

Two Treatments of Pluralism: Canada and the United States

Margaret F. Brinig

Most of my interactions with Jürgen Backhaus over the past 20 years stemmed from his editorship of the *European Journal of Law and Economics*. Some of these involved articles that were for some reason too controversial to find ready acceptance elsewhere. For example, one, coauthored with economist Michael Alexeev was entitled *Fraud in Courtship: Annulment and Divorce*,¹ and maintained that there is an optimal amount of premarital fraud. Even more provocative, perhaps, was a sociobiology piece with Douglas Allen, *Sex, Property Rights and Divorce*,² providing a theoretical and empirical explanation for the “7-year itch.” Perhaps after taking these chances on me he felt he could ask me to write for him as well as to referee for the journal, as I do quite regularly. At Jürgen’s invitation, I therefore responded to a piece bemoaning elimination of a law requiring equality of housework caused by the reunification of Germany.³ Finally, I had the pleasure of his soliciting a chapter from me on family law for the *Elgar Companion*.⁴ So it is somewhat in the spirit of this rather inventive exchange that I submit this contribution to the collection celebrating him.

Fritz Duda Family Professor Of Law, University of Notre Dame. Thanks are due to Hazel Thompson-Ahye and the Caribbean Regional Meeting of the International Society for Family Law as well as attendees of my keynote address at the Canadian Law and Economics Association meeting in 2010.

¹Margaret F. Brinig and Michael V. Alexeev, *Fraud in Courtship: Annulment and Divorce*, 2 *European Journal of Law and Economics* 45–63 (1995).

²Douglas W. Allen and Margaret F. Brinig, *Sex, Property Rights and Divorce*, 5 *European Journal of Law and Economics* 211 (1998).

³Margaret F. Brinig, *Equality and Sharing: Views of Households Across the Iron Curtain*, 7 *European Journal of Law and Economics* 55 (1998).

⁴Margaret F. Brinig, *Family Law*, Chap. 4 of the *Elgar Companion to Law and Economics* (Jürgen Backhaus, ed., 2003).

M.F. Brinig (✉)

School of Law, University of Notre Dame, Notre Dame, IN, USA

e-mail: Margaret.brinig.1@nd.edu

Canada and the United States, while similar in many ways, diverge substantially when it comes to family law. Canada's marriage and divorce law is national, while the U.S. family law is largely governed by state law. This makes rules in the United States heterogeneous compared to those in Canada, and thus easier to tailor to the preferences of people living in the various states.

More important for this paper, Canada's approach to pluralism, dealing with nontraditional family forms, differs as well. In C-23, the Modernization of Benefits Act, Canada gave unmarried couples (and their children) the same federal benefits and obligations as to married couples.⁵ Canada now recognizes same-sex marriages as well as granting many benefits to heterosexual couples who do not marry.⁶ These legal changes were also reflected in Canadian writing on the family. In 2001, the Canadian Law Commission after much study released a report called *Beyond Conjugal*, which included the words, "The state cannot create healthy relationships; it can only seek to foster the conditions in which close personal relationships that are reasonably equal, mutually committed, respectful and safe can flourish."⁷

In contrast, states in the United States consistently maintain differences between married and unmarried couples,⁸ and the federal government has enacted legislation favoring marriage and confining it to a man and a woman (while allowing states to do so).⁹ The legislation, as in Canada, is reflected in both academic studies and political documents. For example, in the same year as *Beyond Conjugal*, University of Chicago demographer Linda Waite published her much discussed *The*

⁵Modernization of Benefits and Obligations Act (S.C. 2000, c. 12). However, the 2013 case of *Quebec (Attorney General) v. A.*, 2013 SCC 5 (2013), in a 5-4 decision, allowed Quebec to maintain its own separate status for what it calls "de facto" couples. While they are allowed some relief under restitutionary principles in egregious situations, and while child custody and support are treated the same way as for dissolving marriages, most property and support regimes are not. They do have access to the substantial federal benefits provided all couples by C-23, and of course may contract between themselves. The majority grounded its reasoning on the decision to recognize the partners' autonomy and, in part, upon Quebec's formal legal equality between the sexes.

⁶C-38, An Act respecting certain aspects of legal capacity for marriage for civil purposes, 38th Parliament - 1st Session (2005). The United States has been recognizing such marriages piecemeal, especially following the Supreme Court case of *United States v. Windsor*, 670 US—, 133 S.Ct. 2675 (2013).

⁷*Id.* at xxiii.

⁸The closest exception that takes into account heterosexual relationships is Washington's "meretricious relationships" law. A summary of the law treating unmarried couples in the United States can be found in the American Law Institute, *Principles of Family Dissolution*, Reporter's Notes to Chap. 6: Analysis and Recommendations (2002), at 914–16, and Comments to § 6.03, *id.* at 918–19; as well as in Ira Ellman, Paul Kurtz & Elizabeth Scott, *Family Law: Cases, Text, Problems* 919–82 (5th ed. 2009).

⁹The Defense of Marriage Act, Pub.L. 104–199, 110 Stat. 2419, enacted September 21, 1996, 1 U.S.C. § 7 and 28 U.S.C. § 1738C. The Act was overruled by *Obergefell v. Hodges*, 576 U.S. – (2015). At least in the United States, recognizing same-sex marriages does not necessarily reflect an adoption of the policy that marriage does not matter. See, e.g., *Baskin v. Bogan*, 766 F.3d 648, 658–59, 663 (7th Cir. 2014)(stressing advantages of marriage recognition for adopted children).

*Case for Marriage: Why Married People are Happier, Healthier, and Better Off Financially.*¹⁰ President Obama, while taking a progressive stance on national health care, has also touted marriage in his *Audacity of Hope*¹¹ (2006).

Finally, preliminary research shows that marriage education workshops can make a real difference in helping married couples stay together and in encouraging unmarried couples who are living together to form a more lasting bond. Expanding access to such services to low-income couples, perhaps in concert with job training and placement, medical coverage, and other services already available, should be something everybody can agree on¹²

In summary, the difference between the two treatments is that Canada supports a diversity of relationships positively (through providing for financial assistance and legal recognition) and through its public policy. The United States, while tolerating most family forms,¹³ formally recognizes only marriage and adoption, leaving adults in heterodox relationships to private support or contract.

In both these North American jurisdictions, people live in a variety of family forms. While most heterosexual couples marry, some do not. This paper considers the effects of the differing policies on young people in two minority groups, the Québécois in Canada and African-Americans in the United States, both of which groups de facto eschew formal marriage.¹⁴ Both are relatively impoverished groups, and both historically have suffered discrimination and been underrepresented among the power elites. Yet despite these surface differences, the two groups diverge in terms of the mental health of their youth, and quite notably in terms of the rate at which they commit suicide. This paper will attempt to portray these similarities and differences as well as propose several reasons for the differing results.

¹⁰(New York: Broadway, 2001). As the title implies, Waite presented studies showing that married couples, holding other sociodemographic factors constant, perform better than do their single counterparts.

