

**An examination of state policies, cohabitation, and childbearing within cohabitation
across Western Europe**

Nora Sánchez Gassen and Brienna Perelli-Harris,

Max Planck Institute for Demographic Research

Please see www.nonmarital.org for further information regarding the surveys we used in this study. We would like to thank Karolin Kubisch for her assistance in standardizing the Harmonized History data. In addition, we would like to thank Alicia Adsera, Wendy Sigle-Rushton, Renske Keizer, Caroline Berghammer, Trude Lappegard, and Jean Marie LeGoff, as well as all of the others involved in producing the data we used in our analyses. Also, thank you to Christine Schnor for calculating the German percents from the pairfam data.

Although cohabitation and childbearing within cohabitation has increased in nearly every country in Europe over the past few decades, the variation across countries remains pronounced. Here we examine how the policies and laws that govern marriage and cohabitation correspond to this variation in behavior. We examine policies that regulate the relationship between couples and the relationship between unmarried parents and their children. Using a rich database of 19 policy dimensions for 9 countries in Western Europe, we examine and code how similar cohabitation is relative to marriage for each dimension. We then calculate average scores by country and compare them with the prevalence of cohabitation and the percent of births within cohabitation. The findings will be descriptive in nature (not causal), but will provide important insights into the relationship between policies and family behavior.

INTRODUCTION

The increase in cohabitation and childbearing within cohabitating unions across Europe has been one of the most striking changes in the family in the past few decades (Kiernan 2004, Perelli-Harris et al 2009, Perelli-Harris et al 2010a). Although family formation has changed dramatically in nearly every country in Europe, the variation across countries is remarkable (Kiernan 2004; Perelli-Harris et al. 2009). For example, by 2008, all of Northern Europe, the U.K., and France experienced at least 40% of births outside of marriage, while other parts of Western Europe only experienced 20-30% of births outside of marriage. Parts of southern Europe, on the other hand, experienced a slower increase in nonmarital childbearing, with less than 10% of births born outside of marriage (Eurostat 2010). In countries that have experienced substantial increases in nonmarital births, the majority of the increase has been within cohabitation, not to single mothers (Perelli-Harris et al 2010a). This increase suggests that cohabitation has become an “alternative to marriage” in some countries, but not in others.

State policies that regulate marriage and cohabitation may be one of the most important explanations for cross-national variation. Despite a wealth of studies comparing family policies across countries (Neyer and Andersson 2008, Hoem 2008, Kamerman and Kahn 1991), few researchers have examined how family policies and legal regulations may shape union formation or prompt changes in union status. Family policies and laws that favor marriage may be critical for motivating couples to transition from cohabitation to marriage, especially during the period of childbearing and early childrearing (Perelli-Harris and Sánchez Gassen 2010). On the other hand, states may have enacted policies to reflect changing behavior; as cohabitation becomes more

prevalent, states may attempt to regulate cohabiting unions or provide cohabitators with greater rights and protection.

In this paper, we focus on intimate, long-term co-residential heterosexual partnerships; although homosexual partnerships have been instrumental in reforming marriage and civil partnership law, our interest here is in behaviors practiced by a substantial proportion of the population. Our interest is also in cohabitation that is more similar to marriage. In some countries, cohabiting unions tend to be shorter in duration and closer to an “alternative to single” (Heuveline and Timberlake 2004), but few regulations govern such relationships. Indeed, the duration of the relationship often determines the degree to which the relationship is regulated: in some countries regulations do not go into effect until the couple can prove that they have lived together for a specific period of time (often two years). Having children within the relationship is also often a marker for union stability and determines whether couples gain certain rights. The specific requirements for demonstrating a cohabiting relationship can differ between countries (and even among policies within countries). Nonetheless, the general concept of cohabitation, especially with respect to family law, is similar enough across countries to be able to make meaningful comparisons.

In this paper, we systematically analyze a range of policy dimensions that may influence cohabitation and marriage or alternatively may have been enacted as a response to increases in cohabitation. We acknowledge that the constellation of policies that influences these behaviors is extremely complex and indeed may be shaped by a number of contextual or individual-level factors, such as welfare-state context or gender ideology (see Perelli-Harris and Sanchez Gassen 2010 for a more complete discussion of these

issues). Despite this complexity, however, it is important to analyze the policies and laws that directly pertain to marriage and cohabitation to better understand their relationship to behavior. In this paper, we synthesize and measure the policies governing unions and examine whether these policies are correlated with cohabitation and giving birth within cohabitation. Drawing on a detailed policy database, we first examine specific policy dimensions to determine whether cohabitators are treated the same as married couples. We then compare these findings with survey data on the percent of people living within cohabitation and births within cohabitation. This comparison sheds light on whether the legal policies that regulate partnerships correspond to actual union formation behavior across countries. We expect that countries with a greater number of policy dimensions that equalize marriage and cohabitation will have higher rates of cohabitation and childbearing within cohabitation. Taken as a whole, the study will provide insights into whether cohabitation can be seen as an “alternative to marriage” not only in terms of behavior (Heuveline and Timberlake 2004), but also with respect to laws and policies.

THEORETICAL FRAMEWORK

Across Europe, the state has long been involved in regulating relationships between private individuals through the institution of marriage (Coontz 2005). Over time, shifts in cultural and religious values, political ideology, and public attitudes have led states to alter their involvement in marriage. One of the major influences on family law has been demographic change itself: changing economic and social conditions have led to declines in fertility, increases in divorce, and most recently increases in cohabitation (Perelli-Harris et al 2010a, Sobotka and Toulemon 2008). Legislative bodies have reacted

by enacting new laws to reflect these new demographic realities (Hantrais 1998, Hantrais 2004, Gauthier 1996). As new types of families evolve, states may enact new legislation to protect vulnerable individuals (especially children) after union dissolution, provide parity of treatment for different types of unions when there is no basis for discrimination, or promote certain types of families that accord with perceived family values, for example, strengthening traditional married couples or supporting alternative living arrangements (Dey and Wasoff 2006). All in all, the different rates at which populations adopt new family behaviors leads states to adopt new policies at different rates, thereby producing variation in both behavior and policies across countries.

On the other hand, state policies also influence people's behavior by encouraging or discouraging new family behaviors. Policies may encourage cohabiting couples to marry in order to take advantage of certain privileges, such as tax benefits or access to health insurance. Or policies may be neutral towards cohabitation, providing couples with no incentive to marry, which may be to a couple's advantage if they are likely to divorce. Policies may also be particularly influential at key moments in the lifecourse, for example couples may marry during pregnancy to gain parental rights (Perelli-Harris et al 2010) or near the end of life to ensure inheritance. It is important to keep in mind that policies may also have unintended consequences; for example, the provision of single-mother benefits may lead cohabiting couples to hide their relationships, thereby inadvertently increasing cohabitation (Hantrais 2004; Noack 2001; Martin and Théry 2001).¹ Finally, individual policies that support cohabitation or encourage marriage may not be as

¹ Note, however, that we do not address policies which may have unintended consequences, as they are beyond the scope of this paper.

important as the entire set of policies directed at union formation (Kamerman and Kahn (1978) in Neyer and Andersson 2008).

In sum, it is difficult to disentangle the direction of the causal relationship between state policies and individuals' behavior. The relationship is reciprocal, and just as there are feedback loops between demographic behaviors and social institutions - for example, the increase in divorce leads to changes in the institution of marriage which in turn leads to further increases in divorce (Bumpass 1990) - there are also feedback loops between union formation behaviors and the state policies that regulate those behaviors. Thus, it is our intention in this paper to examine how policies are correlated with behaviors, but not to determine causality in either direction.

The role of the state in regulating partnerships

We now turn to a discussion of the specific ways in which the state regulates marriage and unmarried partnerships. Until recently, unmarried couples primarily fell outside of legal jurisdiction, and in some countries, living together outside of wedlock was even considered criminal (Bradley 2001). In the 1960s and 1970s when cohabitation started to increase, some states, particularly in Scandinavia, started to implement a policy of neutrality towards alternative family forms. Gradually these states began to recognize or incorporate cohabitation into their legal systems, or devise tax and transfer systems that were based on the individual rather than the family (Bradley 2001). Other states, however, continued to maintain traditional family models, privileging marriage and providing very few if any laws for cohabitators. Thus, states may have directly enacted legislation to regulate cohabiting partnerships, provided some regulation, or completely ignored cohabitation, with it continuing to fall outside of legal jurisdiction.

