THE 20TH CENTURY DECLINE IN THE PRIVATE COST TO WOMEN OF NON-MARITAL SEX: CAUSES AND CONSEQUENCES

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The 20th Century Decline in the Private Cost to Women of Non-Marital Sex:
Causes and Consequences

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Sexual intercourse began
In nineteen sixty-three
(Which was rather late for me)—
Between the end of the Chatterley ban
And the Beatles' first LP.

Up till then there'd only been
A sort of bargaining,
A wrangle for the ring,
A shame that started at sixteen
And spread to everything.

Then all at once the quarrel sank:
Everyone felt the same,
And every life became
A brilliant breaking of the bank,
A quite unlosable game.

So life was never better than
In nineteen sixty-three
(Though just too late for me)—
Between the end of the Chatterley ban
And the Beatles' first LP.

PHILIP LARKIN, Annu Mirabilis, in High

Non-marital sex in the United States—pre-marital, extra-marital, and post-marital—went through a radical change over the course of the twentieth century. It both increased markedly in frequency and availability and changed dramatically in character. The pace of change was most rapid in a period of perhaps ten years beginning in the early 1960s. What accounts for this revolution in such a core human activity? Why and how did we shift from a world in which sex outside of marriage, while not unavailable, was not nearly so abundant, was generally unreliable, tawdry, and, for women, usually shameful, to one in which it was readily and widely available, seen as part of the natural course of unmarried life, and where the failure to engage in sex with some regularity was generally viewed as harmful and shameful?


2 See, e.g., WENDY SHALIT, A RETURN TO MODESTY: DISCOVERING THE LOST VIRTUE 36-38 (1999) (observing that the contemporary pressures on young women are such that “[a]s long as you seem to be ‘hooking-up’ on a regular basis, no one has a thing to say to you,
I am aware of no fundamental change in the drive for sex or its ontological and psychological meaning that explains this revolution. I will spend most of this paper providing an economic explanation of this transformation, and particularly its pace in the 1960s. I will focus primarily on the plummeting costs to women of engaging in sex. That waning of cost came in two different, but related, dimensions. First, there was a dramatic amelioration and even reversal in the negative material consequences of sex. Second, and perhaps more importantly, the reputational price that women had to pay for engaging in non-marital sex plummeted in a manner analogous to a neighborhood “tipping” model. Beyond exploring the causes I am concerned with the consequences of this change in practice and attitude. I will discuss the immense negative externalities both pecuniary and real that have come in the train of our more libertine practices and attitudes. That I will suggest that the earlier more prudish and chaste sexual culture had a number of broad societal benefits that have now been eroded will hardly be surprising. Grounding such an observation in the language and concepts of economics will I hope prove informative and thought provoking.

but if you’re alone, people become very concerned and start to give you lots of advice”); E. Kay Trimberger, Blossoming in Middle Age: It’s Not All About Sex for Women from 45 to 59, S.F. CHRON., Apr. 23, 2006 at E2 (noting that “[w]omen were not expected to enjoy sex, and any female with a strong libido—especially a ‘middle-age’ woman—was regarded as suspect or even deviant. But now the pendulum has swung in the opposite direction. All women are expected to retain a strong sex drive well into middle age. For female Boomers who want women to remain sexually active, it’s great to have this new cultural validation. But women with less sexual desire or opportunity may feel inadequate and inferior.”). An examination of the today’s popular television shows reveals the adoration of sex as a form of recreation, to be engaged in as often, and with as few strings attached as possible. The exchange between three single friends in their 30s on the highly rated cable show, Sex and the City, is typical:

Samantha: I never leave underwear at a guy's place because I never see it again.  
Charlotte: What happens to it?  
Samantha: Nothing; I just never go back.  
Carrie: Doesn't that get a little expensive, disposing of lingerie every time you sleep with a guy?  
Samantha: That's why I stopped wearing underwear on dates.

Sex and the City: Evolution (HBO television broadcast Aug. 15, 1999).

The Market for Sex

How are we to understand the economics of sex? We begin with a simple proposition. Men want women, and women want men. Each wants a variety of things from the other, the most important of which are relationships. It is not merely that as in all relational contracts the process of exchange is facilitated by a relationship entailing some degree of mutual understanding and trust, but rather that the relationship itself is the principal good that is desired.

Do not misunderstand me. The word relationship in the modern argot of romantic/sexual dealings between men and women has taken on the meaning of a necessarily positive, productive, quasi-religious bond. My use of the term is more agnostic, and extends to brutal, subjugating and otherwise exploitive relationships, valued by one or both parties precisely because of those qualities. Whatever the relation in which one desires to stand with respect to another, it requires, or at least is facilitated by, the other’s reciprocal positioning. And so the acquiescence and cooperation of the other are required. This is not so much true because we live in a free society in which all are at liberty to enter and exit the relationships they chose, as it is a matter of the nature of human consciousness. The owner of a slave with the stoic bearing of Epictetus, could never feel like his master—though he still might get a good deal of work out of him.

A relationship (sexual or asexual) between a man and a woman, if voluntary in an inward sense, is itself an exchange even in the absence of the provision of other supplementary goods or services by either party. But, these relationships are most interesting and important as social, economic, legal, and political phenomena because they entail other emotional and concrete exchanges as well. While men, women, and their relationships are heterogeneous, members of each category can usefully be understood as sharing broad similarities. And it is first of all those broad similarities that I will explore. Thus I beg the reader’s indulgence to forswear the response that not all men, women, and relationships are as I describe them.

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4 The sex we are concerned with is an exchange between men and women. I exclude from the current discussion those with other sexual orientations.

5 By way of illustration of the breadth of this heterogeneity, consider the fact that there are hundreds of cases nationwide of unconsummated marriages. Brian Alexander, When the Train Never Leaves the Station, SEXPLORATION ON MSNBC.COM, Aug. 14, 2008, http://www.msnbc.msn.com/id/26161185/ns/health-sexual_health/t/when-train-never-leaves-station/#.TzgZ9WDgLLY. In her 36-year career, Dr. Domeena Renshaw, a psychiatry professor at Loyola University Health System has treated 202 couples that have not consummated their marriages despite a strong desire of both parties to do so. Id. Educated estimates indicate that approximately one percent of married couples have not had
So, what is the character of this exchange between men and women? First, in comparison to other affective relationships between contemporaries, considerably more of both the purely relational exchanges and virtually all the concrete exchanges between men and women are reciprocal rather than symmetrical. That is, this is less about sharing the same functions and thereby gaining scale economies and insurance, than it is about performing different functions so that each is provided with services from the other that he/she can not nearly (if at all) so well provide for him/herself. This core reciprocity is considerably less prominent in our era than it was in times past. The many markets and state services available in an advanced economy allow men and women to acquire or earn what they otherwise would have required a wife or husband to supply. That said, the core sexual and procreative function still generally requires a member of the opposite sex.

Second, given that marriage, the quintessential long-term relationship, is the principal non-consanguineous relationship between men and women it is hardly surprising that exchanges do not remain cabined within discrete “services.” In virtually all “sexual” exchanges between men and women—and in marriage most completely—the exchange is typically not: sex for sex; sex for companionship; companionship for protection; or (as in the typical market exchange) any of these things for money. Instead, the entire congeries of relationships, services, and things provided by one are exchanged for a reciprocal set provided by the other.

Sex is thus a grand and complex exchange with the roots of the constituent desires and their satisfaction deep in the human soul. Humility might caution a humble economist to give this subject a wide berth; it is seemingly beyond comprehension let alone modeling. But the virtue of the shallow discipline of economics is that it is a sturdy tool that while not yielding deep insights does reveal simple and often overlooked truths.

Our investigation must begin somewhere, and so I choose the one obvious entry point, sex in the small. I start with sex in the narrow sense for two reasons. First, because it lies at the bottom both of the relationship between men and women, and second, it is the good whose declining cost and consequent increased supply this paper is concerned with. The value of sexual intercourse and accompanying sexual acts, because they carry powerful meanings to the parties that are rooted in how the other, and the relationship to the other are perceived, cannot be treated as a homogeneous commodity; sex with one person is not equivalent to sex with another. And, the meanings that attach to the act usually require that in order to maximize

intercourse, with the reasons ranging from ignorance about sexual functions to anxiety. Id.
the sum of the value to the parties the exchange must take the form of barter rather than a cash transaction. That is, as I will discuss more fully shortly, sex with a woman who only acquiesces in exchange for cash is generally less satisfying and therefore less valued than sex with a woman who does so for love or lust. And the loss of value on the other side of exchange is perhaps even more pronounced, i.e., offering most women cash for sex is usually not a very promising path to the bedroom.

Though the presence of a highly heterogeneous barter market to some degree obscures the general character of the exchanges there are certain common salient features. We begin with which gender desires sex more. Both men and women have sex drives, the power of which—physiologically and psychologically—vary both randomly and systematically. Age, for example, has a systematic differential effect on each gender’s drive. The sex drives of men and women manifest themselves, if not first, then certainly most powerfully, at puberty, rise for a period of time and then decline, though the rise and decline seem to follow different patterns for men and women, with some studies showing women’s not reaching their peak until middle age.

But the systematic variation we are most concerned with is not caused by differences in age but by differences in gender. The median man—especially in his youth—has a considerably stronger sex drive than the median woman. Although there are independent biological measures of this

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6 See e.g., Jeanne Brooks-Gunn & Frank F. Furstenberg, Jr., Coming of Age in the Era of AIDS: Puberty, Sexuality, and Contraception, 68 MILBANK QUARTERLY 59, 63 (1990) (explaining generally that “pubertal changes set the stage for an increase in sexual feelings” and noting that both male and female sexual arousal is linked to increased testosterone levels).

7 See Judith A. Easton, Jamie C. Confer, Cari D. Goetz & David M. Buss, Reproduction Expediting: Sexual Motivations, Fantasies, and the Ticking Biological Clock, 49 PERSONALITY AND INDIVIDUAL DIFFERENCES 516, 516-20 (2010) (reporting the findings of a recent study that indicated women in their late 20s to mid-40s experience an increased motivation for sex that may be driven by a “biological clock” that seeks to maximize a woman’s remaining years of fertility).

