The indirect effects of changing property and income settlements on relationship breakdown

Hayley Fisher

University of Sydney

Family Demography and Family Law Virtual Sessions
18 November 2020

Family law and household behaviour: my research agenda

- ▶ Use economic models of household behaviour to understand how family law regimes affect household behaviour
- ▶ Building on a large body of research on household behaviour dating back to Becker
- ▶ Particular interest in what makes marriage different from unmarried cohabitation
- ▶ This presentation:
  - ▶ Why do the laws governing how property is divided after relationship breakdown affect how couples behave within relationships?
  - ▶ What can we learn from reforms to Australian family law that subjected unmarried couples to the same legal regime as married couples?
    Based on Chigavazira, Fisher, Robinson and Zhu (2019) 'The consequences of extending equitable property division divorce laws to cohabitants'

Unmarried cohabitation has increased across developed countries

Proportion of population aged 25-55 cohabiting
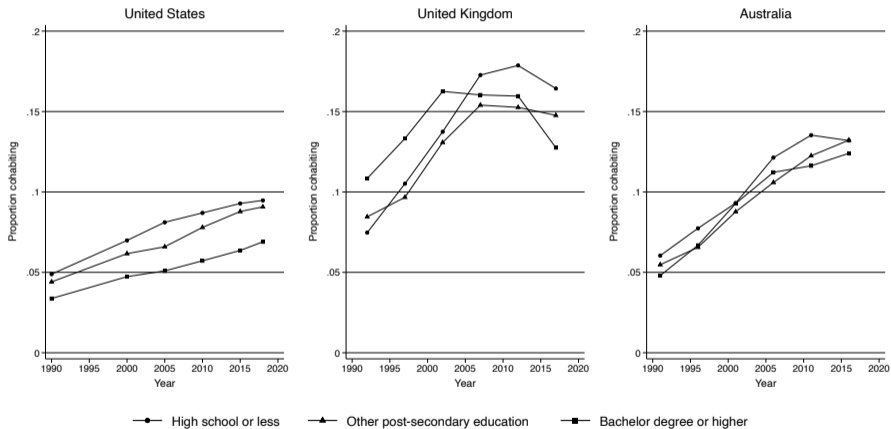
Source: US Census and American Community Survey; Australian Census; UK General Household Survey, British Household Panel Survey, and Understanding Society

Why do property division laws affect couple behaviour?

1. Effect on **post-separation wealth**
   - A more equal division of property should mean more equal post-separation outcomes

2. Effect on **bargaining power**
   - More equal division of property transfers bargaining power from lower-asset to higher-asset partner (typically man to woman)

3. Effect on **cost of relationship breakdown**
   - If it costs more to separate, couples are less likely to separate
   - Increases expected return to relationship-specific investments

4. Effect on ability to make **relationship-specific investments**
   - If property division provides compensation for costs incurred, improved ability to make asymmetric cooperative investments
   - Eg. having children, household specialisation, location choice

How does family law treat unmarried couples?

- ▶ Wide cross-country variation
  - ▶ US – family law remedies do not apply to unmarried relationships in most states (though common law marriage exists in some cases)
  - ▶ Canada – unmarried couples subject to alimony requirements (can be substantial), but not to marriage-like laws for property division (in most provinces)
  - ▶ New Zealand – unmarried couples treated as married if relationship has lasted for three years
  - ▶ England and Wales – family law does not apply to unmarried couples. Common law marriage does not, and never has, existed
- ▶ Additional variation in welfare and tax policy, and child support

Australian legal reform

- In 2009, Australia introduced federal legislation that treated all unmarried (de facto) couples in the same way as married couples for property distribution at relationship breakdown
  - Division based on future needs, not just past contributions
- Prior to this, variation by state and territory
- Change motivated by desire to provide legal framework for same-sex couples
- No changes to child custody, child support, welfare payments or tax policy (married and unmarried couples treated in the same way)

Property laws on relationship breakdown: married couples

- Determined by Family Law Act 1975 (Cth) section 79 – across Australia
- Broad discretionary framework – 'just and equitable' in all the circumstances
- Considers financial, non-financial and homemaker contributions, as well as needs going forward
- All property, including retirement savings, can be reallocated
  - Future income is not property, though sufficiently certain income streams can be capitalised
- Pre-nuptial contracts available, but extremely high disclosure and advice requirements – uncommon
- Spousal maintenance rare – strong preference for 'clean break'
- Child support in a separate administrative system

Property laws on relationship breakdown – Pre 2009

- Unmarried: determined at the state or territory level, range of approaches:
  1. Modelled on FLA: present and future needs, financial and non-financial contributions
     (WA, TAS, QLD)
  2. Intermediate: financial and non-financial contributions, and *other relevant matters*
     (SA, ACT)
  3. Restrictive: financial and non-financial contributions
     (NSW, VIC, NT)
- Different gateway requirements – length of relationship (usually 2 years), or a child

Property laws on relationship breakdown – Post 2009

From 1 March 2009 (2010 in South Australia; no change in WA)

- *Family Law Amendment (De Facto and Other Financial Measures) Act 2008* (Cth)
- Extended provisions of the Family Law Act to all unmarried cohabiting couples where:
    - Relationship lasted two years, or
    - Had a common child
- Part of a package of reforms targeted at providing same-sex couples with the protections of married couples
- Considers contributions and present *and future* needs

Press coverage of the 2009 FLA extension

The Telegraph

HOME » NEWS » WORLD NEWS » AUSTRALIA AND THE PACIFIC » AUSTRALIA

Cheating husband ordered to pay $100,000 to spurned mistress

An Australian man who had an affair with a woman for 20 years while he was married has been ordered to pay the mistress more than $100,000 (£55,000) under the country's new laws that give rights to people in de facto relationships.