One of the ways that governments have attempted to regulate cohabiting unions is to implement registration systems, for example Pacs in France or registered partnerships in the Netherlands. Registered partnerships have most of the benefits and obligations of marriage, but the similarity between registered partnerships and marriage differs across countries. It is important to keep in mind that even in countries with registered partnerships, a substantial proportion of cohabitators remain unregistered, although these couples may still be given some rights or obligations. Nonetheless, the distinction between registered and unregistered partnerships needs to be taken into account when analyzing to what extent states have extended rights to cohabitators in each policy dimension.

Regulating partnerships. One of the primary reasons the legal institution of marriage was created across Europe was to manage property, inheritance and general financial issues of the household (Coontz 2005). By passing extensive inheritance laws, the state ensured that property automatically transfers to married spouses after death, even without a will. Inheritance for cohabiting couples, however, varies considerably across countries. Most countries do not provide an automatic right to inheritance and/or require higher taxes on inherited property. Some countries have extended rights to cohabitators, especially to long-term cohabitators or those with joint children, but usually only in certain circumstances. For example, cohabitators in most countries have recently been granted the right to take over the lease of the apartment in which the couple lived, if only the deceased partner had held the lease. Cohabitators may be eligible for a survivor's pension, provided that certain conditions have been met, such as having a child together.

The state has also long been involved in resolving property disputes after the dissolution of marriage. Divorce law is usually well specified in European legal systems and managed through court proceedings. Because cohabiting couples fall outside of the law, however, their recourse to family law is limited, and they must instead rely on general property or contract law. Some European states have implemented laws of limited scope to regulate the division of property after dissolution, such as the right to a share of household goods used on a daily basis, but different regulations may still apply to the division of individual assets or private wealth. In countries with registered partnerships, partners may be subject to specific regulations for the division of joint property (Boele-Woelki and Schrama 2005).

The state also has an interest in ensuring that its constituents are well maintained and do not fall into destitution. In most countries, the first step to ensuring basic well-being is to require that spouses provide support to each other. Most states require that married spouses provide maintenance to a spouse during a relationship if the spouse is unemployed and has no means of supporting him/herself. Ex-spouses may also be required to pay alimony after the relationship ends. The situation may be very different for unregistered cohabitants, who are usually not obliged to maintain their partners or pay alimony after separation (Barlow et al 2005; Noack 2001; Wellenhofer 2005). If the couple has common children, however, the state may require that a partner pay the primary childcare provider financial maintenance for a limited period, in addition to child support (Kulms 1994; Becker 1994). Again, countries with registered partnerships may have different rules for alimony after union dissolution. Finally, the state also determines to what extent partners are responsible for each other's debts; for example married

spouses are usually responsible for certain types of debts incurred by the household, but cohabitators generally do not share this obligation.

As states developed tax systems, official marriage was used to organize the taxation of households. Often states would privilege married households, based on the presumption that a breadwinner would support a wife who would be responsible for maintaining the household and raising children. Today, income tax systems vary extensively in their approach to families and whether they privilege the breadwinner model. Some states continue to favor marriage by exercising joint taxation (Dingeldey 2001). In joint taxation systems, the income of both spouses or all household members is added and then usually split by a predefined quotient, an approach especially advantageous for couples in which one spouse's income is higher than the other's. Other states have developed individualized taxation that tends to be neutral towards cohabitation. In individualized tax systems, taxes are declared separately for each individual, irrespective of whether the person is married or cohabiting, and few tax incentives encourage marriage. A third type of tax system calculates taxes on an individual basis but provides considerable tax relief when only one person in a family is employed (Dingeldey 2001, O'Donoghue and Sutherland 1998).

States also have an interest in protecting the welfare of their constituents by providing them with basic welfare payments, such as social security benefits and health insurance. Because it is assumed that married spouses will care and provide for their partners, the state often refuses to provide married people the same benefits as single people. Usually, the state assumes that cohabiting couples, like married couples, will care for each other and therefore refuses to provide benefits to households with cohabiting

couples. The result is that cohabiting and married couples are treated the same. On the other hand, marriage can provide access to certain social benefits that would be denied to single people. Because many welfare states have traditionally supported the breadwinner model and assumed that one spouse (usually the wife) will stay at home to manage the household, the state has made it easier for spouses out of the labor force to be covered by the health insurance of the working spouse. In some countries this type of health insurance can be extended to unmarried partners, but usually only under certain conditions. In countries which have introduced a universal right to health insurance, however, rights to health care are independent of marital status.

Regulating parenthood. Besides regulating the relationship between couples, the state also regulates the relationship between parents and children. Historically, the state was involved in regulating the father-child relationship, because it was fundamental to determining inheritance and custody. Married fathers were automatically assumed to be the father of the wife's child, and property passed to these children. In the past few decades, discrimination against the children of unmarried parents has been abolished, with the children of unmarried parents now accorded the same rights to inheritance as those of married parents (Dopffel 1994). Nonetheless, paternity and custody, i.e. the right and obligation to nurture and care for the child and the authority to make legal decisions related to its upbringing, are not automatically established for cohabiting fathers; in all countries, unmarried fathers must officially recognize their children, usually through bureaucratic procedures or court ruling. Countries differ, however, in the details of these bureaucratic procedures, for example, whether mothers are required to provide consent, granted a right of veto, or allowed to contest the veracity of the paternity claim *ex post*.

On the other hand, some countries take an active role in establishing paternity, usually because the state wants to ensure that fathers provide child support; nonetheless the state usually determines paternity through the mother's notification. In sum, countries vary in the difficulty for cohabiting couples to establish paternity, and, indeed, these difficulties or lack thereof may prompt some couples to marry during pregnancy or shortly after birth.

In some countries, fathers automatically acquire joint custody once paternity is established, although there may still be specific requirements, for example establishing paternity within one year. In other countries, a specific, separate application is required for unmarried fathers to attain joint custody, and again this may depend on the mother's consent. Requirements may also differ for registered partnerships. In addition, couples may need to meet further conditions to acquire joint parental custody, for example sharing a common household or contracting a formal agreement regarding the allocation of the personal care and financial responsibility for the child. Again the bureaucratic procedures may end up motivating couples to marry to ensure joint custody.

Finally, countries 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 or the couple has registered for joint custody. In other countries, a nonmarital child receives the mother's surname, but couples can apply to change the child's name to the father's after the father has acknowledged paternity. In some countries, however, nonmarital children receive the mother's last name, and fathers who would like to pass the paternal family name to their children must marry the mother before the birth.

Regulations for special groups. Marriage also conveys rights to certain types of couples, for example, partners from two different countries may gain residency and/or citizenship through marriage. In most European countries, foreign married spouses of resident citizens have the right to obtain a residence permit and are usually able to attain citizenship under privileged conditions. Cohabiting partners of resident citizens usually do not share these rights; however, registered partners might receive special consideration.

Another special category pertains to those who are unable to reproduce using natural means or who wish to adopt children. Not all countries allow cohabiting couples the same access to reproductive technology as married couples, or fertility treatments may not be covered by health insurance. However, it is considerably easier for cohabiting couples to undergo fertility treatments than to adopt a child. Most countries have restrictions on unmarried couples jointly adopting a child; instead, one cohabiting partner must adopt a child as a single person.

DATA AND METHODS

To better understand the relationship between policies and the level of cohabitation and childbearing within cohabitation, we have compiled two databases.

The first database details policies related to cohabitation and marriage in 9 countries in Western Europe: Germany, Austria, France, Sweden, Norway, Switzerland, Spain, England, and the Netherlands. We chose these countries to represent a broad cross-section of welfare-state ideologies and levels of cohabitation. We only look at national level legislation, which may mask variation across countries at the regional level;

for example, in Spain, individual regions have registered partnerships and implemented policies which might differ from those at the national level. The information in our policy database comes from a number of secondary sources, legal documents (usually in the official language), and official websites.² Where possible, we examine codes of law and individual pieces of legislation in the original language. Because most of our demographic data refers to the period 2000-04, we examine policies in effect in January 2000 when policies may have influenced couples' decisions to marry or to stay in cohabitation. Note that further research is needed to follow the development of these policies over time.