8 A 2001 examination of gender differences in sex drive by Roy F. Baumeister, Kathleen R. Catanese, and Kathleen D. Vohs found that “[o]n every measure, men were found to display greater sexual motivation than women.” Roy R. Catanese & Kathleen D. Vohs, Sexual Economics: Sex as Female Resource for Social Exchange in Heterosexual Interactions, PERSONALITY AND SOCIAL PSYCHOLOGY REV. 8 342 (2004) (citing Roy F. Baumeister, Kathleen R. Catanese & Kathleen D. Vohs, Is There a Gender Difference in Strength of Sex Drive? Theoretical Views, Conceptual Distinctions, and a Review of Relevant Evidence, PERSONALITY AND SOCIAL PSYCHOLOGY REV. 5 242-73 (2001)). According to the work of Baumeister, Catanese, and Vohs, men “think about sex more often, have more frequent fantasies, are more frequently aroused, desire sex more often (both early and late in relationships, and outside of relationships), desire higher numbers of sex partners,
difference, e.g., hormone levels, such evidence is considerably less accessible and persuasive than the cultural and market responses that those fundamental biological phenomena give rise to. Take for example the market for pornography. It is a commonplace observation hardly requiring formal empirical support that men vastly outnumber women as consumers.9

The issue becomes more clouded when one looks to other sexual markets such as prostitution and the sexual bargaining during dating. All observations of market demand are of net desire rather than gross desire; so too for sex. That is, if there is a cost to purchase or consume the sexual product or service—monetary or otherwise—then the observed quantity demanded and the intensity with which that demand is expressed will surely under-represent the strength of the desire. So, whether we are observing the willingness to view pornography, purchase the services of a prostitute, or engage in sexual intercourse outside of marriage, the consumer is motivated not merely by the expected “benefits” but by those benefits minus the expected costs of acquiring and consuming the service. While the monetary cost of purchase may be the same for women as for men in all these markets, (true for pornography, less clear for prostitution) the risks of pregnancy, injury, disease, and damage or enhancement of one’s standing or status will differ markedly between the genders. For pornography, given the private nature of the consumption, the costs to men and women are likely virtually identical. But, as will be explored in greater depth below, the costs of actually engaging in heterosexual activity are considerably higher for women than for men. So, whatever we may be able to say about the pure un-cost-constrained desire for sex, the desire as measured by net benefits

masturbate more frequently, are less willing to forego sex and are less successful at celibacy (even when celibacy is supported by personal religious commitments), enjoy a greater variety of sexual practices, take more risks and expend more resources to obtain sex, initiate more goal directed behior to get sex, refuse sex less often, commence sexual activity sooner after puberty, have more permissive and positive attitudes toward more sexual behaviors, are less prone to report a lack of sexual desire, and rate their sex drives as stronger than women.” Id. As for women, “[n]o findings indicated that women had a stronger sex drive than men on any measure.” Id.

9 See, e.g., ROBERT WRIGHT, THE MORAL ANIMAL: EVOLUTIONARY PSYCHOLOGY AND EVERYDAY LIFE 43 (1994) (explaining that “virtually all pornography that relies sheerly on visual stimulation—pictures or films of anonymous people, spiritless flesh—is consumed by males”). A 2008 study of 813 undergraduate and graduate students from six colleges and universities (ages 18 to 26) found that 86 percent of men view pornography at least once a month, and 69 percent of women do not view pornography at all. Jason S. Carroll, Laura M. Padilla Walker, Larry J. Nelson, Chad D. Olson, Carolyn McNamara Barry, & Stephanie D. Madsen, Generation XXX: Pornography Acceptance and Use among Emerging Adults, JOURNAL OF ADOLESCENT RESEARCH 23, 6-30 (2008). Moreover, the same study found that at least half of men, but only 3 percent of women, watch pornography on a weekly basis. Id.
demonstrates men’s greater demand for sex. Whether we look at the market for prostitution or the dynamic of the most mundane of dating transactions between men and women, all make plain that at the median it is men who more strongly lust for women rather than the reverse. It is men who pay and women who are paid; and when non-consensual heterosexual encounters occur it is men who rape and women who are raped. A core result then is that given men’s stronger demand there is a positive price that women can extract for their participation in consensual sex, whether that participation amounts to mere acquiescence or something more enthusiastic.

**The Increased Demand for Sex**

Sex has always been with us; were it not so we would not be here. And given its primal character one might be inclined to think that the demand for sex is unchanging. But all desires trade off against one another, and there is reason to believe that at the margin sex is a more important economic good to 21st century Western man than it was to our ancestors. Why?

Consider the well known economic paradox of water and diamonds. While the consumer surplus in the market for water is immeasurably greater than that in the market for diamonds, because of the vastly greater supply of the former its price and marginal value is much less than that of the latter. Things are not entirely different with regard to sex. While the inherent drive and desire for sex is greater than that for diamonds, it is not the strongest human drive. It normally ranks behind the drives for food, warmth, and safety. But the singular truth of modern economic life is that

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11 See e.g., SHANNAN CATALANO, ERICA SMITH, HOWARD SNYDER, & MICHAEL RAND, *FEMALE VICTIMS OF VIOLENCE*, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE 5 (Sept. 2009) available at http://bjs.ojp.usdoj.gov/content/pub/pdf/fvv.pdf (reporting that the “rates of rape or sexual assaults against females and males in 2008 were 1.4 and 0.3 per 1,000 persons age 12 or older, respectively”).
man’s ingenuity has succeeded in largely satisfying our other core, primal needs. We have moved far down our demand curves for the primitive material goods that concerned our ancestors. We are now trolling in regions where the marginal utilities of additional units of food and body covering are low indeed. Not so with respect to our demand for sex, either in the small, or in the large.

In speaking of a demand for sex I am knowingly amalgamating and collapsing a congeries of relationships varying immensely in depth and character, everything from the “hook-up” to the life-time marriage. I beg the reader’s indulgence on this point. Human intentions and demands shade into one another along the sex continuum and there are useful things we can say about the entire spectrum. Most importantly, our marginal demand for sex along the entire spectrum remains strong, indeed perhaps stronger than ever, not despite, but rather, because of the increased wealth of modern life. There is simply no technological fix that allows us to satisfy our demand for sex significantly differently or better than did our prehistoric ancestors. Indeed modern life has provided more and better devices to excite that desire.

Greater wealth does allow more people to enter the market for sex in its broadest and most committed sense, as they are more able to afford the bearing and rearing of children, but that increase is modest. First, because the desire to procreate has always been strong, and so, much else will always be sacrificed to satisfy it. Second, because until little more than a century ago, children were as much investment goods as consumption goods. Now, of course, they are for many people almost luxuries.12

More significantly, precisely because other primal needs are more easily satisfied in modern economies, the demand for sex (narrow or broad) becomes more prominent. This is in addition to the effect of greater physical vigor brought on by more balanced and nutritious diets. The demand curve, already quite inelastic, in effect has pivoted in a clockwise direction and become more vertical, that is, still more inelastic. To the extent that there are no good substitutes for either the broad or narrow versions of sex, and the supply is limited by the members of the opposite gender who are available, the proportion of our desire that is satisfied is hardly greater now than it was 10,000 years ago. As long as the relative numbers of available and willing men and women are kept in equipoise, the demand curves of

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12 See John H. Langbein, The Twentieth-Century Revolution in Family Wealth Transmission, 86 Mich. L. Rev. 722, 725, 733 (1988) (explaining the change from the nineteenth century when “the family was not only the primary unit of production, it was the primary education entity as well” to the twentieth century when “the process of delivering educational advantage to children begins very young” and for “propertied parents” can include “private schools” and “private colleges”).
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each only rise vertically with increased wealth, and the intersection does not change its position much in relation to the quantity axis; a paltry few more can satisfy their demand now than could in the distant past.  

**An Aside on Prostitution**  

One of the oldest jokes in the book is about the man (some say Churchill, others George Bernard Shaw) who asks a woman if she'd sleep with him for a million dollars. When she says yes, he asks if she'd sleep with him for five dollars, and indignant, she exclaims "What do you think I am?"

The famous answer? "We're already established what you are, ma'am, now we're just haggling over the price."

It is nearly a sacred doctrine of economic theology that, while quantity demanded of any good is a function of price, demand itself remains invariant with either the level, or very existence, of a price. That postulate is generally well founded; but there are exceptions. The exceptions arise most forcefully when the transaction one is contemplating engaging in is the establishment of a “relationship.” Some relationships are precluded or severely compromised when putatively entered into in exchange for financial (or similar) compensation. Thus when one little boy offers his friendship to another in exchange for half of the latter’s potato chips it is plain not merely to the observer, but usually to the owner of the chips that there is no real friendship being offered in the transaction. In the realm of sex the commercialization of the exchange is similarly problematic. Were a married male reader of this essay to go home tonight wishing to partake in sexual intercourse and, learning that his wife was not similarly inclined, to offer two hundred dollars as an inducement, I suspect that in most cases he would not thereby have increased his wife’s enthusiasm.

For both men and women sex in exchange for money is a decidedly different good than sex undertaken for reasons of love, lust, procreation, cementing of a relationship, etc. As a general matter for both parties the belief that the motive of the other party to the transaction is one of the latter set rather than (for women) financial remuneration or (for men) a belief that the woman expects or would acquiesce in response to modest financial remuneration, makes the transaction considerably more valuable.

Graphically this is depicted in figure 1. The green and blue supply and demand functions depict two related but fundamentally different markets. The green lines depict a supply and demand for sex in which there is no expectation of financial exchange between the parties, while the blue lines reflect supply and demand where such a transfer of funds between the parties is central to the exchange. The slope of women’s green supply curve should be understood as thoroughly hypothetical, it reflects something akin to women’s greater willingness to engage in sex with a given man given that
they are compensated for doing so by someone or thing other than that man or his agent—either directly or indirectly. Given that I know of no such market the only operative point on the curve is the place where it crosses the X axis. On the other hand the man’s downward sloping green demand curve is all too real. It reflects the wealth that men are willing to expend—though not to pay to the woman—in order to woo her, expenditures on clothes, grooming, dates, etc. The number of exchanges that will occur will generally correspond not to the intersection of the supply and demand curves but rather to the point at which the supply curve crosses the X axis. At that price the quantity demanded far exceeds the quantity supplied. The available supply will be rationed among the men in part by their natural characteristics and how those characteristics play into the utility functions of women and in part on men’s expenditures to make themselves available and attractive to women.

Figure 1

![Graph showing Quantity of Sex Exchanges](image)

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13 Given the importance of this good in men’s utility functions it is not surprising that men have sought not only to appeal to women’s utility functions but to mislead and seduce those functions as well. For example, Ross Jefferies, a “UCLA graduate student and former comedy writer,” has written a book entitled, *How to Get the Women You Desire Into Bed*, which teaches men quasi-hypnosis and “neuro-linguistic programming” for the purpose of seducing women. Charlotte Allen, *The New Dating Game*, THE WKLY. STANDARD, Feb. 15, 2010, at 21. Jefferies has been so successful with his techniques (or merely his marketing?) that copycats abound selling CDs and DVDs with titles like, “Grow Your Game,” “Double Your Dating,” “Alpha Seduction,” and “Blissnosis.” *Id.*
The blue curves are something else again. They reflect the supply and demand for financially compensated sex—admittedly a substitute good, but a very different good entirely. For men, the services of a prostitute are in general a much inferior substitute for uncompensated sex—even when finding the willing partner for uncompensated sex is far more costly than paying a prostitute. And on the supply side the female providers of uncompensated sex—the joke that begins this section notwithstanding—would generally not offer their services in the compensated market for any reasonable compensation.

While some would characterize a man paying for dinner and entertainment on a date as a kind of compensation, it is not accepted by the women and generally is not offered by the men in that spirit. Indeed if the women believe that the man is offering it in the spirit of compensation for sex, they are likely to turn down the offer, or were they so inclined to accept compensation would demand considerably more—preferably in cash. No, the spirit of the expenditure on a date harkens back to earlier more universal male courting practices in which one demonstrates to prospective spouses: (1) that one has the resources to support a wife; and (2) that this particular woman is deemed attractive enough—in the broadest sense—for repeated investments of time and wealth in the courtship process.

There are a variety of ways in which a man might seek sexual release: vaginal intercourse with a prostitute, with a lover, with a spouse, sodomy in all its various forms with the same set of potential partners, and auto-erotic activity. But that does not make them equivalent activities. Prostitution and uncompensated sex are substitutes, but not nearly so close as they might appear when examined as purely physical acts.