¹¹The *Audacity of Hope: Thoughts on Reclaiming the American Dream* (Crown Pub. New York, 2006).

¹²Id. at 334.

¹³*Lawrence v. Texas*, 539 U.S. 558 (2003), disallowed criminalization of sexual activities between consenting adults that do not harm others. The Court wrote this would not include bigamous, polygamous, or incestuous relationships, nor would its analysis require same-sex marriage. *Obergefell v. Hodges*, 576 U.S. – (2015) held that same-sex couples had a constitutional right to marry.

¹⁴As with all such statistical and demographic studies, there are of course exceptions. Some Québécois and African-Americans do marry; some are wealthy; some have reached the apex of power in their countries (such as Pierre Trudeau and Jean Chrétien in Canada and of course Barack Obama in the United States), and the vast majority of their youth do not commit suicide. On the other side of the coin, some wealthy, married, and privileged Americans and Canadians produce youth with problems, including suicide.

1 A Portrait of the Family in Contemporary Quebec and for African-Americans

While a minority of Canadians¹⁵ are identified as Québécois,¹⁶ Quebec contains a disproportionate percentage of the cohabiting couples and single-parent families in Canada.¹⁷ In 2009, nearly half the couples in the province were unmarried,¹⁸ and more than half the births in Quebec were to unmarried mothers.¹⁹ About 31.5 % of households live in “common law” unions compared to 15.7 % for all of Canada counting Quebec, or 9.2 % without it.²⁰ In Quebec, as in other provinces and in the United States, the United States, cohabiting relationships are only half as stable as are marital ones (Table 1).²¹

Nor has this difference in instability changed over the years, even though the percentage of cohabiting couples in the province is allegedly the highest in the world.²² Quebec also boasts a higher divorce rate than the other provinces in Canada, 49.9 % by age 50 (Fig. 1 and Table 2).²³

¹⁵That is, about 23 % according to the 2014 Canadian Census. See Statistics Canada Summary Tables, Population by marital status and sex, by province and territory (Quebec, Ontario, Manitoba, Saskatchewan), available at <http://www.statcan.gc.ca/tables-tableaux/sum-som/101/cst01/famil01b-eng.htm> (March 24, 2015). This shows the population of Canada as 35,540,419, with Quebec’s as 8,214,672.

¹⁶This group is defined for purposes of this paper as those who live in Quebec, speak French, and are white. It therefore does not include Caribbean immigrants to Montreal, who may also speak French, nor French Canadians living in Newfoundland or British Columbia (Arcadians), nor the small Anglophone population (about 10 %) who live in the province. The linguistic breakdown is available at <http://www.statcan.gc.ca/tables-tableaux/sum-som/101/cst01/demo11b-eng.htm> (March 24, 2015).

¹⁷See generally Zheng Wu, Economic Circumstances and the Stability of Nonmarital Cohabitation, Cat. 9870, available at <http://www.statcan.gc.ca/pub/75f0002m/75f0002m1998010-eng.pdf>, at 20. For the relative numbers, see <http://www.imfcanada.org/issues/canadian-families-global-context> (last visited March 24, 2015). The percentage living in common law couples in Quebec is 31.5 %, and unmarried 16.6 %. For Canada not including Quebec, the percentage living in common law couples is 9.2 %, and unmarried 3.3 %.

¹⁸47.3 %, adding together the two categories of unmarried in footnote 18 found in ZHeng Wu.

¹⁹59.3 %, according to Statistics Canada, Table 102-4506, 2009.

²⁰<http://www12.statcan.gc.ca/census-recensement/2011/as-sa/98-312-x/2011001/tbl/tbl2-eng.cfm> (computations are mine, March 24, 2015).

²¹France-Pascale Menard, What Makes It Fall Apart? The Determinants of the Dissolution of Marriages and Common Law Unions in Canada, 2 McGill Soc. Rev. 59, 68 & Fig. 1 (2011).

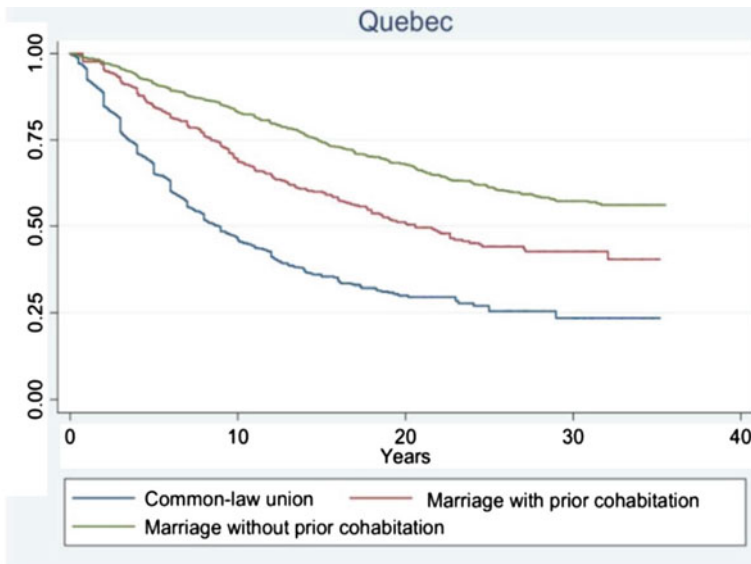
²²Dana Hamplová, Céline Le Bourdais and Évelyne Lapierre-Adamcyk, Is the Cohabitation-Marriage Gap in Monday Pooling Universal? At 27 and Table 2, available at [http://iussp.org/sites/default/files/event_call_for_papers/Money%20management%20\(Hamplova%20et%20al\).pdf](http://iussp.org/sites/default/files/event_call_for_papers/Money%20management%20(Hamplova%20et%20al).pdf). The assertion about the world is made id at page 3, attributed to Statistics Canada, 2012.

²³Vanier Family Institute, Oct. 26, 2011, Fascinating Families, Four in Ten Marriages End in Divorce.

Table 1 Probability for Women to Separate, by Type of First Union, Quebec 2006

	Quebec		Other provinces	
	50–59 years	30–39 years	50–59 years	30–39 years
Probability for women to go through at least one separation	33.8	45.8	30.5	40.6
According to whether the first union was ...				
Marriage	30.6	26.8	30.2	30.7
Common law	64.8	55.3	60.4	66.3

General Social Survey—Cycle 15—Changing Conjugal Life in Canada, at 9 and Table 1 (2002)
 Source General Social Survey, Statistics Canada, 2006



Source: General Social Survey, Statistics Canada, 2006 (with person-level weights)

By: France-Pascale Ménard
 McGill Sociological Review, Vol. 2, April 2011

Fig. 1 Union dissolution in Quebec, by union type (time-varying)

As previously indicated, the story for African-Americans looks much the same. In 2010, 25 % of African-American, or Black, women over 35 had never married (compared to 7 % for white women),²⁴ and in 2008, 71.8 % of all births in this

