g., Douglas NeJaime, *Marriage Equality and the New Parenthood*, 129 HARV. L. REV. 1185, 1195 (2016).

11. There is a rich literature challenging marriage as the canonical measure for family life. E.g.,

A single-neutral standard, one that treated single people in the same way as two (or three) partnered people (and vice versa), or one in which partnership status was irrelevant, might entail broad-based conceptual and practical shifts to address the interests and needs of single people and to support them in leading fulfilling lives, while also joining the chorus of challenges to the ways the law prioritizes group membership. On a conceptual level, legal doctrine and policy in a variety of fields, ranging from zoning to family law, could be challenged to reflect the empirical reality of the growing number of single people.<sup>12</sup> The bases for such a challenge would reflect three commitments placing, at its core, the dignity and autonomy interests of single people; addressing structural inequalities; and ensuring legal mechanisms to assess and institutionalize single neutrality. In its weakest form, this is single-neutrality; in its strongest, it is pro-singlehood.

In the first part of this essay, I explore the various legal contexts in which single and non-single people are treated differently, separating them into categories based on whether being single has drawbacks or benefits. In part II, I turn to document what it means to be single in America today,

---

Albertina Antognini, *Nonmarital Coverture*, 99 B.U. L. REV. 2139 (2019); Katharine Baker, *What is Nonmarriage?*, 73 SMU L. REV. 201 (2020); Naomi Cahn & June Carbone, *Uncoupling*, 53 ARIZ. ST. L.J. 1, 3 (2021); June Carbone & Naomi Cahn, *Nonmarriage*, 76 MD. L. REV. 55 (2016) (arguing that nonmarriage comprises a variety of relationships, and the laws of marriage should not be applied to those relationships); Courtney G. Joslin, *Discrimination in and out of Marriage*, 98 B.U. L. REV. 1, 54 (2018) (exploring status-based discrimination); Kaiponanea T. Matsumura, *A Right Not to Marry*, 84 FORDHAM L. REV. 1509 (2016) (emphasizing the importance of consent before converting nonmarital relationships into marriage); Serena Mayeri, *Foundling Fathers: (Non-)Marriage and Parental Rights in the Age of Equality*, 125 YALE L.J. 2292 (2016) (examining advocacy challenging unequal treatment of nonmarital children and their families); Melissa Murray, *Accommodating Nonmarriage*, 88 S. CAL. L. REV. 661, 665-66 (2015) (arguing that “impulse to translate coupled intimate relationships into the vernacular of marriage ...leads to the diminution of legal space for accommodating nonmarriage”); Angela Onwuachi-Willig, *The Return of the Ring: Welfare Reform’s Marriage Cure as the Revival of Post-Bellum Control*, 93 CALIF. L. REV. 1647, 1650 (2005) (addressing marriage-promotion and welfare). And another literature challenges the rhetoric surrounding legal rights accorded to nonmarriage. See Albertina Antognini, *Nonmarital Contracts*, 73 STAN. L. REV. 67 (2021). The focus of these articles is the primacy of marriage and the disfavored treatment of nonmarital couples; they do not center the single subject. The single subject appears rarely as the focus of a law review article. See Jennifer Jaff, *Wedding Bell Blues: The Position of Unmarried People in American Law*, 30 ARIZ. L. REV. 207 (1988); Rachel F. Moran, *How Second-Wave Feminism Forgot the Single Woman*, 33 HOFSTRA L. REV. 223 (2004); Trina Jones, *Single and Childfree! Reassessing Parental and Marital Status Discrimination*, 46 ARIZ. ST. L.J. 1253 (2014); see also Leong, *supra* note 7, at 1357 (including section on single people).

12. Cf. Naomi Cahn, Clare Huntington & Elizabeth Scott, *Family Law for the One-Hundred-Year Life*, 132 YALE L.J. (forthcoming 2023) (posing such challenges based on the aging of our population).

showing the range based on age, race, class, and other intersecting identities. This section also examines social and legal attitudes towards people who are single, relying on social science research, survey data, and popular culture. Part III then suggests how the law could develop a principle of singlehood neutrality,<sup>13</sup> both protecting single people against discrimination in appropriate circumstances and ensuring that married people are not disadvantaged.

As an introductory matter, I should note that the word *single* has multiple meanings, and can refer to an individual, to someone who is unmarried, and to something that is unique.<sup>14</sup> As a social, sociological, and legal matter, there are similarly multiple usages. For example, as a sociological matter, some people are “single at heart,” and believe that they can be the best version of themselves without looking for someone to “complete” them.<sup>15</sup> Some people are temporarily and unintentionally single, some are single parents (whether because of divorce, separation from a nonmarital partner, or intentionally); sometimes, single means not being part of a group, while at other times, it stands in contrast to marriage and coupledness. Typically, the person will not be part of a dyadic (or polyamorous) intimate group.<sup>16</sup> By contrast, the law may categorize anyone who is not legally married as “single,” even though, as a social (and often

---

13. “Couples neutrality” is a well-known concept in the tax literature. *E.g.*, Daniel Hemel, *Beyond the Marriage Tax Trilemma*, 54 WAKE FOREST L. REV. 661 (2019); Yair Listokin, *Taxation and Marriage: A Reappraisal*, 67 TAX L. REV. 185, 187 (2014) (marriage neutrality is when spouses pay the same amount they would have paid as before they married; couples neutrality is such that couples with the same income pay the same amount). That is, marriage neutrality means that when equal-earning individuals, or when a higher-earning and lower-earning individual get married, they pay the same amounts as prior to marriage; couples neutrality means that the two couples would pay the same amount. Both Hemel and Listokin show that this does not happen in our current system. *See* Hemel, *supra*, at 668-70; Listokin, *supra*, at 186-87. Hemel explains that progressivity—the third leg of the trilemma—is a potential cost of achieving marriage and couples neutrality, and notes that a flat tax rate that also includes a per capita and refundable credit would solve the trilemma, but the critical questions involve policy preferences. Hemel, *supra*, at 664-65.

14. *Single*, DICTIONARY.COM, <https://www.dictionary.com/browse/single> (last visited Mar. 10, 2023) [<https://perma.cc/6N2F-WHHD>]. At the bottom of the dictionary.com page is the question: “Was ‘Single’ Always a Negative Word?” *Id.*

15. Bella DePaulo, *Single-at-Heart: What Do We Know About It?*, BELLA DEPAULO (Mar. 9, 2013), <http://www.belladepaulo.com/2013/03/single-at-heart-what-do-we-know-about-it/> [<https://perma.cc/2USS-QZZT>].

16. Priests, nuns, monks, and similar religious figures are beyond the scope of this paper. “[S]ingle people do not have a sexual partner at the center of their families.” Bella DePaulo, *Single and Flourishing: Transcending the Deficit Narratives of Single Life* 5 (2022) (unpublished manuscript) (on file with author).

economic) matter, those people are not truly “single,” because they have a long-term intimate partner—or are part of an intimate group.<sup>17</sup> Unmarried and legally single (though socially “unsingle”) couples or those in various forms of group living also straddle this social/legal divergence by sharing the costs of cohabiting.<sup>18</sup>

This essay focuses on those at the intersection of legal and social meanings, people who are single and unpartnered, those characterized by “emotional individualism.”<sup>19</sup> While it discusses issues involving, in Courtney Joslin’s words, “equality for those living outside of” marriage,<sup>20</sup> it does not address domestic, sexual relationships, such as those involving cohabitants or living apart together couples.<sup>21</sup> Instead, the essay focuses on those who are “single” as a way to help imagine what a world would look

---

17. Legal categories are discussed in part I. In arguing for legal recognition of friendships, Dean Laura Rosenbury discusses those outside of “domestic coupling” as the focus of inquiry. Laura A. Rosenbury, *Friends with Benefits?*, 106 MICH. L. REV. 189, 209 (2007). This article focuses on a similar group, asking what it would mean more broadly to start with a focus on them; this might well result in the type of recognition that Dean Rosenbury advocates.

