

Race Matters in Research on Nonmarital Unions: A Response to Amanda Jayne Miller's and Shannon Sassler's "*Don't Force My Hand*": Gender and Social Class Variation in Relationship Negotiation

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I. INTRODUCTION

At three-years old, I overheard my parents talking about one of my uncles. Chatterbox that I was, I promptly found that uncle after their conversation ended and apparently repeated much of what they said. It was not that my uncle—who did not appreciate what he heard from me at all—had done anything wrong. In fact, he had not *done* anything at all. And that, at least for my parents, was really the crux of the matter.

It was early 1970. My uncle, a life-long New Yorker, had just become a first-time father. And, to their chagrin, he had not married the child's mother. As it happens, his partner was no more interested in getting married than he. For my parents, however, that was almost beside the point. Like my uncle, they had grown up in poor, single-female headed households. And they recalled all too well the difficulties, to include the stigma, that they had faced growing up in some of New York City's poorest communities of color. To them, nonmarriage was not something one elected. If it became your reality for some reason beyond your control, that was one thing. But to choose it—as several of my aunts and uncles, and even my grandmother had—was quite another.

That long-ago family debate was on my mind when I accepted the invitation to be part of the first Nonmarriage Roundtable. So, I was very glad to participate in the convening and even more excited to be asked to respond to Amanda Jayne Miller's and Shannon Sassler's article on that topic, "*Don't Force My Hand*": Gender and Social Class Variation in Relationship Negotiation.¹ Part I of this essay briefly summarizes Miller's and Sassler's

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1. Amanda Jayne Miller & Sharon Sassler, "*Don't Force My Hand*": Gender and Social Class Variation in Relationship Negotiation, 51 ARIZ. ST. L.J. 1369 (2019).

article and identifies its contribution. Part II then turns to offer some thoughts on race in the nonmarriage context, an issue not addressed by the authors. It argues that race matters in the important work being done on nonmarriage and that we can learn a lot about race, inequality, and intimate choice by attending to it more intentionally. The essay ends with a few observations on race and intimate relationships.

II. GENDER AND CLASS MATTERS IN NONMARRIAGE

In the early 1970's rates of nonmarriage were low and the stigma attached to it—as my parents' reactions reflect—fell largely on African Americans. This was true in part due to a policy paper that former Senator Daniel Patrick Moynihan produced while serving as an official in the U.S. Department of Labor in 1965.² That document, popularly referred to as the “Moynihan Report,” recognized that “[t]hree centuries of injustice ha[d] brought about deep-seated structural distortions in the life of the Negro American.”³ Nevertheless, it primarily attributed low marriage and high divorce rates in that community to the “breakdown” of “family structure” in poor black communities.⁴ For him and many others, the greatest barrier to black “progress” and citizenship in 1965 was not persistent disadvantage or discrimination, but the “deterioration of the Negro family.”⁵

A lot has, of course, changed since then. African Americans—now the most unmarried in the country—still face stereotypes and stigma for non-compliance with traditional family norms like marriage.⁶ The negative meaning that is attached to nonmarriage itself, however, has largely dissipated. This is largely because the rates of nonmarital unions have increased outside of African Americans as well. For example, the rate of nonmarriage among Whites has increased from to twenty-six percent in 1960 to approximately forty-five percent in 2010.⁷ This shift has essentially worked to normalize nonmarital unions. They went from being rare several decades ago to becoming so prevalent across demographic groups that

2. R.A. Lenhardt, *Black Marriage Through Citizenship? Reflections on the Moynihan Report at Fifty*, 25 S. CAL. INTERDISC. L.J. 347 (2016).

3. U.S. DEP'T OF LABOR, OFFICE OF POLICY PLANNING AND RESEARCH, THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION 47 (1965), <https://web.stanford.edu/~mrosenfe/Moynihan's%20The%20Negro%20Family.pdf> [<https://perma.cc/NXV4-2TUR>] [hereinafter Moynihan Report].

4. Moynihan Report, *supra* note 3, at 5, 47; *see also* Lenhardt, *supra* note 2, at 351–52.

5. Moynihan Report, *supra* note 3, at 5, 47.

6. R.A. Lenhardt, *Marriage as Black Citizenship?*, 66 HASTINGS L.J. 1317, 1345 (2015).

7. *Id.* at 1345 n.163.

publications like the *New York Times* now regularly feature stories touching on issues concerning nonmarital unions and family groups.⁸

A. Gender, Class, and Relationship Advancement Study

The growing focus on nonmarital unions and the change that they mark in American values and families is where Miller and Sassler enter the picture. Their study considers the rise in cohabitation and, more specifically, explores relationship advancement in this context.⁹ In particular, it considers “the process of entering into and forwarding [heterosexual] cohabiting unions” and the extent to which it is affected by gender and class.¹⁰

