

Unwed parents and the law

## Carriage and horse

**Births out of wedlock are becoming the norm. How should governments respond?**

BRITAIN is nearly there; America not far behind; France passed the milestone in 2007. As couples wait longer to marry, and fewer eventually do, the number of countries where more births are out of wedlock than in it has risen to more than 20. Rates across the OECD group of 34 mostly rich countries vary hugely, from 2% in Japan to 70% in Chile. But overall the average is 39%—more than five times what it was in 1970 (see chart on next page).

Policymakers wish they could change the trend. Unmarried parents are more likely to split up. Their children learn less in school and are more likely to be unhealthy or behave badly. It is hard to say how much of this difference is due to marriage itself, however, because unmarried parents differ a great deal from married ones. They are poorer, less well-educated and more likely to be teenagers, for example.

But efforts to persuade people who otherwise would not marry to do so have generally failed. Isabel Sawhill of the Brookings Institution, a think-tank, says that a plethora of policies in America, from tweaking incentives in the benefits system to teaching couples how to be better domestic partners, have had little or no effect on marriage rates. Better, she says, help women to avoid unplanned pregnancies and delay childbearing at least until they finish school and are in a solid relationship, whether married or not.

Governments must still decide what to do when cohabiting couples break up or

one partner dies. They tend to take one of three approaches: to treat unmarried couples like married ones if they have been together more than a couple of years; to treat them as if they were single; or to offer several formal alternatives to marriage and hope that couples will choose the one that suits them best.

Subscribers to the first approach include Australia, New Zealand, Sweden and some Canadian provinces. For legal purposes, cohabiting couples are almost indistinguishable from married ones after some time living together, usually two or three years. De facto marriage may kick in earlier for parents. Some countries allow couples to opt out of some of the provisions of de facto marriage by signing a contract, for example if one partner wishes to exclude property, or money for offspring from a previous relationship.

In Australia, however, couples rarely draw up opt-outs, says Belinda Fehlberg of the University of Melbourne. So courts still end up dealing with messy separations. One party may dispute the very existence of a relationship. In a property dispute in 2013 a judge ruled that a couple who had lived together for 14 years, holidayed together and had regular sex were not in a de facto marriage. The woman claimed they had been. The man, who had married someone else, said they hadn't, because one had always paid rent to the other.

In Brazil, where two-thirds of children are born to unmarried parents, couples

Also in this section

56 The common-law marriage myth

whose relationship is “public, permanent and intended to form a family unit” are regarded as being in a “stable union”. They need not live together, and there is no set period before the law kicks in. Foreign clients find this startling, says Carolina Ducci of Mattos Filho Advogados, a São Paulo law firm; she advises those in unmarried relationships to declare a stable union in a notary's office in case doubts arise. For those with the opposite concern—that a casual fling might demand alimony—there is no such quick fix. Some rich Brazilians insist on “dating contracts” at the start of any new relationship, says Ms Ducci—but these have no legal status.

### Marriages of inconvenience

Such disputes are surprisingly rare, though, because Brazilians know the risks. Anyone determined not to enter a stable union will do nothing that a judge might take as evidence of one. Pictures together on Facebook show that a relationship was public, for example. Paying bills jointly, sharing a bank account or making loan repayments for a partner can be taken as intent to form a family. More common are legal battles after one partner dies: children from a former marriage, who lose out if their parent enters a new union, may dispute that a partner was a de facto spouse.

By comparison, recognising only formal marriage has the merit of clarity. But countries that take this approach, such as many American states, England, Italy and much of eastern Europe, have problems, too. The assumption that all those who want the rights and obligations of marriage will wed is often wrong. In many ▶▶

**Correction:** In “A new age of discovery”, on January 2nd 2016, we said Oliver Steeds had filmed a fish at a deeper level than anyone else. In fact this was achieved by Alan Jamieson of the University of Aberdeen. And though Rune Gjeldnes was the first person to cross the Antarctic alone without being resupplied, Sir Ranulph Fiennes and Mike Stroud had previously done so together.

countries lots of unmarried couples mistakenly believe that they have all the rights of married ones after they have lived together for some time (see box). And often, says Robert Wintemute of King's College London, one partner wants to marry but the other does not. The reluctant party is usually the richer one, most often the man.