18. Cohabiting, unmarried couples are less likely than married couples to pool savings and investment accounts. Julia Carpenter, *Moving In Together Doesn't Match the Financial Benefits of Marriage, but Why?*, WALL ST. J. (Nov. 7, 2022, 2:19 pm), [https://www.wsj.com/articles/moving-in-together-doesnt-match-the-financial-benefits-of-marriage-but-why-11667761626?mod=hp\\_featst\\_pos3](https://www.wsj.com/articles/moving-in-together-doesnt-match-the-financial-benefits-of-marriage-but-why-11667761626?mod=hp_featst_pos3) [<https://perma.cc/7MYS-MRUX>]. The choice to keep personal finances separate precludes cohabiting, unmarried couples from certain wealth benefits married couples capture through pooled assets (including compound interest maximization, greater access to homeownership, and inflation cushioning). *Id.*; Julia Carpenter, *Inflation Widens Married Couples' Money Lead Over Their Single Friends*, WALL ST. J. (Aug. 16, 2022, 7:14 am), [https://www.wsj.com/articles/inflation-widens-married-couples-money-lead-over-their-single-friends-11660511872?cx\\_testId=3&cx\\_testVariant=cx\\_5&cxartPos=0&mod=WTRN#exrecs\\_s](https://www.wsj.com/articles/inflation-widens-married-couples-money-lead-over-their-single-friends-11660511872?cx_testId=3&cx_testVariant=cx_5&cxartPos=0&mod=WTRN#exrecs_s) [<https://perma.cc/QA5H-WLDG>].

19. See Moran, *supra* note 11, at 228. Moran also discusses “emotional independence” as a characteristic of singlehood. *Id.* at 288. While useful to indicate independence outside of marriage, many single people are emotionally dependent on others. See Rosenbury, *supra* note 17, at 216 (noting the many types of “nondomestic care”). Susan Appleton provides a useful definition in addressing “those who are not just ‘single’ in the legal sense but ‘solo’ in the domestic (and sexual) sense.” Susan Frelich Appleton, *The Forgotten Family Law of Eisenstadt v. Baird*, 28 YALE J.L. & FEMINISM 1, 25 (2016).

20. Courtney G. Joslin, *Discrimination In and Out of Marriage*, 98 B.U. L. REV. 1, 9 (2018). This (at times) includes unmarried partners/groups who are legally single, although socioeconomically not.

21. See CYNTHIA GRANT BOWMAN, *LIVING APART TOGETHER: EGAL PROTECTIONS FOR A NEW FORM OF FAMILY 2* (2022) (defining living apart together couples as “committed (though by and large unmarried) couples who maintain coequal and independent residences”).

like where marriage (or intimate relationships) are not the norm,<sup>22</sup> and singlehood is a “positive” identity.<sup>23</sup>

### I. DIFFERENT TREATMENT

Current laws draw a number of distinctions based on whether an individual is single or coupled; that is, marriage serves as a legal line for the availability of various programs and benefits. These dividing lines affect people who are single and childless and people who are single parents, overlapping on the “single.” While these distinctions often have negative implications for single people,<sup>24</sup> they can be positive—and some are more ambiguous, with positive or negative economic effects depending on an individual’s financial situation. What unites them is their impact (intentional or unintentional) on singlehood because of their focus on the public fisc, their assumptions about marriage, or some other public policy, rather than an explicit focus on singlehood. In cataloguing the “benefits” of being single, the next section is not intended to minimize the discrimination against, and social stigma about, singlehood; its goals are, instead, to suggest that singlehood status is already significant, and the legal status provides a complicated patchwork of benefits and detriments. This catalogue might also provide a basis for showing that changing the law to recognize singlehood might not require sweeping changes but would serve to recognize the increasing number of people who are choosing singlehood. The following subsections address singlehood’s legal drawbacks, benefits, and ambiguities.

---

22. That is, how might we structure our legal system so that singles are the (or at least “a”) assumed way of being, rather than marriage or other intimate relationships. *See* Emens, *supra* note 6, at 303, 306.

23. *See* Leong, *supra* note 7, at 3.

24. *Cf.* Marie-Amélie George, *Expanding LGBT*, 73 FLA. L. REV. 243, 305 (2021) (“noting that discrimination against people who are single” is legally permissible—and sometimes required.”).



### A. Singlehood Legal Detriments<sup>25</sup>

On the other side of the benefits equation are the many legal detriments to singlehood, only some of which are discussed below.<sup>26</sup> Parents must cooperate with their local child support agency in order to receive Temporary Assistance for Needy Families (“TANF”), a requirement that disproportionately affects single parents.<sup>27</sup> While most states do not prevent single people from utilizing reproductive technology and adoption, some have placed restrictions on their ability to access these means of becoming parents or limit parentage determinations to heterosexual married couples.<sup>28</sup>

25. E.g., Erez Aloni, *The Marital Wealth Gap*, 93 WASH. L. REV. 101 (2018) (providing extensive exploration of the economic distinctions).

26. Bella DePaulo provides one analysis of some of the legal disadvantages. See Bella DePaulo, *Unearned Privilege: 1000+ Laws Benefit Only Married People*, PSYCH. TODAY (April 2, 2018), <https://www.psychologytoday.com/us/blog/living-single/201804/unearned-privilege-1000-laws-benefit-only-married-people> [<https://perma.cc/X4MA-L3XJ>].

27. *Characteristics and Financial Circumstances of TANF Recipients Fiscal Year (FY) 2019*, U.S. OF DEP’T HEALTH & HUM. SERVS., (Aug. 28, 2020), [https://www.acf.hhs.gov/sites/default/files/documents/ofa/fy19\\_characteristics\\_final.pdf](https://www.acf.hhs.gov/sites/default/files/documents/ofa/fy19_characteristics_final.pdf) [<https://perma.cc/H4PP-PF6Y>] (approximately 73% of TANF adult recipients are single, and only 12.2% are married); see Naomi Cahn & June Carbone, *The Triple System of Family Law*, 2013 MICH. ST. L. REV. 1185, 1216. The requirement seems to apply only to unmarried recipients. *Child Support Handbook*, OFFICE OF CHILD SUPPORT ENF’T, U.S. OF DEP’T HEALTH & HUM. SERVS. (2019), [https://www.acf.hhs.gov/sites/default/files/documents/ocse/chapter1\\_0.pdf](https://www.acf.hhs.gov/sites/default/files/documents/ocse/chapter1_0.pdf) [<https://perma.cc/38QC-E6L2>].