We examine 19 policy dimensions that capture the concepts discussed in the theoretical framework above (Table 1). To facilitate analysis, we organize these dimensions into six clusters: protection of the surviving partner, property disputes after union dissolution, financial issues, taxation and benefits, father-child relationship and rights for special groups of couples.

(Table 1 around here)

Table 1 provides details on the policies we examine, with column two presenting the specific question we ask. Table 2 shows an example from our database for Germany. The questions are designed to determine whether union status conveys certain rights or obligations. We ask the questions separately for married couples and cohabiting couples and then compare the answers to better understand whether the two types of couples are treated the same. For example, for 'inheritance rights' we ask: 'In the absence of a will, is

² Extracts of the database and an overview of the sources used are available with the authors

the surviving (married or cohabiting) partner entitled to inherit from the deceased according to inheritance law?’ In Germany, we find that married partners have the right to inherit without a will, but cohabiting partners do not. Therefore, we code the difference between married and cohabiting partners as 2.

(Table 2 around here)

The quantification follows the following scheme: We coded a policy dimension 0 if long-term cohabiting couples have equivalent rights and obligations as married spouses or if the union status does not entail any rights. For example, in Sweden, the tax system is organized around the individual, and neither married nor cohabiting couples receive benefits. Thus, the income tax policy dimension for Sweden would be coded 0. A policy dimension is coded 1 if some rights are granted to cohabiting couples, but these rights are not as far reaching as those of married couples, e.g. because they depend on additional conditions, apply only in specific circumstances or are only open to specific groups of cohabitants. A value of 2 is allocated if cohabitants do not have the same legal rights and obligations as married couples. Again, we used the same type of policy analysis and quantification for all other eight countries of this study.

To arrive at an overall assessment of how the nine countries equalized marriage and cohabitation, we sum the points for each of the 19 policy dimensions (for example, Germany achieved 29 points). The maximum is 38, indicating that rights and obligations remain reserved for married couples in all policy areas. The minimum sum is 0,

indicating that marriage and cohabitation have been completely equalized in all policy areas.

It should be noted that our coding procedure is inherently subjective, since we are trying to summarize many issues into a simple measure. Also, because the coding scheme collapses all exceptions into a single “some rights” category, the scheme may mask the variety of exceptions to the rules. For example, in one country it may be relatively easy for cohabitators to gain similar rights as married couples, while in another it may be extremely difficult. Nevertheless, we feel that our broad categories meet the goal of comparing general rights across countries. The measures capture basic differences in how similar cohabitation and marriage are for each policy dimension and focus on the extremes: no rights, exactly equal rights, or something in between. It should also be noted that this study focuses on *de jure* policies, not on how the policies might be interpreted.

Overall, by constructing a series of metrics that allow policy dimensions to be compared across countries and by creating an aggregate indicator that measures the “total” number of policies that equalize cohabitation and marriage, we aim to answer the following key questions:

- (1) How do our study countries vary with respect to the number of policy dimensions that equalize cohabitation and marriage?
- (2) Which areas of the law are most likely to have been equalized for cohabitation and marriage across countries?

- (3) How well does the number of policy dimensions that equalize cohabitation and marriage correlate to the level of cohabitation and childbearing within cohabitation across countries?

The second database, used to calculate the percent of births to women living within cohabitation, is composed of union and fertility histories from the Harmonized Histories database (Perelli-Harris, Kreyenfeld, and Kubisch 2009). More information on the Harmonized Histories can be found at www.nonmarital.org. The data for Norway, Austria, and France come from the Generations and Gender Surveys, which interviewed nationally representative samples of the resident population in each country. The other surveys in the Harmonized Histories database are similar in that they also included retrospective birth and union histories, although they might have employed different survey designs. The Dutch data come from the 2003 Fertility and Family Survey and interviewed women aged 18-62. The data for the U.K. is from the British Household Panel Survey and required a slightly different dataset construction. The German data come from PAIRFAM., which is based on the 1971-73 cohorts, and the Spanish data are from the Survey of Fertility and Values³. Data for Sweden and Switzerland are still undergoing processing, thus we rely on secondary sources for statistics shown below.

Despite slightly different survey designs, information on births and union formation is relatively comparable. Questions about cohabitation could be interpreted differently in different settings, but the questions generally relate to co-resident relationships with an intimate partner. In some of the GGS surveys (and the BHPS), the

³ The Spanish Survey of Fertility and Values was collected by the Centro de Investigaciones Sociológicas, but it is still undergoing processing. Therefore, the CIS holds no responsibility for any inaccuracies found in the data.

question specifically refers to cohabiting relationships that last more than three months; in Austria, however, there is no minimum length of cohabitation specified. Note that retrospective histories are often subject to recall error, but since we focus on the most recent periods, such inaccuracies should be minimal.

Because the Harmonized Histories data is not available for all countries, we use the European Social Surveys to examine basic measures of the percent of men and women living with a partner at the time of interview. The ESS includes data for all 9 countries included in our policy database. More information on the ESS can be found here: <http://www.europeansocialsurvey.org/>. Questions regarding marital status and whether the respondent had a partner at the time of interview differ slightly in France, where they asked question about PACS, and the Netherlands, which asked all respondents whether they were living with a partner. Although sampling strategies and the age composition of the population differs across countries, the information shown here should provide a basic picture of how the level of cohabitation differs across countries.

RESULTS

Differences across countries.

Table 3 represents the quantification of the policy dimensions from our policy database for each country. This table shows to what extent married and cohabiting couples are treated differently for each policy dimension, and, at the bottom of the table, the total sum of policy dimensions for each country. Immediately we see that that there is considerable variation in the way that states treat married and cohabiting couples,

depending on policy area. We can also see how countries range from providing more or less equality for married and cohabiting couples. The sum totals are lowest in Sweden and the Netherlands (13 and 15 points, respectively), indicating that by 2000 these countries had moved the furthest in equalizing marriage and cohabitation.⁴ These countries had eliminated the differences between marriage and cohabitation in most policy dimensions, extended rights in areas such as inheritance tax and residence permits for foreign partners, but maintained differences in areas such as financial maintenance and alimony. Note, however, that even in these relatively liberal policy regimes, marriage and cohabitation are equal in only half of the policy dimensions which we examine. This suggests that marriage can still be considered a separate legal institution in these countries.

At the opposite end of the table, Germany, Switzerland and Austria have the highest overall values (29, 27 and 24 points). In these countries, existing legal rights and obligations of married couples had not been granted to cohabiting couples to the same degree as in the other countries; only certain rights - especially in the policy clusters social benefits and parent-child relations - have been opened up to cohabiting couples. These results suggest that marriage is still strongly privileged in these countries. Spain, France, England and Norway were in the middle of the spectrum, all with very similar sum totals of 20 or 21 points. These countries have extended rights in some policy domains, but important distinctions, for example, in terms of adoption, citizenship and inheritance tax legislation remain.

⁴ Note that the sum total of policy dimensions for registered partnerships in the Netherlands is even lower (3 points). Marriage and registered cohabitation are nearly equal in terms of their legal consequences.

(Table 3 around here)

Differences across policy dimensions

We now turn to a more detailed analysis of how cohabitation and marriage have been equalized in each policy area. To facilitate understanding, we examine figure 1. Each bar in the figure is subdivided according to the number of countries that had legally equalized (white section of the bar), partly equalized (grey section) or not equalized (black section) the rights and duties of cohabitators and married spouses by 2000. Please note that this figure only refers to the legal situation of unregistered cohabitators, i.e. the legal situation of registered cohabitators in France and the Netherlands is not included to avoid counting the countries twice. At first glance, we see that for some policy dimensions, most countries have moved in tandem to extend rights (or obligations) to cohabitators (the predominantly white or grey bars), and marriage and cohabitation are nearly equal. In other dimensions, marriage is still privileged (the black bars) by the majority of countries. Below we discuss in which policy clusters reforms have been adopted for the greatest number of countries.