Sex is most valued for its psychological meaning. Were it not so, fantasy and imagination would not play such a large part in both auto-erotic and inter-personal sex, and it would be as common for men to fantasize

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14 While early views of sexual fantasy were characterized as dysfunction and perversion, more modern views assess sexual fantasy as a healthy outlet of desire. Literature from the 1960s onward has suggested that sexual fantasy aids arousal, supports a functioning ego, and may increase with more sexual intercourse and masturbation. See, e.g., J. Kenneth Davidson, Sr., & Linda E. Hoffman, Sexual Fantasies and Sexual Satisfaction: An Empirical Analysis of Erotic Thought, 22 J. SEX RESEARCH 184, 184-205 (1986) (finding that sexual fantasy, rather than being undesirable, actually "help[s] many married women to achieve sexual arousal and/or orgasm during sexual intercourse, irrespective of their current sex life status"). A 2004 study of heterosexual men and women concluded that while most people experience sexual fantasy, men tend to fantasize about pleasing aroused female partners, whereas women tend to focus on themselves. For women, sexual fantasy may serve as a safer outlet of desire; women may explore desire through fantasy without risking rape, pregnancy, harassment, or violating traditional notions.
In the uncompensated market the willingness of a woman to have sex with a man is a demonstration that he is worthy of that act. It is a powerful affirmation of his manhood. If instead, the act is only performed in exchange for financial compensation then it is not lust, love, desire, admiration, or any other emotion triggered by the personal positive characteristics of this particular man that induces the woman to give herself to him, rather it is the universal homogeneous indiscriminate solvent of cash that serves as the necessary inducement. Still, the powers of fantasy can sometimes permit the man to imagine otherwise, at least during the carnal act.

Let me illustrate this by recalling for you a scene from a popular film of four decades ago, the title of which captures the subject well, *Carnal Knowledge*.\(^\text{15}\) Near the end of the film, the character played by Jack Nicholson enters an apartment occupied by an attractive and seductive woman. She tells him what a wonderful lover he is, and how much she adores and desires him. Suddenly he gets angry. It quickly becomes apparent that she is a prostitute and has flubbed a line from a script that he has prepared for her, and that she has recited many times before. In that instant the Nicholson character is exposed as not a self-contained man and a great lover adored by women, but a pathetic creature, who, not only must pay a woman to engage in sex with him, but, so craves even the pretense of the adoration that such an act implies (if uncompensated) that he would debase himself to orchestrate and pay for a patent sham. Why? Because, for humans, sex is most importantly not about orgasmic relief, rather it is about meanings that attach to the act.

Since the sex that most men want requires that they believe that the woman is willingly surrendering herself to him out of passion or love, and women were (at least in the past) usually unwilling to do so outside of marriage, the market for sex resolved itself into largely a market for marriage. So, yes, sex with a prostitute is a substitute for sex with a girlfriend or date, but in most cases a very poor one.

That said, there are instances in which for a minority of men it is a superior alternative. Because sex with a prostitute is bottomed on a purely financial relationship it is a less socially and emotionally complicated affair and can for that very reason be valued.


\(^{15}\) *CARNAL KNOWLEDGE* (Metro-Goldwyn-Mayer Studios 1971).
a prostitute carries a decidedly different meaning for a woman than sex with a man who views one as a lover. The woman wishes the man to appreciate that she is highly selective in the men on whom she bestows her favors. If he believes that her principal criterion for selection is his willingness to pay the fare then she can in no fundamental way be giving herself to him. Why do women care about this?

Some might explain this as a product of evolution. There is the old humorous line that runs “momma’s baby, daddy’s maybe.” It is a fundamental truth that paternity is uncertain. A state of nature in which males were as a behavioral matter—even if not as a cognitive one—unconcerned with the paternity of their putative offspring would be evolutionarily unstable. And so, men’s preference for chaste and sexually modest women for long-term affective relationships, and still more so for procreation and marriage, is fully evolutionary explicable. But whatever its root, there is deeply embedded in male consciousness a strong preference for a woman who surrenders herself exclusively to him because of his particular characteristics. And women implicitly, and usually explicitly, appreciate this. Thus in her effort to find a life-mate who will support her and their joint offspring a woman understands that men who view her as a whore are not promising candidates.

So while the supply curves of non-compensated sex and prostitution are clearly related to one another in that the suppliers broadly speaking share the same inputs and the demand curves are clearly related in that the physical act remains largely the same and the imagination can carry much of the weight, neither on the demand side nor the supply side is there a very high cross-elasticity.

The Declining Cost of Sex to Women

Even if we were to assume that men and women were equally biologically driven to engage in sex, women would still be more reticent and discriminating in practice. While on the demand side of the equation we

16 See ROBERT WRIGHT, THE MORAL ANIMAL: EVOLUTIONARY PSYCHOLOGY AND EVERYDAY LIFE 65-67 (1994) (explaining the evolutionary and empirical support for the fact that men are intensely concerned about the sexual behaviors of their female partners, and stating, “Not long for this world are the genes of a man who spends his time rearing children who aren’t his.”)

17 The evolutionary reasons to expect that men and women differ systematically in the strength of their sex drives are obvious. Waite and Joyner write, “[T]he fact that men can have many children without investing much in any of them makes their optimal reproductive strategy to father children with a number of women. The fact that women can have relatively few children over their reproductive lives and must invest a great deal in each one pushes them toward stable, long-term relationships with men who will support them and their children.” Linda J. Waite & Kara Joyner, Emotional Satisfaction and Physical
can do little more than speculate about the inner drive and lust of the individual, on the cost side we can observe objective burdens that vary systematically by gender. The cost to women of engaging in sex, especially pre-marital and extra-marital sex, are inherently and historically much greater than the cost to men. The central thesis of this paper is that this collection of costs to women all fell markedly over the course of the 20th century, and that decline in costs moved women’s supply curve of both financially compensated—and more importantly--uncompensated sex rapidly and substantially to the right. What are those costs? And, how and when did they fall?

We begin with pregnancy. Pregnancy is not always a cost. Indeed it is a great benefit when one wishes to bear a child sired by the man with whom one has had intercourse. Under most other circumstances, however, it is and has always been an enormous burden to a woman. Bearing a child when not married frequently meant embarking on a life of degradation, isolation, poverty, and early death. And terminating the pregnancy was a chancy thing that could result in death, illness, and infertility.

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18 During the period 1815 to 1830, for example, the usual motives of young women who committed suicide were pregnancy, abandonment, or both. PAUL JOHNSON, THE BIRTH OF THE MODERN 753 (1991). In a study of “ruined girls” in New York from 1890-1920, Joan Jacobs Brumberg addresses changing concerns over extra-marital sexuality. Joan Jacobs Brumberg, “Ruined” Girls: Changing Community Responses to Illegitimacy in Upstate New York, 1890-1920, J. OF SOCIAL HISTORY 247-72 (1984). In the 17th century, courts did not distinguish between bastardy, adultery, premarital pregnancy, and premarital intercourse; all fell under an umbrella term of “fornication.” Id. at 248. In the 18th century, premarital pregnancy triggered concerns regarding child support, which ultimately shaped legal and moral codes. Id. By the 19th century, private networks and institutions began to grow, as financial anxieties surrounding illegitimacy began to affect the individual, family, and community Id. at 248-9. In this context, unmarried mothers became sources of embarrassment and economic drain, as states such as New York required certain services for out-of-wedlock children and mothers. Id. at 249. Tracking down reluctant fathers often proved a waste of time and money. Id. Among the wealthier, children out of wedlock posed difficulties in handling intergenerational inheritance. Id. Faced with economic strain routed through social humiliation, ostracism, and family reputational loss, unmarried mothers in the late 19th century coped through abortion, abandonment, infanticide, or anonymity. Id. at 248. An emblematic example is the case of Nettie Mayers. Id. at 247-48. Nettie adopted the pseudonym of “Minnie Evans”. Id. at 247. An 18-year old unmarried mother in 1898, Nettie gave birth in a home for “wayward and erring girls” supported by a women’s Christian organization in New York. Id. Although Nettie claimed to have no family, she escaped from the “home,” threw her baby off of a bridge, and returned to her family. Id. Nettie’s father had her medically examined and committed into an insane asylum to avoid Nettie’s imprisonment. Id. at 248.

19 See, e.g., Patricia Barthalow Koch, The United States of America: Contraception,
But, even leaving aside pregnancy, the other costs of sex to women were substantial. Perhaps most prominent was the reputational cost in the eyes of men. The woman of easy virtue would have a harder time—controlling for quality—finding a mate. It was out of express or implied recognition of that cost that we have the old question, “Will your respect me in the morning?” Add to this the reputational cost in the eyes of other women; chaste and virtuous women would not wish to be associated with “loose” women.\(^\text{20}\) And, beyond all that we have the costs of sexually transmitted disease and possible violence in circumstances in which a remedy might not be forthcoming because of the illicit nature of the relationship.

While all these categories of costs remain in force, their magnitude has fallen steadily over the last two centuries, most markedly in the thirty years following the Second World War. The driving forces behind this fall were massive increases in wealth and extraordinary technological innovation. Let us do a quick tour. Consider pregnancy. It is not only the most significant cost but it drives most of the others. The decline in the cost of pregnancy was three-fold: (1) reducing its likelihood, (2) facilitating its termination; and (3) easing the burden of unmarried motherhood. First, the development of many more contraceptives, the birth control pill in particular—because it was within the control of women—meant that the likelihood of unwanted pregnancy was reduced.\(^\text{21}\) Next, the routinization of abortion, finally ending

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\(^{21}\) See *e.g.*, Timothy Reichert, *Bitter Pill*, FIRST THINGS (May 2010), available at http://www.firstthings.com/article/2010/04/bitter-pill (explaining the effect of contraception on sex and stating that “contraception technology provides the assurance that participating in the sex market will not result in pregnancy”). Beginning in the early 1900s, cervicouterine devices were used as a contraceptive. Jane E. Hutchings, Patti J. Benson, Gordon W. Perkin & Richard M. Soderstrom, *The IUD After 20*
with its legalization meant that terminating an unwanted pregnancy was a relatively easy matter. 22 Third, there was the financial cost of bearing a

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22 Before the 1970s a woman could not obtain a legal abortion in the United States. Patricia Barthalow Koch, The United States of America: Contraception, Abortion, and Population Planning, THE INTERNATIONAL ENCYCLOPEDIA OF SEXUALITY (Robert T. Francoeur ed., 1997-2001), http://www2.hu-berlin.de/sexology/IES/xmain.html (last visited Mar. 17, 2012). In this environment, particularly during the 1950s, approximately one million illegal abortions occurred each year, involving more than one thousand annual deaths. Id. It was the state of New York, in 1970, that first enacted legislation permitting “abortion on demand through the twenty-fourth week if it was done in a medical facility by a physician.” Id. Only a short time later, in January of 1973, the Supreme Court decided the case of Roe v. Wade and held that the constitutional right to privacy was “broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.” Id.; Roe v. Wade, 410 U.S. 113 (1973). Since these statutory and case law developments, “legally induced abortion” has become “the most commonly performed surgical procedure in the United States.” Id. In 2007, the Centers for Disease Control and Prevention (CDC) reported that the number of abortions in the United States reached 827,609, with the abortion rate at 16 abortions per 1,000 women aged 15-44 years, and the abortion ratio at 231 abortions per 1,000 live
child out of wedlock. A world of widespread use of contraceptives and easy abortions meant there was a dearth of newborns for adoption. Thus a young woman could bear a child and—if the baby was healthy—have every expectation that there would be an army of financially secure infertile couples eager to adopt. More importantly, both for rich, and much more significantly, for the poor the financial disaster of raising a child out of wedlock has been massively reduced. Most importantly at the lower end of the social and economic spectrum, ever more generous government support for unwed mothers and their children meant that the material horror of raising a child without resources no longer held. When opportunity cost is births. Karen Pazol, Suzanne B. Zane, Wilda Y. Parker, Laura R. Hall, Sonya B. Gamble, Saeed Hamdan, Cynthia Berg & Douglas A. Cook, Abortion Surveillance—United States, 2007, Morbidity and Mortality Weekly Report, Centers for Disease Control and Prevention (Feb. 25, 2011), available at http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6001a1.htm?s_cid=ss6001a1_w. The CDC also reported, “In 2006, the most recent year for which data were available, six women were reported to have died as a result of complications for known legal induced abortions. No reported deaths were associated with known illegal induced abortions.” Id.