28. Some states limit infertility insurance coverage to married couples. In Hawaii, infertility insurance need only cover forms of ART where the patient’s eggs are fertilized with spouse’s sperm. HAW. REV. STAT. § 431:10A-116.5(a)(3) (2013) (providing coverage only if “the patient’s oocytes are fertilized with the patient’s spouse’s sperm”). Legislation has been introduced to extend coverage to single women. S.B. NO. 2917, 31st Leg., Reg. Sess. (Haw. 2022). Texas limits infertility insurance coverage to situations where “the fertilization or attempted fertilization of the patient’s oocytes is made only with the sperm of the patient’s spouse” and “the patient and the patient’s spouse have a history of infertility of at least five continuous years’ duration.” TEX. INS. CODE ANN. § 1366.001 *et seq.* (West 2005). This eliminates single people. See Leong, *supra* note 7, at 1408 (“adoption officials’ inherent discretion allows them to prefer a couple over a single parent . . . the effect of the focus on marriage ‘has been to restrict the use of assisted reproduction to those in socially sanctioned intimate relationships and to erect barriers to its use against those who are not in such relationships’”); Jennifer Kawwass et al., *Fertility: A Human Right Worthy of Mandated Insurance Coverage*, 115 FERTILITY & STERILITY 19, 30 (2021). For patients who need fertility preservation, such as those undergoing cancer treatments, the situation may differ. See, e.g., Joyce Reinecke, *States Add Coverage Mandates to Cover Infertility Treatment following Cancer Treatments*, NAT’L ACAD. FOR STATE HEALTH POL’Y (Nov. 20, 2018),

Single parents are treated differently than are married parents when it comes to third-party claims for visitation in a number of states.<sup>29</sup> The focus, and justification, is on the best interests of the child as needing additional support when they are outside the nuclear married family.<sup>30</sup>

The workplace has many different couple-preferring policies.<sup>31</sup> Some have suggested that special policies supporting the family, such as family-focused leave and dependent care services, unfairly shift the burden of caretaking to those who do not have children.<sup>32</sup> This may be particularly disadvantageous for women, who not only experience sex discrimination but who also “get no offsetting compensation from the increased childcare benefits.”<sup>33</sup> Similarly, when spouses are covered as an employment benefit, that imposes significant costs to the employer. To the extent that those costs are reallocated (affecting salaries, decreasing profit margins, etc.), the argument is that single people end up subsidizing married people. Countering that position are those who note that such family supportive programs provide a benefit to society in numerous ways.<sup>34</sup>

When groups of single people wish to live together, they may be precluded from doing so because of municipal zoning ordinances.<sup>35</sup> The number varies, but limits may be imposed on as few as three or four

---

<https://www.nashp.org/states-add-coverage-mandates-to-cover-infertility-treatment-following-cancer-treatments/> [<https://perma.cc/KEC9-KEM3>]. Ironically, single people and different-sex married couples may be preferred in some contexts, such as religious-based foster care parenting. *E.g.*, *Foster Care*, COMMONWEALTH CATHOLIC CHARITIES (2022), <https://www.cccofva.org/foster-care> [<https://perma.cc/LYY7-E43V>].

29. Barbara A. Atwood, *Marriage As Gatekeeper: The Misguided Reliance on Marital Status Criteria to Determine Third-Party Standing*, 58 FAM. CT. REV. 971, 972 (2020).

30. *Id.* at 982 (“Lawmakers may view children’s interests and needs as correlating with parents’ marital status . . . [i]f the family unit suffers a rupture, the logic continues, children’s wellbeing is at risk, potentially justifying a court order for contact with a nonparent”).

31. See Mary Anne Case, *How High the Apple Pie? A Few Troubling Questions About Where, Why, and How the Burden of Care for Children Should Be Shifted*, 76 CHI.-KENT L. REV. 1753 (2001); Katherine Franke, *Theorizing Yes: An Essay on Feminism, Law, and Desire*, 101 COLUM. L. REV. 181 (2001); Jones, *supra* note 11, at 1253; Moran, *supra* note 11.

32. *E.g.*, Jones, *supra* note 11, at 1265 (“single workers without children [] question the fairness of the load they are carrying” because accommodating family-friendly benefits “can require workplace adjustments” from them).

33. Case, *supra* note 31, at 1759.

34. See Katharine T. Bartlett, *Gender Law: After Twenty-Five Years*, 27 DUKE J. GENDER L. & POL’Y 1, 15–16 (2020) (citing the arguments of Maxine Eichner, Martha Fineman, and Clare Huntington).

35. Leong, *supra* note 7; Cahn et al., *supra* note 12.

unrelated co-living roommates.<sup>36</sup> Such restrictions have been tartly upheld by the Supreme Court, unless the group members qualify as family by blood or adoption.<sup>37</sup>

While gifts to any individual over \$17,000 per year (in 2023) are subject to a gift tax, transfers between spouses during marriage or at divorce incur no gift or estate tax.<sup>38</sup> Any individual has a gift and estate tax credit for more than \$12,920,000 (in 2023) in gratuitous transfers, but a deceased spouse's unused credit can be added to the surviving spouse's credit, permitting married couples to develop creative estate planning for almost \$26 million through this portability option.<sup>39</sup> While the credit is individual-taxpayer-based, it nonetheless allows for transfer between spouses and joint planning. While Social Security provides benefits according to an individual's work record, it confers special benefits on spouses, who can claim based on a higher-earning partner.<sup>40</sup> Both wealth transfer tax and Social Security benefits benefit a breadwinning spouse/lower-earning spouse model; couplehood benefits dissipate based on more equal earnings.<sup>41</sup>

Federal law currently allows an eligible spouse or adult child to take up to twelve weeks of unpaid leave to care for a defined group of family members with a "serious health condition."<sup>42</sup> Not only is the FMLA limited in terms of the types of conditions it covers, it provides no benefits for leave-taking or caregiving by single people, unless they have children or parents.<sup>43</sup>

---

36. Bella DePaulo, *Want to Share a Rental with Roommates? In Some Places, That's Illegal*, MEDIUM (May 3, 2022), <https://medium.com/fourth-wave/want-to-share-a-rental-with-roommates-in-some-places-thats-illegal-f3594c0b0c00> [<https://perma.cc/NPA2-7QS7>].

37. *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974); *Moore v. City of East Cleveland*, 431 U.S. 494 (1977).

38. See Pat Cain, *Taxation of Unmarried Partners*, 99 WASH. U.L. REV. 1931 (2022).

39. On the deceased spousal unused credit, see Erez Aloni, *The Marital Wealth Gap*, 93 WASH. L. REV. 1, 36-37 (2018). On the estate tax exemption, see IRS, *Estate Tax* (2022), <https://www.irs.gov/businesses/small-businesses-self-employed/estate-tax>.

40. See Cahn & Carbone, *supra* note 11; Alstott, *infra* note 50; Jones, *supra* note 11.

41. See, e.g., Lily Kahng, *The Not-So-Merry Wives of Windsor: The Taxation of Women in Same-Sex Marriages*, 101 CORNELL L. REV. 325, 333 (2016).

42. 29 U.S.C. §§ 2611, 2612(a)(1) (2021). Although the serious health condition requirement places a potentially onerous condition as discussed *infra*, "various of the illnesses that often accompany aging—such as Alzheimer's disease, strokes, diabetes, arthritis and heart disease—readily fit within the meaning of a serious health condition." Peggie R. Smith, *Elder Care, Gender, and Work: The Work-Family Issue of the 21st Century*, 25 BERKELEY J. EMP. & LAB. L. 351, 385 (2004). Although eldercare was a key motivation for enacting the FMLA, elder care is the basis for less than twenty percent of all leaves. See Naomi Cahn, *The Golden Years, Gray Divorce, Pink Caretaking, and Green Money*, 52 FAM. L. Q. 57 (2018).