²⁴Diana B. Elliott, Kristy Krivakas, Matthew W. Brault and Rose M. Kreider, Historical Marriage Trends from 1890–2010: A Focus on Race Differences, SEHSD Working Paper Number 2012-12 and Fig. 5, available at <http://www.census.gov/hhes/socdemo/marriage/data/acs/ElliottetalPAA2012paper.pdf> (March 23, 2015)

Table 2 Cumulative percentages of separation 12 years after the beginning of the union, according to union type and cohort, Quebec and other Canadian provinces

Union cohort	Cohabiting union ^a		Direct marriage	
	Quebec	Other Canadian provinces	Quebec	Other Canadian provinces
1970–1979	41.6	47.8	13.8	16.4
1980–1989	47.0	44.6	18.8	17.5
1990–1999	49.2	46.1	24.7	16.2

Source Life tables derived from statistics Canada, 2006 General Social Survey on Family Transactions, cycle 20, Public Use Microdata files

^aUnion started as a cohabitation, transformed or not into a marriage

group occurred outside marriage.²⁵ While the single-mother-headed family has occurred for some time among the African-American population, as in Quebec, it is far from stable. Even at the end of 3 years, couples remain together only slightly more than half the time, while at the end of 5 years, the number of intact relationships has declined to only 26 % (Figs. 2 and 3).²⁶

While short-lived relationships are painful for those involved when they end, what is more important is that children in them will experience disruption in their living patterns. This holds true both in “common law” families in Quebec and among cohabiting African-Americans in the United States (Figs. 4 and 5).²⁷

How old is the child likely to be when the parents separate?

Again, among African-Americans, the result is similar. According to a study based on the National Survey of Family Growth, three-fifths of Black children will no longer be living with both parents at age 5.²⁸ This is more than twice as high a

²⁵6.5 million couples of all races cohabited in the United States in 2007. America’s Families and Living Arrangements: 2007. The last figures for births appeared in the 2012 Statistical Abstract, Tables 80 and 85. http://www.census.gov/compendia/statab/cats/births_deaths_marriages_divorces.html (March 23, 2015).

²⁶Marriage and Cohabitation in the United States, Fig. 15, based on the National Survey of Family Growth, Cycle 6 (2002)(including childless couples), Table 18. See comparable numbers from the relatively poor, urban families in the Fragile Families Study, at Robert A. Hummer and Erin R. Hamilton Race and Ethnicity in Fragile Families, 20 Future of Children 113, 119 and Fig. 4 (2010) (showing higher rates of breaking up and lower rates of staying married for African-American couples at 3 and 5 years after the birth of a child, when parents cohabited at the child’s birth). The Fragile Family disruptions are less likely than for childless couples, for “Cohabiting unions in which children are born tend to last longer than those that are childless, but they still remain significantly more unstable than marriages.” Valerie Martin, Céline Le Bourdais & Evelyne Lapierre-Adamcyk, Stepfamily instability in Canada—The impact of family composition and union type, 23 Journal of Family Research 196, 197 (2011).

²⁷See, e.g., Sara McLanahan and Audrey Berk, Parental Relationships in Fragile Families, 20 The Future of Children 17 (2010).

²⁸Wendy D. Manning, Pamela Smock and Deborun Majumdar, The Relative Stability of Cohabiting and Marital Unions for Children, 23 Population Research and Policy Review 135, 146 (2004). Note that the terms Black and African-American are used interchangeably in this piece, as they are in the literature and on government websites.

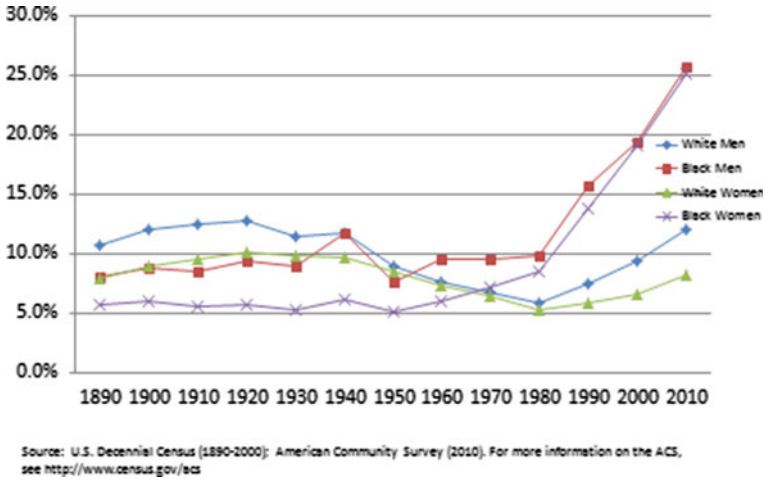


Fig. 2 Never-married among Blacks, United States

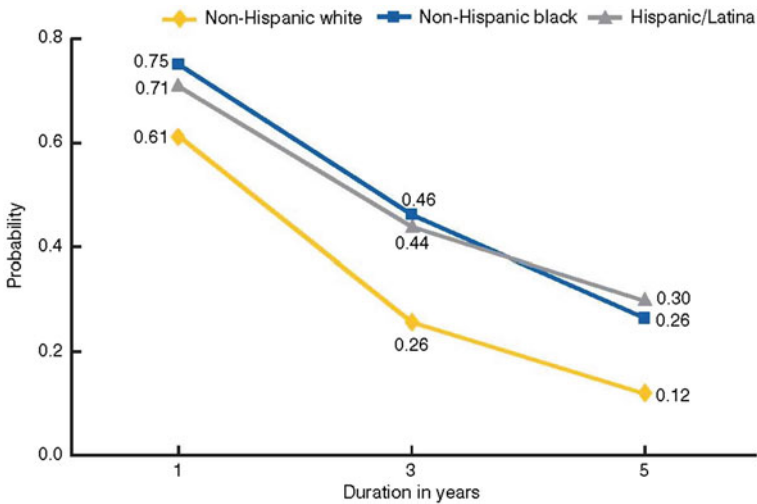


Fig. 3 Probability of separation: US by race [Vital and Health Statistics (U.S.), Marriage and Divorce in the United States: A Statistical Portrait Based on Cycle 6 (2002) of the National Survey of Family Growth, Series 23, No. 28, February, 2010, Center for Disease Control, Atlanta, 2010, page 9 & Fig. 15]

probability of disruption in their living situation as for those born to married parents, even controlling for other factors.²⁹

²⁹Id. at 148 and Table 2.