(Figure 1 around here)

Protection of the surviving partner, property disputes, and financial issues. At the end of the 20th century, the largest differences between the legal rights of married and cohabiting couples persisted in policy dimensions addressing the protection of the surviving partner in case of death, property disputes in case of union dissolution, and

financial issues. Civil Codes and marriage laws generally provide extensive rules to protect surviving spouses (Hamilton and Perry 2002). For example, married spouses have automatic rights to inherit from their deceased partner even if no will was made. They also often have to pay lower inheritance tax rates and only have access to survivor's pensions, once certain conditions are fulfilled. As Figure 1 shows, these rights were extended to cohabitators in only a few countries. Sweden and Norway provide rules on how a joint household is to be dissolved in case of death. The scope of these laws, however, is more limited than marriage law, because they cover only the joint home and certain goods belonging to the joint household. Other types of property, such as money in bank accounts, summer houses, cars, gifts or inherited property is not covered by the laws (Ryrstedt 2005a and 2005b). In England, surviving cohabitators can make a claim for financial provisions according to the Inheritance Act of 1975, if they lived 'as husband or wife' with the deceased and had not been sufficiently provided for in a will. Provisions granted on this basis, however, are likely to be lower than those awarded to married spouses (Barlow et al. 2005).

With respect to inheritance tax, only Sweden and the Netherlands applied the same tax rates and tax exemptions to married spouses and cohabitators in 2000 (represented in the white part of the bar on inheritance tax, figure 1; Waaldijk 2005, Eliason and Ohlsson 2010). In Switzerland, cohabitators generally did not enjoy any tax advantages under cantonal law, which defines inheritance tax, with the exception of the canton of Luzern (represented in the grey part of the bar; Duttmeier 1998). In the Netherlands cohabitators had exactly the same rights to survivor's pensions as married spouses (Waaldijk 2005). In Sweden, Norway and Spain, long-term cohabitators were eligible for

survivors' pensions only if certain conditions were fulfilled, e.g. if they had joint children (grey part of the bar; Lamarca i Marquès and Alascio Carrasco 2007; Noack 2001; Björnberg 2001).

In contrast to the preceding policy dimensions, states have moved much further in equalizing marriage and cohabitation in tenancy law. As Figure 1 shows, almost all of our study-countries allow long-term cohabiting partners to take over the lease of the rented apartment in which the couple had lived, even if it had only been signed by the deceased partner. Only Switzerland and Germany did not follow this trend in 2000. In Switzerland, the heirs of the deceased are entitled to cancel the lease; therefore, surviving cohabiting partners were allowed to continue the lease, only if they were appointed in a will. In Germany, the Civil Code only gave surviving married spouses the right to remain in a rented apartment. However, in 1993 the Federal Court of Justice ruled that heterosexual cohabiting partners could remain, resulting in *de facto* rights differing from *de jure*. In 2001, the Civil Code was officially amended to adapt the law to the court ruling (Siegfried and Waaldijk 2005).

Differences between married spouses and cohabitators also persisted in property law. All countries have laws detailing how property and household goods acquired during marriage should be divided after divorce. As figure 1 shows (cluster 'property disputes'), cohabiting couples were generally not covered by such laws. The only countries which had enacted laws to help solve property disputes for former cohabitators were Sweden and Norway. These countries provide rules on the division of household goods in case of union dissolution. Again, these laws are not as far-reaching as marital property law and apply only to household goods and the joint home – not other types of assets.

In contrast to married spouses, cohabitators were also under no obligation to share their financial resources with their partner, either during or after the end of a relationship (cluster ‘financial issues’). Minor exceptions could be found only in three countries - Germany, Switzerland and Austria – where unmarried fathers are responsible for maintaining the child’s mother for a few weeks before and/or after birth. This might apply both during a union (‘financial maintenance’) and after union dissolution (‘alimony’). In Germany, fathers may need to provide payments for a longer period of time if the mother is not able to work, e.g. due to lack of childcare. Apart from these minor exceptions, cohabitators did not share the financial obligations of married spouses in 2000.

Civil Codes across Europe stated that both spouses can be made liable for debts that were incurred for the day-to-day needs of the household. This obligation applied irrespective of whether the debts were incurred by only one of the spouses. In many countries, unregistered cohabitators were not covered by such laws (see Figure 1). Only in France, Spain and Austria had courts come to different conclusions and established joint responsibility of cohabitators for household expenses, if the relationship appeared to be ‘marriage-like’ (grey part of the bar on ‘debts’ Ferrand 2005; Cadena Serrano 2002). In Sweden and England, neither married nor cohabiting couples have joint responsibility for household debts (white part of the bar; Ytterberg and Waaldijk 2005).

Taxation and benefits, father-child relationships and rights for special groups. As noted above, the equalization of cohabitation and marriage does not necessarily provide an advantage to cohabiting couples: the state may ignore marital status in order to avoid

making payments. Our findings show that most countries had moved towards equalizing cohabitation and marriage with respect to social security in 2000 (cluster ‘taxation and benefits’). Usually, the income of all household members was pooled when establishing whether individual members of the household community were eligible for means-tested social support. Long-term cohabiting couples, registered couples and married couples could all be made responsible to maintain their partner, and the amount of social support that persons in need received was generally lower if they were in any type of long-term relationship than if they were single. Only in Norway did the eligibility for social security payments depend on the discretion of the municipal social welfare offices, and it is unclear to what extent they assessed the income of a cohabiting partner when establishing access to social security benefits (Asland/Waaldijk 2005:160f.).

Similarly, the right to co-insure a non-working partner in health insurance had been extended to long-term cohabitators in some countries with joint health insurance schemes by 2000. In other countries, the marital status of a person was irrelevant because access to health care was universal (England, Sweden), or because the option to co-insure a partner did not exist either for married or cohabiting couples (Switzerland) (Ytterberg and Waaldijk 2005). Only in Germany did the right of co-insurance remain a privilege of married spouses not granted to cohabitators. In Norway, cohabiting partners could be co-insured if they had previously been married to each other or if they had children (Asland and Waaldijk 2005).

Differences in income taxation for married and cohabiting spouses varied even more across Europe. In some countries, marital status had no effect on income tax rates since taxation was based on the individual person’s income (e.g. in Sweden (Björnberg

2001) and England (Hamilton 2002); white part of the bar). In other countries, the tax advantages of married couples were granted to cohabitants, once certain conditions were fulfilled (grey part of the bar). In Austria, for example, tax reductions for families with a sole breadwinner could be available to long-term cohabitants with minor children. In France, advantages in tax law were based on marriage, but the number of children born also constrains some advantages; therefore unregistered cohabitants with children could profit from tax advantages (Ferrand 2005). In systems of joint taxation (Germany, Norway and Switzerland) cohabitants were not provided the option of declaring their taxes jointly (black part of the bar; Asland and Waaldijk 2005). This right was reserved for married spouses and often – but not always, as in the case of Switzerland – advantageous.

As is evident from the large white and grey sections of the bars in the policy cluster covering father-child relationships (Figure 1), unmarried fathers had acquired many rights towards their children by 2000. Like married parents who did not share the same surname, unmarried parents in most European countries were able to determine which of their respective family names should be passed on to the child. In France, couples did not have a choice about transferring their name to their children; instead, the father's family name was automatically transferred to the child if the parents were married or if the father acknowledged the child with the mother. In Germany, unmarried fathers had the right to pass on their family name, but only if they shared custody for the child (grey section of the bar). In Switzerland and Austria (black section of the bar) the Civil Codes explicitly stated that a nonmarital child should carry the name of the mother.

In all countries, cohabiting couples had to undertake additional procedures to establish paternity. Married husbands were automatically considered to be the father of

the child in all countries observed, but cohabiting men had to explicitly acknowledge their children in order to be registered as the father. While all nine countries required this step to be taken, the conditions under which cohabiting men could acknowledge their child differed substantially by country (Hamilton and Perry 2002). In some countries like Germany, paternity could only be established with the consent of the mother. In Sweden, the acknowledgement of paternity not only had to be approved by the mother, but also by a municipal Social Welfare Committee which had a legal duty to investigate in paternity issues (Saldeen 2002: 646f.). Thus, although this policy dimension appears to be homogenous across countries, because additional measures must always be taken in order to establish paternity, the “partial differences” category masks variation in bureaucratic procedures across countries, procedures which may in fact be very important to decisions to remain in cohabitation or marry.