23 See e.g., Marianne Bitler & Madeline Zavodny, Did Abortion Legalization Reduce the Number of Unwanted Children? Evidence from Adoptions, 34 PERSP. ON SEXUAL AND REPRODUCTIVE HEATH (2002), available at http://www.guttmacher.org/pubs/journals/3402502.html (stating that “[t]he estimated effect of abortion legalization on adoption rates is sizable and can account for much of the decline in adoptions, particularly of children born to white women, during the 1970s”). In addition to the effect of legalized abortion on adoption, lower teenage birth rates and legislation requiring that “reasonable efforts be made to preserve and reunify families (e.g., The Adoption Assistance and Child Welfare Act of 1980), and to give preference to placement of children with relatives who meet state standards for child safety (e.g., The Personal Responsibility and Work Opportunity Reconciliation of 1996)” have reduced the number of infants available for adoption. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, Adoption Experiences of Women and Men and Demand for Children to Adopt by Women 18-44 Years of Age in the United States, 2002, VITAL AND HEALTH STATISTICS (2008), available at http://www.cdc.gov/nchs/data/series/sr_23/sr23_027.pdf

24 As a related example of this effect, consider the fact that the decrease in the domestic supply of children for adoption has forced “more affluent women and couples” to adopt from overseas. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, Adoption Experiences of Women and Men and Demand for Children to Adopt by Women 18-44 Years of Age in the United States, 2002, VITAL AND HEALTH STATISTICS (2008), available at http://www.cdc.gov/nchs/data/series/sr_23/sr23_027.pdf. According to the CDC, “Between 1990 and 2001, the number of children adopted from other countries has increased from 7,093 to 19,237.” Id.

taken into account this change clearly had more purchase for some women than for others. Those with fewer good employment or marriage prospects would be more inclined to avail themselves of government largesse. Though one should not exaggerate its significance, secular changes in the economic life of the nation meant that the cost of out-of-wedlock childbearing was reduced for better educated women as well. Labor saving devices at home and high incomes available in the labor market meant that many single women could raise a child in middle class comfort.

As for the reputational costs to women in the eyes of men, they too have fallen. When most unmarried women were chaste until marriage or at least betrothal, most men could afford to insist on only marrying a virgin. I recall when teaching at a small private university in the Midwest thirty-five years ago being told by a couple of coeds that the saying about the various sororities was “Thetas to bed, Deltas to wed” (or was it the other way around?). Such ordinary language expressions evidence women’s belief—quite likely correct—that a reputation for sexual availability reduced one’s value on the marriage market. The decline in female chastity initiated by a fall in the costs of possible pregnancy meant that men could not afford to be so choosy on this issue. So as a practical matter the marriage prospects of unchaste women were no longer substantially different from that of virgins. In addition cognitive dissonance made it hard for men to hold unchaste women in disdain. After all, with each passing year it became ever more likely that one’s future wife and the mother of one’s children would not be a virgin when you met her. Women also faced a declining reputational cost in the eyes and behavior of other women. The nature of this cost and its decline will be explored more fully below. Suffice it to say for the moment that as those who sought to impose this cost fell in number and those on whom it was imposed grew, the cost on each unchaste woman fell.

Finally we have sexually transmitted disease. The great panoply of such diseases that were the scourge of earlier generations including gonorrhea, syphilis, Chlamydia, while not eliminated, have been much reduced in their prevalence and cost. The development of more advanced

26 In the 1920s, just 12 percent of women reported having a sexual partner before marriage. Mark Regnerus & Jeremy Uecker, Premarital Sex in America: How Young Americans Meet, Mate, and Think About Marrying 24 (2011). Today, over 25 percent of adult women report having had 5 to 10 sexual partners, and 10 percent of adult women report sex with 10 or more partners. Id. at 24-25.

27 See Mark Regnerus & Jeremy Uecker, Premarital Sex in America: How Young Americans Meet, Mate, and Think About Marrying 43 (2011) (stating, “[C]hlamydia and gonorrhea . . . can be gotten rid of and are typically passed from person to person by infected bodily fluid such as blood, semen, and vaginal or pre-ejaculate . . . . Syphilis and gonorrhea are also considerably rarer than they used to be.”)
diagnostic devices and treatment with anti-biotic drugs are the principal explanation. Alas, in the last 25 years the spread of AIDS and Herpes have raised the cost again.

So for all these reasons the costs to women of engaging in sex outside of marriage fell precipitously and so its practice increased. All save one of the costs to women of sex discussed above require no more elaborate explanation. The costs of pregnancy and disease are self-explanatory. As for the reputational cost in the eyes of men it requires but two small steps. First, women wish to marry. Second, expectations of fidelity by one’s wife matters to a man if for no other reason than that he wants to be secure about the paternity of his wife’s offspring, and pre-marital chastity is a predictor of post-marital fidelity. There are indeed more important and deeper psychological reasons for this concern with one’s mate’s sexual fidelity. But we need not trouble ourselves with the source of the desire as long as we recognize its power.

The puzzle is why female chastity should matter to other women. The answer is twofold. First there is the notion of something akin to guilt by association. One cannot wear one’s chastity as a badge on one’s sleeve. Its value rests on establishing a reputation and maintaining it. That reputation will be based on an amalgam of things including inferences drawn from characteristics and behaviors of the person in question. None of these sources are entirely reliable. In an earlier era loose women—other than prostitutes—would seek to dress and carry themselves as chaste women, while in our era it may be the reverse.

It is only reasonable to assume that a woman who socializes with loose women partakes in the same sexual behavior. Thus it was generally in the interest of chaste women to dissociate themselves from the unchaste. But, the reaction of the putatively chaste to the unchaste goes well beyond that. More than disassociation, it has the character of disdain and opprobrium. Such zeal is partially explicable as a tactical effort by the chaste—and those who would like to appear so—to make the break more dramatic. But why would disdain and opprobrium seem called for and justified? What gives rise to this anger? That brings us to the second answer as to why a woman’s chastity is valued by other women: the “women’s cartel.”

**The Women’s Cartel**

A cartel is a collusive agreement among a group of suppliers. Suppliers who face a relatively inelastic portion of a demand curve for their product or

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28 The oldest literary reference to a women’s cartelization of the market for sex comes from Aristophanes’ *Lysistrata* in which women withhold sex in order to get men to end the Peloponnesian war. ARISTOPHANES, LYSISTRATA 7-14 (Dover Pub. 1994).
service are in a position to extract monopoly rents if they can successfully collude in decreasing the supply and raising the price. So it is in the market for sex.

The principle market for sex is not a cash market, but one of barter. Sex is exchanged for sex; sex is exchanged for love; sex is exchanged for commitment; sex is exchanged for support; sex is exchanged for protection. In this barter market it is women who more often seek the supplementary non-erotic aspects of the sexual relationship. The title under which the most all-encompassing and important exchange takes place is marriage. And, while both men and women find much to gain from marriage, it has been women who have historically most vigorously pursued marriage, a covenantal relationship in which they expected to be financially supported by a husband. In exchange for such support women promised fidelity as well as the performance of various uxorial services.

In the past, in most cultures, the financial and other consequences for women who bore children out of wedlock were horrific, and birth control was a chancy activity at best, even when carried out with the cooperation of the man. And so, most—though not all--women had a strong incentive to refrain from sex until marriage or commitment, and even more so to recoil from pregnancy and childbearing outside of marriage. The price that these women sought to extract for providing sexual access to a man was entrance into and adherence to lifetime marriage.

On the other side of the exchange, whether for purely rational and prudent reasons, or perhaps because those rational and prudent reasons have resulted in a transformation in men’s genetically driven preferences, men have a decidedly more libertine sexual attitude than women. Many men, if they could, would more than willingly have sex with as many women as possible, and freely impregnate as many as they could. That they do not do so, or—more likely—do not do battle with other men (in the manner of many of our mammalian cousins) for the privilege of doing so, is at bottom largely a function of women, (and their parents—especially in earlier times).

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29 A series of studies conducted in 1978 and 1982 rather starkly reveals this point. On the campus of Florida State University, a group of attractive male and female researchers approached college-aged students of the opposite sex, explained that they were attracted to the subject, and then asked them one of three questions: "Would you go out with me tonight? Would you come over to my apartment tonight? or Would you go to bed with me tonight?" In response, 75 percent of men agreed to go to bed with the requester, but not a single woman agreed. Mark Regnerus & Jeremy Uecker, Premarital Sex in America: How Young Americans Meet, Mate, and Think About Marrying 56 (2011) (citing Russell D. Clark & Elaine Hatfield, Gender Differences in Receptivity to Sexual Offers, Journal of Psychology & Human Sexuality 2, 39-55 (1989)).
Now, given that the demand for women by men (or supply curve of men to women) and the supply curve of women (or demand curve for men by women) are both highly inelastic.\textsuperscript{31} The price at which exchanges take place is inherently unstable. That is, relatively small shifts to the left or right of either curve will result in large changes in equilibrium prices. Further, because of the inelasticities, the imposition of an artificially high or low price will not have a large effect on the number of transactions or their “efficiency” as compared to its effect on the transfer of wealth. In other words if women succeed in artificially raising the price that they as a group receive for sex the number of exchanges will fall only slightly and women will gain a great deal. The universe of women will receive an immense \textit{ex ante} gain, while a few will suffer a considerable \textit{ex post} loss because they will be precluded from any successful and satisfactory exchange in the market.\textsuperscript{32}

Some readers may wonder whether I am confusing sex with marriage. Clearly one could have sex with an enormous number of partners in a sufficient period of time and thus if one’s tastes ran in that direction there is no cultural constraint on elasticity \textit{per se}. So, the elasticity of men’s demand for sex might be considerably above zero.

True enough, but there are a number of reasons to think of the demand for sex as a demand for marriage. First, as the saying goes, it takes two to tango, and as women generally have less of a taste for casual sex than do men, it is they who create the limiting constraint on men’s satisfaction of their demand for sex. Second, to the extent that the cartel is vigorous and strong—making sex outside of marriage degrading to women---

\textsuperscript{30} See ROBERT WRIGHT, \textsc{The Moral Animal: Evolutionary Psychology and Everyday Life} 139 (1994) (referring to George Williams and Robert Trivers as having discovered that that “much of human sexual psychology flows from the scarceness of eggs relative to sperm” which “gives women more power—in individual relationships, and in shaping the moral fabric—than they sometimes realize”).

\textsuperscript{31} Describing the demand curves as highly inelastic, though not precisely economically accurate, in that the price of sex is not exacted in dollars, but rather in the depth of the commitment, nonetheless metaphorically captures the nature of the issue.