Press coverage of the 2009 FLA extension

"Unless you've been living under a rock, you would have heard that there's bad news for philandering husbands. Thanks to the new reforms of the Family Law Act, mistresses are now entitled to gain compensation from the bloke they've been bonking for the last two years, if indeed they do fall pregnant."

Sydney Morning Herald, March 17 2009

Predictions

- ▶ Reform subjected unmarried couples to marriage-equivalent property division
- ▶ Expect this to enable more cooperative investments among unmarried couples – more specialisation, more children, more home ownership
- ▶ May also shift bargaining power towards women

Data

- Household, Income and Labour Dynamics in Australia Survey (HILDA)
- Household panel covering 2001-2015, base sample of 7,682 households
- Select all opposite-sex couples aged 18-65 with consistent reports of relationship status, married and unmarried
- Sample of 7,714 couples, 3,562 cohabiting at some stage
- Outcomes: employment status, hours of work, hours of housework, home ownership, number of children, fertility intentions, time spent with children, satisfaction across a range of domains
- Controls: state and time fixed effects, state time trends, education

Summary statistics

	Women		**Men**	
	Married	Cohabit.	Married	Cohabit.
Employed	0.72	0.73	0.90	0.86
	(0.45)	(0.45)	(0.30)	(0.35)
Hours worked	31.0	34.6	45.4	43.5
	(14.1)	(12.9)	(12.6)	(12.3)
Housework hours	18.6	13.2	6.2	6.4
	(13.0)	(11.8)	(6.2)	(6.3)
Number of children	1.49	0.74	1.43	0.52
	(1.23)	(1.08)	(1.22)	(0.89)
Time with children	16.7	11.9	7.7	6.2
	(22.3)	(21.4)	(10.2)	(12.0)
(Max) N	36,119	11,884	36,119	11,884
(Max) couples	4,152	3,562	4,152	3,562

Empirical strategy

- ▶ Triple difference fixed effects
  - ▶ Compare the behaviour of cohabiting couples before and after FLA expansion
  - ▶ Control 1: cohabiting couples in states that already had FLA-equivalent legislation
  - ▶ Control 2: married couples (already covered by marriage legislation)

$$Y_{ist} = \beta_1 Cohab_{ist} + \beta_2 equitable_{st} + \beta_3 Cohab_{ist} * equitable_{st}$$
$$+ X_{ist} + \mu_s + \gamma_t + \theta_i + \varepsilon_{ist},$$

- ▶ Fixed effects: response for previously existing couples observed before and after equitable property division laws introduced
- ▶ *Not capturing changing selection*

Main results: employment, work hours, and housework

	Employed	Work hours	Housework hours
Women			
Equit*Cohab	-0.023	-0.738	**1.974**
	(0.011)	(1.164)	(0.884)
	[0.232]	[0.580]	[0.091]
Men			
Equit*Cohab	**0.029**	1.425	0.121
	(0.005)	(0.569)	(0.184)
	[0.005]	[0.240]	[0.555]

Bold indicates significance at 10%. Clustered standard errors in parentheses; wild cluster bootstrap p-values in brackets. Controls: time and state fixed effects, state time trends, education.

Results: children, time with children, home ownership

|	No. of children	How many more children?	Hours with children	Home owners
Women				
Equit*Cohab	**0.255**	**0.109**	**4.080**	
	(0.048)	(0.025)	(1.422)	
	[0.086]	[0.020]	[0.053]	
Men				
Equit*Cohab	**0.283**	**0.143**	**1.948**	
	(0.046)	(0.035)	(0.311)	
	[0.047]	[0.069]	[0.027]	
Couple				
Equit*Cohab				**0.109**
				(0.015)
				[0.024]

Bold indicates significance at 10%. Clustered standard errors in parentheses; wild cluster bootstrap p-values in brackets. Controls: time and state fixed effects, state time trends, education.

Results: self-reported satisfaction

	Financial satisfaction	Partner satisfaction	Overall satisfaction
Women			
Equit*Cohab	**0.155**	-0.170	-0.032
	(0.059)	(0.055)	(0.039)
	[0.084]	[0.141]	[0.647]
Men			
Equit*Cohab	0.151	**-0.175**	-0.043
	(0.094)	(0.016)	(0.057)
	[0.355]	[0.004]	[0.745]

Bold indicates significance at 10%. Clustered standard errors in parentheses; wild cluster bootstrap p-values in brackets. Controls: time and state fixed effects, state time trends, education.