43. 29 U.S.C. § 2612(a)(1)(defining bases for entitlement to leave). Of course, single people, like

Some states, by contrast, have provided such benefits to an expansive list of potential caretakers.<sup>44</sup>

### *B. Singlehood Legal Benefits*

Historically, the distinction between *feme sole* v. *feme covert* mattered, as under the Blackstonian vision of gender, wives were subsumed into, but also protected by, their husbands upon marriage. By contrast, single women were not dependent on a spouse to enter into legal transactions, although they faced numerous legal and economic constraints. As some of the legal disabilities of marriage for women dissipated with the enactment of Married Women's Property Acts, others remained. States still required wives to use their husbands' names in order to register to vote, to obtain a driver's license, or to obtain credit until the 1970s.

Under contemporary law, within the thousand-plus federal statutes that distinguish between recipients based on marriage, and a variety of state laws that provide similar distinctions, there are some places where the law accords benefits to single people. This occurs most clearly when it comes to qualifying for benefits from public programs, although there are other places as well.

As a first example, consider Medicaid and long-term nursing care. Medicaid is the primary source of financial support for nursing care for low-income people. Medicaid is means-based, and eligibility for long-term care requires consideration of the income and assets available to the individual seeking care; but for married applicants, a spouse's assets are also considered. Medicaid assumes that each spouse is financially responsible for the other. The non-applying (or "community") spouse can retain up to half of both spouses' joint liquid assets, subject to a statutory limit, but

---

anyone else, can take leave to take care of their own health condition, *see id.* at (a)(1)(D). The FMLA has other limits as well, and does not, for example, cover "life admin," the often overwhelming office-type work that is an inevitable part of providing care. Elizabeth F. Emens, *Disability Admin: The Invisible Costs of Being Disabled*, 105 MINN. L. REV. 2329, 2331, 2376 (2021); *see* Mary Anne Case, *When Someday Is Today: Carrying Forward the History of Old Age and Inheritance into the Age of Medicaid*, 40 L. & SOC. INQUIRY 499, 502 (2015) ("elders who may now be able to hire someone on their own or the government's dime to perform bodily care services still may need to depend on a trusted family member or friend"); Deborah A. Widiss, *Chosen Family, Care, and the Workplace*, 131 YALE L. J. F. 215, 217 (2021) (some states use a functional approach, allowing leave when "a sick individual depends on the employee for care").

44. *See* Widiss, *supra* note 43.

assets above that amount must be spent down before the applicant spouse can qualify. If the individuals were not married, only the applicant's income and assets would be considered, with no need for any other individual to "spend down" their assets.

Second, the determination of eligibility for Supplemental Security Income (which, unlike Social Security, is not based on work history) may include a spouse's income. A spouse's income may change the benefits amount. The eligibility for ongoing Social Security benefits of a "disabled adult child," who began receiving such benefits because of a medical disability that began before the age of twenty-two, terminates upon marriage to a non-recipient. Such treatment is, as noted above, part of the long legal history in which marriage has served to privatize dependency.

In addition to financial benefits, there may also be legal and pragmatic autonomy benefits to remaining single. When children are born into a marriage, or where nonmarital couples register as parents, decisions concerning children generally require the involvement of all parents. The movement towards joint custody indicates that, when the parents separate, their lives remain intertwined with respect to caretaking. By contrast, single parents who do not include another name on the birth certificate, or single parents who do not apply for public welfare, are not required to consult another adult when making decisions about their children. More generally, as discussed *infra*, single people by choice celebrate their ability to make decisions autonomously, without interference.

There are, of course, other contexts in which being legally "single" is a benefit.

### *C. Singlehood and Legal Ambiguity*<sup>45</sup>

In some legal contexts, there is variation as to whether being single or coupled is a benefit. Consider the income tax system; proposals abound for changing the current tax system to minimize—or eliminate—its current biases, which include favoritism for the traditional married, sole bread-

---

45. Lily Kahng, *One Is the Loneliest Number: The Single Taxpayer in A Joint Return World*, 61 HASTINGS L.J. 651 (2010); Leong, *supra* note 7; Hemel, *supra* note 13.

winning couple.<sup>46</sup> Indeed, regardless of the marriage trilemma, there is not “a single person’s bonus.”<sup>47</sup>

A second example is the earned income tax credit. The goal of the Earned Income Tax Credit (“EITC”) is to provide benefits to low-income working families, returning income to taxpayers up to a specified limit.<sup>48</sup> That can result in a penalty for dual-income families,<sup>49</sup> as the maximum income eligibility for a single person is not significantly less than the total for eligibility of a married couple to qualify for the EITC.<sup>50</sup> Thus, in order to qualify in 2023, one person with one child “Filing as Single, Head of Household, or Widowed” could earn up to \$46,560, while someone “Filing as Married Filing Jointly” can earn no more than \$53,120 total.<sup>51</sup> On the other hand, it might serve, as is true with the income tax system, as a subsidy to a secondary earner.<sup>52</sup>

---

46. E.g., Anthony C. Infanti, *Decentralizing Family: An Inclusive Proposal for Individual Tax Filing in the United States*, 2010 UTAH L. REV. 605, 664 (2010).

47. Kahng, *supra* note 45, at 660 (“[T]hat is, a single person never pays less relative to a couple, whether married or unmarried, with the same amount of income as the single person.”).

48. *The Tax Policy Center’s Briefing Book: What is the earned income tax credit?*, TAX POL’Y CTR. (May 2021), <https://www.taxpolicycenter.org/briefing-book/what-earned-income-tax-credit> [<https://perma.cc/TXP4-U2MB>].

49. See MARGOT L. CRANDALL-HOLLICK ET AL., CONG. RSCH. SERV., RL3805, THE EARNED INCOME TAX CREDIT (EITC): HOW IT WORKS AND WHO RECEIVES IT 6 (2021), <https://sgp.fas.org/crs/misc/R43805.pdf> [<https://perma.cc/L3E6-ENKW>].

50. *Earned Income and Earned Income Tax Credit (EITC) Tables*, INTERNAL REVENUE SERV., U.S. DEP’T OF THE TREASURY (Aug. 30, 2022), <https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/earned-income-and-earned-income-tax-credit-eitc-tables> [<https://perma.cc/D2U6-A8ZM>]. See, e.g., Anne L. Alstott, *The Earned Income Tax Credit and the Limitations of Tax-Based Welfare Reform*, 108 HARV. L. REV. 533, 564 (1995) (the EITC “creates unavoidable and difficult policy tradeoffs between potential marriage disincentives and accurate targeting of benefits.”).

51. While one spouse’s income might disqualify a couple from eligibility for the EITC, “marriage can increase the EITC (a bonus) if a nonworking parent files jointly with a low-earning worker.” *The Tax Policy Center’s Briefing Book: What are marriage penalties and bonuses?*, TAX POL’Y CTR. (May 2020), <https://www.taxpolicycenter.org/briefing-book/what-are-marriage-penalties-and-bonuses> [<https://perma.cc/QXM3-HH3X>]. See *infra* discussion of income tax. See also INTERNAL REV SERV., EARNED INCOME AND EARNED INCOME TAX CREDIT (EITC) TABLES (2023), <https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/earned-income-and-earned-income-tax-credit-eitc-tables#EITC%20Tables> (demonstrating the most updated numbers for the 2023 tax year).