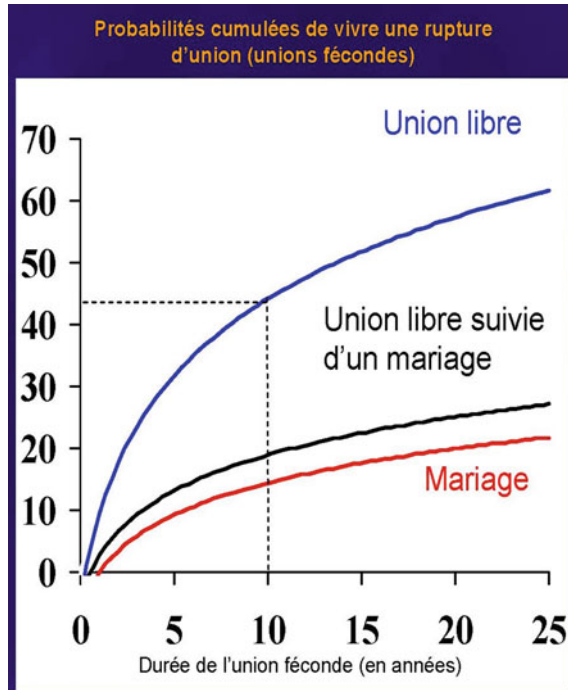


Fig. 4 Cumulative probability of a child's living through a disrupted union

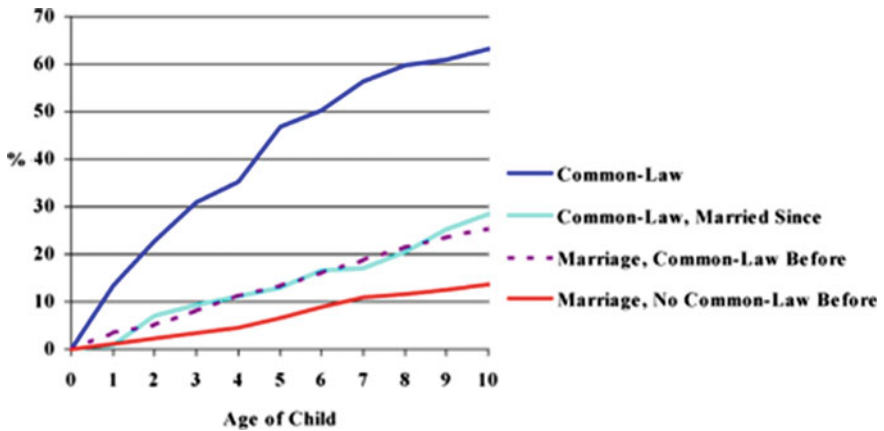


Fig. 5 Likelihood of disruption of various forms of union by child's age

1.1 Adolescent Outcomes in African-American and Québécois Families

In my prior work, I have noted that despite material disadvantages and lower educational attainment, Black adolescents do remarkably well from a psychological standpoint.³⁰ They display no more depression or anxiety, less substance abuse, and no more delinquency than other Americans once income is taken into account.³¹ Furthermore, as we will see shortly, they remain optimistic about the future compared to their peers.

On the other hand, French-speaking young people in Quebec have the highest provincial suicide rate in Canada,³² and one of the highest in the Western world. They are more depressed,³³ and less optimistic than other adolescents, as I will discuss below. They abuse alcohol at a higher rate than do most Canadian adolescents.³⁴ Figures 6 and 7 show the suicide rate, one in terms of its change over time, one in comparison to the rest of Canada. Figure 6 shows that the rate has

³⁰Margaret F. Brinig and Steven L. Nock, *The One Size Fits All Family*, 49 *Santa Clara Law Review* 137 (2009).

³¹These results are based on regressions from the Panel Survey of Income Dynamics (PSID), Child Development Supplement (CDS), 2002–03. Some are reported *Id.* at 146–47 (text) and 163, Figs. 2 and 3. Others appear in Margaret F. Brinig and Steven L. Nock, *Legal Status and Effects on Children*, 5 *University of St. Thomas Law Journal* 548, 579 and Table 10 (2007); or Margaret F. Brinig and Steven L. Nock, *How Much Does Legal Status Matter? Adoptions by Kin Caregivers*, 36 *Family Law Quarterly* 449, 473–74 and Tables 2 and 3 (2002–03).

³²Andrea Shaver, *Teen Suicide*, Statistics Canada BP-236E, available at <http://dsp-psd.pwgsc.gc.ca/Collection-R/LoPBdP/BP/bp236-e.htm> (last visited April 21, 2011). An update does not include a graph but shows that the comparable figures for Canada as a whole in 2011 were, for males 15–24, 8.42 per 100,000 and 42.63 per 100,000 for males 15–24 in Quebec. The population figures for the province were calculated from *Population of Quebec, 1971–2014*, http://www.stat.gouv.qc.ca/statistiques/population-demographie/structure/index_an.html (March 24, 2015). The suicide rates come from suicideprevention.ca/.../2014/.../Suicide-Rate-Across-Canada-and-Provinces-10-14-14.xlsx.

³³Amy H. Cheung and Carolyn Dewa, *Canadian Community Health Survey: Major Depressive Disorder and Suicidality in Adolescents*, 2 *Healthy Policy* 76, 82 and Table 1 (2006).

³⁴See, e.g., Mark Zoccolillo, Frank Vitaro and Richard E. Tremblay, *Problem Drug and Alcohol Use in a Community Sample of Adolescents*, 38 *Journal of the American Academy of Child and Adolescent Psychiatry* 900 (1999), showing in a survey of adolescents in Quebec, 62.2 % had drunk alcohol more than given times in their lifetime, and 50 % of both boys and girls drank at least once a week. *Id.* at 902 and Table 2, while one-third of the boys and a quarter of the girls drank alcohol in the morning.

In 2008, in a survey of 7–12 graders, the proportion of those reported drinking at least once a month in the previous year was highest in Quebec at 28.5 %, followed by BC at 26.0 %, Atlantic at 18.5 %, Ontario at 16.6 % and lowest in the Prairies at 15.7 %. Quebec also had the highest reported use of tobacco at 42.0 % while Ontario had the lowest at 16.4 %. David Hammond et al., *Illicit Drug Use Among Canadian Youth* *Revue Canadienne de Santé Publique* Vol. 102, No. 1, at 10 and Table 4, available at <http://davidhammond.ca/wp-content/uploads/2014/12/2011-CJPH-Youth-Substance-Use-Hammond1.pdf>.

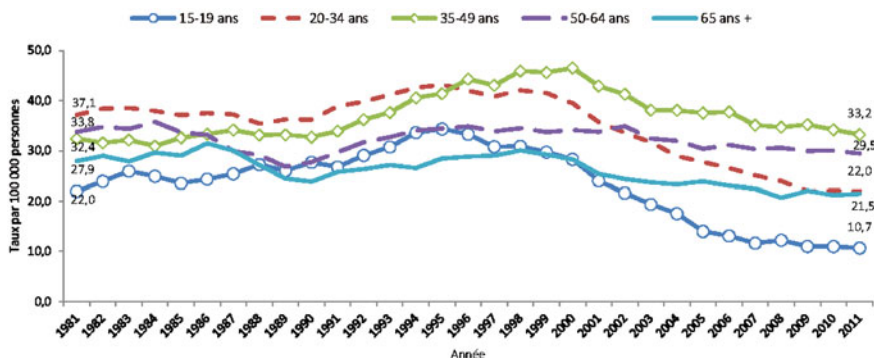


Fig. 6 Taux de mortalité par suicide selon les groupes d'âge, hommes, ensemble du Québec, 1981 à 2007

decreased from a peak in about 1995 of 34.4/100,000 for males 15–24 (though it is higher than that today), but remains comparatively higher than other provinces.³⁵ The second shows a comparison for all ages over years 2005–2011.³⁶

1.2 Reasons for the Difference

A Montreal psychiatrist,³⁷ citing the Quiet Revolution, when the Church became uninvolved with governmental functions, as well as family breakdown (increased failure to marry), argues that the social upheaval in Québec since the 1960s has affected troubled teenagers by giving them nothing stable to fall back on. Further, he stated, “We are a society that values the quality of life rather than its quantity... Life is [seen by some teenagers as] not worth living if you cannot guarantee its quality.”

