How Similar Are Cohabitation and Marriage? Legal Approaches to Cohabitation across Western Europe

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The interaction between public and private spheres of life is of central concern to sociologists, political scientists, and demographers. A number of broad studies have examined whether and how public policies affect family behavior (Hantrais 2004; Hantrais and Letablier 1998; Gauthier 1996; Salles 2006), but, with regard to Western Europe, demographers have primarily focused on whether family policies can raise fertility in countries with very low levels of childbearing (Neyer and Andersson 2008; Gauthier 2007; Hoem 2008; McDonald 2006). Social scientists have paid far less attention to how family policies and laws are associated with union formation and union status at birth. Although a large literature describes the laws regulating cohabitation and nonmarital childbearing for individual countries (Waaldijk 2005b; Barlow 2004; Bradley 2001), this information has not been synthesized to be useful for studying whether such policies affect union formation behavior. In this article, we provide a comprehensive overview of the policies that regulate unions and discuss theoretical perspectives on the role of the state in union formation. By examining policy dimensions in detail from across Western Europe, we raise questions about how individuals respond to changing institutional structures, or alternatively how legal structures are modified to reflect changes in societal-level behavior.

In Europe the increase in cohabitation and in childbearing within cohabiting unions has been one of the most striking changes in the family in the past few decades (Kiernan 2004; Perelli-Harris et al. 2010; Perelli-Harris et al. 2012). Although these changes have occurred in nearly every country on the continent, the variation across countries remains remarkably wide (Kiernan
2004; Perelli-Harris et al. 2012). For example, northern Europe is characterized by a high proportion of births within cohabitation; in the early 2000s over 40 percent of births in Norway and Sweden occurred within cohabitation. Western Europe has displayed greater variation in the proportion of births within cohabitation: about 40 percent of all births occur within cohabitation in France, compared with about 20 percent in the Netherlands and 15 percent in western Germany (calculations from the Harmonized Histories: www.nonmarital.org). Spain, which has traditionally had a low proportion of nonmarital births, has experienced a rapid increase to about 20 percent of births within cohabitation in 2007 (Castro-Martin 2010). Switzerland, on the other hand, has maintained a very low proportion of births within cohabitation: only 9 percent in 2000–04 (personal communication with Jean-Marie Le Goff; Le Goff and Ryser 2010). This variation in childbearing within cohabitation leads to questions about the meaning of cohabitation in different countries and about whether laws and policies play a role in explaining these differences.

Most theories explaining the increase in cohabitation and childbearing within cohabitation focus on structural, ideational, or cultural factors (Perelli-Harris et al. 2010; Lesthaeghe 2010; van de Kaa 2001; Reher 1998). Few studies take into account the role of policies (for exceptions see Le Goff 2002; Baizán, Aassve, and Billari 2004). Some studies in the United States examine the effect of welfare policies on the likelihood of cohabiting or marrying after a birth, but these studies focus on disadvantaged single or cohabiting mothers who are likely to receive welfare payments (e.g., Carlson et al. 2004). In general, country-specific policies and legislation are rarely discussed as an explanation for variation in the levels and timing of cohabitation and childbearing within cohabitation among countries.

The policies related to union formation are multi-faceted and may be only indirectly related to the phenomenon. Unlike in the United States, where former President George W. Bush’s administration implemented the “Healthy Marriage Initiative” to encourage marriage, most governments in Europe have not directly attempted to increase marriage or influence the rate of childbearing within cohabitation (Cherlin 2009). In fact, many countries have responded to behavioral change by passing legislation that reflects new demographic realities, such as expanding cohabitators’ rights or instituting registration systems to record civil unions. Therefore, it is important to recognize both the potential impact of policies on cohabitation and marriage, and how the government adapts legislation and policies to changes in behavior.

**Historical background**

Historically in Europe, states regulated the relationship between couples in order to formalize the affiliation between individuals who are not biologically related, regulate property and inheritance, provide protection to individuals,
manage disputes between citizens, and structure the taxation of households (Coontz 2005). Until the mid to late twentieth century, the state (as well as the church) regulated relationships between couples through official marriage, and unmarried couples were outside of legal jurisdiction. Although some couples did live together outside of marriage, usually because of social or financial barriers to matrimony (Ehmer 2002), such behavior was considered criminal in some countries. In these countries, laws that prohibited a man and woman from living together without being married were updated only in the mid-twentieth century: as late as 1968 in Italy, 1970 in parts of Germany, and 1972 in Norway (Bradley 2001), although clearly most of the laws were no longer enforced at that time.

Starting in the late 1960s and early 1970s, the institution of marriage began to change fundamentally in many parts of Europe, and more couples began to live together outside of marriage. During this period, values and attitudes about sex, gender relations, women’s employment, and the role of the individual and society changed dramatically (Lesthaeghe 2010; van de Kaa 2001). Simultaneously, states began to provide greater welfare protection to vulnerable individuals and increased state support for families, leading to diverging welfare and family policy contexts (Knijn, Martin, and Millar 2007; Gauthier 1996). These developments resulted in fundamentally different national and state approaches to the institution of marriage and cohabitation, and the policies aimed at regulating the relationship between unmarried partners continue to evolve today.

When examining the role of government in regulating cohabiting relationships, it is also important to consider the relationship between unmarried parents and their children (Dopffel 1994a). Governments’ involvement in the relationship between parents and children originally focused on inheritance and gradually expanded to require parents to care for their children. Until recently, marriage was widely considered the only living arrangement in which childbearing was legitimate (Coester 1993). Reforms to laws that regulated parent–child relationships generally occurred in stages. First, laws that discriminated against children born outside of marriage were abolished, and children born to married and unmarried parents were granted equal rights to maintenance and inheritance from their fathers. Although the timing of such reforms differed across Europe, most countries had completely harmonized the rights of children born to married and unmarried parents by the 1980s, with some minor exceptions for inheritance laws in Germany that lasted until the late 1990s (Stintzing 1999). Thus, the countries in our study do not vary in how they legally treat the children of cohabiting and married couples.

The next major stage of reforms occurred as single mothers were granted greater support and the freedom to make decisions for their children. Before these reforms, some countries restricted mothers’ rights and maintained au-
thority over their children. For example, single mothers in Germany, Sweden, and Switzerland were responsible for raising and caring for their children, but they were not considered capable of having full parental responsibility and of representing the legal interests of the child (Dopffel 1994b; Becker 1994; Buske 2004). Gradually countries began to grant unmarried mothers sole rights over their children. All European countries automatically grant custody to the mother upon the birth of the child and often after union dissolution, although some countries continue to assign a single mother an advisor who supports her in case of need.

Only recently have unmarried fathers begun to receive equal rights and obligations to educate and care for their children. Until the 1970s, unmarried fathers were rarely awarded joint custody after union dissolution, and some countries even barred unmarried fathers from establishing a legal relationship with their children. However, concerns about gender equity and psychological ties with fathers led courts to provide fathers with greater rights after divorce (Melli 2003). The increase in fathers’ rights after divorce seems to run parallel with the increase in rights for fathers in cohabiting unions. During the past several decades, the rights of unmarried fathers toward their children have been extended throughout Europe, most notably by introducing joint custody (Meulders-Klein 1990; Barlow et al. 2005; Hamilton and Perry 2002; Forder 1993). Unlike the reforms established to provide single mothers with custody over their children, however, European countries still vary considerably in the extent to which they provide unmarried fathers with rights and in the bureaucratic difficulty in attaining these rights.