Once paternity is established, France and Spain automatically allocate joint custody to the parents, thus effectively treating them like married couples (white part of the bar on ‘joint custody’ in Figure 1). In all other countries cohabiting couples had to take additional administrative steps to be granted joint custody for their child. Again, the requirements varied by country. In Norway, the parents had to notify the authorities of their wish to obtain shared custody (Lødrup 2002:512). In Switzerland the parents had to fulfill more extensive requirements, for example drafting an agreement about each partner’s financial support and personal care. Swiss parents also had to apply for joint custody at the guardianship office, which would only grant parents joint custody if it was considered to be in the child’s best interests (Graham-Siegenthaler 2002:691).

Governments have also made strides in equalizing cohabitation and marriage in the policy cluster ‘rights for special groups’ (see Figure 1); however, not for all dimensions. All nine countries generally granted foreign spouses access to long-term residence permits and facilitated their naturalization. Four of the nine countries (Sweden, Norway, the Netherlands and France) had fully - or partly in the case of France - extended the right to a residence permit to unregistered cohabiting couples. In France, unregistered cohabitation did not entail any rights to receive a residence permit as such, but could be considered when determining whether the foreign resident had family ties in France (Ferrand 2005). In the other five countries, cohabitators were not granted privileged access to residence permits (black part of the bar). Legal differences between married and cohabiting persons existed in even more countries in terms of citizenship. Only the Netherlands had equalized the naturalization requirements of cohabitators and married spouses (Waalwijk 2005). In all other countries, only married spouses could profit from easier naturalization requirements.

In laws governing adoption and reproductive technologies, similar differences remained. While almost all countries granted cohabiting women the same rights to use reproductive techniques as married women, adoption laws continued to privilege married couples. Only in Spain, did long-term cohabiting couples have the right to apply for joint adoptions similar to married spouses (white part of bar on ‘adoption’ in figure 1). In the Netherlands, cohabiting spouses could jointly adopt children who were born in the country; for international adoptions, partners had to be married if they want to adopt jointly (grey section of the bar; Boele-Woelki and Schrama 2005).

Correspondence between policy regimes and demographic behaviour.

One of the primary motivations of this paper is to investigate whether the policies governing marriage and cohabitation correspond with levels of cohabitation and childbearing within cohabitation. We expect that countries with high levels of cohabitation and childbearing within cohabitation would have moved further towards equalizing cohabitation and marriage law, while countries with policies that continue to favor marriage would have lower levels of cohabitation and births within cohabitation. In order to test this hypothesis, we start by examining the percent of men and women aged 20 to 45 living with a non-marital partner at the time of interview, based on the 2002 ESS. In figure 2, we plot the percent living with a partner and the sum of policy dimensions, taken from the last row on table 2.

(Figure 2 about here)

Our results show that the percent of respondents living with a partner and the sum of policies equalizing marriage and cohabitation are weakly correlated (Pearson's R : -0.43). 19% of the variance of cohabitation can be explained by the state's approach to cohabitation, or - because we are not attempting to demonstrate causality - 19% of the state's cohabitation policies can be explained by developments in demographic behavior. Note that there are serious limitations in using this approach with this data: our sample size of 9 countries is extremely small, and we did not choose our sample countries randomly, but rather on convenience based on where we were able to gather policy data. Also note that our measure is subject to biases due to the age composition of the population (the percent of single people and when individuals are likely to form co-

residential unions) and when and how cohabitation diffused (i.e. whether younger never-married couples were the forerunners or previously married older individuals were more likely to cohabit). Finally, this measure could also be subject to social desirability biases that might differ by country. In Spain, for example, fewer couples may admit to living with an unmarried partner, or one couple may still maintain an official residence with parents, even though they may technically be living together. Nonetheless, it is interesting to use the correlation coefficient to help facilitate understanding of the relationship between behaviors and policies.

The extreme ends of the spectrum demonstrate the relationship between cohabitation behavior and policies well. In Sweden, where married and cohabiting partners had more similar legal rights, the percent of 20 to 45 year olds living in cohabitation is higher than in all other countries. In 2002, 35% of all men and women lived in a cohabiting union (Figure 2). On the other side of the spectrum, in Switzerland, marriage was still highly privileged and the percent living in cohabitation was lower than in almost all other countries (13%). Most of the other countries fall between these two extremes. The sum of policy dimensions in Norway, France, England⁵ and Austria were lower than in Sweden but higher than in Switzerland, indicating that these countries had equalized marriage and cohabitation in some dimension while maintaining differences in others. The levels of cohabitation also fall between the levels we find for Switzerland and Sweden. In Norway, for instance, 31% of all individuals in the age range 20 to 45 were cohabiting.

⁵ Note that while our policy analysis and the data on births within cohabitation apply to England only, data on levels of cohabitation were only available for the whole UK at this point. We will restrict these data to England at a later point.

Nonetheless, a few countries stand apart from this pattern. The Netherlands is a striking case. Despite the high degree of legal equality between marriage and cohabitation, the percent living in cohabitation (18%) was much lower than expected. Spain also does not meet our expectations. The percent of persons living in cohabitation is extremely low, only 3% of men and women aged 20 to 45 lived in such a union in 2002. However, given that the Spanish EFES shows that 22% of births occurred within cohabitation (see below), and other sources have reported an increase in cohabitation (Castro Martín 2007), we suspect that the low figures may also be due to data measurement issues, for example, the social desirability factors mentioned above or how the question was worded. This data source needs to be further investigated to rule out data irregularities.

Using the Harmonized Histories database, we also plot the percent of births to women living within cohabitation and the sum of policy dimensions. Note that most of the data on births refers to the period around 2000-04, but the data for Sweden (Thomson and Kennedy 2010) refers to 1995-99, and the German data from pairfam only shows results for cohorts born in 1971-73. Also, we do not distinguish between registered and unregistered partnerships, because the percent of registered partnerships in our 2000-04 data is extremely small. All in all, we feel that our data roughly corresponds to policy conditions around 2000.

(Figure 3 about here)

The results obtained for figure 3 are remarkably similar to those in Figure 2. The position of the countries does not change substantially, although the correlation coefficient suggests a slightly stronger relationship (-0.54) between policies and behavior,

with 29% of the variance explained. Spain is less of an outlier in Figure 3 (again, perhaps due to data issues), but the Netherlands still remains apart from the overall pattern. Switzerland's position for the percent of births in cohabitation is substantially lower than for the percent cohabiting, which may reflect the country's conservative policies regarding unmarried fathers (LeGoff and Rhyser 2010). Overall, our analysis of both living arrangements and childbearing does suggest that state policies and union formation behavior are related.

DISCUSSION

This study is the first attempt to systematically analyse the legal treatment of married and cohabiting couples across European countries and to compare these findings with trends in union formation and childbearing. Our analysis of the policies that may influence union formation behavior revealed that countries have made considerable strides in providing parity between cohabitation and marriage in areas such as health insurance, transfer of rental agreements after death, and access to reproductive technologies. On the other hand, governments have been much more reluctant to extend marital rights to cohabitators in the areas of property disputes and protection of the surviving partner. In most countries, married partners still have greater rights to inherit without a will, receive a survivor's pension, and avoid inheritance tax. States have also been slow in passing measures to resolve disputes after union dissolution: rarely are cohabiting partners required to divide financial assets or provide maintenance or alimony. (Indeed, this may be one of the reasons couples prefer to remain within cohabiting relationships rather than marrying). In general, we find that up until 2000, it was rare for

all countries to extend rights and obligations to cohabitators in any policy dimension. The only exception is in provision of welfare benefits, where states treat cohabiting and married couples the same in order to avoid payments.