In doing so, Miller and Sassler drew on data from interviews that they conducted with sixty-one cohabiting couples in the Columbus, Ohio metropolitan area.¹¹ All participants were “between the ages of 18 and 36, the prime family formation years.”¹² Thirty of those individuals fell into what Miller and Sassler have dubbed “the service class.”¹³ The remaining participants fell into the “middle class.” Miller and Sassler required that all participating couples earn at least \$18,000 per year and have a certain level of educational attainment.¹⁴ Couples were classified as middle-class if both partners had a bachelor’s degree.¹⁵ In instances where only one partner had a bachelor’s degree, designation as “middle-class” turned on “occupational status” and the extent to which the partner with the degree was in a job that utilized his or her educational training.¹⁶

These groupings provided Miller and Sassler with a platform for evaluating how gender and class influenced intimate decision-making across different phases of couples’ relationships. The relationship phases they

8. See, e.g., Tatiana Boncompagni, *All the Conventional Cohabitation, but No Nuptials*, N.Y. TIMES (July 3, 2014), <https://www.nytimes.com/2014/07/06/fashion/weddings/all-the-conventional-cohabitation-but-no-nuptials.html> [<https://perma.cc/Y8DV-FB77>]; Erik Carter, *In a Nontraditional Relationship? Beware These 7 Financial Pitfalls*, FORBES (May 30, 2012, 9:53 AM), <https://www.forbes.com/sites/financialfinesse/2012/05/30/in-a-nontraditional-relationship-beware-these-7-financial-pitfalls/#2149b1691a2f> [<https://perma.cc/N99L-D8MN>]; Mandy Len Catron, *The Case Against Marriage*, ATLANTIC (July 2, 2019), <https://www.theatlantic.com/family/archive/2019/07/case-against-marriage/591973/> [<https://perma.cc/5XA8-QY3C>].

9. Miller & Sassler, *supra* note 1, at 1370. For another source exploring these topics, see Boncompagni, *supra* note 8.

10. Miller & Sassler, *supra* note 1, at 1370.

11. *Id.* at 1373.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.* at 1374.

16. *Id.*

considered included: 1) initial romantic involvement; 2) decision-making about cohabitation; 3) discussions pertaining to relationship advancement and marriage; and 4) engagement.¹⁷

B. Relationship Advancement and Miller's and Sassler's Contribution

Miller and Sassler have set a wide and ambitious agenda for themselves. Perhaps, as a consequence, the precise framing of their intervention sometimes seems to shift. In some places, they focus on the role of cohabitation in social class discrepancies in cohabiting relationships.¹⁸ Other times, the emphasis has clearly been placed on understanding why, under the study results produced, cohabitation seems to be more likely to lead to marriage when the parties are both college education.¹⁹ In other ways, the study seems firmly rooted in an inquiry trained primarily on the gender and class scripts developed and utilized by participants in a context in which cohabitation is “incompletely institutionalized,” but nevertheless still reflects certain traditional norms.²⁰

For my part, the latter framing comes closest both to what the data yield and what seems of most interest to the authors. However one understands the main study objectives though, the significant contribution made by Miller and Sassler cannot be gainsaid. Their study has produced a wonderful window into an area of intimate relationship that we are still very much trying to understand. Together, the study participants and the comments they shared across class and gender help to clarify the range of cohabitation-related issues that intimate partners in the twenty-first century confront.

Because Miller and Sassler obviously intend to expand on the insights already generated by their research,²¹ it would be premature to say definitively the scope of the contribution they stand to make overall. Several things stood out for me in the paper submitted in connection with the newly constituted Nonmarriage Roundtable. First, the results reported remind all of us of the need to think of cohabitation as a process, a relationship phase that may be permanent for some, but that is temporally bounded for many others. In the 1970s, as I noted earlier, the presumption post-Moynihan Report was that the relationships that African Americans like my uncles, grandmother,

17. *Id.* at 1376.

18. *Id.* at 1371.

19. *Id.* at 1372.

20. *Id.* at 1371.

21. *See, e.g.,* Sharon Sassler & Amanda J. Miller, *Waiting To Be Asked: Gender, Power, and Relationship Progression Among Cohabiting Couples*, 32 J. FAM. ISSUES 482 (2011).

and aunt had were permanently spoiled and evidence of moral and economic dysfunction.²²

Today, some of that stigma obviously still attaches to poor, black relationships. At the same time, however, research shows that even African Americans who remain unmarried across a long period due to structural inequalities that inform marriage progression, still see shifts within their relationships and parenting that necessitates greater study and support. The emergence of complex families of color, documented by legal scholars such as Clare Huntington, a member of the Nonmarriage Roundtable, and researchers associated with the ground-breaking Fragile Families study, underscores this truth.²³ In many ways, Miller's and Sassler's work helps to remind us of the need to be similarly attentive to phases of relationships among other groups. Recognizing the phases of intimate relationship into which couples fall offers an additional lens for better understanding modern cohabitation among middle- and "service-class" couples.²⁴