³⁵Id. at 83 and Table 2 (2006).

³⁶Although some statistics data is available for each province, the age breakdown varies and some do not collect it each year. The statistics in Excel form compiled by the Centre for Suicide Prevention can be downloaded from <https://suicideinfo.ca/Library/AboutSuicide/Statistics.aspx>. Population data for the relevant ages was downloaded from <http://www5.statcan.gc.ca/cansim/a26> to calculate the rates.

³⁷Mounir Samy, Montreal General Hospital, in Teen Suicide (BP-236E) <http://dsp-psd.pwgsc.gc.ca/Collection-R/LoPBdP/BP/bp236-e.htm> 4 of 9.

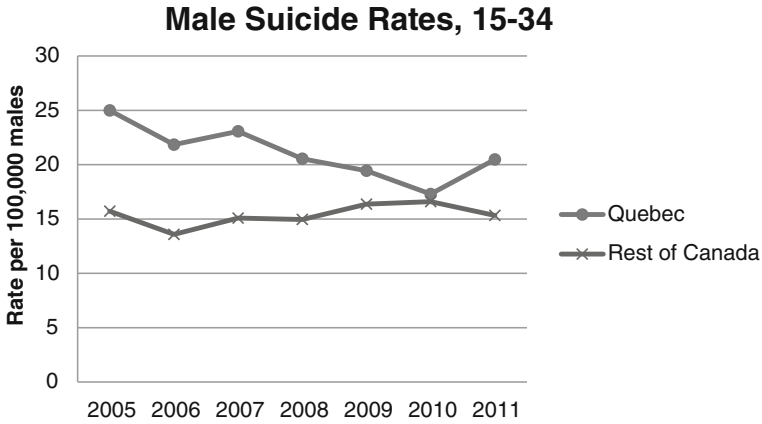


Fig. 7 Suicide Rates for Youth, Canada and Quebec

This hypothesis is consistent with my own. One of the central features of my recent book, *Family, Law, and Community*,³⁸ is that typically families need community support to flourish. This support may come from formal legal status, such as marriage or adoption. It may also stem from mediating institutions, such as religious organizations, parochial schools,³⁹ or perhaps military service.

What I have reported above for suicide among youths also holds true for their depression⁴⁰ and alcohol use.

The tables that follow consider smoking, comparing Quebecois, Canadian, and other provincial populations,⁴¹ followed by similar data involving the United States as a whole compared to its African-Americans (Fig. 8 and Table 3).

There are similar differences in alcohol use and in binge drinking (Figs. 9 and 10).

1.3 Optimism Among African-Americans and the Québécois, a Provisional Study

Another way of looking at the difference is to consider what might be opposite (positive) outcomes related to optimism. For this paper, I have compared data from

³⁸Margaret F. Brinig: *Family, Law and Community: Supporting the Covenant* (University of Chicago Press, 2010).

³⁹See Margaret F. Brinig and Nicole Garnett, *Catholic Schools and Broken Windows*, 9 *Journal of Empirical Legal Studies* 347 (2012).

⁴⁰Amy Cheung, footnote 33 and Table 1 (2002 data).

⁴¹Canadian Tobacco Use Monitoring Survey, http://www.hc-sc.gc.ca/hc-ps/tobac-tabac/research-recherche/stat/_ctums-esutc_prevalence/prevalence-eng.php (1999).

Cigarette Use, United States

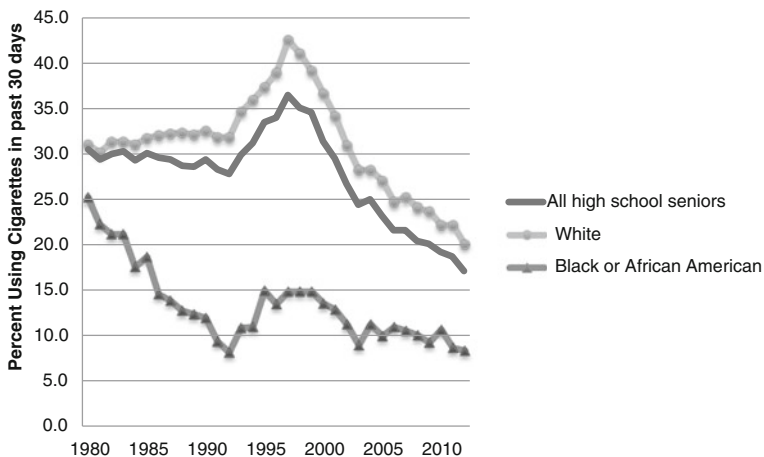


Fig. 8 U.S. Smoking Among High School Students [Chart produced from Excel version of Table 61, Use of selected substances in the past 30 days among high school seniors, 10th graders, and 8th graders, by sex and race: United States, selected years 1980–2012. National Institutes of Health, National Institute on Drug Abuse, Monitoring the Future Study, annual surveys. <http://www.cdc.gov/nchs/hsr/contents2013.htm#061>]

Table 3 Smoking in Canada and by Province, 1999

Province	Age group				
	15+ (%)	15–19 (%)	20–24 (%)	15–24 (%)	25+ (%)
Canada	25	28	34	31	24
NFLD	28	30	36	33	26
PEI	27	27	40	33	26
NS	29*	30	36	33	28
NB	28	26	39	33	27
Que	28	36	39	38	26
Ont	24	24	30	27	23
Man	23	30	35	32	21
Sask	25	34	36	35	23
Alb	27	25	42	33	26
BC	20	23	26	25	19