Historical developments have clearly resulted in variation in how countries treat cohabiting couples and cohabiting parents, and this variation in turn may be related to current levels of cohabitation within a country. We now examine the theoretical issues that need to be considered when analyzing the relationship between policies and behaviors.

**Theoretical considerations**

Social research has raised a number of theoretical considerations that must be addressed when analyzing the relationship between the state and the family. Here we follow the theoretical framework proposed by Neyer and Andersson (2008) to raise issues pertinent to cohabitation and childbearing within cohabitation. Neyer and Andersson describe three major conceptualizations of family policies: 1) Kamerman and Kahn’s (1991) approach to family policies that includes “everything that government does to and for the family”; 2) the approach of feminist welfare-state researchers, who regard family policies as a central aspect of the welfare-state context and define family policies as policies that structure society by structuring private relationships (e.g., partnership and parenthood); and 3) Bourdieu’s (1996) argument that the
state uses family policies to construct and institutionalize a particular form of family. We draw on these three conceptualizations of family policy to explore 1) the “quantity,” “coherence,” and “timing” of family policies related to childbearing within cohabitation; 2) how family policies are situated in the context of welfare states and influenced by other legal, cultural, gender, and economic institutions; and 3) the potential disjunction between laws, family ideologies, perceptions, and behavior.

The quantity, coherence, and timing of policies

Drawing on the work of Kamerman and Kahn, Neyer and Andersson (2008) describe how a broad spectrum of family policies may be more effective in influencing behavior than stand-alone policies (quantity), how family policies need to fit together to achieve similar goals (coherence), and how the timing of policies needs to precede societal development rather than lagging behind it (timing). Each of these dimensions may also be relevant for how policies shape individuals’ decisions about cohabitation and marriage. First, the sheer quantity of incentives supporting either marriage or cohabitation could deter or facilitate the spread of cohabitation. Second, it is necessary to evaluate the coherence of policies across different policy domains as well as the relative importance of the policies. Individual policies or laws may be ineffective if they conflict with other policies. For example, governments may aim to support cohabitation by providing cohabiters with the same tax and welfare benefits granted to married couples, but those benefits may be irrelevant in the long run if, for example, cohabiters have only limited rights to inherit from each other, as in Sweden (Agell and Brattström 2008 in Ohlsson 2009; Ryrstedt 2005b).

Understanding the timing of the enactment of policies and legislation is also fundamental to understanding whether policies are leading to changes in behavior or reacting to changes that have already occurred. Only by knowing that a change in policy occurred before a change in behavior can we conclude that the policy may have led to new family behaviors, although policies introduced at a later time may indeed facilitate an increase in new behaviors. For example, the initiation of marital benefits led to a sharp increase in marriage in several countries. Marriage rates in Sweden spiked in late 1989 because many couples wanted to be eligible for the National Widow’s Pension Scheme, which required that couples be married before 1990 (Hoem 1991). In Austria, the introduction of a marriage bonus for newlyweds and subsequent rumors of its withdrawal led to marriage booms in 1972, 1983, and 1987 and could have stalled increases in nonmarital childbearing (Prioux 1993; Prskawetz et al. 2008). Even if the implementation of a policy may seem to have led to an increase in behavior, however, the relationship between a policy and behavior may in fact be spurious and instead caused by other factors such as social or economic change.
Situated policies related to cohabitation and childbearing within cohabitation

A country’s orientation and ideology clearly date back to cultural and historical factors that determine the state’s relationship to families and the individual (Bradley 2001). Indeed, as we noted above, family systems that may have shaped marriage and cohabitation patterns in the past can continue to influence both family patterns and policies. In certain countries, constitutions or civil codes explicitly refer to marriage as one of the fundamental ways in which society is organized. In addition, the fundamental structure of the legal system itself may be essential to a government’s ability to respond to changes in the family or regulate cohabitation. Bradley (2001) argues that “Differences in legal tradition are [another] factor which may explain divergent approaches to statutory regulation of cohabitation.” Thus, the type of courts and legislative bodies (e.g., common law vs. civil law) may impede or facilitate the development of family law.

Welfare-state researchers emphasize that family policies and laws are situated within state contexts that structure society (Esping-Andersen 1990). The welfare-state context may be critical to how states relate to individuals and families and to the role of marriage in those societies. States often protect and provide for their constituents by implementing tax and transfer systems; whether these systems are organized around married couples or individuals could be crucial to whether couples find it more advantageous to marry or to remain within cohabitation. On the other hand, the welfare-state typology often ignores other types of legal, cultural, gender, and economic institutions that may not be directly related to family policy, but nonetheless have a strong effect on individual behavior (Neyer and Andersson 2008).

Feminist welfare-state researchers have emphasized how gender needs to be incorporated into such classification schemes in order to accurately identify the power relations within families (Orloff 1993). Such considerations are of particular importance to union formation, since state policies may favor a particular gender ideology that may structure its regulation of formal and informal relationships. For example, Scandinavian countries have sought to increase gender equality at home or in the workforce and to create policies that support women’s position within cohabitation.

Like many other family policy researchers, we focus on the national level, but policies at different geographic levels may also be relevant to the increase in cohabitation. Policies in European countries may be subject to or highly influenced by supranational institutions, such as the European Union or the Council of Europe. National family law has also been the subject of international court rulings; for example, in December 2009, the European Court of Human Rights declared that German law, which does not allow unmarried fathers to go to court over custody issues, discriminates against fathers
and does not comply with the European Convention on Human Rights. In August 2010, the German Federal Constitutional Court agreed and declared the current legal situation to be unconstitutional (Süddeutsche Zeitung 2010). This example demonstrates that federal policies are constantly shifting in response to both internal demands and external pressures. Finally, policies within countries may vary by local or regional areas. For example, different regions of Spain have enacted their own legislation regarding cohabitation, and some regions have even created systems for registering cohabitation (González Beilfuss 2005). In fact, studying regional variation in policies may provide the analytical power needed to determine the impact of policies on behavior (Neyer and Andersson 2008).

Besides variation across regions, childbearing within cohabitation may differ substantially within countries by educational, class, ethnic, and religious groups, owing to the differential impact of policies. For example, women with low education and few employment prospects may be more likely to marry if they gain greater tax advantages than highly educated women whose income is similar to that of their spouses. Such is the case in Germany, for example (Konietzka and Kreyenfeld 2002). Immigrants or cross-national couples may marry in order to attain residence permits or citizenship. In addition, policies may only become relevant at different periods of the lifecourse. As discussed in Perelli-Harris et al. (2012), individuals may decide to marry at a particular point during the childbearing process when policies provide certain benefits to married fathers. For instance, couples in Switzerland may be more likely to marry after conception to gain full access to parental rights (Le Goff and Ryser 2010), while couples in Sweden may marry only after buying a house or near the end of life when inheritance becomes more important (Holland 2012).