52. An early study found that the EITC lowered both the likelihood of work and the number of hours worked by a secondary earner, essentially providing subsidies to married mothers to stay home. Nadia Eissa & Hilary Williamson Hoynes, *The Earned Income Tax Credit and the Labor Supply of Married Couples*, NAT’L BUREAU OF ECON. RSCH. (December 1998), (Nat’l Bureau of Econ. Rsch., Working Paper No. 6856, 1998), <https://www.nber.org/papers/w6856> [<https://perma.cc/B5FQ-V55L>]. Later analyses similarly find a marriage penalty.

By contrast, the 2021 American Rescue Plan did not include such a disparity: individuals earning up to \$75,000 and married couples with incomes up to \$150,000 were eligible for the Economic Impact Grant, a seemingly neutral approach.<sup>53</sup> Similarly, the Child Tax Credit is available on a per capita basis per child, rather than corresponding to the status of their parents.

## II. THE DEMOGRAPHICS OF SINGLEHOOD

Approximately 30% of American adults are single—not married nor in a romantic relationship.<sup>54</sup> That statistic varies by age, race, gender, and education, with college-educated adults the least likely to be single (although twenty-five percent of them are), and more than a third of households headed by people over the age of fifty.<sup>55</sup> Just under half of Blacks in the U.S. are single,<sup>56</sup> and their rate of singlehood is higher than

---

53. *FACT SHEET: The American Rescue Plan Will Deliver Immediate Economic Relief to Families*, U.S. DEP'T OF THE TREASURY (Mar. 18, 2021), <https://home.treasury.gov/news/featured-stories/fact-sheet-the-american-rescue-plan-will-deliver-immediate-economic-relief-to-families>. There is some unfairness, in that a married couple, where one person earns \$100,000 and would be ineligible as an individual, and a second person earns \$50,000, and would be eligible, is still able to receive the payment.

54. Anna Brown, *Nearly Half of U.S. Adults Say Dating Has Gotten Harder for Most People in the Last 10 Years*, PEW RSCH. CTR. (Aug. 20, 2020), <https://www.pewresearch.org/social-trends/2020/08/20/a-profile-of-single-americans/> [<https://perma.cc/G46C-2F5G>]. For additional statistics on the single population, see *supra* n. 9. Definitions of “romantic” bring in comparable issues of the identity category for “asexuals,” which has come to mean so many things. See Mary Anne Case, *Legal Protections for the “Personal Best” of Each Employee: Title VII’s Prohibition on Sex Discrimination, the Legacy of Price Waterhouse v. Hopkins, and the Prospect of ENDA*, 66 STAN. L. REV. 1333, 1366 (2014) (noting, in the context of the definition of sexual identity, that “in striving to be as broad as possible, [it] also risks being obscure and subject to judicial manipulation or confusion”); Harmeet Kaur, *Asexuality isn’t celibacy or abstinence. Here’s what it is – and isn’t*, CNN (Oct. 20, 2019, 11:26 AM), <https://www.cnn.com/2019/10/20/us/sexuality-explainer-trnd/index.html> [<https://perma.cc/9L6N-HUUD>]; Press Release, Williams Inst., 1.7% of sexual minority adults identify as asexual (Aug. 8, 2019), <https://williamsinstitute.law.ucla.edu/press/sm-asexuals-press-release/> [<https://perma.cc/YQ4B-ZQDM>]; ASEXUALITIES: FEMINIST AND QUEER PERSPECTIVES (Karli June Cerankowski & Megan Milks eds., 1st ed. 2014) (collection of essays on issues ranging from theorizing asexuality to medicalization to the politics of asexuality); Emens, *supra* note 6, at 307-310 (discussing various approaches to asexuality).

55. Goldstein & Gebeloff, *supra* note 5. The article addresses single occupant households, so this statistic may not reflect the percentage not in a romantic relationship and shows how studies use the term “single” in various contexts.

56. Brown, *supra* note 54, at 17.

that of whites.<sup>57</sup> Indeed, a growing portion of educated Black professionals are part of what researchers have termed the “Love Jones cohort.”<sup>58</sup>

Approximately half of those who are single are not looking for a romantic commitment, explaining “that they have more important priorities right now and that they just like being single.”<sup>59</sup> Singles may fall into any category of sexual orientation, but do not have a committed romantic partner (or set of partners).<sup>60</sup> They may be asexual—or not. As this part shows, single people are not the stereotype through which they are often portrayed, as a social matter, even as they remain disadvantaged by rules that prioritize coupledness.

In terms of demographics, single women are more likely to be employed. While their earnings exceeded those of “partnered” women in 1990, the situation has changed.<sup>61</sup> They may be happier than those who are married or have children.<sup>62</sup> But, compared to never-married men, their earnings are lower and they have significantly less wealth.<sup>63</sup> Single men are less likely than married men to be employed, they have less education, and they are more likely to be economically vulnerable than are partnered men.<sup>64</sup>

---

57. Fry & Parker, *supra* note 9 (“Among those ages 25 to 54, 59% of Black adults were unpartnered in 2019. This is higher than the shares among Hispanic (38%), White (33%) and Asian (29%) adults.”).

58. See, e.g., KRIS MARCH, *THE LOVE JONES COHORT: SINGLE AND LIVING ALONE IN THE BLACK MIDDLE CLASS* xiii (2023) (identifying “SALA” - single and living alone); Lynda Dickson & Kris Marsh, *The Love Jones Cohort: A New Face of the Black Middle Class*, 2 *BLACK WOMEN, GENDER & FAMILIES* 84 (2008); Kris Marsh, et al., *The Emerging Middle Class: Single and Living Alone*, 86 *SOCIAL FORCES* 735 (2007). Marsh explains that her 2023 “book, then, represents an attempt to center on the voices of both Black men and women in singlehood and single studies research.” MARCH, *supra*, at 15.

59. Brown, *supra* note 54, at 14.

60. See Carlos A. Ball, *Gender-Stereotyping Theory, Freedom of Expression, and Identity*, 28 *WM. & MARY BILL RTS. J.* 229, 283 (2019) (discussing various forms of sexual identity).

61. Fry and Parker, *supra* note 9, at 13 (referencing chart on “Partnered Women are Now Significant More Educated Than Single Women”). Fry and Parker explain that, while “[t]he economic gap between single and partnered adults has generally grown wider since 1990, . . . For women the gaps have widened not because unpartnered women are faring worse now than 1990, but rather because partnered women have experienced significant improvements in their outcomes.” *Id.*

62. Sian Cain, *Women are happier without children or a spouse, says happiness expert*, *THE GUARDIAN* (May 25, 2019, 9:47 AM), <https://www.theguardian.com/lifeandstyle/2019/may/25/women-happier-without-children-or-a-spouse-happiness-expert> [<https://perma.cc/785P-K7NU>].