Some people in this situation will leave and look for a less marriage-shy partner; others realise their predicament only after children are born, when keeping the family together trumps unshared marital aspirations. They risk poverty, even homelessness, if they are bereaved or the relationship comes to a bitter end. After a divorce, the parent who does most of the child care usually gets the family home, no matter whose name it is in or who paid for it; without marriage there is no such guarantee.

In England, bereaved unmarried partners may have to sell the family home to pay inheritance tax that a spouse would have been exempt from—if they are lucky enough to be left it, that is. Without a will, they may be made homeless by blood relatives favoured by the intestacy rules. The British government has done nothing to change these, despite recommendations from the parliamentary law commission and family lawyers' association that some unmarried partners be given the inheritance rights of spouses.

Belgium, France and the Netherlands take a third approach, offering a range of formal options short of marriage. A cohabitation agreement, one of the options in the Netherlands, can be drawn up by a notary; more than half of unmarried Dutch couples had one in 2008. Couples can tailor these with details on how assets and expenses will be shared. A popular choice in France is the *pacte civil de solidarité* (PACS), which confers many of marriage's rights and duties but is easier to end: one partner can terminate it by a registered letter or by marrying someone else, without giving notice to the (possibly surprised) ex. Couples in a PACS get the same income- and inheritance-tax breaks as married ones. But

Unmarried and ill-informed

# The common-law marriage myth

## Many cohabiting couples misunderstand their legal status

**I**F YOU live together like a husband and wife for a number of years, then in the eyes of the law you are married. It is startling how many people in England believe this. Yet it is a myth.

Despite an information campaign, over half of unmarried English couples living together in 2006—when the campaign had been running for three years—believed that their legal position was the same as that of married couples. Half the general population did, too. In fact, common-law marriage has not legally existed in England since the 16th century.

In America, family lawyers push the message that living together for seven years—or any amount of time—does not make you a married couple. Why so many Americans believe in this seven-year cut-off is mysterious. A handful of American states, including Alabama and Colorado, do recognise common-law marriage, meaning that a couple may be legally treated as married if they live as a family and present themselves as a husband and wife. But people all over the country mistakenly believe that this is also the case in their state.

In Canada, says Robert Leckey of McGill University in Montreal, a similar confusion results from laws that call

unmarried couples “legal spouses” for the purposes of tax and benefits. Many assume that they are as good as married for everything else, too.

Even when unmarried people know what the law says, research shows, optimism may mean they neglect pragmatic measures such as ensuring that they are recognised as co-owner of the house they share. Most couples who move in together, whether they marry or not, believe that they will either stay together for life or separate amicably. Some fear being viewed as gold-diggers or spoiling the ardour if they brandish paperwork that says who gets what if things turn sour.

Prodding and advice do not help much either. Before gay marriage became legal in America, few gay couples named each other as next of kin or drew up wills in each other's favour, despite reminders from activists, says Gordon Morris of Unmarried Equality, a lobby group. In England researchers followed up with 102 people in unmarried couples who had visited an official website with information and model agreements about property, next-of-kin wishes and so on. None had gone on to sign one: the most common reason was that they had not got around to it, though they intended to.

if they separate neither can claim alimony or the other's property. About two-thirds as many French couples are in a PACS as are married—a popularity that has spawned a new verb: *se pacser* (to “get pacs-ed”).

But even when several options are on offer, many couples choose none. A fifth of French and Dutch cohabiting couples are in no form of registered partnership—the same share as in England, where marriage

is the only option. (English same-sex couples can also enter into a civil union, a remnant of the equal-but-separate era before gay marriage became legal in 2014.) In the end governments face a trade-off. Treating long-lasting cohabitation as marriage leads to fewer bereaved and wronged families—but also blurs a once-clear line. Not doing so, though, puts the law out of step with the way families are evolving. ■

### Unwedded bliss

Births to unmarried women, % of total



Sources: OECD; Eurostat

Cohabiting couples who are not married\*



Cohabiting couples with children‡ at home



\*Or in any other form of registered union †2013 ‡Under 25 §2014



bank, said oil might need to fall as low as \$10 a barrel before speculators concede that “matters had gone too far”. But it’s mostly guesswork. Such is the level of uncertainty that American derivatives contracts tied to deliveries in April imply an oil price of anything from \$25 to \$56 a barrel, according to official number-crunchers.