Finally, legal regulations may interact with cultural, historical, and economic institutions to produce substantial variation across regions, even within the same country. For example, after reunification in 1990, regions in East and West Germany consolidated their laws to create similar policies governing marriage and cohabitation. Nonetheless, the level of nonmarital childbearing has remained strikingly different (Konietzka and Kreyenfeld 2002): in the West, 26 percent of all births occurred outside marriage in 2009, compared with nearly 58 percent in the East (Statistisches Bundesamt 2010). To explain these differences, researchers have posited a number of economic, social, and historical factors, such as female attachment to the labor force, higher unemployment in the East that would lead to family instability (Konietzka and Kreyenfeld 2002), the persistence of attitudes stemming from policies initiated in the former East Germany (Salles 2006), or cultural attitudes that may even date back to the Prussian regime (Goldstein and Kluesener 2009). Thus, the German example shows that although current policies may play a critical role in encouraging or discouraging a particular behavior, they may be insufficient to alter underlying cultural patterns.
Constructing the family

Although countries may seek to structure families and regulate the private sphere, family policies and laws may not correspond to social realities or the changing nature of relationships (Bourdieu 1996). This disconnection from social reality is particularly pertinent with respect to cohabitation, which may not be regulated by the state. In fact, couples may live together without marrying specifically to avoid the legal constraints of marriage and the consequences following a divorce. Thus, cohabitation allows couples to reject the legal institution of marriage and live together outside of legal jurisdiction.

Even if certain family policies and laws regulate and support particular family forms, individuals may be unaware of them or may ignore them, even though the laws and policies may be in their best interest. Cohabiting couples with children may know they should take the necessary steps to attain legal recognition for the father, but fail to do so, a failure that could have negative consequences in case of union dissolution or death (Schrama 2008). Likewise, marriage may be in a couple’s best financial interest, but the couple may still fail to marry because they are ignorant of the benefits or do not get around to doing so. Alternatively, individuals may believe that they maintain certain rights when in fact they do not. In England, for example, there is a widespread misunderstanding that people in so-called common law marriages (cohabiting unions) enjoy similar rights to inheritance after a spouse’s death as people in legal marriages, even though they do not. A UK survey showed that more than half of cohabiting respondents believed they have the same rights as married couples (Barlow et al. 2005). These examples provide evidence that “Family policies always act on two levels: on the level of facts and on the level of perception” (Neyer and Andersson 2008: 703). The absence or presence of a body of law that regulates cohabitation may have little or no impact on cohabitation rates.

Another point is that policymakers may be motivated to enact laws or policies that have nothing to do with heterosexual cohabitation, but instead arose from the campaign to allow same-sex couples to receive the same rights and protections as heterosexual married couples. The creation of registered partnerships to protect same-sex couples may have led to legal registration systems for heterosexual couples. Both France and the Netherlands implemented registered cohabitation to grant same-sex couples legal rights, and yet the debates in the two countries surrounding their implementation were quite distinct and resulted in different outcomes for heterosexual couples. Debates in France centered around reproductive rights, such as access to adoption and reproductive technologies, especially for same-sex couples (Borrillo and Fassin 2004). In the Netherlands, however, reproductive rights for same-sex couples were not a central issue, resulting in similar rights for both same-sex and heterosexual couples (Waaldijk 2005a).
Finally, policies aimed at protecting individuals may have consequences that were unintended by policymakers. A number of countries have enacted a system of transfers and benefits as part of a social safety net to protect vulnerable people, such as single mothers and their children. Family policies and legal regulations that were originally designed for these purposes may lead to unintended or even unwanted outcomes. For example, cohabiting couples may seek to profit from benefits for single mothers by postponing entry into marriage and concealing cohabiting relationships (Hantrais 2004; Noack 2001; Martin and Théry 2001). The French government initiated a single-mother benefit (allocation pour parent isolé) in 1976 to provide a monthly income to single mothers for up to three years after each birth. Some critics have argued that this means-tested benefit encouraged low-income cohabiting couples to conceal their relationship and postpone marriage, leading to an increase in births within cohabitation throughout the 1980s, especially among the least educated (Knijn, Martin, and Millar 2007). The Netherlands also provided unemployment benefits to single mothers with children under the age of 18, and the rising numbers of mothers receiving benefits led to concerns that women who were cohabiting fraudulently claimed to be single (Knijn, Martin, and Millar 2007). As a result, some governments have emphasized the distinction between single and cohabiting parents and eliminated incentives to avoid marriage (see, for instance, Noack 2001; Hantrais 2004).

To better understand how countries differ in their regulation of partnerships, we employ two concepts suggested by Neyer and Andersson: quantity—the number of policies that mention cohabitation; and coherence—whether countries generally treat marriage and cohabitation the same or differently. This analysis allows us to place countries along a continuum from those that harmonize cohabitation and marriage to those that primarily regulate marriage. We then briefly discuss the primary contextual factors in each country that contributed to the current policy. Our discussion allows us to clarify the role of governments in regulating relationships.

Data and methods

Data sources

Our study examines policies related to cohabitation and marriage in nine countries in Western Europe: Austria, England and Wales, France, Germany, the Netherlands, Norway, Spain, Sweden, and Switzerland. We chose these countries to represent a broad cross-section of welfare-state ideologies and levels of cohabitation. We consider only national-level legislation, although certain countries, for example Switzerland and Spain, pass some legislation at the regional level. The information used in the policy analysis comes from legal documents, secondary sources, and official websites. Where possible,
we examine codes of law and individual pieces of legislation in the original language. We focus on laws that were in effect in early 2010.

We examine 19 policy areas in which marriage is traditionally legislated or provides certain benefits. A large body of law covers marriage and divorce, and these laws differ substantially across countries. We focus solely on whether cohabiters are provided legal rights and obligations similar to those of married couples. While we exclude some legal aspects that occur in rare circumstances—for example, spousal immunity and privilege in court, or compensation in case of wrongful death—we include laws that may affect only some sub-groups, for example immigrants or those seeking access to reproductive technology.

Although the term cohabitation can refer to a variety of relationships, from those that are relatively uncommitted or in the trial stage to those that are long-term and stable, our focus is on how the law considers cohabiting couples in whatever form they take. In many countries, laws cover only cohabiting couples who meet certain conditions, for example living together for a period of time (often two years) or having children together. We note these requirements in the database and use them in determining the extent of harmonization between cohabitation and marriage. We only examine the legal rights and obligations relating to heterosexual relationships, although, as discussed above, some laws may have been passed in order to provide rights to same-sex couples. We also do not consider laws that target single mothers or “living apart together” relationships, since our focus is on couples in co-residential relationships.

Finally, we note that two of our sample countries have instituted special types of cohabiting relationships: registered partnerships in the Netherlands and Pacs in France. In these countries, cohabiters can choose whether to register their union with public authorities or to remain unregistered. Because registered partnerships/Pacs tend to be more closely regulated than unregistered cohabitation, we examine registered and unregistered cohabitation separately for these two countries.