\textsuperscript{32} Some large factor of this inelasticity is a product of the cultural constraints on obtaining sexual partners. In a monogamous culture, men only have the option of being married to one woman at a time, and women to only one man. While successful and powerful men in other cultures and in other eras have sometimes had more than one wife, women have not had the same opportunity. Judging from the ersatz polygamy entailed in extra-marital relationships, women generally seem to have less of a taste for having more than one husband.
it further restricts the supply and thus drives more men into the marriage market as their path to sex. Third, the desire for sex in the broader sense is also a desire for procreation, and perhaps parenthood, and that will generally be fulfilled satisfactorily for women (and for many, perhaps most, men) only through marriage. So given that, (1) most women are in general willing to refrain from sex if the conditions are not attractive; and (2) in European and Asian cultures for most of recorded history women have viewed either marriage or at a minimum exclusivity as a requirement, men have frequently been limited to a choice of one sexual partner or none.

But most importantly the reason to think of the demand for sex as inelastic (for men as well as women) is that the portion of the demand curve we are concerned with is the region from 0 to 1. Even if men have elastic portions of their demand curve when the quantity of sexual partners exceeds one, they have an inelastic demand for sexual partners in the range 0 to 1. The heart of the argument is that men have a very strong demand for one partner and will sacrifice a great deal to obtain that one partner. Thus raising the price will not drive them out of the market.

So what does this all mean for the sex market? Women can capture the rents men would otherwise receive from easy access to sex and procreation. This capture only very rarely comes expressly in the form of a direct transfer of wealth. Rather it is by bundling the exchange of current sex in the contract/covenant of marriage that women can capture these rents in cash and in kind. Men’s desire for sex (and procreation) is greatest when they are young, but when they are young their wealth is limited and so they are not well positioned to pay heavily for sex. It is in women’s interest to make the contract for sex with men a long term (lifetime) one, so that they can extract the rents from men over the course of a lifetime.

Drawing an analogy to a commercial cartel, the task for women (and their male supporters) was to raise the price of sex, eliminate or degrade substitutes offered by non-cartel members, and develop rules for dividing the market that will lead to less cheating and the unraveling of the cartel. The problem for women is especially difficult because of the heterogeneity of the service and product they offer and the indivisibility and non-transferability of the compensation they receive from men to other women. In other words (1) women differ in looks, age, intelligence, race, religion etc., and thus do not all offer products in identical or even overlapping markets; and (2) if they succeed in selling at a high price, that is in marrying, and especially if they marry well, they can not (even if they wanted to) transfer a portion of their gain to those women who because of

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33 I have in mind here not only their fathers and other male kin, but men who see salutary effects for society as a whole in channeling young men into lifetime marriage.
bad luck or having less to offer did not do so well in the market.

To repeat, the overall thesis of this paper is quite simple: That until perhaps sixty years ago the price that women received for sex was considerably higher than it is today. This proposition rests on two related sub-theses. First, the material cost of sex to women fell precipitously during the 20th century, especially in the 1950s and 60s. As it fell each woman found it in her interest to supply more readily. This in turn gave rise to a massive negative externality (real or pecuniary) to other women. That is, the price that they could extract for sex fell precipitously. Second, the pre-existing cartel-like mechanism in the market for sex between men and women collapsed, further reducing the cost of sex to women in a rapid downward spiral.

The core of this paper is about the cost and supply of sex and a cartel is designed to restrict the supply and thereby raise price above the market clearing level. The principal tool of the women’s cartel was to increase the cost of non-marital sex to women. In referring to a “women’s cartel” I use the word cartel neither quite literally nor purely metaphorically. While I do not mean to convey an image of women’s leaders gathered in Mrs. Gary’s drawing room setting the price of sex over cigars and brandy, I do mean to suggest something that lasted longer and functioned considerably more effectively than any commercial cartel in raising the implicit price that women received for sex. The operation of the cartel entailed women, individually charging a higher than market clearing price for sex, and both individually and collectively men and women—but especially women: (1) punishing: (a) those women who either sold at too low a price, or who violated the market sharing rules; and (b) those men who purchased from them; and (2) supporting those women who, though in some sense it did not serve their personal interests, nonetheless played by the rules. Because this was an implicit cartel rather than an explicit one, there is no smoking gun such as a written agreement. In what follows I will however offer bits and pieces of history and sociology that are consistent and illustrative of the underlying story, and categories of empirical evidence that make the case not only more persuasive—but more importantly—more readily imagined and visualized. Though there is no smoking gun, the story itself accords sufficiently with our understanding of the interest of the parties, historical memory, social mores, and the current predicament of women to be persuasive.

The Rules Of The Cartel

Consider the following set of moral and social rules, listed in something like a descending order of their moral and social force in most societies with
which we are familiar:

1. No child-bearing prior to or outside of marriage.\textsuperscript{34}
2. No adultery (especially by females).\textsuperscript{35}
3. No sex prior to, or outside of, marriage.\textsuperscript{36}
4. No divorce.\textsuperscript{37}
5. No sex with, or marriage to, divorced men.\textsuperscript{38}
6. Marriage to be restricted to one’s own age cohort.\textsuperscript{39}

\textsuperscript{34} In the early American colonies, a significant amount of “shame . . . could be felt by young couples and their families when an overly advanced pregnancy disclosed premarital sexual relations.” Mary Beth Norton, Founding Mothers & Fathers: Gendered Power and the Forming of American Society 71 (1996). In fact, young couples would engage in inter-colonial travel and even falsify marriage documents in order to avoid the humiliation. \textit{Id.}

\textsuperscript{35} Research on the perceptions of men and women who are unfaithful frequently find that women who engage in “extradyadic sex” are judged “more harshly and are seen as more guilty for their actions than men who engage in similar practices.” Roy R. Catanese & Kathleen D. Vohs, Sexual Economics: Sex as Female Resource for Social Exchange in Heterosexual Interactions, Personality and Social Psychology Rev. 8 348 (2004). In addition, historical penalties for female infidelity were “often more severe than those for male infidelity, and in some cultures they involved having the interloper compensate the cuckolded man with money or goods.” \textit{Id.}

\textsuperscript{36} In 17\textsuperscript{th} century New England it was a criminal offense to have sex with “any single woman,” and the penalties imposed included “fine[s], whipping, and ‘enjoyning to Marriage.’” Mary Beth Norton, Founding Mothers & Fathers: Gendered Power and the Forming of American Society 335 (1996) (emphasis added). Modern society has taken a more cavalier attitude. For individuals born before 1900, “37 percent of men but only 3 percent of women reported having had premarital intercourse by age 18.” Mark Regnerus & Jeremy Uecker, Premarital Sex in America: How Young Americans Meet, Mate, and Think About Marrying 18 (2011). For the female side of this statistic, it is important to note that the 3 percent figure may reflect a desire by women at the time to “give a socially desirable answer.” \textit{Id.} As of 2007, “nearly two-thirds of all 18 year olds reported having already had vaginal sex . . . .” \textit{Id.}

\textsuperscript{37} As an example of the strength of this moral and social rule, there were fewer than two divorces per year in England from 1800 to 1850. Griselda Rowntree & Norman H. Carrier, The Resort to Divorce in England and Wales, 1858-1957, 11 Population Studies 188 (1958).

\textsuperscript{38} In early colonial America, divorces were more like separation agreements, which would allow “husbands and wives to live apart and provid[e] for a distribution of the property or the continuing maintenance of the wife, but not permitting remarriage for either partner.” Mary Beth Norton, Founding Mothers & Fathers: Gendered Power and the Forming of American Society 89 (1996) (emphasis added).

\textsuperscript{39} Marrying men and women were separated by an average of over four years in 1890. Mark Regnerus & Jeremy Uecker, Premarital Sex in America: How Young Americans Meet, Mate, and Think About Marrying 78 (2011). Interestingly, the marital age gap in America has narrowed over time. As of 1960, the marital age gap was to 2.5 years;
7. No remarriage by women following divorce.\textsuperscript{40}
8. Remarriage by widows not favored.\textsuperscript{41}

Each of these moral and social rules of proper sexual relations existed in European/American culture, and all served to advance the interests of a women’s cartel. As a general matter the rules accomplished two things: first, and most importantly they restricted women’s supply of sex and degraded its quality when provided outside of marriage thereby setting the conditions that allowed women to extract as much of the rents as possible from men to transfer to women (and their children); and second, they divided those resources among women in as fair an \textit{ex ante} fashion as possible—subject to the constraint of monogamy. The individual effect of each rule was either to substantially deny sex to men except in the context of marriage, and to limit women to one bite of the apple. All of this in turn rests on an effort to restrain the competition among women for the attention of men and channel that competition into certain socially acceptable pathways.\textsuperscript{42}

Not all the rules carried the same moral and social weight. In general the rules that dealt with maintaining a high price for sex were most stringently enforced, while those that spoke to setting and administering the implicit market sharing rules were enforced with a lighter more subtle touch.

The violation of these rules brought forth punishment by those who sought to maintain the cartel.\textsuperscript{43} Some of this came by way of the legal

currently the gap is just under two years. \textit{Id.}

\textsuperscript{40} See \textit{supra} note 39.

\textsuperscript{41} For example, in the 1850s in Victorian England, when a widow remarried there was "a faint distaste for her action: she was being unfaithful to the memory of her dead husband, which was almost as bad as physical infidelity." \textsc{Judith Flanders}, \textsc{Inside the Victorian Home: A Portrait of Domestic Life in Victorian England} 385 (2003). In addition, when a widow remarried, her second ceremony was conducted without bridesmaids and without a veil; instead, the widow would wear "a colored silk dress and bonnet." \textit{Id.} at 237.

\textsuperscript{42} See \textsc{Robert Wright}, \textsc{The Moral Animal: Evolutionary Psychology and Everyday Life} 63-64 (1994) (explaining that in a high male parental investment species, such as ours, a female will seek to “monopolize their dream mate” by “steer[ing] his social and material resources toward her offspring,” which results in fierce female competition for a partner that is anything but “passive and guileless”; in fact, females “will sometimes be the natural enemies of one another”).

\textsuperscript{43} For example, a study of rural Wisconsin from 1850-1920 reveals the tendency of neighbors to report girls and young women for moral violations. \textsc{Joan N. Jensen}, \textit{Sexuality on a Northern Frontier: The Gendering and Disciplining of Rural Wisconsin Women, 1850-1920}, 73 \textit{Agricultural History} 136 (1999). \textsc{Rose Wilcox}, resident of Pilot Knob, Wisconsin, wrote to Governor Robert M. La Follette in 1901, asking the governor to arrest her neighbor,
system. Consider the torts of “criminal conversation” and “alienation of affections”, and the crimes of adultery, fornication and prostitution. But though carrying significant symbolic weight, those legal responses were relatively minor in their social and economic weight and operated at the periphery. And while some of the enforcement came through administrative institutions when women entered the public sphere, the principal form of enforcement and punishment largely came in the form of social sanctions.