Although the absence of another class tier focused on lower-income and even poor intimates was palpable for me, I appreciated the ways in which Miller's and Sassler's work lifts up cohabitation as a relationship phase and clears a space for the contestation and remaking of gender roles in norms for all groups. It might take some time or even a specific focus on couples who, by definition, do not adhere to certain gender norms—such as LGBT couples, who were not discussed in the instant study—to make real change in the end. Yet, the study Miller and Sassler offer provides important insights and lessons. That lower-income women might feel less able to push co-habiting male partners hesitant to advance the ball toward marriage was not all that surprising, given their vulnerability relative to their peers who are better-resourced and thus have a wider range of opportunities available to them. Still, what women whom expressed their interest in moving from cohabitation to possible marriage with strong statements or nudges—such as, "If I am living with you, I'll start looking for two bedrooms . . . but I need an answer, 'Do you want to live with me?'"—can tell us a great deal as well.²⁵

III. RACE MATTERS IN NONMARRIAGE

For all we can take from Miller's and Sassler's intervention, I could not help feeling that there was also a great deal missing from their study where

22. Lenhardt, *supra* note 6, at 1335.

23. See, e.g., Clare Huntington, *Postmarital Family Law: A Legal Structure for Nonmarital Families*, 67 STAN. L. REV. 167 (2015).

24. Miller & Sassler, *supra* note 1, at 1371.

25. *Id.* at 1379.

the issue of race is concerned. The study sample utilized included “relatively few couples [who] were racial minorities or were interracial.”²⁶ “Asian-Americans [were] [especially] . . . underrepresented.”²⁷ To their credit, the final version of their paper includes a short section acknowledging their limited engagement with race.²⁸ In many ways, however, that raised as many questions as it answered, specifically because the addendum sometimes unfortunately seems to treat race and ethnicity, two very distinct concepts, as interchangeable.

In truth, nonmarriage in the United States has long been raced, and generally not in a good way—a reality that arguably informed my parents’ reaction to the set of circumstances outlined in the narrative that opened this essay. The firestorm following the release of the Moynihan Report mentioned earlier, which arguably still colors reactions to non-marital unions, provides an important example, but hardly the only one. From Reconstruction Era efforts that punished emancipated persons unwilling to marry²⁹ to more recent government efforts linking welfare and marriage promotion, one can point to countless examples where issues of race and nonmarriage, especially where African Americans are concerned, have sat at the very top of public discourse and priorities.³⁰

This history and the fact that, as I noted earlier, African America now stands as the most unmarried group in the country, suggest that Miller and Sassler would have only deepened their contribution with an effort to engage race matters more seriously in their study. One way to achieve the depth I contemplate here would be to constitute a study group designed intentionally to reflect racial diversity, something a number of participants in the Nonmarriage Roundtable suggested when Miller’s and Sassler’s paper was first presented. Short of this, however, future work might look expressly to highlight or discuss the experiences of couples and individuals of color within the sample currently being utilized.

Miller and Sassler do tell their readers that, for example, “[b]lack women progress more slowly into cohabiting unions than do [w]hite women”³¹ and that there are no “ethnic differences in initiation of marriage talk” in their

26. *Id.* at 1390.

27. *Id.*

28. *Id.*

29. Lenhardt, *supra* note 6, at 1328; *see also* Katherine M. Franke, *Becoming a Citizen: Reconstruction Era Regulation of African American Marriages*, 11 *YALE J.L. & HUMAN.* 251, 308 (1999).

30. Lenhardt, *supra* note 6, at 1327–28; Angela Onwuachi-Willig, *The Return of the Ring: Welfare Reform’s Marriage Cure As the Revival of Post-Bellum Control*, 93 *CALIF. L. REV.* 1647, 1649–50 (2005).

31. Miller & Sassler, *supra* note 1, at 1388.

sample.³² This information is useful and important, but there are many questions that remain unanswered. These include sample-related questions regarding whether the couples of color in the sample were more likely to be in the “middle class,” as well as inquiries that engage issues of structural inequality and its impact on both cohabitation and progression to marriage.³³ Differences in class status where cohabitants of color are concerned would also be an area for future research and exploration. Finally, it seems clear that the already rich study offered by Miller and Sassler would benefit from analyses that are more intentionally intersectional so that issues of race and gender could be married together in efforts to make sense of the changing landscape of interracial relationships in twenty-first century America.

IV. CONCLUSION

Race matters in cohabitation—and so do gender and class. Fortunately, there is a growing body of research that simultaneously engages these issues, which Miller and Sassler can draw from as they advance their important research. Not insignificantly, the Nonmarriage Roundtable where their paper was presented stands to be an important source of such research. It has brought together a diverse group of legal and non-legal academics whose work will only be enhanced by the opportunity for cross-disciplinary engagement that the Roundtable creates. I, for one, am grateful both to have been a part of it and to get the chance to discuss Miller’s and Sassler’s valuable intervention.

32. *Id.* at 1389.

33. *Id.*