**Analyzing the quantity and coherence of laws on cohabiters**

Measuring or summarizing policies and laws is inherently difficult, since each country has fundamentally different legal structures and laws relevant to specific policy areas. To compare policies across countries, we focus on one or two questions that address the most relevant policy points. For instance, when analyzing adoption law, we look only at whether cohabiters can adopt a child jointly and disregard procedural aspects or whether each partner can adopt a child individually. This approach helps us to distill the details of the laws down to a fundamental principle for each policy area.
As noted above, we employ the concepts of quantity and coherence suggested by Neyer and Andersson. The quantity of laws regulating cohabitation reveals whether states actively legislate on cohabitation or generally ignore it. We determine whether laws in each policy area explicitly mention cohabitation or implicitly apply to cohabiters, for example by protecting “household communities” that include cohabiting couples. We then calculate the number of policy areas that explicitly or implicitly mention cohabiters to indicate the extent to which countries have recognized cohabitation in the law.

Next we examine the approach each state takes toward harmonizing the laws between married and cohabiting couples. By comparing our findings across policy areas, we establish whether countries are coherent in their approach. For each policy area, we determine whether the law treats married and cohabiting couples the same, takes an intermediate position, or treats them completely differently. Some countries may provide no privileges for married couples; for example, in Sweden taxes are filed individually. In this instance, we would consider that the law treats cohabiting and married couples the same. Those laws that take an intermediate position often require that cohabiters undertake additional bureaucratic procedures, or the laws apply only to specific groups of cohabiters, such as those with children. The difference between the conditions and procedures across countries may be great. In some countries, it may be easy for cohabiters to gain rights (e.g., by living together for two years), while in other countries it may be difficult (e.g., only by undertaking court proceedings). Therefore, this broad middle category may mask some important differences between how countries approach cohabitation. Nonetheless, because our goal is to provide a general outline of the variation in legal systems across Western European countries, we believe these three categories are sufficient.

Results: Policy areas

Rights and responsibilities during the union

We now analyze the legal treatment of cohabitation in each of the 19 policy areas. To organize the results, we distinguish between policy areas that are relevant during the union, after the union dissolves, after death, and when cohabiters become parents. Table 1 shows policies that generally apply during the union and may influence decisions to enter into marriage. The top entry in a cell shows whether a law explicitly mentions cohabiters or implicitly applies to them, or whether there is no applicable law. The second entry shows whether a law is neutral toward marriage and cohabitation, treats cohabiting couples completely differently from married couples, or takes an intermediate position. Some cells are empty, because policies are legislated on the regional rather than the national level.
Policies relevant during the union are quite disparate, ranging from those that regulate financial issues, such as taxes and maintenance, to those that govern reproductive issues and immigration. Across Table 1, we see no discernible pattern in how governments approach the policy areas. While almost all governments have provided rights to cohabitators in a few areas, such as access to reproductive technology, governments have taken various approaches in other areas. To better understand the approaches across each policy area, we turn to a discussion of each.

The right to declare income tax jointly or use tax rebates (column 1). Countries differ in how their income tax systems treat individuals and families (O’Donoghue and Sutherland 1998). Income tax systems may provide immediate financial incentives to marry. They range from individualized taxation that tends to be neutral toward cohabitation to joint taxation that generally favors marriage (Dingeldey 2001). In individualized tax systems, taxes are declared separately for each individual, irrespective of whether the person is married or cohabiting. England and Sweden belong to this type of system, which in principle does not favor married people over unmarried people.

At the other end of the spectrum lie countries such as Germany and Switzerland, in which joint taxation is restricted to married spouses. In these systems, the income of both spouses is added and in some countries is split by a predefined quotient and then taxed jointly. These systems usually result in marriage being privileged, especially for couples in which one spouse’s income is higher than the other’s, although in Switzerland the advantage may disappear if both spouses’ incomes are high. Austria, Norway, and Spain fall between the two ends of the continuum: tax advantages for married couples, such as joint taxation or specific allowances, are partly available to cohabitators once certain conditions are met. In Spain, for instance, only married spouses can declare taxes jointly. Cohabitators, however, are implicitly covered by legal provisions for unmarried parents, and one of the cohabitators can form a tax community with joint children, which provides certain advantages. Taxation in Austria is based on the individual, but a single-earner tax allowance is available for married spouses. The law also explicitly refers to cohabitators, who under certain conditions are permitted to take advantage of the allowance. In France and the Netherlands registered partners are treated like married spouses in terms of income taxation, and unregistered cohabitators can only partly profit from tax advantages. In France, married spouses and Pacs partners can add their income and then divide it by a quotient that also takes into account the number of children before tax rates are applied. Cohabitators cannot be taxed jointly; however, one of the partners can form a tax unit with joint children. In the Netherlands, income taxation is largely individualized, but for certain purposes joint taxation is possible for married and registered partners. Cohabitators are not automatic joint tax partners, but can apply for joint taxation if they have lived in a joint household for more
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</tbody>
</table>

NOTE: Mention of cohabitation in current law: LE = Law with explicit mention; LI = Law with implicit mention; NL = No law. Distinction between marriage and cohabitation in current policy: N = Neutrality (no difference); D = Treated differently; I = Intermediate position. *No national policy; laws are available only at the regional level.

SOURCE: Policy database compiled from original laws and legal documents, secondary sources, and websites. Further information on sources available on request (B.G.Perelli-Harris@soton.ac.uk).
than six months of the calendar year. Thus, France and the Netherlands treat registered partnerships the same as married couples, but they provide only some benefits to unregistered partnerships.

The right to co-insure a non-working partner in public health insurance systems (column 2). Health insurance in most European countries is organized around the individual, but in some cases the health insurance of one partner may cover a partner not in the labor force. Germany requires that couples be married to include a non-employed partner in health insurance. Other countries such as France, Norway, and Spain explicitly extend public health insurance coverage to unmarried partners, although in Norway this is possible only if cohabiters have children together. Laws in Austria do not mention cohabiters explicitly, but nevertheless one cohabiting partner can provide coverage for another since persons forming a household community can under certain conditions be co-insured in the health insurance of the main insurant. In countries that have introduced a universal right to health insurance, such as Sweden and Switzerland, rights to health care are independent of marital status.

The obligation to maintain a partner financially in case of unemployment and the right to receive social security benefits (columns 3 and 4). In most European countries, married couples are required to support each other financially during the relationship, especially in case of unemployment or withdrawal from the labor force, but cohabiting couples are not. In France and the Netherlands, registered partners have the same obligation to provide for each other as married couples, while unregistered couples do not. Austria, Germany, and Switzerland do not require cohabiters to provide for their partners, unless the woman has recently had a child, in which case men can be required to support the unmarried mother of their child for a certain period of time before and/or after birth.

While in most of our study countries cohabiters are under no legal obligation to support each other financially, social security laws in these countries are based on the assumption that partners will support each other in case of need. In all of our study countries, basic social security payments granted to long-term unemployed persons are means-tested and are not paid if the married or cohabiting partner of the applicant has enough income to support the other. The only exception to this general pattern is Norway, where the law does not explicitly mention that the income of the married or cohabiting partner has to be taken into account when assessing welfare payments; instead, welfare officers use their discretion to decide whether the income of other household members should be taken into consideration (Asland and Waaldijk 2005). In Spain and Switzerland, social security is regulated by subnational regions, and therefore not included in our analyses.