We hypothesized that countries in which marriage entailed substantial legal advantages should have had a lower percent of births within cohabitation than countries in which marriage and cohabitation had achieved greater legal harmonization. There does seem to be a weak correlation between policies, cohabitation and childbearing within cohabitation. Switzerland and Sweden are on the extremes of the spectrum. Switzerland has a lower percent of couples living together, and couples appear to marry around the time of the birth, because of pro-marriage policies, a finding which corroborates previous work (LeGoff and Rhyser 2010). In Sweden, neutral or supportive policies towards cohabitation may have led to an increase in cohabitation behavior. Alternatively, behavioral changes in the population may have triggered policy reforms that led to the harmonization of marriage and cohabitation. At this point, we cannot conclusively argue the direction of influence, and indeed, it may be impossible to disentangle the direction of causality.

Some countries do veer off the path and may even be considered outliers. For example, the Netherlands has moved quite far in equalizing both registered and unregistered cohabitation with marriage, but the share of persons cohabiting is lower than in many other countries and only a relatively small percent of births occur within cohabitation. Spain also appears to have enacted policies that equalize cohabitation, while the population has been slower to adopt the new behaviors. The main question then is: why is the correlation between policies and behavior stronger in some countries than in

others? We acknowledge that this study has certain limitations which might help to explain our findings.

First, we focused on 19 different policy dimensions. We believe that these policy areas reflect a wide spectrum of rights and obligations that are likely to become relevant to couples at different stages in their relationship. However, it is possible that other policy dimensions which we did not capture here are relevant for couples' decision to marry. Previous research suggests that certain welfare policies intended to protect and support single parents set incentives for cohabiting couples to hide their relationship and remain unmarried to be eligible for such benefits (Knijn et al 2007). We did not consider the unintended consequences of single mother benefits, because of the difficulty of systematically identifying all policies that indirectly promote unmarried parenthood. We also focused on policies in force at the beginning of the year 2000, while the demographic data on union formation and childbearing mainly pertain to the period 2000 to 2004. During these four years, legal changes might have been enacted which had a direct and quick impact on couples' decision to marry or to remain in cohabitation. Such changes in laws could not be taken into consideration in our analysis, since they would have added too much complexity to the paper. Future research is needed to examine the development of policies over time and their relationship to behavior.

Second, it is important to note that we did not weigh the 19 policy dimensions according to the influence they might have on cohabitation behavior. Certain dimensions might have stronger effects towards promoting marriage or cohabitation than others (Perelli-Harris and Sánchez Gassen 2010). For example, the system of joint income taxation in Germany entails considerable advantages for married couples, if there is a

difference in earnings between the spouses. These advantages are not available to cohabitators. The financial consequences resulting from marrying may be much more influential for a couple's decision to marry than the legal consequences of marriage and cohabitation in other policy dimensions, such as joint adoption, which would affect fewer couples. To account for these potentially different impacts of policy dimensions, it may be important to weigh certain policy areas when evaluating the relationship between policies and behavior.

Additionally, the unexpected findings may simply suggest that policies have little impact on people's decisions to marry. Cohabitators may be unaware or misinformed about their legal rights and duties. In a study on cohabitators and the perception of their rights in England, Barlow et al (2005) revealed that many long-term cohabiting couples believe that they enjoy very similar rights as married spouses, for example in terms of inheritance— a clear misconception of the actual legal situation in England. Thus, the correlation between policies and behavior may be misaligned, if the public perception of legal rights is flawed.

Finally, even if policies promote a certain type of union and the population is well-informed about their rights, these policies might fail to have effects if they do not accord with historical and prevailing family norms and values (Perelli-Harris and Sánchez Gassen 2010). For the Netherlands, Kok has pointed out that premarital sexual relations were common already around the turn of the 20th century, but that premarital conceptions generally resulted in marriage, so that few births occurred outside of marriage. Such historical trends and family norms may linger and continue to influence the demographic behavior of the population today (Kok 2009). Further research is

necessary to analyse whether such factors can explain the variation in demographic behavior and the sometimes unexpected findings of our study.

Despite these potential limitations, the general pattern of our findings suggests that policies and behaviour tend to be weakly correlated across countries, with countries that have gone further in equalizing marriage and cohabitation also showing higher levels of cohabitation and births within cohabitation than countries in which marriage still entails many privileges. These results indicate that policies matter for people's decisions about union formation, or alternatively, that policies are adjusted to reflect changes in the behaviour of a population. In addition, our findings suggest that in no country can the institution of marriage and cohabitation be considered the same, either with respect to policies or behaviors. Although some countries, such as Sweden and the Netherlands, may have made great legal strides towards equalizing marital and cohabiting unions, especially registered unions in the Netherlands, our policy analysis suggests that married couples still enjoy advantages. And marriage is certainly not disappearing in terms of general living arrangements or childbearing. Of course, given the persistent and steady increase in cohabitation and rapid changes to cohabitation policy, it is difficult to tell what will happen next; marriage may be declining in importance both for policy-makers and couples.

In conclusion, this study adds a new perspective to discussions on recent trends in cohabitation and childbearing within cohabitation in Europe. Previous studies have sought to explain the rise in cohabitation and nonmarital childbearing by referring to value changes, economic conditions or historical family norms. The impact of policies on union formation behavior has so far not been systematically analysed. This study

represents a first step to fill this gap. We used an explorative qualitative approach to provide a detailed analysis of which countries have equalized marriage and cohabitation and which have continued to privilege marriage. We quantified the findings to be able to compare them with actual demographic behaviour. Taken as a whole, our findings show that Western European countries differ substantially with regard to the legal rights they confer to cohabitators, and these legal differences are partly reflected in demographic behavior. Further research is necessary to gain more detailed insights into when, and under which conditions, policies influence cohabitation behavior and conversely, when changes in behavior trigger policy reforms.

Table 1: Legal rights and obligations of married and cohabiting couples

| Policy dimension | Question |
|--|--|
| Protection of the surviving partner: | |
| Inheritance rights | In the absence of a will, is the surviving (married or cohabiting) partner entitled to inherit from the deceased according to inheritance law? |
| Inheritance tax | In case of inheritance, do (married or cohabiting) partners pay less inheritance tax than a non-related friend would do? |
| Survivor's pension | Are surviving (married or cohabiting) partners eligible to receive a statutory survivor's pension, provided they fulfill all other conditions? |
| Rented Apartment | Does the surviving (married or cohabiting) partner have a legal right to stay in the other partner's rented apartment after his/her death? |
| Property disputes after union dissolution: | |
| Household goods | Do specific legal rules (other than general property law) regulate the distribution of household property after union dissolution? |
| Assets | Is the distribution of other assets after union dissolution regulated by family law? |
| Financial issues: | |
| Financial maintenance | Are (married or cohabiting) partners obliged to financially support each other during the relationship? |
| Alimony | Do legal rules on alimony apply after union dissolution? (Case law on non-recurring compensation payments is not taken into consideration here.) |
| Debts | Is one partner responsible for the debts of the other (married or cohabiting) partner, provided that the debts were made for the day-to-day needs of the joint household? |
| Taxation and benefits: | |
| Income tax | Does the partnership (marriage or cohabitation) lead to any specific rights or obligations when declaring income taxes? |
| Social security | Can the partnership (marriage or cohabitation) lead to a reduction of basic social security payments (provided that the other partner has a sufficiently high income)? |
| Health insurance | Can one (married or cohabiting) partner who does not have an own income be co-insured in the public health insurance of the other partner? |
| Father-child relationship: | |
| Paternity | Is the paternity of the (married or cohabiting) father automatically established? |
| Child custody | Once paternity is established, do both (married or cohabiting) parents automatically acquire joint custody for their child? |
| Family name | If the (married or cohabiting) partners do not have the same family name, does the law allow for the child to carry the father's family name (provided that paternity is established)? |
| Rights for special groups: | |
| Residence permit | Does the relationship (marriage or cohabitation) with a citizen of the country result in an easier access to a residence permit (for third country nationals)? |
| Citizenship | Does the relationship (marriage or cohabitation) with a citizen of the country result in an easier access to citizenship? |
| Adoption | Can (married or cohabiting) partners jointly adopt a child? |
| Reproductive Technologies | Do (married or cohabiting) partners have the right to use reproductive technologies? |