63. Bhattarai, *supra* note 9.

64. Fry & Parker, *supra* note 9, at 8 (within the category of men age 25-54, 26% of single, working-age men had completed college, compared to 37% of partnered men; 73% of unpartnered men were employed, compared to 91% of partnered men; unpartnered men had annual earnings of \$35,600, compared to \$57,000 for partnered men; and, based on threshold of the resources needed to live



While their median net worth is higher than for single women, it is less than half that of couples.<sup>65</sup>

Being single is often posed as a “negative,” an absence of the expected partner.<sup>66</sup> And singlehood may, indeed, be unwanted; dating apps trade on the desire to be coupled, there is a billion dollar wedding industry that celebrates coupledness, advice columns are filled with pleas from desperate singles, and popular culture—consider the Netflix series, *Love is Blind*—feeds on the desire to be partnered. The acronym FOBS expresses a “fear of being single.”<sup>67</sup> But singlehood also may be a temporary or more permanent state that is desired and deliberate. It ensures that an individual is free from the default legal obligations of marriage concerning financial and custodial sharing as well as the emotional strings of obligation.<sup>68</sup> It is also freedom.<sup>69</sup> Contrary to stereotypes that single people are selfish, single people are more

---

independently, 36% of unpartnered men would have been considered financially vulnerable compared to 13% of partnered men). This may be the result of discrimination because they are not perceived as needing a family wage. Bella DePaulo, *Married Men Paid More than Single Men, Get More Interviews*, PSYCH. TODAY (Oct. 4, 2021), <https://www.psychologytoday.com/us/blog/living-single/202110/married-men-paid-more-single-men-get-more-interviews> [https://perma.cc/B7HT-WGVU].

65. Sarah House, et. al., *Party of One: How Single Women Stack Up in the U.S. Economy* fig. 10, WELLS FARGO (March 8, 2023), <https://wellsfargo.bluematrix.com/links2/html/d0f1547d-0864-4f9f-a630-32f147eabd95> (couples had a median net worth of \$203,000, compared to \$57,000 for single men and \$47,000 for single women). The report notes that married men have the highest earnings, and married couples have economies of scale. Note that these are statistics and do not address the separate and complex issue of causation.

66. Nancy Leong’s definition of “negative identity” focuses on social marginality; it is “identity marked by indifference or antipathy to something that much of society considers fundamental,” and, in addition to singlehood, includes those who are atheists, asexual, or childfree. Leong, *supra* note 7, at 1357, 1357.

67. Susan Sprecher & Diane Felmlee, *Social Network Pressure on Women and Men to Enter a Romantic Relationship and Fear of Being Single*, 15 INTERPERSONA: AN INT’L J. ON PERS. RELATIONSHIPS 246 (2021), <https://interpersona.psychopen.eu/index.php/interpersona/article/view/6139> [https://perma.cc/N7JK-CP5H].

68. Cahn & Carbone, *supra* note 11, at 36; NAOMI CAHN & JUNE CARBONE, MARRIAGE MARKETS: HOW INEQUALITY IS REMAKING THE AMERICAN FAMILY 101 (Reprint Ed. 2015) (discussing Bethenny’s belief that coupling would mean “one less granola bar”); *see generally* KATHRYN EDIN & MARIA KEFALAS, PROMISES I CAN KEEP: WHY POOR WOMEN PUT MOTHERHOOD BEFORE MARRIAGE (2005) (exploring why marriage may not precede motherhood for low-income women).

69. Bella DePaulo, *Single People Value Freedom More and Get More Happiness Out of it*, MEDIUM (Feb. 18, 2022), <https://medium.com/fourth-wave/single-people-value-freedom-more-and-get-more-happiness-out-of-it-2290809368c0> [https://perma.cc/6799-C47N]. *See also* Bella DePaulo, *Are Single People Happy Because They Are Free?* PSYCH. TODAY (Oct. 8, 2018), <https://www.psychologytoday.com/us/blog/living-single/201810/are-single-people-happy-because-they-are-free> [https://perma.cc/HYL7-LAQ6] (addressing the role of freedom and choice in single people’s lives).

likely to be volunteers (other than for religious organizations) than are married people, and they do more to maintain community and family ties.<sup>70</sup> Being single does not mean being alone or feeling lonely. Of course, as a legal matter, everyone is single until they become part of a governmentally-recognized dyad, even when they join a polyamorous or non-dyadic, or non-amorous group.<sup>71</sup>

An increasing chorus of single people celebrate the benefits of their status<sup>72</sup> with books, podcasts, internet groups, singles-focused therapists, advocacy groups and other resources.<sup>73</sup> Psychologist Bella DePaulo has identified characteristics of those who are “single at heart,” including that they love their solitude; they are not looking for a romantic partner; and, after the break-up of their relationships, they feel “relief, rather than sadness or pain.”<sup>74</sup> Based on the Facebook group, *Community of Single People*, one of the most popular reasons for remaining single is autonomy,<sup>75</sup> although the community is so diverse that generalizations cannot do it justice. Some in the group are struggling financially, others are economically secure; some have children while others are child-free; some are divorced while others have never been legally coupled.

Stereotypes suggest that single people are more selfish and less connected and caring than married people, yet the reality is quite different.<sup>76</sup>

---

70. See, e.g., Bella DePaulo, *Think Single People are Selfish? The Research Proves Otherwise*, WASH. POST (May 25, 2018), <https://www.washingtonpost.com/news/soloish/wp/2018/05/25/think-single-people-are-selfish-the-research-proves-otherwise/>.

71. “Single” parents are defined both by their adult-partnered relationship and their parentage. A few cities now recognize groups of more than two. See City of Somerville, Mass., Ordinance No. 2020-16, § 2-502(c) (defining “domestic partnership” as “the entity formed by people who meet the following criteria” which do not include a maximum number of individuals). See also City of Cambridge, Mass., Ordinance No. 2020-14 (Mar. 8, 2021), [https://library.municode.com/ma/cambridge/ordinances/code\\_of\\_ordinances?nodeId=1072098](https://library.municode.com/ma/cambridge/ordinances/code_of_ordinances?nodeId=1072098) [<https://perma.cc/TRC3-FYJH>] (no limits on numbers in group).

72. See ELYAKIM KISLEV, HAPPY SINGLEHOOD: THE RISING ACCEPTANCE AND CELEBRATION OF SOLO LIVING 58 (2019) (discussing singles’ benefits from autonomy); Peter McGraw, *Solo: The Single Person’s Guide to a Remarkable Life*, <https://petermcgraw.org/podcasts/solo/> [<https://perma.cc/8F7C-CMBC>].

73. Bella DePaulo, *Resources for Single People Who Like Being Single*, MEDIUM (Dec. 4, 2022), <https://belladepaulo.medium.com/resources-for-single-people-who-like-being-single-8dd5bcd542fe> [<https://perma.cc/9UWX-25W9>].

74. Bella DePaulo, *Single at Heart: The World’s Most Joyful and Unapologetic Single People*, MEDIUM (Dec. 17, 2020), <https://medium.com/fourth-wave/single-at-heart-the-worlds-most-joyful-and-unapologetic-single-people-e928887276c4> [<https://perma.cc/5LVA-HKRG>].

75. *Community of Single People*, FACEBOOK, <https://www.facebook.com/groups/CommunityofSinglePeople/> [<https://perma.cc/9KEW-CT82>] (last visited Nov. 7, 2022).

76. Bella DePaulo, *Think single people are selfish? The research proves otherwise*, CHI. TRIB.

Choosing to be single does not mean they want to be alone and unconnected to others through friendships and community.<sup>77</sup> Instead, singlehood might be viewed as pointing to the “tragedy” of relying on traditional romantic partnerships as the source of companionship.<sup>78</sup>

On the other hand, single people are overlooked in politics, with even women’s organizations preferring to focus on married mothers than single women.<sup>79</sup> Or, they are urged to marry, an effort to change their votes.<sup>80</sup>

Pragmatically, being single is more expensive than being part of a couple or group.<sup>81</sup> For example, insurance rates are higher for two single people than two married people.<sup>82</sup> A group sharing household internet pays less than if each member of the group is living and paying separately. Class markers of singlehood certainly deserve closer attention.