The right to use methods of assisted reproduction and to jointly adopt a child (columns 5 and 6). In some Western European countries, controversy has arisen
over whether cohabiting couples, particularly same-sex couples in registered partnerships, should receive assistance in becoming parents (Cherlin 2009). Nonetheless, most countries allow heterosexual cohabiting couples the same access to reproductive technology as married couples, or allow all women irrespective of marital status to undergo treatment. In Switzerland, however, only specific techniques are available for cohabiters. In Germany, laws do not explicitly refer to cohabiting couples or do not require that women be married to undergo treatment, but the German Medical Association urges that women be married or in stable nonmarital relationships. The result is that women in long-term cohabiting relationships can use assisted reproduction. The joint adoption of a child, by contrast, often remains a privilege of married spouses. Laws in many countries state that unmarried persons may not adopt jointly. Only in England and Spain do laws explicitly state that cohabiters are entitled to jointly adopt a child if they live in an enduring, marriage-like relationship. In the Netherlands, two persons who have lived together for at least three years may jointly adopt a Dutch child, regardless of whether they have officially registered their partnership; however, international adoptions are still restricted to married couples.

The right to acquire a residence permit and citizenship (columns 7 and 8). Laws on immigration and citizenship usually allow foreigners married to citizens of the country to acquire permanent residence and eventually citizenship. These rights have been extended to long-term cohabiting couples in the Netherlands, Norway, and Sweden. In Germany and Switzerland, cohabiters are treated like unrelated persons when they apply for a residence permit or citizenship. Cohabiters in England can apply to live with their partners under conditions very similar to those that pertain to married spouses, but they are treated as unrelated persons in terms of naturalization procedures. In Austria, France, and Spain, a person’s relationship with a citizen can be of relevance when applying for a residence permit, but is not included in naturalization procedures.

Rights and responsibilities after a union dissolves

Although few people plan to end a relationship when they enter into it, the policies regulating dissolution and divorce may still be very influential in the decision whether to cohabit or marry. Some partners may decide to marry to protect themselves in case of union dissolution, particularly after the birth of a child or when not working. On the other hand, the lack of regulation for ending a cohabiting union may be one of the main reasons individuals remain in cohabitation: they do not want to undertake a lengthy and costly bureaucratic procedure if their union ends. Prior personal experience or the experience of someone they know (especially parents) may lead them to choose cohabitation over marriage (Thornton 1991).
The laws that regulate the dissolution of both marital and nonmarital unions vary across countries. Divorce law is well specified in all countries, and each country has its own provisions for no-fault divorce, waiting time, and so on. In this article, we focus on how certain policies treat marriage and cohabitation after a union dissolves. We note that cohabiting couples do not need to take any formal steps to end a relationship. Registered partners, on the other hand, need to notify officials when dissolving their relationship, but usually this is a simple procedure. In fact, this is the primary way in which registered partnerships and marriage differ in the Netherlands: while it is very easy for registered partners to dissolve their unions, it is much more time consuming and expensive for married couples to undertake divorce proceedings.

Even though unregistered cohabiting couples do not need to inform authorities that their union has dissolved, governments have taken a number of steps to help mediate property disputes and provide cohabiting couples with certain rights or responsibilities. In Table 2, we show how governments have either harmonized cohabitation and marriage or continue to distinguish marriage in the following policy areas: alimony, division of property and household goods, and the responsibility to pay each other’s debts. Table 2 indicates that few countries explicitly regulate provisions for cohabiting couples after dissolution. Only registered partnerships in the Netherlands provide similar regulations for married and cohabiting couples in all areas, even though the process of dissolving a registered partnership is much easier than obtaining a divorce. This indicates that, by and large, governments in our study countries have refrained from regulating cohabitating unions upon dissolution.

The division of property and household goods (columns 1 and 2). Similar to the case of divorce law, few laws regulate the division of property after cohabiting unions dissolve. In Austria, England, and Spain, for instance, divorce law does not apply to cohabiting unions, and property disputes are mostly resolved by referring to general property law. Only a few countries have implemented laws to regulate the division of property after the breakup of a cohabiting relationship. In Sweden, long-term cohabiting partners may request mediation in dividing household goods and the joint home upon the request of one of the partners. However, the law does not cover other personal assets, which means it is not as comprehensive as marital property law. Norway has enacted a law on the dissolution of household communities, which, while not explicitly referring to long-term cohabiters, does cover them. Cohabiters in Norway are granted certain rights to claim access to the joint home and some of the household goods. Registered partners in the Netherlands are subject to regulations similar to those applying to married couples. In France, on the other hand, the Civil Code states that each of the Pacs partners remains the sole owner of the property bought with his or her own means before or during the partnership, unless the partners agree that property should be held jointly. In this case, both partners are joint owners of the property bought
during the partnership (with some exceptions), and this property must be divided between them in case of union dissolution.

_The obligation to pay alimony to an ex-partner (column 3)._ In most European countries, unregistered cohabitants are not required to pay alimony to their partners after separation. Exceptions exist if a couple has common children, in which case some countries require that the primary childcare provider receives financial maintenance for a limited period. Despite these exceptions, the general principle is that former unregistered cohabitants do not have a right to claim alimony, which makes this policy area one of the most distinctly dif-
ferent from marital law. Regarding registered cohabitators, only the Netherlands has enacted laws requiring alimony after union dissolution (Boele-Woelki and Schrama 2005). In France, no such requirement exists for Pacs.

The responsibility for debts incurred for the day-to-day needs of the household (column 4). During divorce proceedings, couples have to deal not only with the division of their property, but also with their debts. In most study countries, married couples are jointly responsible for debts that were incurred for the day-to-day needs of the household, such as food, home repairs, or children’s education, even if incurred by only one of the partners. Cohabitators, on the other hand, do not share any of this liability. Only registered partners in France and the Netherlands have the same responsibility for household debts as married couples. In England and Sweden, on the other hand, marriage law does not contain provisions for the joint responsibility for these types of debts. This results in former cohabiting and married partners being treated the same, since, irrespective of union type, individuals are responsible for their own debts.

After the death of a partner

Table 3 presents our results for policies that take effect after the death of one partner. Most countries allow partners to remain in housing after a partner’s death, but overall the rights to inheritance and pensions are more limited.

The right to remain in housing rented by the deceased partner (column 1). Across Western Europe, governments have extended from married spouses to cohabiting partners the right to remain in a deceased partner’s rented home, although the exact conditions differ by country. In some countries, laws explicitly allow the surviving partner to stay in the home, once a minimum period of joint residence is reached. This is the case in France, where Pacs partners are allowed to assume the lease immediately and unregistered cohabitators can assume the lease if they had lived together with their partner for one year. In England, the exact conditions depend on the type of tenancy. Other countries, such as Germany, cover cohabitors implicitly, by allowing those in a joint household to assume the lease. In Switzerland, however, the heirs of the deceased are responsible for the continuation or termination of the lease, and cohabitors are allowed to remain in rented housing only if they are named as heirs in a will.

Entitlement to inheritance and reduced inheritance tax (columns 2 and 3). If a married spouse dies, the surviving spouse is automatically entitled to inherit property without a will. In many European countries such as Austria, Germany, and Spain, cohabitors do not share this automatic right to inherit. They are entitled to receive a share of their partner’s estate only if specified in a will. Nonetheless, some countries have started to extend inheritance
rights to cohabitators. In Norway, cohabitators who have been together for at least five years or who have joint children have certain rights to inherit from each other. Limited claims to the deceased person’s property can also be made in England and Sweden and by unregistered cohabitators in the Netherlands. Registered partners in the Netherlands have the same inheritance rights as married spouses; in France, Pacs partners have rights only to the joint home.