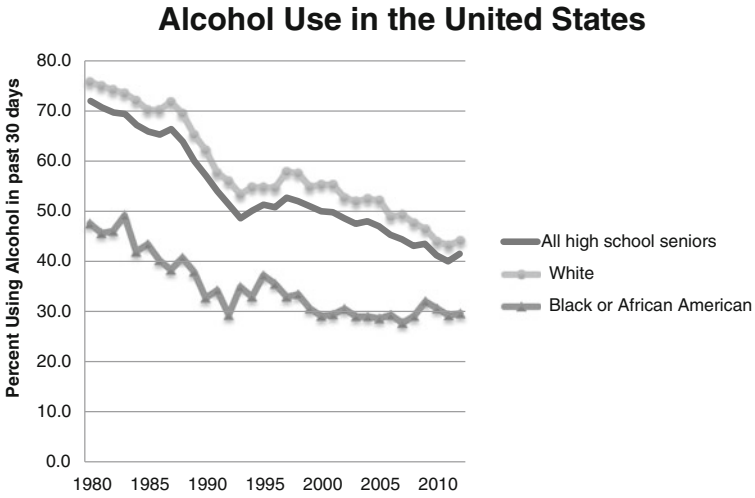


Fig. 9 Alcohol use in US high schools

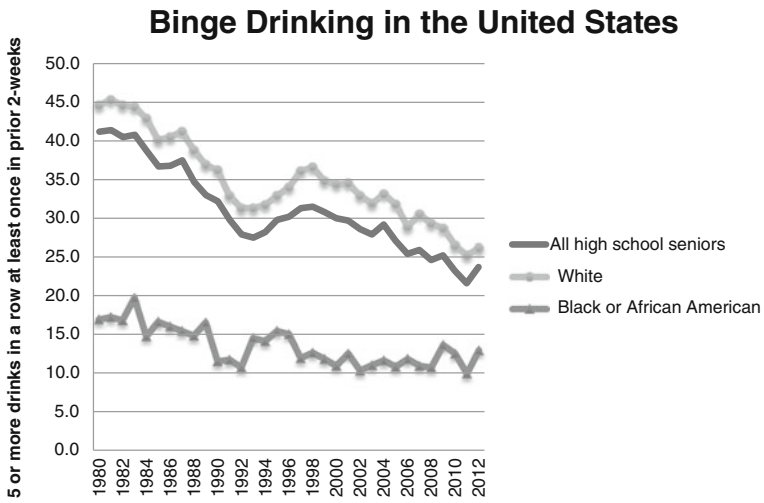


Fig. 10 Binge drinking in US high schools

two comparable datasets, the National Longitudinal Survey of Youth (US), 1997 and 2002.⁴² Data for Canada comes from the similarly titled National Longitudinal Survey of Children and Youth, 2002 wave.⁴³ Here are the regression coefficients for optimism among the Québécois and African-Americans, holding constant income and the nurturing qualities of the mother. All children studied live with their mothers. Again, the Québécois are those who live in the province, speak French, and are white. The dependent variable in both the papers is some version of optimistic (Tables 4 and 5).⁴⁴

African-American adults continue to be relatively more optimistic as well.⁴⁵ One study attributes the optimism, as well as the lower levels of suicide, to values consistent with Black culture: to report that God is responsible for life and to hold communitarian rather than individualistic values.⁴⁶

1.3.1 The Common Problem and the Two Approaches: A reprise

Both the governments have a common problem under study here. This issue concerns what should be done with increasing cohabitation among a minority

⁴²Ohio State University, Center for Human Resource Research, National Longitudinal Survey of Youth, 1997 (NLSY97), for which data is available at the Institute for Social Policy Research. <http://www.icpsr.umich.edu/icpsrweb/ICPSR/studies/3959/detail>. $N = 1984$. Unfortunately, the comparable data is not available for later years. The (US) General Social Survey in 2006 asked “I am always optimistic about my future.”

⁴³National Longitudinal Survey of Children and Youth. URL: <http://www.statcan.ca/cgi-bin/imdb/p2SV.pl?Function=getSurvey&SDDS=4450&lang=en&db=imdb&dbg=f&adm=8&dis=2>. The National Longitudinal Survey of Children and Youth (NLSCY) is a long-term study of Canadian children that follows their development and well-being from birth to early adulthood. The NLSCY began in 1994 and is jointly conducted by Statistics Canada and Human Resources Development Canada. Please note that the publicly available data used here is a synthetic dataset only. ($N = 538$). More recently, there has been a single question “How do you feel about your life as a whole right now?” asked in 2008, 2009, and 2010 that immediately precedes the Community Health Survey. This is available at select centers in Canada.

⁴⁴The precise question in the NLSY97 is R0624200 (NLSY97). “I’m always optimistic about my future.” (AGREE/DISAGREE). Answers ranged from 1 (Strongly Disagree) to 4 (Strongly Agree). The precise question in the NLSCY is EAMCQ03 (NLSCY): “The next five years look good to me.” Answers again ranged from 1 (Strongly Disagree) to 4 (Strongly Agree). The question is available at Questionnaire 10–19 Year Olds, Cycle 5, at 25 available at www.utoronto.ca/datapub/codebooks/cstdli/nlsc/synthetic/cycle5/nlsc5-cbk-10-19-mas.pdf.

⁴⁵See, e.g., Hope Yen and Jennifer Agresta, African Americans & Hispanics More Optimistic About Their Economic Future Than Whites, Poll Says, Huffington Post, March 27, 2015, available at http://www.huffingtonpost.com/2013/08/01/african-americans-hispanics-optimistic-economic-future-_n_3690867.html; Breanna Edwards, Survey: African Americans Still Optimistic Despite Racism, The Root, April 4, 2014, available at http://www.theroot.com/articles/culture/2014/04/survey_african_americans_still_optimistic_despite_racism.html.

⁴⁶Rheeda L. Walker and Kelci C. Flowers, Effects of Race and Precipitating Event on Suicide versus Nonsuicide Death Classification in a College Sample, 41 *Suicide and Life-Threatening Behavior* 12 (2011).

Table 4 Optimism among Québécois adolescents

Model		Unstandardized coefficients		Standardized coefficients	<i>t</i>	Sig.
		B	Std. error	Beta		
1	(Constant)	2.274	0.142		15.993	0.000
	Québécois	-0.300	0.090	-0.136	-3.350	0.001
	Estimated total household income/poverty ratio	0.000	0.000	0.090	2.205	0.028
	Nurturing	0.048	0.006	0.316	7.768	0.000

R^2 (adjusted) for equation = 0.115, $F = 24.368$, sig. = 0.000 (optimistic.spv)

Table 5 Optimism among African-American adolescents

Model		Unstandardized coefficients		Standardized coefficients	<i>t</i>	Sig.
		B	Std. error	Beta		
	(Constant)	2.773	0.065	0	42.347	0.000
	Black	0.030	0.028	0.018	1.065	0.287
	Household income to poverty ratio Percentage	0.020	0.005	0.069	4.186	0.000
	Nurturing (residential mother supports child)	0.000	0.000	0.031	1.946	0.052

R^2 (adjusted) = 0.005, $F = 7.518$, sig. = 0.000

population, many of whom are poor. The Canadian solution, as I have stated it, is to stop privileging marriage, that is, to provide equal benefits to all who cohabit, thus recognizing de facto unions.⁴⁷ The solution in the United States first involves leaving solutions up to the individual states. Second, it privileges marriage. Examples include the federal marriage initiative,⁴⁸ which stresses marriage education, and the Defense of Marriage Act,⁴⁹ in which the federal government refuses to recognize same-sex marriage and through which states are freed from the usual obligation of honoring other states’ marriages.