Source: own work

Table 2: The legal rights and obligations of married and cohabiting couples in Germany (2000)

| Policy dimensions | | Legal consequences | | Difference in legal status |
|---|---------------------------|---|--|----------------------------|
| | | Spouses | Cohabitors | |
| Protection of the surviving partner | Inheritance rights | Yes | No | 2 |
| | Inheritance tax | Yes | No | 2 |
| | Survivor's pension | Yes | No | 2 |
| | Rented Apartment | Yes | No, not according to the legal text, but the Federal Civil Court affirmed in 1993 that the legal provisions for spouses are applicable also to heterosexual cohabiting partners | 1 |
| Property disputes after union dissolution | Household goods | Yes | No, in general each former partner is owner of the things he/she paid for; disputes have been considered by courts on a case by case basis | 2 |
| | Assets | Yes | No, courts have referred to general property law or to law on companies constituted under civil law ('Gesellschaft bürgerlichen Rechts') to judge on cases of former cohabitants' property | 2 |
| Financial issues | Financial maintenance | Yes | No, except in the case of childbirth: then the father is legally obliged to pay maintenance to the mother; duration of maintenance payments depends among other factors on availability of childcare | 1 |
| | Alimony | Yes, but spouses can also draw up own agreements about alimony in case of divorce | | 1 |
| | Debts | Yes | No | 2 |
| Taxation and benefits | Income tax | Yes | No | 2 |
| | Social security | Yes | Yes | 0 |
| | Health insurance | Yes | No | 2 |
| Father-child relationship | Paternity | Yes | No, but the father can establish paternity by acknowledging the child with the consent of the mother | 1 |
| | Child custody | Yes | No, but the parents can together apply for joint custody | 1 |
| | Family name | Yes | Yes, if the parents share custody for the child | 1 |
| Rights for special groups | Residence permit | Yes | No | 2 |
| | Citizenship | Yes | No | 2 |
| | Adoption | Yes | No | 2 |
| | Reproductive Technologies | Yes | Yes, but only after consultation with a commission appointed by the German Medical Association | 1 |
| Sum total | | | | 29 |

Signification of values: 0 = equal rights for married and cohabiting spouses/marital status does not confer any rights

1 = some marital rights are granted to cohabitants

2 = no marital rights are granted to cohabitants

Source: Own analyses based on legal documents and secondary sources (list of sources available upon request)

Table 3: Difference in legal position of married and cohabiting couples by country and policy dimension (2000)

| Policy dimensions | | Sweden | NL (U) | Spain | England | Norway | France (U) | Austria | Switzerland | Germany | NL (R) | France (R) |
|-------------------------------------|---------------------------|--------|--------|-------|---------|--------|------------|---------|-------------|---------|--------|------------|
| Protection of the surviving partner | Inheritance rights | 1 | 2 | 2 | 1 | 1 | 2 | 2 | 2 | 2 | 0 | 1 |
| | Inheritance tax | 0 | 0 | 2 | 2 | 2 | 2 | 2 | 1 | 2 | 0 | 1 |
| | Survivor's pension | 1 | 0 | 1 | 2 | 1 | 2 | 2 | 2 | 2 | 0 | 2 |
| | Rented Apartment | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 |
| Property disputes after union | Household goods | 0 | 2 | 2 | 2 | 0 | 2 | 2 | 2 | 2 | 0 | 0 |
| | Assets | 1 | 2 | 2 | 2 | 1 | 2 | 2 | 2 | 2 | 0 | 0 |
| Financial issues | Financial maintenance | 2 | 2 | 2 | 2 | 2 | 2 | 1 | 1 | 1 | 0 | 0 |
| | Alimony | 2 | 2 | 2 | 2 | 2 | 2 | 1 | 1 | 1 | 0 | 2 |
| | Debts | 0 | 2 | 1 | 0 | 2 | 1 | 1 | 2 | 2 | 0 | 0 |
| | Income tax | 0 | 0 | 1 | 0 | 2 | 1 | 1 | 2 | 2 | 0 | 0 |
| Taxation and benefits | Social security | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| | Health insurance | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 2 | 0 | 0 |
| | Paternity | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| | Child custody | 1 | 1 | 0 | 1 | 1 | 0 | 1 | 1 | 1 | 1 | 0 |
| Father-child relation | Family name | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 2 | 1 | 0 | 0 |
| Rights for special groups | Residence permit | 0 | 0 | 2 | 2 | 0 | 1 | 2 | 2 | 2 | 0 | 1 |
| | Citizenship | 2 | 0 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 0 | 2 |
| | Adoption | 2 | 1 | 0 | 2 | 2 | 2 | 2 | 2 | 2 | 1 | 2 |
| | Reproductive Technologies | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 |
| | SUM | 13 | 15 | 20 | 21 | 21 | 22 | 24 | 27 | 29 | 3 | 12 |

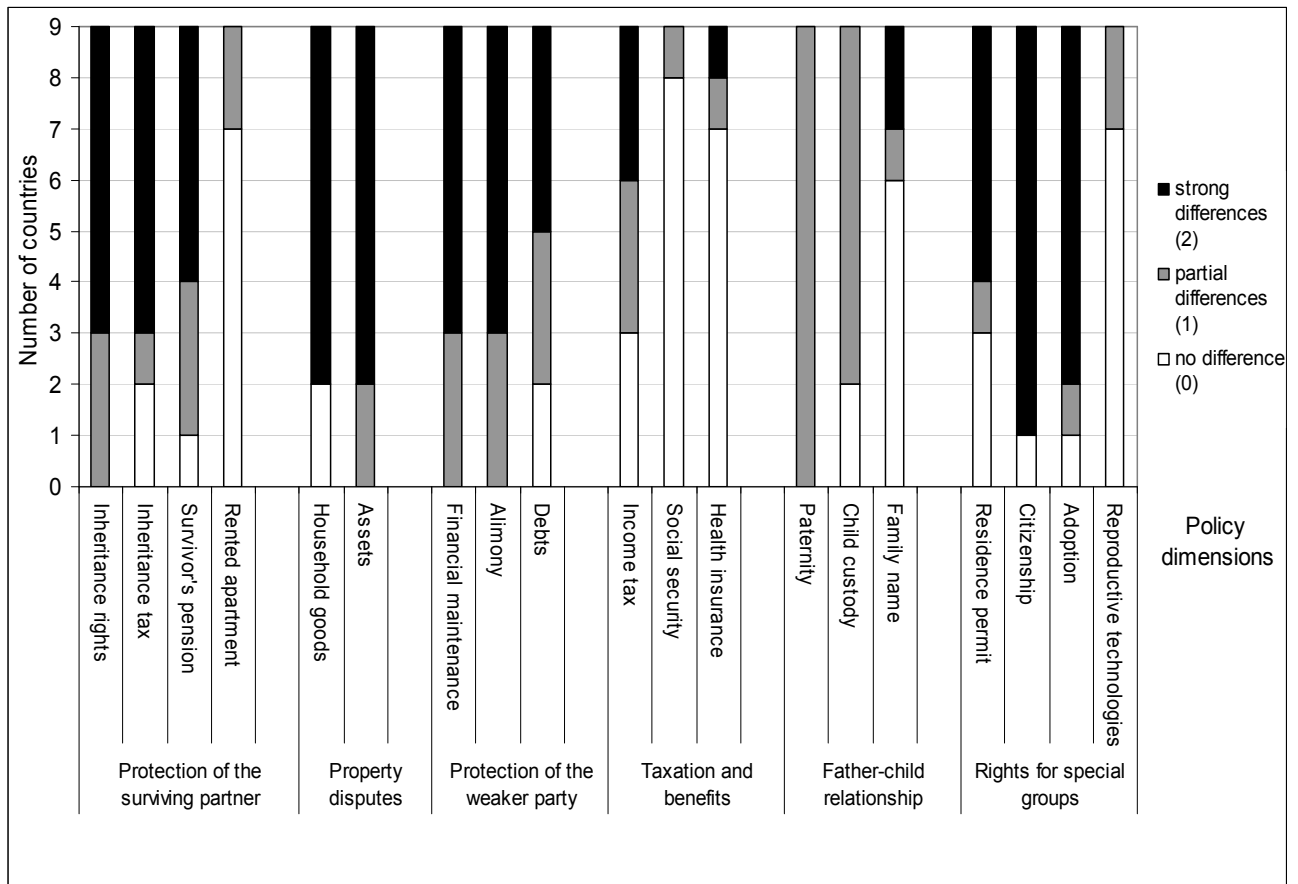
Signification of values: 0 = equal rights for married and cohabiting spouses/marital status does not confer any rights