<table>
<thead>
<tr>
<th>Country</th>
<th>Right to remain in rented apartment</th>
<th>Inheritance rights</th>
<th>Inheritance tax</th>
<th>Survivor’s pension</th>
</tr>
</thead>
<tbody>
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<td>NL</td>
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<td>Unregistered</td>
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</tbody>
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**NOTE:** Mention of cohabitation in current law: LE = Law with explicit mention; LI = Law with implicit mention; NL = No law. Distinction between marriage and cohabitation in current policy: N = Neutrality (no difference); D = Treated differently; I = Intermediate position. *No national policy; laws only available at the regional level.

**SOURCE:** Policy database compiled from original laws, legal documents, secondary sources, and websites. Further information on sources available on request.
and to receive their share in the property held in joint ownership, unless stipulated otherwise in a will or Pacs contract.

The lack of inheritance in many countries leaves cohabitors in a vulnerable position if the deceased was the sole owner of the home: the surviving partner might not have the right to continue to live there. If both cohabitors were owners of the home, the surviving partner has certain rights to the property, but may still have to compensate other legal heirs or wait until children are of legal age and can make decisions about their property. In some countries such as Austria, however, specific laws allow cohabitors to acquire full ownership of joint property in case of a partner’s death.

Cohabitors also have to pay higher inheritance taxes than spouses or family members in some countries, for example in Germany. The situation is different in Austria and Sweden, where the inheritance tax has been abolished. In other countries, preferential inheritance tax rates for married couples are also available to cohabitors. For example in France, Pacsés, like married spouses, do not have to pay inheritance tax, while unregistered cohabitors do. In Norway, tax advantages are granted to cohabitors who have lived together for at least two years, who have previously been married to each other, or who have a child together. In Switzerland, each canton defines inheritance tax differently, which means we cannot include Switzerland in this policy aspect.

The right to receive a survivor’s pension (column 4). Survivor’s pensions are paid to support widows or widowers who were dependent on their deceased partner’s income before his or her death. Cohabitors generally have no right to receive a survivor’s pension under state pension schemes in Austria, England, Germany, and Switzerland, although private pension schemes may provide coverage for other types of dependents. In France, not even Pacs partners are allowed access to survivor’s pensions. The situation is different in Norway and Sweden, where cohabitors can receive a survivor’s pension if they have children together. In Spain, cohabitors can receive a survivor’s pension if certain requirements are met relating to length of the union and its registration. Finally, in the Netherlands, legal provisions on survivor’s pensions are neutral with respect to union status; cohabitors, registered partners, and married spouses have to meet the same requirements to be eligible for pensions. In short, across our study countries cohabitors remain in a disadvantaged position after a partner’s death.

The relationship between parents and children

As we noted above, most European countries have made substantial strides in allowing unmarried fathers to establish paternity and attain joint custody. However, as shown in Table 4, the status and rights of married and unmarried cohabiting fathers have not been completely harmonized in any
country we study. Cohabiting fathers must undertake extra steps to establish paternity and/or apply for joint custody, while married fathers automatically attain both.

The establishment of paternity (column 1). In all of our study countries, cohabiting fathers can establish paternity by officially recognizing the child; however, the procedure is not automatic as it is for married parents, and all cohabiting parents must meet additional requirements. Legal policies in all countries implicitly or explicitly refer to cohabitation, and an intermediate

### Table 4 Whether cohabitation is explicitly or implicitly mentioned in the law, and overall approach to cohabitation and marriage for policies concerning cohabiting fathers

<table>
<thead>
<tr>
<th>Country</th>
<th>Paternity</th>
<th>Joint custody</th>
<th>Family name</th>
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<tbody>
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<td>England</td>
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**Source:** Policy database compiled from original laws, legal documents, secondary sources, and websites. Further information on sources available on request.
position obtains between legal treatment of cohabiting parents and married parents. What the table does not show, however, is how difficult it is to establish paternity in many countries. The differences in procedures can be substantial. In Germany and the Netherlands, unmarried mothers are required to provide consent. In Norway, cohabiting fathers must submit additional forms, but if parents are registered at the same address, the law explicitly states that the mother’s approval is not necessary. In Sweden, the recognition of paternity has to be approved not only by the mother, but also (at least nominally) by the Social Welfare Board. In the Netherlands, the law explicitly distinguishes only between married and unmarried couples, regardless of partnership registration. Registered partners are treated the same as unregistered cohabiters: paternity is not established automatically, but has to be established with a certificate of recognition. The situation is similar in France.

**Joint custody (column 2).** The policies pertaining to joint custody exhibit greater variation than those for the establishment of paternity, but again, cohabiting fathers in all countries are provided at least some of the rights available to married fathers. In Norway, the law states that cohabiting parents automatically have joint custody once paternity is established. In the Netherlands, the law states that fathers in registered partnerships automatically receive joint custody if paternity has been established. The law in France does not explicitly say that Pacs couples achieve joint custody if paternity is established, but instead all unmarried fathers automatically achieve joint custody if paternity is established within one year. In England and Spain, all unmarried fathers automatically receive joint custody if paternity is established, so cohabiters are implicitly covered. In Austria, Germany, and the Netherlands, a separate application is required for unmarried fathers to attain joint custody, and this may require the mother’s consent. The Civil Code in Austria states that cohabiting parents can apply for joint custody, but only after undertaking additional procedures. Finally, parents in Switzerland must contract a formal agreement outlining the division of care and financial responsibility for the child; this contract is then evaluated by guardianship authorities who can grant joint custody if they deem it to be in the best interests of the child.

**Transferring the family name (column 3).** Countries also vary as to whether unmarried fathers can transfer their family name to their children. In most countries, couples can jointly decide which surname the child receives, especially if paternity has been established. In Austria, a child born to unmarried parents receives the mother’s surname, and couples can officially change the child’s name only after the father has acknowledged paternity. In Switzerland, only a married father can give his surname to his child; otherwise the child receives the mother’s surname.
Quantity, approach, and coherence of policies

Figures 1 and 2 summarize the results from Tables 1–4 to show the overall quantity, approach, and coherence of policies related to marriage and cohabitation in each country. Figure 1 shows the number of policy areas that explicitly mention, implicitly mention, or do not mention cohabitation in legislation. Note that Spain and Switzerland have no national legislation for certain policy areas, because this legislation is passed on the regional level. Figure 2 shows the number of policy areas that treat cohabitating couples the same as married couples, differently from married couples (usually privileging marriage), or take an intermediate position.

Figure 1 orders countries by the number of policies that explicitly or implicitly refer to cohabitation. The countries range from those that mention cohabitation in most policy areas to those that rarely refer to cohabitation. Note that with the exception of Switzerland, all of our study countries explicitly mention cohabitation in at least one policy area, but no country explicitly includes cohabiters in all policy areas. Overall, the lack of legislation on cohabitation implies that the countries in question still consider marriage and cohabitation to be fundamentally different, because marriage requires a greater degree of legislation. The variation across countries means that

FIGURE 1  Number of policy areas in which cohabitation is explicitly, implicitly, or not mentioned in the law, by country

NOTE: R = registered cohabitation or Pacs; U = unregistered cohabitation.

a Laws available only at the regional level.