---

(May 26, 2018, 5:00 AM), <https://www.chicagotribune.com/lifestyles/ct-single-people-selfish-20180525-story.html> [<https://perma.cc/S6XR-RLS3>].

77. Bella DePaulo, *Single People Are Caring, Connected, Attached, and Unselfish*, BELLA DEPAULO (Jun. 30, 2013), <http://www.belladepaulo.com/2013/06/the-myth-of-the-isolated-and-self-centered-single-person-who-really-is-more-connected-and-more-likely-to-provide-care/>; Bella DePaulo, *Single People Aren’t to Blame for the Loneliness Epidemic*, ATL., (Aug. 28, 2018), <https://www.theatlantic.com/family/archive/2018/08/single-people-arent-to-blame-for-the-loneliness-epidemic/568786/> [<https://perma.cc/4RSA-B8NF>].

78. See generally JANE WARD, *THE TRAGEDY OF HETEROSEXUALITY* (2020)(note the title); Lyz Lenz, *The Joy of Being Alone*, MEN YELL AT ME (Aug. 24, 2022), [https://lyz.substack.com/p/the-joy-of-being-alone?utm\\_source=email](https://lyz.substack.com/p/the-joy-of-being-alone?utm_source=email) [<https://perma.cc/HJ7G-EZHJ>] (reflections by a single mother, noting that “sociologist Jane Ward writes that one of the tragedies of heterosexuality is the reliance on romantic partnerships to fill the void of companionship.”).

79. Ashley English, *Where Are All the Single Ladies? Marital Status and Women’s Organizations’ Rule-making Campaigns*, 16 *POLITICS & GENDER* 581 (2020).

80. Mary Papenfuss, *Women Need to Marry, “Settle Down,” So They Stop Voting for Democrats: Jesse Watters*, YAHOO! NEWS, (Nov. 10, 2022), <https://news.yahoo.com/women-marry-settle-down-stop-005849281.html> [<https://perma.cc/8DAL-ZCWS>].

81. For example, two spouses with the same income who share a residence and each pay half of the mortgage or rent pay less in housing than a single person. Children, of course, raise a different set of cost issues; the point here is economies of scale for adults. Singles can achieve those same economies of scale by living in a group household. See, e.g., Lauren Cherchye, et al., *Marital Matching, Economies of Scale and Intrahousehold Allocations* (2018), <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://ethz.ch/content/dam/ethz/special-interest/mtec/cer-eth/cer-eth-dam/documents/research/seminar/2018/Matching11102018.pdf> [<https://perma.cc/E3SJ-B9VM>] (“A definition characteristic of multi-person households is that some goods are partly or completely publicly consumed, which gives rise to economies of scale”).

82. This is not to minimize the default rules of marriage, which are based on interdependence. See generally Cahn, Huntington & Scott, *supra* note 12 (discussing how family law assumes such economic interrelationships, and thus may not match the expectations of older adults in subsequent marriages).

### III. TOWARDS A SINGLE STANDARD?<sup>83</sup>

Moving towards a recognition of singlehood challenges the law's long history of favoring and celebrating marriage, with marriage serving a number of purposes<sup>84</sup> such as to protect against dependency,<sup>85</sup> or to ensure legitimacy of children.<sup>86</sup> Even when recognizing the rights of nonmarital couples, there have been efforts to ensure that such rights are not in derogation of marriage.<sup>87</sup> Since Professor Rachel Moran first proclaimed the legal arrival of singlehood in 2004,<sup>88</sup> little has changed in the law. Instead, the "marital habitus" remains a strong force in shaping "perceptions and practices, pulling certain relationships within its orbit and deterring others."<sup>89</sup> Some have already proposed disaggregating marriage from taxation and both public and employment-based benefits.<sup>90</sup>

Considering whether the law should change, so that singlehood is a useful analytical category for examining statutes and policies,<sup>91</sup> involves a recognition of the ambivalence with which contemporary law approaches

---

83. See Samhita Mukhopadhyay, *All the Single Ladies Aren't So Privileged*, NATION (May 13, 2015), <https://www.thenation.com/article/archive/all-single-ladies-arent-so-privileged/> [<https://perma.cc/L7T3-SLVB>] (discussing singlism and heteronormativity).

84. "It renders the family unit the primary source of financial support and caregiving for dependents and children. Marriage is also a site of discipline and regulation, articulating sexual and moral norms and reinforcing appropriate spousal behavior." Kaiponanea T. Matsumura, *A Right Not to Marry*, 84 FORDHAM L. REV. 1509, 1539 (2016).

85. E.g., Cynthia Grant Bowman, *A Feminist Proposal to Bring Back Common Law Marriages*, 75 OR. L. REV. 709, 754, 765 (1996).

86. *Michael H. v. Gerald D.*, 491 U.S. 110 (1989).

87. E.g., *Marvin v. Marvin*, 18 Cal.3d 660 (1976). The Uniform Cohabitants' Economic Remedies Act provides another example; it offers five different alternatives with respect to states' choices of whether a spouse or a cohabitant has superior rights. UCERA §8 (2021), <https://www.uniformlaws.org/viewdocument/final-act-4?CommunityKey=c5b72926-53d2-49f4-907c-a1cba9cc56f5&tab=librarydocuments> [<https://perma.cc/RH2M-HGWZ>].

88. Moran, *supra* note 11; see also Angela P. Harris, *Loving Before and After the Law*, 76 FORDHAM L. REV. 2821, 2842-44 (2008); Rachel F. Moran, *Loving and the Legacy of Unintended Consequences*, 2007 WIS. L. REV. 239, 274-76 (2007).

89. See Matsumura, *supra* note 6, at 2045; Murray, *supra* note 11. See also Moran, *supra* note 11, at 228 (noting that feminists have grappled with political and economic individualism within marriage).

90. Anne L. Alstott, *Updating the Welfare State: Marriage, the Income Tax, and Social Security in the Age of Individualism*, 66 TAX L. REV. 695, 698 (2013); Cahn & Carbone, *Uncoupling*, *supra* note 11.

91. See Sandra Mayson, *But What is Personalized Law?*, 89 U. CHI. L. REV. ONLINE 1 (Mar. 2022) (exploring the dimensions on which law should generalize); See generally FREDERICK SCHAUER, *PLAYING BY THE RULES: A PHILOSOPHICAL EXAMINATION OF RULE-BASED DECISION-MAKING IN LAW AND IN LIFE* (1993) (on rules as generalizations).

singlehood. Accordingly, it is unclear how singlehood could be such a basis for protection against discrimination;<sup>92</sup> it cuts across numerous other protected (and unprotected) categories, and the source of discrimination against a single person might be based on that person’s race or sexual identity or religion. Even then, however, singlism might be a component of that differential treatment.