Cora. *Id.* at 147. According to Rosa, Cora was “leading a low and degraded life” and that she and the man with whom she was “carrying on” were in danger of “white capping” (a form of “hooded vigilante punishment”). *Id.* Wilcox added that Cora’s children were “contaminating” other children, and signed her letter, “I remain yours for purity, Mrs. Rose Wilcox.” *Id.*

In Britain, “prewar [WWI] endeavors to establish a female police force derived mostly from social purity convictions that only women could effectively tackle problems of female immorality.” Philippa Levine, "Walking the Streets in a Way No Decent Women Should": Women Police in World War I 66 J. MODERN HISTORY 34, 35-36 (1994). In the mid-1860s to the mid-1880s, male police would work undercover to catch female prostitutes with authority granted by the Contagious Disease Act. *Id.* at 35. The social purity movement, coupled with notions of separatist feminism, lead to an increase in female police officers to deal with female prisoners, particularly those kept overnight. *Id.* In England, social purity feminists, through the Criminal Law Amendment Committee, fought for female inclusion in the inspections of lodging houses. *Id.* at 38. Such housing was suspected of encouraging immoral behavior and feeding English girls into the “white slave trade.” *Id.* Additionally, the committee sought to have female patrols to overlook places of amusement and to be included in cases involving solicitation. *Id.* These female officers “patrolled public places, separating couples thought to be bracing too closely, following those they suspected might be about to embark on unsavory courses of behavior, and warning youngsters of the dangers of overly casual behavior.” *Id.* at 45. The early recruits were “frequently older and married, but, unlike male police, they tended to be socially privileged and often well educated.” *Id.* at 46. The movement was not unique to Britain. In fact, “Britain lagged noticeably behind other nations.” *Id.* at 35. New York had “police matrons” in 1845, and many more America cities joined by the 1870s. *Id.*

*44* RICHARD A. POSNER & KATHARINE B. SILBAUGH, A GUIDE TO AMERICA’S SEX LAWS (Chicago 1996).

*45* For example, the entry of women in the army during World War II aroused fears of women as sexual or victims of sexual abuse. Leisa D. Meyer, Creating G.I. Jane: The Regulation of Sexuality and Sexual Behavior in the Women’s Army Corps During World War II, 18 FEMINIST STUDIES 581, 581-82 (1992). Female soldiers were stereotyped as either “loose” or “manish.” *Id.* at 584. Colonel Oveta Culp Hobby, member of an elite, white female network, organized the army’s response. *Id.* at 581. Hobby’s strategy was to emphasize the Victorian femininity and morality of women in the armed forces—rejecting the army’s health and combat-readiness approach applied to male soldiers. *Id.* at 584-86.

*46* The varieties and settings of these sanctions are too numerous and tedious to catalog, so I will only offer a small sampling. Consider the Menonites. Among Holdeman Mennonites, where female clothing is perceived as an expression of religiosity and sexual restraint, women informally police female sexuality by gossiping about the deviating member. Linda B. Arthur, Deviance, Agency, and the Social Control of Women’s Bodies in a Mennonite Community, 10 NWSA JOURNAL 75, 75-77 (1998). If this is inadequate in pushing
Consider the case of Margaret (O’Neale) Timberlake “Peggy” Eaton.\textsuperscript{47} Peggy was the attractive daughter of a Washington innkeeper.\textsuperscript{48} At a young age she married John Timberlake, a Navy purser who spent considerable time at sea.\textsuperscript{49} He died suddenly at sea under “mysterious circumstances.”\textsuperscript{50} It was widely rumored that he had committed suicide because of his wife’s alleged infidelity.\textsuperscript{51} In the 1820s she attracted the attention of a number of powerful men, including Senator John Eaton of Tennessee, a close friend of Andrew Jackson, whom she married.\textsuperscript{52} Eaton was then appointed Secretary of War by Jackson.\textsuperscript{53} It is here that the story becomes richly revealing of the functioning of the women’s cartel. The wives of the other cabinet members were outraged that a woman with Mrs. Eaton allegedly lurid past would be

\begin{itemize}
  \item the deviant member toward compliance, the deviating woman’s best friends will approach her directly about her behavior. \textit{Id.} at 90. Young girls and unmarried women, however, are given a bit more leeway. \textit{Id.} at 94. For younger single women, the understanding was that “the rules of modesty can be bent during this short time in a woman’s life, since marrying is of utmost importance.” \textit{Id.} at 94.
  \item Another interesting example of female social sanctioning is the role played by midwives in America’s early colonial period. In the mid-1600s, childbirth was the central female experience, characterized by a continuous cycle of “pregnancy, nursing, weaning, pregnancy, nursing, weaning.” MARY BETH NORTON, \textit{FOUNDING MOTHERS & FATHERS: GENDERED POWER AND THE FORMING OF AMERICAN SOCIETY} 222 (1996). For the women of this early American period, the only true place where they could gather outside of the presence of men was the “birthing room.” \textit{Id.} at 222-23. Present in the birthing room was the midwife. \textit{Id.} at 223. One of the key functions played by midwives during this period was that of interrogator. In the early 1600s, midwives that “presided over the birth of an illegitimate child” were “expected to interrogate the mother about its paternity,” under the belief at the time that “a woman could not lie about the identity of her child’s father while giving birth.” \textit{Id.} at 225. Because of their recognized role in obtaining evidence of illegitimate children, women who did not obtain midwives were considered suspicious characters. \textit{Id.} at 226. If a woman did not hire a midwife she was “immediately suspected of trying to hide the identity of the child’s father.” \textit{Id.}

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\textsuperscript{48} \textit{Id.} at 244.

\textsuperscript{49} \textit{Id.} at 245.

\textsuperscript{50} \textit{Id.} at 246.

\textsuperscript{51} \textit{Id.}

\textsuperscript{52} \textit{Id.} at 245-46.

\textsuperscript{53} \textit{Id.} at 238.
insinuated into their social circle.\textsuperscript{54} Their ostracism of her was complete.\textsuperscript{55} The other ladies, led by Floride Calhoun, wife of Vice President John C. Calhoun refused to talk to her at White House receptions, and would neither accept nor return social visits from Mrs. Eaton.\textsuperscript{56} They openly said they were scandalized that Mrs. Eaton was even invited to participate in polite Washington society.\textsuperscript{57} The social crisis spilled over into government procedure. The situation deteriorated to the point where it became a difficult even for Jackson’s cabinet to conduct its regular business, so preoccupied were the members with the Eaton affair.\textsuperscript{58} And in the end the Peggy Eaton affair was instrumental in Martin Van Buren rather than Calhoun succeeding Jackson as President.\textsuperscript{59}

This story is widely known because it involved major public figures of the time and actually affected the operation of government. It is otherwise unremarkable as a representation of the workings of the women’s cartel. The cartel was a serious affair not some trifling amusement.\textsuperscript{60} Decent women did not consort with “whores”—and that word was used more loosely to describe any woman whose chastity was put into question.

But the cartel did not deal with enforcing merely the grosser rules of sexual behavior. The more subtle, less belligerent and strict, market sharing rules were perhaps even more interesting. They capture how all-encompassing was the sexual morality of the women’s cartel. I offer as an illustration a story from my wife’s family. My wife’s maternal grandmother was one of nine children, born in 1900 into an observant Catholic family. Two of her older brothers divorced and re-married. She and her sisters were not only disapproving of her brothers for divorcing and for remarrying but also disapproved of one of her brothers’ new younger “trophy” wife, not because of any personal characteristics of this kind, generous and gentle

\textsuperscript{54} Id. at 246-49.

\textsuperscript{55} Id. at 238, 246-49.

\textsuperscript{56} Id. at 249, 253.

\textsuperscript{57} Id. at 249.

\textsuperscript{58} Id. at 259-63.

\textsuperscript{59} Id. at 263.

\textsuperscript{60} A large number of middle- and upper-class white women believed that it was a moral and social obligation to police the sexual behavior of other women, with the view being that this was in the best interest of the whole community. Id. at 250.
lady, but because she had married a divorced man and one who was considerably older than herself, thus violating rules 6 and 7 above.

**The Role of Men in Supporting the Cartel**

In traditional industrial organization analysis cartels are bad things because they reduce social wealth by charging an inefficiently high price. The women’s cartel would seem to have had much the same character. Men with very strong preferences for sex were denied sex by women who may also have had strong desires for sex, or at least were not seriously averse to the prospect. But in a deeper sense there were not only group benefits to women as a whole in supporting the cartel, but wider external benefits to society in the enforcement of the cartel. The cartel succeeded in harnessing men to the yoke of marriage. As long as the cartel operated the only reliable access a man could get to women for sex and procreation was through marriage, and marriage entailed supporting a family, and living a responsible life. In the absence of marriage many men would (and do) live degenerate dissolute lives. Thus there was a general interest in enforcing the cartel.

Men and women had in effect had three separate preferences with respect to sex. First, each when viewing this from a purely private and personal perspective had a desire for sex that was balanced by the possible costs to the activity. In the old world of 80 years ago (and still today, but to a lesser degree) the desire was stronger for men and the costs considerably lower. Thus men generally wanted easy access to women, while women had less clear or uniform desires. The second strongest set of preferences had to do with one’s children and spouses. With respect to one’s spouses both parties, but especially men wanted fidelity, and wanted a society that made infidelity less possible and less attractive. With respect to one’s children, parents wanted a society in which one’s children, especially one’s daughters, but one’s sons as well, had a prospect of secure lifelong marriage. With respect to one’s son one might have an interest in him getting some sexual experience prior to marriage, but hardly wanted that to be the entire course of his life. Finally, there were the set of interests with respect to society as a whole. One wanted a society in which children were raised in secure marriages, and men had substantial familial obligations to fulfill. 61 Thus many men and certainly older politically and socially powerful men had a great deal of interest in supporting the cartel—at least in their public activities.62

61 From an evolutionary biology perspective, “children with two parents may have had an educational edge over children with one.” ROBERT WRIGHT, THE MORAL ANIMAL: EVOLUTIONARY PSYCHOLOGY AND EVERYDAY LIFE 58-59 (1994).

62 At times this was done through the use of criminal and civil commitment. For
The Cause of the Cartel’s Collapse: Declining Cost

While the logic of the women’s cartel is clear, it, like all cartels, does not result from the natural private self-interested behavior of its members. All cartels offer opportunities and incentives for defection and so all require policing and punishment. As in most commercial cartels, so too in the women’s cartel it is the participants themselves who if they do not defect or cheat are called upon, and have an incentive, to punish those who do defect and cheat. The principle means of enforcement has been social ostracism. The power of social ostracism turns first on numbers: the number of those in the group that shuns and the number of those in the group that is shunned. Ostracism raises the costs of breaking the cartel rules either by selling at too low a price or not adhering to the sharing rules. As a simple economic calculation if the private internal costs of a given behavior plus the costs of ostracism exceed the benefit then a woman will desist from that behavior, and if not, then not. And, the costs of ostracism will be a function of what one is being ostracized from. Thus if 95% percent of women are ostracizing 5%, the costs to those ostracized will be far greater than if 50% are ostracizing the other 50%.

As each woman moves from adherent to defector, she increases by one the number of defectors to be punished and reduces by one the number of enforcers to do the punishing. So this cartel in equilibrium, like any cartel, may have some stable number of providers operating outside the cartel. That is, the maintenance of an effective cartel does not require that every woman adhere to it, only that a sufficient number do so to maintain the price of the sex they offer sufficiently above the market clearing price that those women who remain in the cartel have enough to gain by adhering to the rules in their own behavior and of imposing the costs (if it be such to them) of not adhering to the rules on others.