SOURCE: Policy database compiled from original laws, legal documents, secondary sources, and websites. Further information on sources available on request.
cohabitation appears to be higher on the political agenda in some countries than in others.

Although governments may explicitly or implicitly legislate on cohabitation, they still may not treat cohabiters the same as married couples. Therefore, we also summarize the approach countries take in various policy areas to assess the coherence of each country’s policies. A comparison between Figures 1 and 2 reveals some differences between the quantity and coherence of policies that regulate cohabitation. The countries in Figure 2 are ordered by the number of policy areas that treat cohabiters the same as or somewhat similar to married couples. While the countries fall roughly in similar positions on the continuum as in Figure 1, the order is different, indicating that the association between number of policies and approach is not exact. As in Figure 1, Figure 2 shows that no country has equalized the rights of unregistered cohabiters and married spouses in all policy areas; instead the policies are a patchwork of legal regulations that provide rights to cohabiters in some domains but not others. Also, the countries do not appear to cluster together, with clear distinctions between groups of countries; instead, the differences between countries are gradual. We now discuss specific countries according to where they fall along the continuum.

Registered partnerships in France and the Netherlands. By creating a special category for registered partnerships, the Netherlands has moved the farthest

NOTE: R = registered cohabitation or Pacs; U = unregistered cohabitation.
*Laws available only at the regional level.
SOURCE: Policy database compiled from original laws, legal documents, secondary sources, and websites. Further information on sources available on request.
in equalizing cohabitation and marriage. We see from Figure 1 that registered cohabiting couples are explicitly mentioned in all but three policy areas. The Netherlands has equalized the legal status of married and registered partners in almost all policy areas. Indeed, this was the goal of the Dutch government in passing the Act on Registered Partnerships in 1998. The government wished to acknowledge the social and economic importance of cohabiting relationships, as well as to provide legal recognition for same-sex couples. The Dutch Constitution does not explicitly protect a certain type of family or marriage; instead, it prohibits discrimination in general and promotes tolerance and neutrality (Boele-Woelki and Schrama 2005).

However, it is important to remember that registered partnerships are easier to dissolve than marriage. In addition, married couples can convert their marriages into registered partnerships, facilitating an easier divorce without court intervention. Married couples who want to divorce clearly take advantage of this measure: more than half of all registered partnerships initiated in 2003 were former marriages (Boele-Woelki and Schrama 2005). Apparently, married couples who wanted to divorce contributed more to the rise in registered partnerships than cohabiting couples who registered their partnerships for other reasons, such as the rejection of the formal institution of marriage. Also, although the Netherlands sought to provide rights and protection to cohabiting couples, many such couples still did not register their partnerships. According to a survey conducted in 2003, only half of cohabiting couples had registered their partnerships (Poortman 2010). Cohabiting couples may be unaware of the benefits of registering their partnerships, both for themselves and their children, or they simply may not bother to register their partnerships (Schrama 2008). On the other hand, cohabiting couples may not register their partnerships precisely because they do not want their relationship to be regulated. Thus, the Dutch example shows that even though a country may implement a system for registering cohabitation with the goal of providing protection to all families, a significant proportion of families can still remain outside of the law.

As we can see from Figure 2, French registered partnerships, or Pacs, do not offer nearly as many benefits as Dutch registered partnerships, but also do not require the same obligations after union dissolution. In France, registered cohabitation was clearly a by-product of the initiative to provide legal status to same-sex couples. The French government was reluctant to acknowledge same-sex marriage and only after many controversial debates instituted Pacs in 1999 (Martin and Théry 2001). Note that Pacs mainly regulate couples, not the relationship between parents and children. Pacs are not explicitly mentioned in laws on paternity and custody, and if Pacs are provided rights in these areas, it is because the laws apply to unmarried parents. On balance, the French government continues to emphasize the difference between marriage and Pacs by considering marriage the superior institution (Bradley 2001; Borrillo and Fassin 2004). While allowing Pacs,
France has been reluctant to regulate unregistered cohabitation or harmonize it with marriage, as is evident in Figures 1 and 2. The government still primarily relies on the Napoleonic adage, “Cohabitants ignore the law, so the law ignores them.”

**Norway and Sweden.** As indicated in Figures 1 and 2, Norway and Sweden have also made considerable strides toward equalizing cohabitation and marriage. Although Sweden explicitly legislates in fewer areas, it provides similar rights to cohabitators and married couples in a greater number of policy areas than France does for its Pacs. Indeed, Sweden has maintained a position of neutrality for decades. The Swedish government was one of the earliest in Europe to state that new legislation should be neutral with respect to different moral views and forms of living together (Bradley 2001). As Sweden’s social welfare state developed, the government often focused on the individual rather than the married couple, especially with regard to social services and income tax. In general, Sweden actively supports gender equality and does not support the male breadwinner model; these stances may have led women to become more economically independent and less reliant on the legal institution of marriage. Nonetheless, because the level of commitment in a cohabiting relationship is regarded as lower than in marriage, legislators have not sought to completely harmonize the laws on marriage and cohabitation. Therefore, important differences between marriage and cohabitation remain, for example in terms of inheritance and pensions.

Norway has had a similar view toward providing rights to individuals and alternative family forms, but the country has experienced much more debate about instituting comprehensive policies that provide cohabitators with certain rights (Ryrstedt 2005a). Norway’s main justification for legal action has been to protect the weaker party (Bradley 2001), adjust laws to changing family behaviors, and “avoid unjust differences between married and cohabiting couples” (Noack 2001). The focus has been on protecting cohabiting couples with children and, to a lesser extent, on protecting long-term relationships that are similar to marriage (ibid.). Although there has been some opposition to regulating cohabitation, most issues regarding cohabitation have been solved pragmatically (Ryrstedt 2005a).

**Austria, England, and Spain.** Figures 1 and 2 show that Austria, England, and Spain roughly fall in the middle of the continuum. The number of policy areas that refer to cohabitation indicates that policymakers in these countries have been more reluctant to regulate cohabitation than their counterparts in Scandinavia. The policy areas that mention cohabitation are inconsistent; cohabitators share the rights of married spouses in some policy areas, while in others their rights and obligations are different. Laws have not been systematically adapted to account for the increasing number of cohabiting relationships; rather, they have been changed in a piecemeal fashion.
The lack of a coherent approach to legislating cohabitation in England is attributable to the government’s ambivalence and to the common-law tradition (Barlow 2004). According to Barlow (2004: 57), “While toying with American-style pro-marriage policy, [the government] has also been prepared to take on an inclusive and functional approach to cohabitants on an ad hoc basis....” The English common-law tradition, which adjudicates individual cases through case law and statutes, has resulted in a confusing legal framework for cohabitators. This often leads to inconsistent approaches across policy areas, resulting in few protections for the weaker party.