⁴⁷C-23, RSC 4 (2d Supp.), SC 2000, c. 12.

⁴⁸Section 101 of Pub. L. 104-193, 1996. The fruits of the legislation can be found at Office of Family Assistance, <http://www.acf.hhs.gov/programs/ofa/programs/healthy-marriage>.

⁴⁹The Defense of Marriage Act (DOMA), Public Law No. 104-199, 110 Stat. 2419, 1996. This was invalidated I part United States v. Windsor, 570 US—, 133 S. Ct. 2675 (2013). The remainder is under challenge as Oberfell v. Hodges, 135 S. Ct. 1034 (2015).

1.3.2 Why Might the Outcomes Be So Different? Religion in Quebec: Policies and Reactions

In the 1990s, the Roman Catholic religious hierarchies in Québec that had performed most educational and health care services in the province ceded authority over them to the provincial government.⁵⁰ (For schools, this was a gradual process that did not conclude until 2006.)⁵¹ Québec is now the only Canadian province with no church-run (parochial) elementary schools,⁵² and religion may not be taught in or after school classes.

Beginning in the 1960s, church attendance in Quebec declined from the highest to the lowest rates in Canada.⁵³ While this may be for a number of reasons, some academics speculate that while Church reforms following Vatican II empowered the laity,⁵⁴ this movement did not relax unpopular stances toward birth control, abortion, and women's place in the Church.⁵⁵ Quebec now resembles some northern

⁵⁰Alain Bélanger and Pierre Turcotte-Milan, "L'influence des caractéristiques sociodémographiques sur le début de la vie conjugale des Québécoises," 28 *Cahiers québécois de démographie*, 173 (1999). See also Lawrence Anderson, *Federalism and Secessionism: Institutional Influences on Nationalist Politics in Québec*, *Nationalism and Ethnic Politics*, 13: 187–211 (2007).

⁵¹Comité sur les affaires religieuses, *Secular Schools in Québec: A Necessary Change in Institutional Culture* (October 2006), available online at http://www.mels.gouv.qc.ca/sections/publications/publications/BSM/Aff_religieuses/Avis_LaiciteScolaire_a.pdf (last visited April 22, 2011). See also Nugent, *Demography, National Myths, and Political Origins: Perceiving Official Multiculturalism in Quebec*, 38 *Canadian Ethnic Studies* 21 (2006).

⁵²It is difficult to prove this negative, but see, for example, the Ontario Catholic School Board, which governs its system of (publicly funded) parochial elementary schools. <http://www.tcdsb.org/> (last visited April 22, 2011). The only Catholic schools listed on the Archdiocese of Québec's website are secondary schools. The website of the archdiocese of Quebec lists its various functions at beta.ecdq.org, and contains no references to schools in either its youth or formation subpages. The change came through the Education Act of 1988, Bill 107, 188 c 84 § 36. For a critical Roman Catholic perspective, see Rory Leishman, *The School War in Quebec*, *Catholic Insight* http://catholicinsight.com/online/church/education/article_1033.shtml (last visited April 22, 2011) (originally published in the Catholic Pro-Life publication *The Interim*, August 2010. Quebec was able to accomplish secularization by receiving an exemption from the Canadian Constitution that protected the two systems (religious and secular) in the other provinces. See Comité, *supra* note 60. For a discussion of the exemption, see David Cameron and Jacqueline D. Krikorian, *Recognizing Quebec in the Constitution of Canada: Using the Bilateral Constitutional Amendment Process*, 58 *University of Toronto Law Journal* 389 (2008).

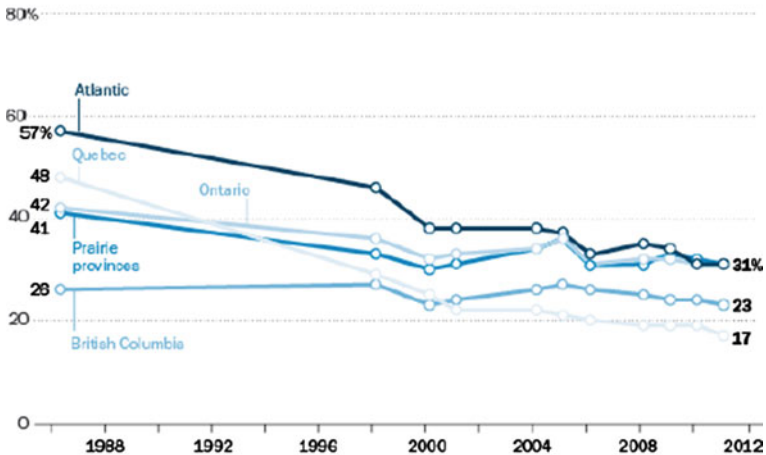
⁵³Warren Clark, *Pockets of Belief: Religious Attendance Patterns in Canada*, *Canadian Social Trends* 2, 3 (Spring, 2003), *Statistics Canada Catalogue No. 11-008*, <http://www.statcan.gc.ca/pub/11-008-x/2002004/article/6493-eng.pdf>.

⁵⁴David Seljak, *Why the Quiet Revolution was "Quiet": The Catholic Church's Reaction to the Secularization of Nationalism in Quebec after 1960*, *CCHA*, 62 *Historical Studies* 109 (1996).

⁵⁵Michael W. Higgins, *The Bishop-maker: Who is Canadian Cardinal Marc Ouellet?* *Commonweal Magazine* July 22, 2010, www.Commonwealmagazine.org/bishop-maker (last visited April 22, 2011)(provides an accessible and brief story of the Quebec transformation and a discussion of current attitudes toward abortion in Canada).

Trends in Canadian Religious Attendance, by Region

% of Canadians ages 15 and older in each region who attend religious services at least once a month



Source: Canada General Social Surveys

PEW RESEARCH CENTER

Fig. 11 Religious attendance, Canada

European nations in terms of attendance and importance given to religion.⁵⁶ In 1986, nearly half (48 %) of Quebec residents said they attended religious services at least once a month. By 2011, about one-in-six Quebecers (17 %) reported attending religious services at least once a month, a drop of 31 points (or 70 %), according to a Pew Research Center poll (Fig. 11).⁵⁷

While the identity of the Québécois has been consistently and insistently oriented around the French language, the association with the Catholic Church has disappeared. Alain Bélanger attributes this to a rejection of what Michel Brunet called “les trois dominantes de la pensée canadienne-française: l’agriculturalisme, le messianisme et l’anti-étatisme” [the three main components of French Canadian thought: agriculturalism, antistatism, and messianism].⁵⁸

⁵⁶Benoît Laplante, The Rise of Cohabitation in Quebec: Power of Religion and Power over Religion, 31 Canadian Journal of Sociology 1 (Winter, 2006).

⁵⁷Pew Research Center, Canada’s Changing Religious Landscape, at 11, available at <http://www.pewforum.org/2013/06/27/canadas-changing-religious-landscape/>.