A more or less stable equilibrium can be maintained for a very long

example, in 1897, Ontario enacted the Female Refuges Act (FRA), which allowed magistrates to incarcerate women for “unmanageability and incorrigibility.” Joan Sangster, Incarcerating “Bad Girls”: The Regulation of Sexuality through the Female Refuges Act in Ontario, 1920-1945, 7 J. Hist. of Sexuality 239, 239-40 (1996). In 1919, the FRA was amended to allow any person to report an immoral woman to the magistrate. Id. at 240. One woman, Mildred, was sentenced for 1 year and 9 months at the age of 19 to treat her venereal disease and “teach her some discipline.” Id. at 239. From 1920 throughout the 1950s, the FRA allowed “parents, police, welfare authorities, and the Children’s Aid Society to use incarceration as a means to regulate the sexual and moral behavior of [young] women perceived to be ‘out of sexual control.’” Id. at 240.

63 It is of course sometimes the case that if someone can cheat secretly they will publicly continue to punish other cheaters.
time—centuries or millennia—unless and until there is some significant shock to the system. The general transformation of life in the past two centuries and the decline in the material cost of sex to women outlined above was just such a shock. Because disease, pregnancy, and unplanned birth were not the dangers and disasters that they had been in the past women saw it in their interest to engage in sex more freely. The decline in each woman’s marginal cost curve moved her equilibrium to the right. But the mere fall in cost is not enough to eliminate the cartel. What is crucial in moving from a state of a stable cartel to one of collapse is the move in the net personal value of sex for a large number of women from negative to positive. As, (1) contraception became easier and safer, (2) abortion legal and routine, and (3) single motherhood less punishing, sex became a net positive for more women. It is one thing to hold a cartel together when it is a question of raising a positive price, it is another when the goal is to charge a high positive price and the market equilibrium price is negative. It is especially difficult for people to sacrifice if they have no personal payoff. Before the precipitous decline in the cost of sex to women, most women saw virtue in chastity and virtue in the cartel, and so they kept it going. The precipitous decline in the cost of sex to women over the last century lent spiritual support to an alternative moral philosophy, that of the “sexual revolution” and “The Playboy Philosophy.” This new ideology proved a powerful counterpoise to the more prudish ideology that enforced the cartel.

The requirements of participation in the cartel were more or less binary; refrain from sex outside the bonds of marriage. The opportunity cost of adhering to that standard rose with the decline in the cost of sex and so many women, especially younger women near the margin, found it in their interest to cross the line. As they did so the numerical balance changed as the number of sexually active unmarried women rose and the number of chaste women fell, the power of the chaste to punish the unchaste by social ostracism fell in step. This is a “Schelling Tipping Model”, as more women cross the line the payoff to women remaining gets smaller and smaller and so the crossing accelerates until effectively no cartel remains in the general society, though it may retain its vigor in specific insulated sub-cultures.

In addition to the drop in costs there were substantial independent sources of the inability of the cartel to enforce its rules and punish violators. The increased physical and social mobility, and urbanization of the American population meant that those with soiled reputations could more easily start a

new life in a new place.\textsuperscript{65} And, in large urban environments people could remain strangers to one another though immediate neighbors. Thus the probability of chaste women imposing significant social costs on the unchaste was further reduced.\textsuperscript{66}

While I think there is much to be understood about the market for sex by employing the metaphor of cartel, I do not want it to be taken too literally. Specifically, I think one must always remember that the cartel was not a self-conscious thing. Women as a group did not generally articulate the “economics” of what they were doing to themselves or one another. When the costs of pre-marital and extra-marital sex to women fell (for various reasons) the internal (psychological) sanctions that held the cartel together started to erode, and after them the external social ones did so as well.

The gains to defecting from the cartel were particularly high for younger women. An important aspect of the cartel was the lifetime profile of costs and benefits of participating in it. Women in general gain particularly in the out-years of a marriage. The principal gain of maintenance of the cartel for women is marriage, not merely in inducing men to marry but in inducing them to remain married, faithful, and devoted. One of the variables that will powerfully affect men’s willingness to abide by their marriage vows is the prospect of attractive opportunities for breach. Thus one of the quid pro quos of the cartel is that women abstain and sacrifice when younger in order for a payoff when they are older. The collapse of the cartel was then particularly cruel to many middle-aged women who abided by the rules when they were young only to find no payoff when they were older and found that their husbands could abandon marriage because of the prospects of

\textsuperscript{65} In traditional, non-mobile communities, identities of members are known; among the transient and more mobile societies, individuals are able to create identities. \textit{Lawrence M. Friedman, Crimes of Mobility}, 43 STAN. L. REV. 637, 658 (1991).

\textsuperscript{66} Note also that urban living and mobility meant that women faced greater difficulties in imposing costs on men who would not play by the female rules. \textit{Robert Wright, The Moral Animal: Evolutionary Psychology and Everyday Life} 62-64 (1994). While human males have high male parental investment, a “mixed strategy” of sex and abandonment is not incompatible with eventual pair bonding. \textit{Id.} In a typical hunter-gatherer society and throughout evolutionary development, however, humans tended to remain with their group, village, or community. \textit{Id.} at 62. This means that the pool of “betrayable women” was smaller and more finite than in contemporary society, and males would have to face the reputational costs of lying (although some men did leave villages or maintain polygamous lifestyles). \textit{Id.} at 62-63. But in a modern, transient setting, “seducing and abandoning available women year after year after year, without making any of them targets for ongoing investment . . . is not a distinct, evolved, sexual strategy. It is just what happens when you take the male mind with its preference for varied sex partners, and put it in a big city replete with a contraceptive technology.” \textit{Id.} at 62-63.
expanding sexual relationships.67

Cruel though this was to older women, it was informative to younger women. They could look ahead and see that the prospects of a secure lifetime marriage were declining, so why make great sacrifices now when their value in the sexual marketplace was the highest? Why hold out for a long-term contract/covenant when the prospects of actual performance and enforcement were declining apace?

67 From an evolutionary perspective, men are attracted to and have an interest in selecting a younger mate, capable of reproduction because female fertility decreases with age and ends at menopause. ROBERT WRIGHT, THE MORAL ANIMAL: EVOLUTIONARY PSYCHOLOGY AND EVERYDAY LIFE 65 (1994). When women are younger, they can bear more children. Id. Since “beauty” is associated with youthful attributes in women, men target “beautiful women,” whereas women may be less selective, as male fertility does not vary with age. Id.
Consequences

There is a somewhat troubling and informative irony at play here. As a general matter we view it as an immense and largely unambiguous personal and social good when the cost of things that we value greatly decline. So it is with respect to clothing, housing, health-care, food, and the myriad other goods we value. But wait. Is it really so unambiguous? It is surely a good thing that food is now so plentiful and inexpensive that no one in the developed world need suffer starvation or even serious hunger. But somehow we have not arrived at a pleasant state of satiation. Instead there is a growing problem of obesity, type II diabetes, and a variety of related diseases, which with even greater irony have become diseases particularly associated with poverty.68 And, as for health-care, our ability to forestall death is not an entirely and unambiguously good thing. There is now an expanding army of the senile and utterly dependent aged, living the most unenviable of lives.

So, though there are those who treat the concept of utility maximization as a normatively rich civic religion in which it is and must be something akin to an analytic a priori truth that anything that reduces costs of things we value is all to the good, my view is more agnostic on the question. Whether it is that we are imperfect judges of, and actors on behalf of, our interests, or that there are substantial externalities at play such that what serves the interest of the individual damages the more weighty interests of the group, there are substantial reasons to not be completely sanguine about declining costs.

In the remainder of this essay I shall outline—if only in miniature—the likely form of these two sets of unanticipated consequences and costs to women on the one hand, and to society more generally on the other, that have come in the wake of the massive decline in the cost of sex to women in the last century.

The declining cost of sex to women like the declining cost of food has not affected all strata of society in the same way. So, while some people have chosen to purchase more nutritious fresh food and eat well balanced diets at modest cost, others have indulged their gluttonous proclivities in consuming large amounts of refined carbohydrates to ill effect. Thus the same decline in price has provided some with an enormous benefit, while allowing others to fall

68 See e.g., Sandra L. Hofferth & Sally Curtin, Poverty, Food Programs, and Childhood Obesity, 24 J. OF POL’Y ANALYSIS AND MGMT. 703 (2005) (stating, “Although in developing countries, low income has traditionally been associated with underweight as a result of poor diet, researchers have pointed to a paradox in the U.S., which is that low income and obesity can coexist in the same population.”) (citations omitted).
In the same spirit the declining cost of sex to women has meant that some women have been able to delay marriage, invest in a career, search the market for mates, and then enter long, relatively stable, marriages, all without having to deny themselves sex in the interim while not being in great danger of disease, pregnancy, and out-of-wedlock birth. While this has not been all gain for these women and the men they eventually marry, its effect has been decidedly more benign than the effect on those in other strata of society.

For lower class women the effect of the declining cost of sex has been decidedly different. Rather than merely having non-procreative sex outside of marriage, in rapidly growing numbers they have been having procreative sex outside of marriage. This has resulted in a revolution in family formation and child-rearing. Overwhelmingly it is not the “Murphy Browns” who have been having babies out of wedlock but those with little or no financial resources or human capital.

The economic source of this radical divergence is clear. It is all a matter of opportunity costs. Remember, the fall in the cost of sex came in a variety of dimensions: disease, contraception, abortion, child-rearing, reputation. The crucial dividing line between lower class women and other women turned on procreation. For some women the great boon that resulted from the declining costs of sex was the ability to avoid and postpone childbirth either through contraception or abortion, while for others it was the ability to bear a child out-of-wedlock without the crushing economic consequences that would have otherwise befallen them. Which side of that divide a woman chooses to occupy comes down to opportunity cost. For virtually all middle class young women having a child out-of-wedlock is still seen as a disaster to be avoided, but for lower class women the choice went in a different direction.

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70 See e.g., Charles Murray, Coming Apart: The State of White America, 1960-2010 161-62 (2012) (analyzing the Natality Public Use Files of the Centers for Disease Control and stating that white women with at least a college-level education “almost never” give birth outside of marriage, whereas among white women who did not finish high school over 60 percent of live births are non-marital).

71 See id. at 211-16 (discussing Patricia Stern Smallacombe’s 2002 study of an inner-city white neighborhood in Pennsylvania and explaining Smallacombe’s findings that some teenage pregnancies are welcomed by lower class women because it may provide a “certain amount of social status” or a “way to get out of the house, either by moving in with a boyfriend or by going on welfare”).
women, the state offered support that did not differ much—or in any clear direction—from that which could be provided by the median prospect of a husband in their community.\textsuperscript{72} So the margin on which they responded was in having children out-of-wedlock. Note, this is not women having babies to get “welfare”, but rather having babies to have babies, it is just that “welfare” is paying for it at a decidedly more generous level than was available a century ago.\textsuperscript{73} For the women of the lower class, state assistance simply makes young women do something that they are naturally inclined to do.\textsuperscript{74} The incentive does not have the same bite further up the social/economic staircase because benefit levels are typically too far below the level of a middle class woman’s expectations to provide a sufficient incentive for them to have a child.\textsuperscript{75}

So the effect on society is the “Coming Apart” that Charles Murray has recently exposed. One portion of society continues to marry, albeit later, and somewhat less securely than they did in the past, but another portion has largely abandoned marriage formation and marital security entirely.\textsuperscript{76}

Though this “Coming Apart” is a major theme of modern social life, it should not blind us to the other great truth that for all social classes the institution of marriage is increasingly becoming less secure and less necessary. Marriage is no longer necessary for the economic survival of women as post-

\textsuperscript{72} See Charles Murray, The British Underclass, 99 PUB. INTEREST 4, 25-27 (1990) (describing Britain’s rise in illegitimate births as a function of generous government benefits for single mothers that “lifted a large portion of low-income young women above the threshold where having and keeping a baby became economically feasible”).