Summary of results
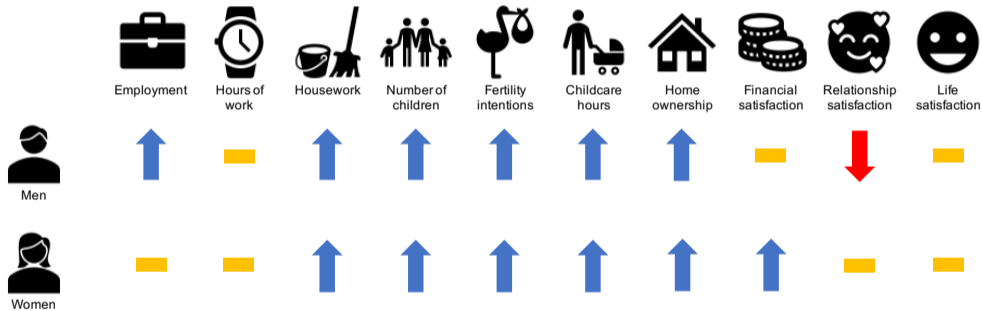
Conclusion

- Existing couples who have marriage-like property division imposed on them respond by making more couple-specific investments
  - Increased home ownership, more children, increase in man's labour supply, increase in woman's housework
- Symmetric effects on life satisfaction suggest this is not a transfer of wellbeing due to changing outside options, but the enabling of cooperative investments
- Potentially unintended consequences of legal reform

Property laws on relationship breakdown – Pre 2009

State	Year	Legislation	Category
NSW	1984	Property (Relationships) Act 1984	Limited
Vic	1987	Property Law (Amendment) Act 1987	Limited
	2008	Relationships Act 2008	FLA-equivalent
NT	1991	De Facto Relationships Act 1991	Limited
ACT	1994	Domestic Relationships Act 1994	Intermediate
SA	1996	Domestic Partners Property Act 1996	Intermediate
QLD	1999	Property Law Amendment Act 1999	FLA-equivalent
Tas	1999	De Facto Relationship Act 1999	FLA-equivalent
WA	2002	Family Court Amendment Act 2002	FLA-equivalent

Empirical strategy

- ▶ Key assumption: no other factors that differentially affect married and unmarried couples in affected states
    - ▶ State-specific variation controlled for using married couples as a comparison group
    - ▶ No other changes in family law or policy that affect married and cohabiting couples differently: married and unmarried couples subject to the same rules for child custody, child support, family and welfare payments across this period
    - ▶ FLA expansion was not in response to pressure from unmarried opposite-sex couples in states without these provisions

Empirical strategy

- ▶ Problem: inference
  - ▶ Australia has 8 states and territories
  - ▶ Too few clusters to rely on cluster robust standard errors (large sample theory requires number of clusters $\to \infty$)
- ▶ Solution: **wild cluster bootstrap** (restricted)
  - ▶ Suggested by Cameron, Gelbach and Miller (2008)
  - ▶ Implemented using Stata command `boottest` (Roodman et al 2018)
- ▶ Generates bootstrap p-values

Changing selection and composition of unmarried couples

- ▶ Couples separate before expansion (after introduction of bill in July 2008)
  - ▶ To avoid the expansion – those who didn't want to specialise
- ▶ Couples marry post-expansion when they otherwise would not have
  - ▶ Removes strategic non-marriage
- ▶ Couples remain unmarried post-expansion when they would otherwise have married
  - ▶ No need to marry to get protections – may explain specialisation result
- ▶ New couples forming after expansion are differently selected
  - ▶ More specialisation – as easier to specialise?
  - ▶ Bargain with knowledge of the new property division regime, so women have a lower share of resources

Are affected couples more likely to separate, or to marry?

- ▶ Look directly for change in relationship status (separate or marry)
- ▶ No change in separation pre- or post; marriage more likely in anticipation of change

	Post-reform		Anticipation	
	Separate	Marry	Separate	Marry
Equitable	0.004	-0.031	-0.003	**0.024**
	(0.008)	(0.020)	(0.003)	(0.011)
	[0.794]	[0.260]	[0.575]	[0.020]

Bold indicates significance at 10%. Clustered standard errors in parentheses; wild cluster bootstrap p-values in brackets. Controls: time and state fixed effects, state time trends, education. Sample includes only cohabiting couples (married couples are not at risk of getting married).

Does changing selection explain the specialisation result?

▶ Holding relationship status fixed at pre-reform status: magnitude of significant results increases

	Employed	Work hours	Housework hours
Women			
Equit*Cohab	-0.027	-0.903	**2.501**
	(0.011)	(0.913)	(0.807)
	[0.274]	[0.586]	[0.087]
Men			
Equit*Cohab	**0.047**	1.934	-0.200
	(0.007)	(0.554)	(0.233)
	[0.012]	[0.157]	[0.618]

Bold indicates significance at 10%. Clustered standard errors in parentheses; wild cluster bootstrap p-values in brackets. Controls: time and state fixed effects, state time trends, education.