Neil Atkinson of the International Energy Agency (IEA), a forecasting outfit, finds lots in the physical oil market to be bearish about—particularly regarding consumption, which was one of the few factors supporting prices last year. The sell-off in oil in the past fortnight has occurred concurrently with a slide in the Chinese stockmarket and the yuan, which some investors think reflects weakness in China’s economy and hence in demand for oil. Though Mr Atkinson acknowledges that possibility, he thinks this risk is overplayed: figures on January 13th showed China imported a record 6.7m barrels a day (b/d) of oil in 2015.

The trouble, though, is that apart from India and a wobbly China, demand is not looking promising anywhere this year. Europe is unlikely to see a repeat of its relatively strong oil-demand growth in 2015. Although America’s economy continues to grow, tightening fuel-efficiency standards cap the upside. Drivers in the Middle East, where fuel use rose last year, are more likely to keep their cars off the road after their governments raised petrol prices or eliminated fuel subsidies altogether to shore up public finances. “There are now considerable uncertainties about oil-demand growth globally,” Mr Atkinson says.

Adding to the gloom, producers are not turning off the taps as fast as people expected. The latest rout stems from an OPEC meeting in early December in which the producers’ cartel abandoned output quotas. Saudi Arabia, which used to curb output to rescue prices, now refuses to play that role, and instead is bent on driving high-cost producers out of business. Saudi officials privately say that they expect the price of oil to rebound late this year or early in 2017 as global output begins to lag behind demand. The natural decline as fields are depleted saps production by at least 5% a year, they argue, even before accounting for the effects of reductions in new drilling by embattled oil firms.

But there remains huge uncertainty about how much Iran will export when UN sanctions are lifted, possibly in coming weeks. What is more, Mr Atkinson says, production continued to rise last year from high-cost wells in the Gulf of Mexico and Canada’s tar sands because, however much oil prices fell, operating costs were lower. “The habit of the industry is to keep producing for as long as you can. Anyone who blinks first is handing a lifeline to their competitors,” he says.

To be sure, production in America is falling, thanks chiefly to cutbacks by strug-

gling shale-oil producers. With oil prices at \$30 a barrel, America’s oilmen will have an even tougher task shoring up output by drilling new wells, and will face further pressure from their bankers to reduce borrowing. AlixPartners, a consultancy that advises troubled firms, says more will go bankrupt this year. It forecasts a funding gap of \$102 billion this year between American oil firms’ projected cash flows and their interest payments and capital spending, up from \$83 billion in 2015. It said the downturn “could be one of the most severe and prolonged ever”.

But however big the cutbacks, they are not yet enough to reduce the glut (see chart on previous page). Global inventories are at record highs, the IEA says. The Energy Information Administration, an American government agency, predicts they will rise a further 700,000 b/d before supply and demand begin to balance out in 2017.

It adds that storage at Cushing, Oklahoma, which can hold 73m barrels, is at record highs of 64m barrels. Brian Busch of Genscape, an industry data gatherer, says it’s a similar story in China, with ships carrying oil spotted waiting at anchor out at sea because storage tanks appeared to be full. Based on the high level of stocks, Mr Busch thinks it could take up to a year and a half before the bear market ends. The only certainty is, the quicker the oil price falls, the sooner that day will come. ■

## Lotteries

### High stakes

#### Lotteries pull in punters by making it harder to win

THE billboards advertising Powerball, an American lottery, were not big enough to display the size of the jackpot in the draw that took place on the evening of January 13th: \$1.6 billion. That prize will be split among the three winners, who bought their tickets in California, Florida and Tennessee. For several days beforehand, Lotto fever gripped the nation: long queues formed outside shops selling tick-