\textsuperscript{73} Id. Murray explains that the proper analogy for understanding how increased government benefits incentivize illegitimate birth is not “a young woman with a calculator” but “a pot com[ing] to boil.” Id. at 26. Little by little, incremental benefit increases become “steps in a quiet, cumulative process whereby having a baby as a single mother went from ‘extremely punishing’ to ‘not so bad.’” Id.

\textsuperscript{74} Id. at 25.

\textsuperscript{75} Id.

\textsuperscript{76} As an example of how American society is separating out by class, Murray estimates that the nonmarital birthrate in lower class, predominantly white municipalities is “6 to 8 percent of all births,” whereas the nonmarital birthrate in upper class, predominantly white municipalities is “around 43 to 48% of all births.” Charles Murray, Coming Apart: The State of White America, 1960-2010 163 (2012). Murray’s argument that American society is coming apart by the “seams of class” focuses on white America so that matters of race and ethnicity are removed and the reader can focus on the central thesis. Id. at 269.
World War II economic advancement permit women to not merely survive, but live comfortably, on a single paycheck—their own. Today, although women on average earn roughly 23 cents less per dollar than men, it is still more than sufficient to live on their own at a standard that would have seemed positively luxurious a century ago.\textsuperscript{77} In addition, as discussed above, the declining costs and dangers of non-procreative sex in all its forms has eliminated marriage as a prerequisite for sexual intercourse for the vast majority of people.\textsuperscript{78} Among today’s never-married 18- to 23-year-olds, roughly 25 percent have had anywhere from 5 to 10 sexual partners.\textsuperscript{79} And finally, marriage is no longer necessary for procreation as evidenced by that fact that currently 40 percent of children are born to single mothers.\textsuperscript{80}

As the necessity of marriage declines, so does its frequency. In 1960, 88 percent of men and 87 percent of women were married; today, these figures have dropped to 66 percent and 67 percent, respectively.\textsuperscript{81} Attitudes toward marriage have undergone such a generational shift that 44 percent of “Millennials” and 43 percent of “Gen Xers” think that marriage is “becoming obsolete.”\textsuperscript{82} Even for those that choose marriage, the low cost of sex has meant that men and women can obtain it easier outside of marriage, which, of

\textsuperscript{77} Kate Bolick, \textit{All the Single Ladies}, \textsc{The Atlantic}, Nov. 2011, at 120. In a 2010 study of “single, childless urban workers between the ages of 22 and 30,” the results showed that “women . . . earned 8 percent more than the men” and women were also “more likely than men to go to college.” \textit{Id.} Timothy Reichert has argued that women’s increased participation in the workforce is actually part of a marital exit strategy. Timothy Reichert, \textit{Bitter Pill}, \textsc{First Things} (May 2010), available at http://www.firstthings.com/article/2010/04/bitter-pill. He explains that “the strategy is, in essence, to become more like men” by specializing in “marketable labor.” \textit{Id.} This strategy has the perverse effect of “erod[ing] the gains from trade that potentially exist in marriage,” leading to a situation where “men and women become, quite simply, less interesting to one another” and increasing the likelihood of divorce. \textit{Id.}

\textsuperscript{78} In fact, it has been argued that the declining costs of sex have divided sex and marriage into two independent markets. \textit{See id.} (arguing that in the post-contraception era the market for sex and the market for marriage is split).

\textsuperscript{79} Mark Regnerus & Jeremy Uecker, \textit{Premarital Sex in America: How Young Americans Meet, Mate, and Think About Marrying} 24-25 (2011).

\textsuperscript{80} \textit{Id.}


\textsuperscript{82} Kate Bolick, \textit{All the Single Ladies}, \textsc{The Atlantic}, Nov. 2011, at 120.
course, increases marital stress and the likelihood of divorce.\textsuperscript{83}

Marriage is a marvelous cultural invention that was designed to harness men’s energies to support the only offspring they may legitimately have, or are likely to have, in a world in which marriage is the norm.\textsuperscript{84} This fundamental truth must remain within our view, despite the fact that it has been pushed aside in the last century as the once virtually universal conditions of poverty has been alleviated in wealthy Western and Eastern countries and it has become possible for women and their children to materially survive in some degree of economic comfort outside of marriage. The decline of marriage has wide-ranging consequences for the happiness, health, and prosperity of heterosexual couples and their children. Much of these benefits are obscured by the broad acceptance of the modern romantic marital mythology, which holds that marriage is not fundamentally about the practical benefits but is instead an outcome and exercise of “romantic love” forged in a bond of “equality.” These two concepts—romantic love and equality—are pernicious and harmful ways to think about marriage.

The metaphor of “falling” in love expresses the out-of-control character of the emotion. When “in love” the object of our desire appears god-like. In time, however, such thoughts are exposed as illusions. The problem is not that love drives us temporarily insane and that we eventually discover that our mate is not whom or what we thought. The problem, instead, is that we accept the belief that taking on, and adhering to, the life-long responsibility of marriage and children should be tied to the continuance of so ephemeral a thing as romantic love. This flawed notion has led millions of people to seek divorce when romantic love faded. Today, such damaging behavior has received broad social acceptance, with the collateral result being that marriage vows are considered freely rescindable.

The mathematical and political concept of equality, as it has been inaptly applied to marriage, leads to an additional set of problems. The concept of equality has distorted our view of what marriage is about, and obscured the

\textsuperscript{83} See Megan M. Sweeney & Allan V. Horwitz, Infidelity, Initiation, and Emotional Climate of Divorce: Are There Implications for Mental Health?, 42 J. OF HEALTH AND SOC. BEHAV. 295, 295-97 (discussing the relationship between infidelity and divorce and explaining that “infidelity is one of the most frequently cited factors leading to marital disruption”).

\textsuperscript{84} The following three paragraphs are adapted from material that originally appeared in Lloyd R. Cohen, Rhetoric, The Unnatural Family, and Women’s Work, 81 VA. L. REV. 2275, 2290-94 (1995) and Lloyd R. Cohen, Marriage, Divorce, and Quasi Rents; or “I Gave Him the Best Years of My Life,” 16 J. Legal Stud. 267 (1987).
essentially reciprocal nature of marriage. At its core, marriage is fundamentally a long-term contract/covenant. Individuals enter into long-term contracts because one or both parties intend to invest in what economists call “specific assets.” Specific assets are those assets whose value is crucially dependent on maintaining an ancillary relationship. The asset will lose a substantial portion of its value to one or both parties if the relationship between the parties comes to an end. In the context of hetero-sexual coupling, the specific asset that dwarfs all others is a woman’s bearing and rearing the child of a specific man. It is the investment in sexual intercourse and the intended or unintended procreation that results that is the specific asset that explains the covenantal commitment of marriage.

In the long-term contract of marriage, a breach or rescission by one party does not lead to equal encumbrances on the two parties to the contract. Until very recently it was always accepted and understood that a woman left with a minor child—bastard or not--had suffered a disaster. At the termination of a marriage the burdens on men and women are not identical and usually not equal. Due to burden of the marital children, higher mortality rates for men, and men’s penchant for younger women, divorce often improves the future mating prospects for men while the opposite occurs for women. So equality is a most misleading metaphor inaptly applied to understand marriage and the consequences of its termination.

The avoidance of marriage and its ready termination are not generally good either for individual couples or for the broader society. Marriage provides numerous material benefits to men and women. Let’s begin with happiness as self-perceived. Getting married is very nearly the best thing that two people can do toward the fulfillment of a happy and healthy life. Acts as simple as spousal monitoring contribute to such activities as “regular sleep,” “a healthy diet,” and “moderate drinking.” Moreover, the knowledge of having support during both sickness and health increases the happiness of each individual. Overall, 40 percent of married individuals report happiness with their life in general, as opposed to less than 25 percent for individuals who are single or cohabitating. Married couples also prosper financially. Although the marriage

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86 Id. at 55-57, 77.

87 Id. at 77.

88 Id. at 67.
advantage may partially suffer from selection bias, studies of how family structure relates to wealth reveal that married couples achieve a higher median net worth and accumulate more savings than their unmarried counterparts.\textsuperscript{89} Divorce, perhaps obviously, has the opposite effect and often leads to a costly division of assets.\textsuperscript{90} Additionally, despite being the butt of an incalculable number of jokes, the familial support of in-laws is an advantage that 17 percent of married couples receive as opposed to only 2 percent of divorced or unwed mothers that obtain support from the father’s parents.\textsuperscript{91}

Most importantly, marriage serves the long-term well being of children. Indeed, in the vein of marriage as a long-term contract, children are the primary specific asset of marriage. Children are valued particularly and peculiarly by their natural parents, with the costs and benefits spanning a long time period. In the event of divorce, a new partner faces the costs of a child without the corresponding benefits they would receive if the child were their own. Thus, a long-term marital relationship provides the optimal environment for the investment in children.

Married parents are quite simply better parents. Charles Murray writes:

No matter what the outcome being examined—the quality of the mother-infant relationship, externalizing behavior in childhood (aggression, delinquency, and hyperactivity), delinquency in adolescence, criminality as adults, illness and injury in childhood, early mortality, sexual decision making in adolescence, school problems and dropping out, emotional health, or any other measure of how well or poorly children do in life—the family structure that produces the best outcomes for children, on average, are two biological parents who remain married. . . . All of these statements apply after controlling for the family’s socio-economic status.\textsuperscript{92}

\textsuperscript{89} \textit{Id.} at 111-14.

\textsuperscript{90} \textit{Id.} at 118-20.

\textsuperscript{91} \textit{Id.} at 117-18.

Marriage serves children best because, as Linda J. Waite and Maggie Gallagher put it, “[m]arriage shapes children’s lives first and foremost by directing the time, energy, and resources of two adults toward them.” 93 Without the support of married parents, children are more likely to face poverty, experience health problems, receive less education, lack social connections to other adults in their community, and receive less love and support overall. 94

Conclusion

So the story we tell is really a simple one. The cost to women of a primal, core human activity, sex, has declined precipitously over the last two centuries, most dramatically in the period 1945 to 1975. The decline itself, and its causes in the broadest sense, are all economic. The costs or probability of disease, unwanted pregnancy, terminating pregnancy, out-of-wedlock birth, social opprobrium have all been severely diminished. As a direct consequence women’s supply curve of sex outside of marriage has

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94 See id. at 126-40 (arguing that married families provide children with more financial support, stronger family ties, more social skills, better mental/ emotional health, and better quality education and discussing various studies on these matters). One particularly widespread social cost from non-marital procreation is the failure of men to support their own children. Lloyd R. Cohen, Rhetoric, The Unnatural Family, and Women’s Work, 81 VA. L. REV. 2275, 2289-90 (1995). This virus affects both the white and black communities. Id. In addition, there are cultures that follow this perverse ethic. In much of Africa, “[p]rocreation is not tied closely to marriage, and men are not expected or required to support their wives and offspring.” Id. at 2290.
shifted massively to the right. The consequences of this are that marriages are not formed at nearly the rate they once were, and are dissolved with an alacrity unimagined in all of human history prior to the second half of the 20th century. Despite the many benefits to women directly and to men indirectly of this massive decline in costs, there is reason to be less than sanguine about the effects on the social and cultural fabric of society.