⁵⁸Alain Bélanger and Pierre Turcotte-Milan. 1999. “L’influence des caractéristiques sociodémographiques sur le début de la vie conjugale des Québécoises,” *Cahiers québécois de démographie*, 28: 173. In English, see Claude Bélanger, <http://faculty.marianopolis.edu/c.belanger/quebechistory/events/quiet.htm> (last visited April 22, 2011).

1.4 *A Recap of the Situation in the United States: Effect of Religiosity*

The federal government in the United States provides much less generous social welfare support than does Canada.⁵⁹ In the United States, people who are married enjoy extensive legal and social protections.⁶⁰ People who are not must rely primarily on contract (or sometimes local domestic partner laws).⁶¹ Unlike Canada, where the distinctions between married and common law couples are legally blurred (at least while the relationships last), the two categories remain quite distinct in the US. As we have seen, African-Americans, like the Québécois, do not take advantage of marriage to the same extent as the majority population. Most African-American children grow up in a family that, at least at some point, and sometimes from the beginning, is headed by a single mother. Andrew Billingsley and Barbara Morrison-Rodriguez argued that African-American communities turn to the church when they go through extending crisis for different types of support.⁶² This may be particularly true for single mothers, often under stress.⁶³ Susan Sullivan found that mothers use religion to help build their children's self-esteem and give them "a sense of self-efficacy stemming from religious beliefs and prayer."⁶⁴

One obvious difference is that while the United States is an outlier in terms of religiosity among "first world" nations, African-Americans, as a group, are far more religious than most.⁶⁵ This provides a contrast to the failing religiosity of the Québécois (Fig. 12).

⁵⁹While this may seem obvious, support for this point may be found at Dennis Raphael and Toba Bryant, *The Welfare State as a Determinant of Women's Health: Support for Women's Quality of Life in Canada and Four Comparison Nations*, 68 *Health Policy* 64, 64, 68 & Table 9 (labor market public spending) (2004).

⁶⁰One list of what these are appears in the Vermont case that eventually resulted in the enactment of civil union legislation, *Baker v. State*, 744 A.2d 864, 884–84 (Vt. 1999).

⁶¹See, e.g., Patricia A. Cain, *Imagine There's No Marriage*, 16 *QLR* (Quinnipiac) 27 (1996).

⁶²Andrew Billingsley and Barbara Morrison-Rodriguez, "The Black Family in the 21st Century and the Church as an Action System: A Macro Perspective." 1 *Journal of Human Behavior in the Social Environment* 1:2-3, 31–47 (1998).

⁶³Susan Crawford Sullivan "The Work-Faith Connection for Low-Income Mothers: A Research Note." 67(1): *Sociology of Religion* 99, 106 (2006).

⁶⁴Susan C Sullivan, "Unaccompanied Children in Churches: Low-Income Urban Single Mothers, Religion, and Parenting." 50(2) *Review of Religious Research* 157, 170 (2008).

⁶⁵See, e.g., Rheeda L. Walker, David Alabi, Jessica Roberts, and Ezemenari M Obasi, *Ethnic Group Differences in Reasons for Living and the Moderating Role of Cultural Worldview*, 16 *Cultural Diversity and Ethnic Minority Psychology* 372, 373 (2010).

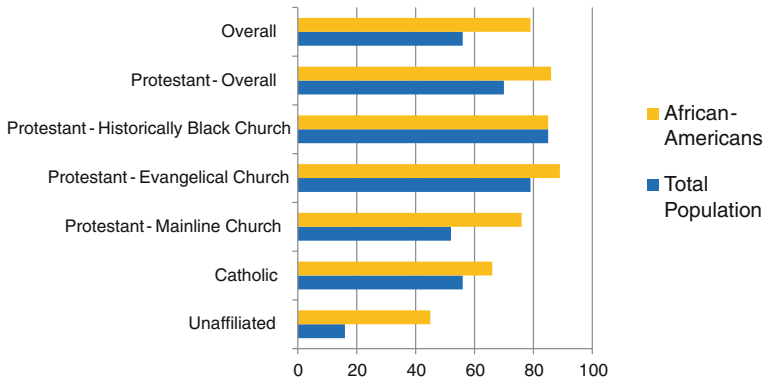


Fig. 12 Religiosity of African-Americans [A Religious Portrait of African Americans, Pew Forum on Religion & Public Life, Jan. 30, 2009, <http://pewforum.org/A-Religious-Portrait-of-African-Americans.aspx>. (last visited April 22, 2011)].

2 Conclusion: The Importance of Support

Families need community support in order to function well, particularly when we consider children’s well-being.⁶⁶ Typically, this support comes from communities through the legal status of marriage and adoption. However, while it is not optimal, cohabitation may suffice for children’s well-being (though it will not be stable), but only if the parents (in most cases, the mothers) have some sort of other, external support. In this chapter, I have tried to demonstrate that religion appears to be a mediating communitarian factor for African-Americans but not for the Québécois. This difference may explain the better psychological, health, and mortality outcomes.

I would like to interject a few words of caution, however. The empirical comparison drawn here is only for a few outcome variables, and, at least for my own work on optimism, uses the simplest possible model. In fact the Canadian data is a “synthetic” dataset rather than the complete one. The consistent findings with depression, suicide, and tobacco use should support this interpretation, however.

References

Beaupré, Pascale, P. Turcotte and F. Goldscheider. 2005. Stabilité des couples en union libre avec enfants: Le Québec se distingue-t-il des autres provinces canadiennes?. Powerpoint May Slide

⁶⁶The need for support, or social capital, is one of the pervasive themes of Margaret Brinig, *Family, Law and Community*, supra note 38, especially Chapters 1 and 2. For a book explaining its role in social mobility, see Robert Putnam, *Our Kids: The American Dream in Crisis* (Simon and Schuster 2015).

6. available (in French), Quebec Inter-University Center for Social Statistics, poster presented at Population of Association of American Meeting, Boston, Massachusetts, April 1, 2004. www.ciqss.umontreal.ca/Docs/Conference/Mai2005/Turcotte_Mai2005.pdf. Accessed 21 April 2011.
- Légaré, Gilles, M. Gagné and D. St-Laurent. 2014. *La mortalité par suicide au Québec: tendances et données récentes—1981 à 2011*. Institute National de Santé Public du Québec. <http://www.inspq.qc.ca/publications/notice.asp?E=p&NumPublication=890>. Accessed 21 April 2011. at 5 & Fig. 3. (The adolescent rate has the open dashes.) While suicide rates have generally declined, depression has not. Cheung & Dewa, note 33, at 82 and Table 1, 84 & Table 3.
- Marcil-Gratton, Nicole and Celine de Bourdais. 1999. *Custody, access and child support: Findings from the national longitudinal survey of children and youth*. <http://www.justice.gc.ca/eng/pi/fcy-fea/lib-bib/rep-rap/1999/anlsc-elnej/index.html>.
- Walker, Rheeda L., and Kelci C. Flowers. 2011. Effects of Race and Precipitating Event on Suicide Versus NonSuicide Death Classification in a College Sample. *Suicide and Life-Threatening Behavior* 41: 12.