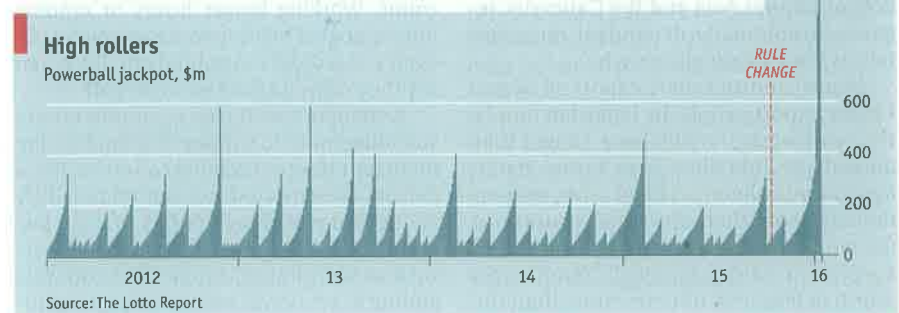
A load of balls

ets and on the day of the draw sales were ringing up at a rate of \$787,000 per minute. Powerball’s website had some advice for its frantic customers: “Swinging a live chicken above your head while wishing for the future numbers does NOT work.”

A more useful bit of counsel would have been that buying a lottery ticket is fun but financially foolish. A punter buying a Powerball ticket has a 1 in 292m chance of winning the jackpot. Buyers are around four times more likely to be killed by an asteroid impact this year. Lotteries are designed to be a bad deal, hoovering up participants’ money in order to plug state budgets and fund good causes.

What’s more, the designers are getting better at their jobs. Victor Matheson, professor of economics at the College of the Holy Cross in Massachusetts, explains that sales are much more sensitive to the size of the jackpots than to the likelihood of winning. After a particularly big prize is won, there is a halo effect, whereby ticket sales remain high even though the jackpot has reverted to the norm. So lottery designers go to great lengths to boost the size of the big prize.

One easy trick is to ►►





▶ make the jackpot seem bigger than it is. The sums advertised by Powerball represented the pre-tax value over 29 years of an annuity that winners can opt to receive. If the winners choose a lump sum instead, they get just over 60% of that, on which they would have to pay tax of at least 40%.

Another approach is to boost the jackpot by expanding a lottery's geographic scope, and thus its potential pool of participants. Powerball and Mega Millions, the two largest American lotteries, have both taken this tack. By forging alliances among state lotteries, they are both now available to residents of 44 of America's 50 states. Similarly, EuroMillions, a lottery that covers nine European countries, has twice offered a jackpot of €190m (\$206m).

Powerball's record-breaking jackpot stems mainly from a riskier strategy, however. If the chances of winning become so slim that no one guesses the right combination of numbers, the prize rolls over, growing to a vast sum. Both Powerball and the British national lottery changed their rules to this effect in October, by increasing the number of balls in the draw. In Britain the change slashed the chance of a winning guess from 1 in 14m to 1 in 45m. In America it fell from 1 in 175m to 1 in 292m.

There is a catch: make it too hard to win a lottery, and punters will lose interest. So even as lottery designers have been lowering the chances of winning the jackpot, they have been boosting the chances of winning lesser prizes, notes David Spiegelhalter of the University of Cambridge.

As larger jackpots draw more customers, the chance that someone will win shoots up. But so does the chance of multiple winners, which lowers the expected value of a ticket. In the run-up to this week's draw, Powerball's organisers expected that roughly 86% of all possible numerical combinations would have been bought, suggesting sales of some 570m tickets. With that many tickets sold, the chance of a winner having to share the pot with others (as indeed happened) was around 68%, compared with just 4% for more typical sales of 25m tickets.