To explore these issues, this part sets out some of the challenges in deciding whether to move forward with a legal approach to singlehood that could establish it as a protected legal category. It briefly explores the impact of an assumption that everyone is legally single. To be clear, a “singles-centered perspective sees single life—within the considerable constraints of systematic inequalities and the resulting limits on resources and opportunities—as a life of possibilities.”<sup>93</sup>

A first step in this process might be evaluating the impact of any policy or statute on those who are single. This means scrutinizing laws to analyze whether they are couple-neutral. If there is a benefit or detriment based

---

92. In suggesting that singlehood, as an aspect of negative identity, might be protected by discrimination law, Nancy Leong relies on Liz Emens, who has identified eight possible criteria to determine whether a characteristic is covered

Individual

(1) Identity beyond the individual’s control or thought too deeply rooted to ask people to alter

(2) Identity characterized by a visible trait or distinct behavior

Political

(3) Identity associated with a salient social group

(4) Identity associated with a widely known social movement

Relational

(5) Negative public attitudes toward the group

(6) Limiting or demeaning stereotypes attached to the group

Legal

(7) History of explicit or direct legal burdens

(8) History of implicit or indirect legal burdens

Leong, *supra* note 7, at 1398-99 (citing Emens, *Compulsory Sexuality*, *supra* note 6, at 377). Emens notes that the criteria are “descriptive,” rather than themselves constituting discrimination theory. Emens, *supra* note 6, at 377-78. Single people may feel a group identity, Alexandra N. Fisher & John K. Sakaluk, *Are single people a stigmatized ‘group’? Evidence from Examinations of Social Identity, entitativity, and perceived responsibility*, 86 J. EXPERIMENTAL PSYCH. 103844 (2020) (the strength of group identification was somewhat less than for other group memberships, such as sexual orientation).

93. DePaulo, *supra* note 14, at 6.

solely on singlehood, then the second step would be considering the underlying substantive goal—a potentially broad inquiry.<sup>94</sup> That is, even if neutrality may not be desirable for any particular policy, it nonetheless provides a critical lens for analyzing benefits based on status and for considering whether a more equitable system would be one that respects discrete living situations—and individuals’ relational privacy. This conceptual shift might also entail concrete reforms to existing policies that either assume economies of scale from dyadic relationships (and so favor singles) or that support dyadic relationships (and favor marriage or cohabitation).

Considering the potential of (and need for) developing a new approach to singlehood builds on other scholars. In an article on the concept of negative identity, Nancy Leong includes (among others such categories) single and child-free individuals. She argues that while single people should not necessarily be treated in precisely the same way as others, direct discrimination based on animus should be prohibited. She advocates that subsidies which both single and non-single people would find valuable as well as accommodations that are valued more highly by one group than the other should each be evaluated based on the totality of the circumstances.<sup>95</sup>

Trina Jones focuses on employment, recognizing that equality between married couples and single women without children is important, but, as does Leong, notes that inflexible application of such a standard is inadequate: “the key question that needs to be asked is whether a workplace benefit, policy, or practice is designed to increase employment opportunities for women by addressing the ways in which women as women are differently situated from others in the workplace.”<sup>96</sup> Accordingly, pregnancy leave benefits would be permissible, because they recognize the differently situated realities of people who can become pregnant; tuition benefits for children, however, are not, under Leong’s system, designed with an anti-subordination goal.<sup>97</sup> Others similarly argue that childfree

---

94. Focusing on singlehood is problematic because “the revised immutability masks questionable moral judgments about the blameworthiness of traits...; second, [] it inserts a highly disputable notion of ‘personhood’ into the doctrine that omits many traits that are stigmatized or irrelevant to any government or employer purpose; and third, [] it reinforces stereotypes about the identities it protects.” Cf. Jessica A. Clarke, *Against Immutability*, 125 YALE L.J. 2, 32-33 (2015).

95. Leong, *supra* note 7, at 1413-14.

96. Jones, *supra* note 11, at 1329.

97. Jones, *supra* note 11, at 1329-30.

people may be unduly burdened by the allocation of responsibility for childcare by employers such that they are required to assume additional tasks.<sup>98</sup>

Yet there remain fundamental questions about the advisability of singlehood as an analytic category:

1. Should singlehood be a basis for legal analysis of equity and discrimination?<sup>99</sup> Discrimination against singles is often invisible<sup>100</sup> and is not explicitly addressed by the major antidiscrimination federal laws.<sup>101</sup> As a starting principle, this would entail focusing on how individuals are advantaged or disadvantaged by any particular government action. In turn, that could lead to developing an approach so that neither nonmarital couples nor marital couples provide the standard, but instead, that the individual becomes the measuring standard; this principle is neutral between the different forms of coupledness as well as between coupledness and singlehood. This might result in legal singlehood for all.
2. How might legal analysis of singlehood result in deprivileging marriage (or, at least, coupledness)?<sup>102</sup> That is, what might be the impacts and who will experience/enjoy those impacts? Might they create greater freedom for

---

98. See, e.g., Katherine Franke, *Theorizing Yes: An Essay on Feminism, Law, and Desire*, 101 COLUM. L. REV. 181 (2001) (discussing questions about how the responsibilities of caretaking should be allocated); Jones, *supra* note 11, at 1265. “I have already expressed my own view that neither employers nor the state should be giving parents anything—from money to tax breaks to time off to parking spaces to ... to housing to flexible schedules—merely because of the fact that they are parents.” Case, *supra* note 31, at 1783 (that does not, Case carefully explains, mean that children should not be supported).

99. For a list of potential factors related to legal protection. See Emens, *supra* note 6, at 376-77; Leong, *supra* note 7, at 1398-99 (applying Emens’ criteria to negative identities, such as singlehood).

100. George, *supra* note 24, at 305-6.

101. Leong, *supra* note 7, at 1407 (noting that neither Title VII nor the Fair Housing Act protect single people, and commenting on the lack of protection in many state anti-discrimination laws).

102. Hemel, *supra* note 13, at 663 (noting the marriage tax trilemma is defined as: “(1) couples neutrality, (2) marriage neutrality, and (3) progressivity. It is mathematically impossible to devise a system that imposes the same tax liability across all married couples with the same income (couples neutrality), neither encourages nor penalizes marriage (marriage neutrality), and taxes higher income individuals at higher rates (progressivity).”).

people to move in and out of different relationship statuses with dignity?

3. What is the relationship between legal interventions and cultural norms about singlehood? That is, given the interrelationship between law and social norms,<sup>103</sup> changes in legal singlehood are in a cyclical relationship with social singlehood.
4. Should legal categories rest on marital status? Just as Dorothy Brown advocates that all income be treated in the same way,<sup>104</sup> perhaps all government benefits—and potentially all other couple-based distinctions—should be dissolved.

### CONCLUSION

As the percentage of single people increases, so are cultural and legal conversations about the relationship of singlehood and the law. This Essay shows how the law is predicated not just on marriage but on the assumption that status as single or coupled matters. Its goal has been to make two distinct points about singlehood. First, single people face a variety of disadvantages, both socially by all the negative stereotypes they experience, and legally, as they are discriminated against by rules that privilege relationships. The second is that the law regulates singlehood in good, bad, and ambiguous ways that do not make sense, and so, using singlehood as an analytic category might make us rethink certain rules in productive ways. That is, regardless of whether there is discrimination against single individuals, the law approaches singlehood in odd and inconsistent ways that are only revealed by an explicit focus that centers singlehood.

---

103. Clare Huntington, *Familial Norms and Normality*, 59 EMORY L.J. 1103, 1116–17 (2010); Clare Huntington, *The Institutions of Family Law*, 102 B.U.L. REV. 393, 424 (2022).

104. DOROTHY BROWN, *THE WHITENESS OF WEALTH* 203 (2021) (proposing a “return to a progressive income taxation system with no exclusions”).