Spain displays a mix of conservative family values paired with a progressive political system. The transformation in the political system after the death of Francisco Franco and the introduction of a new constitution in 1978 provided policymakers with a unique opportunity for radical reform. During this period, policymakers made some of the most radical changes to family law in Europe, for example allowing cohabiting couples to jointly adopt, which is rare in Europe (González Beilfuss 2005). The reforms, however, mostly concern the relationship between parents and children by providing equality between unmarried and married parents. The rights and obligations of cohabiting partners toward each other have not been systematically harmonized with those of married couples. On the national level, the legal situation is haphazard, with cohabitation mentioned in some legal areas but not others (Cadena Serrano 2002). Given this lack of coherent legislation, some regions of Spain have started to legislate cohabitation on their own, even providing systems of registration. As a result, cohabitators in Spain face a confusing legal situation (González Beilfuss 2005).

Until the mid-twentieth century, Austria had one of the highest levels of nonmarital childbearing in Europe. This was particularly so in regions where cultural practices of inheritance prohibited young couples from marrying. In addition, Austria has provided generous support to single mothers since the 1960s (Kytir and Münz 1986). Today, however, the state reserves many legal rights for married couples and partially favors the male breadwinner model, even though the constitution does not explicitly protect marriage as it does in Germany.

Germany and Switzerland. Germany and Switzerland fall farthest to the right on Figure 2, indicating that cohabitation and marriage are treated differently in most policy areas. Cohabitation is rarely explicitly mentioned in the policy areas we analyzed, and legal differences between marriage and cohabitation remain pronounced. Germany’s reluctance to legislate on cohabitation may be related to the privileged position of marriage, protected in the constitution and enshrined in income tax law. Western Germany has traditionally favored the male breadwinner model and encouraged women’s role in the household and in raising children. The constitution, which originated in West Germany, requires that all laws support marriage and avoid
privileging alternative family forms (in welfare regulations, for example, cohabitors have the same obligations to provide for their partners as married partners) (Konietzka and Kreyenfeld 2002). These laws may be buttressed by conservative family values, which encourage women to remain at home to care for children, especially in the western regions. Therefore, changing legislation to incorporate cohabitation may be much more difficult in Germany than in other countries.

Finally, Switzerland appears to be the most conservative country in our study with respect to equalizing marriage and cohabitation. The country adheres to traditional family values, and policymakers consider marriage to be the primary institution for permanent partnership and childbearing (Charton 1999). Unlike in other countries, the state provides few rights to cohabiting fathers. Swiss family law explicitly discourages childbearing within cohabitation by requiring cohabiting fathers who wish to establish paternity and joint custody to negotiate difficult bureaucratic obstacles. Unmarried fathers are also unable to transfer their surname, although recently the government has been debating whether this should be changed (Bundesamt für Justiz 2011). Le Goff and Ryser (2010) surmise that the lack of parental rights is one of the reasons for the low proportion of births within cohabitation, even though the country has relatively high rates of premarital cohabitation. Thus, Switzerland appears to be a case where state policies influence the decisions to exit cohabitation and enter marriage primarily when children are involved.

Conclusion

Much of the debate on the underlying reasons for the increase in cohabitation and the decline in marriage refers to the “deinstitutionalization” of marriage (Lauer and Yodanis 2010), or the weakening of social norms that define couples’ behavior (Cherlin 2004). One of the most important ways in which society regulates and proscribes institutions is through laws and policies. Laws and policies on cohabitation are critical in determining whether the institution of marriage remains distinct from the institution of cohabitation. Our findings suggest that although cohabitation has acquired some legal recognition in every country studied, and in some countries cohabiters have even acquired many of the same rights and responsibilities as married couples, cohabitation and marriage remain distinct legal institutions.

The nine Western European countries we studied differ widely in the degree to which cohabitation has been regulated. Multiple legal approaches to cohabitation are found throughout Europe. France and the Netherlands recognize cohabitation, but primarily by formalizing unions as registered partnerships. These countries mention registered partnerships in the greatest number of legislated policy areas, and registered cohabitation is most similar to marriage. Norway and Sweden, on the other hand, regulate all cohabiting relationships that meet certain requirements. These countries fall toward
the high end of the continuum that harmonizes cohabitation and marriage; however, gaps in legislation prevent complete legal harmonization. Austria, England, and Spain have incoherent policy approaches toward cohabitation, with cohabitators provided rights or obligations in some areas, but not others. Finally, Germany and Switzerland are on the far right of the continuum and have been the most reluctant to equalize cohabitation and marriage or even to recognize cohabitation.

We urge caution in relying too heavily on the precise order of the countries or the exact number of policy areas described. In particular, our “intermediate” policy category with respect to the legal distinction between marriage and cohabitation is very broad and does not reflect the substantial variation within this category. We emphasize that policy dimensions do not weigh equally in their influence on couples’ decisions related to union formation; some dimensions may be relatively minor (e.g., the right to adopt), while others may prompt most couples to marry rather than cohabit (e.g., tax incentives).

Our overview has elucidated the meaning of cohabitation and the role of governments in regulating this dynamic form of relationship. Many studies discussing the meaning of cohabitation question how it should be defined and whether it is an alternative to marriage or an alternative to remaining single (Rindfuss and VandenHeuvel 1990; Manning and Smock 2005; Heuveline and Timberlake 2004; Kiernan 2004; Perelli-Harris et al. 2012). Our findings suggest that one way to define cohabitation is through the law: Legal recognition imbues the behavior with a certain level of credence and legitimacy. Most governments that acknowledge cohabitation attempt to define it (for example, stipulating that the relationship must have lasted two years); it is difficult to regulate something that cannot be defined. Nonetheless, governments may have inconsistent definitions of cohabitation from one policy area to another (Noack 2001). Thus, while laws provide one way of defining cohabitation, they are by no means sufficient for understanding what cohabitation is. As Manning and Smock (2005: 1001) state, “we need to acknowledge that families are defined by individuals and are not always legal institutions.” And, although most countries in our study have moved toward providing cohabiting couples with greater rights and responsibilities, it is still difficult to know whether the law should regulate these types of relationships, given the uncertain and fluid nature of cohabiting relationships and, indeed, the desire of many couples to have a relationship free from legal obligations.

Finally, changing policies to provide more rights and responsibilities to cohabitators challenges the legal uniqueness of marriage, but it can also fundamentally change marriage’s social and economic function. In some countries, legal recognition of cohabitation has been fundamental to a societal acceptance of the behavior and its increased practice; people feel less pressure to marry if the legal and financial benefits to marriage dwindle. As a result, the role of marriage in these societies may take on a different social meaning, or...
marriage may be related to less tangible benefits such as status or emotional commitment to the relationship. Recent studies show that although marriage may be postponed, eventually most people marry (Andersson and Philipov 2002), and indeed most people want to marry, even in places with high levels of cohabitation, such as Sweden (Bernhardt 2004). If these trends and propensities persist, the expansion of policies to regulate cohabitation may have little effect on marriage rates in the long run.

Notes

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1 Although the United Kingdom is a sovereign state, Scotland and Northern Ireland (as well as the Isle of Man and the Channel Islands) have distinct family law jurisdictions and family law that partly differs from that in England and Wales. In this article, we focus on the legal situation in England and Wales, but we refer only to England for brevity.

2 In the case of England, a married couple’s allowance is available, but this is of relevance for few couples since it applies only if at least one of the spouses was born before 6 April 1935.

3 Nonetheless, cohabitators may be able to conceal their relationship in order to receive welfare or unemployment benefits, a practice that has been suggested for eastern Germany (Konietzka and Kreyenfeld 2002).

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