Only very rarely have so many players piled in that the expected value of the jackpot has fallen, and mostly when there are huge jackpots on offer. But the affliction is set to become more common. Britain's National Lottery enjoyed unprecedented demand in the run-up to the record £66m (\$95m) jackpot won on January 9th. Sales for the 28 Powerball draws since its rule change in October (excluding the draw on January 13th) were 134% higher than for the 28 preceding draws. According to Mr Matheson, the customers who are drawn in by higher jackpots tend to be richer than the average. So while lotteries may be snafing ever more money for an ever smaller chance of striking it rich, at least the burden is tilting away from the very poorest. ■

## Poor financial decisions

# Anti-choice

SAN FRANCISCO

## Regulators are keen to stop people making mistakes

FOR centuries liberals have argued that people should be trusted to make their own decisions. Regulators increasingly want to protect them from themselves. In the wake of the financial crisis, the administration of Barack Obama established a new agency, the Consumer Financial Protection Bureau. The CFPB has so far focused on regulating mortgages, for example by making their terms more digestible. But it is now weighing stricter curbs in other markets: new rules on payday loans are expected in the first quarter.

Other new rules are on the horizon, too. The Department of Labor is proposing a "fiduciary rule" for financial advisers who help Americans to invest their pension pots. Currently, many advisers earn juicy commissions by recommending costly products. A study by the White House suggested such "conflicted" investment advice costs consumers roughly one percentage point in returns a year, and that clients are largely unaware of the costs. The new regulations would require that advisers always act in the best interest of clients. Republicans tried, and failed, to kill the proposal in budget negotiations late last year, and the fight isn't over.

Economists might once have poo-pooed the bureaucrats. Most assumed that individuals act rationally when making decisions. But when it comes to head-

scratching financial choices—how much to save, where to invest—that assumption looks ever more iffy.

Take mortgages. Most American home loans last for 30 years, with the interest rate fixed. When rates fall dramatically, most borrowers would be better off if they refinanced. Yet too few do. In 2013 42% of American borrowers paid rates exceeding 5%, when the average rate paid on new mortgages was less than 4%. People make similar mistakes when saving, failing to take advantage of their employer's obligation to contribute to their pensions, for instance, and stashing money in taxable rather than tax-free accounts.

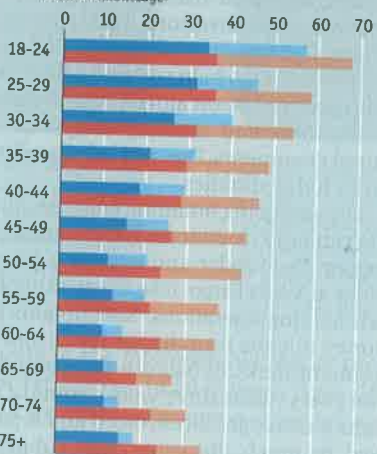
In a lecture at the annual conference of the American Economic Association earlier this month, John Campbell of Harvard University asked what liberal policymakers should do in the face of these apparent errors. American financial literacy is very low, he noted, particularly among the young. Over half of American men aged 18-24 and nearly 70% of women of that age cannot correctly answer at least three of five basic financial questions, such as whether it is riskier to invest in a single stock or in a mutual fund (see chart). Savvy increases with age, though so does overconfidence. People who wrongly think that they know what they are doing are particularly liable to make costly mistakes, as they will not seek help.

Many now worry that firms that exploit the ignorance of such consumers will rack up profits, or use the revenues to subsidise juicy deals for other customers. Financial mistakes can also make inequality worse, if poorer folk are more likely to make them. In "Capital in the Twenty-First Century", Thomas Piketty speculated that richer investors earn higher returns, and showed that this is true of university endowments. Recent work has uncovered a similar phenomenon among individuals. Mr Campbell and his colleagues analysed returns between 2002 and 2012 for investors with an account at an Indian securities depository. They found that the "Piketty effect"—fatter accounts earning greater returns—accounted for 43% of the variation in investors' income.

What to do? One possible solution is financial education. Yet the evidence that this works is surprisingly weak. A recent state-by-state study found that it had no beneficial effect, while using up valuable classroom time. More paternalistic interventions are rightly controversial: a right-wing campaign group recently ran an attack ad against the CFPB, portraying it as a Soviet-style bureaucracy crushing the dreams of hapless borrowers. Some instead prefer the idea of "nudging" people towards better decisions, while preserving their freedom to choose. In weighing up the merits of liberty and protection, it is easy to make a mistake. ■

## Dollars and senescence

Financial illiteracy in America, by gender and age 2012, %



Sources: Annamaria Lusardi, George Washington University; National Financial Capability Study