1 = some marital rights are granted to cohabitators

2 = no marital rights are granted to cohabitators

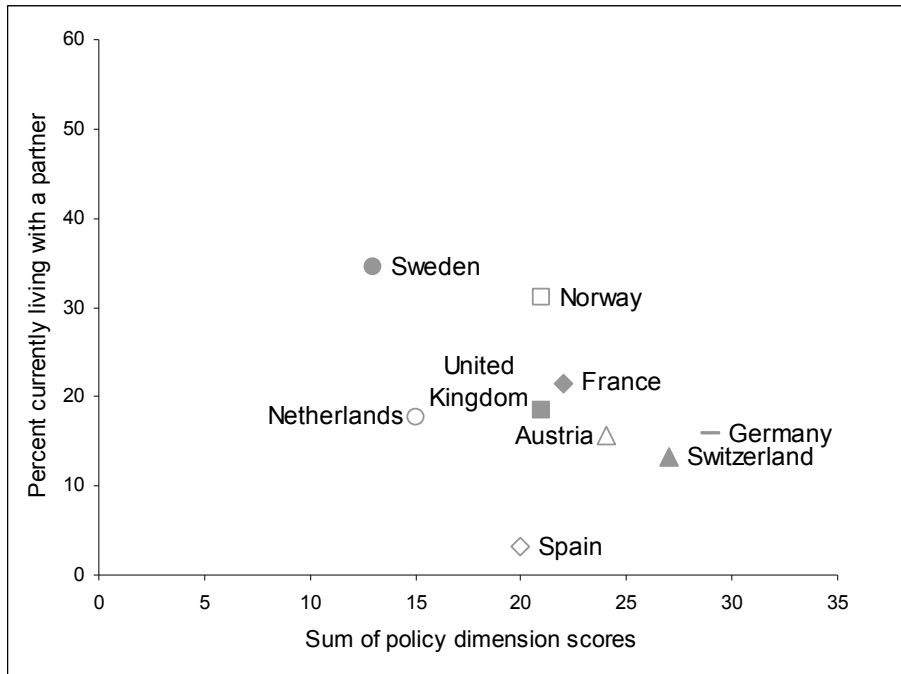
Source: Own analyses based on legal documents and secondary sources (list of sources available upon request)

Figure 1: Comparison of the differences in legal consequences of married and unmarried unions by policy dimension (2000)



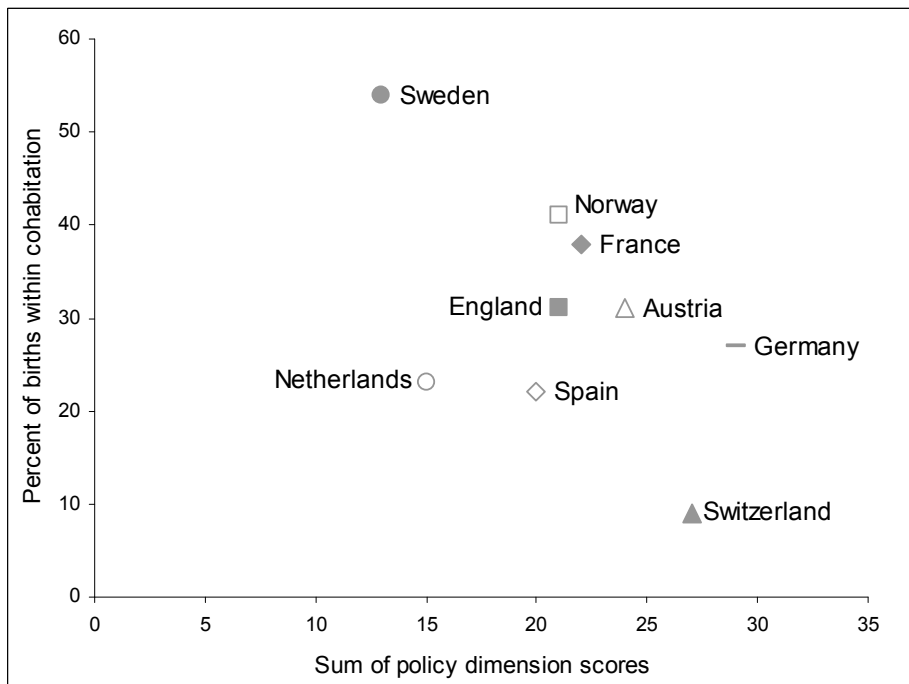
Source: Own analyses based on legal documents and secondary sources (list of sources available upon request)

Figure 2: Share of men and women aged 20-45 living in cohabitation, 2002



Source: Policy analyses: own analyses based on legal documents and secondary sources (list of sources available upon request); Demographic data: ESS 2002.

Figure 3: Percent of births born within cohabitation by country, 2000-04



Source: Policy analyses: own analyses based on legal documents and secondary sources (list of sources available upon request); Demographic data: Harmonized Histories database.

REFERENCES:

- Asland, John and Kees Waaldijk. 2005. "Major legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners in Norway." Pp. 155-168 in *More or less together: Levels of legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners. A comparative study of nine European countries*, edited by K. Waaldijk. Paris: Institut National d'Etudes Démographiques.
- Barlow, Anne, Simon Duncan, Grace James, and Alison Park. 2005. *Cohabitation, Marriage and the Law: Social change and legal reform in the 21st century*. Portland, Oregon: Hart Publishing.
- Becker, Michael. 1994. "Schweiz. Ausgewählte Rechtsfragen des schweizerischen Kindschafts- und Unterhaltsrechts nach der Reform von 1972/76." Pp. 47-70 in *Kindschaftsrecht im Wandel. Zwölf Länderberichte mit einer vergleichenden Summe*, edited by P. Dopffel. Tübingen: J.C.B. Mohr (Paul Siebeck).
- Björnberg, Ulla. 2001. "Cohabitation and Marriage in Sweden - Does family form matter?" *International Journal of Law, Policy and the Family* 15:350-362.
- Boele-Woelki, Katharina and Wendy Schrama. 2005. "Die nichtehelicher Lebensgemeinschaft im niederländischen Recht." Pp. 307-373 in *Die Rechtsstellung nichtehelicher Lebensgemeinschaften, Beiträge zum ausländischen und internationalen Privatrecht*, edited by J. M. Scherpe and N. Yassari. Tübingen: Mohr Siebeck.
- Bradley, David. 2001. "Regulation of Unmarried Cohabitation in West-European Jurisdictions - Determinants of legal policy." *International Journal of Law, Policy and the Family* 15:22-50.
- Bumpass, Larry. 1990. "What's Happening to the Family? Interactions Between Demographic and Institutional Change." *Demography* 27:483-498.
- Cadena Serrano, Fidel. 2002. "Las relaciones sentimentales "more uxorio" en el Derecho civil y en el Derecho penal " in *Actas de los duodécimos Encuentros del Foro de Derecho Aragonés : Zaragoza, 5, 12, 19 de noviembre de 2002 ; Huesca, 26 de noviembre de 2002*, edited by Foro de Derecho Aragonés. Zaragoza: Justicia de Aragón.
- Castro Martín, Teresa. 2007. "Maternidad sin matrimonio. Nueva vía de formación de familias en España." in *Documentos de Trabajo 16*: Fundación BBVA.
- Coontz, Stephanie. 2005. *Marriage, A History: From Obedience to Intimacy, or How Love Conquered Marriage*. New York: Viking.
- Dey, Ian and Fran Wasoff. 2006. "Mixed Messages: Parental responsibilities, public opinion and the reforms of family law." *International Journal of Law, Policy and the Family* 20:225-248.
- Díez Medrano, Juan. 1984. "Reflexiones teoricas sobre la evolución del a ilegitimidad en Europa (1945-1984)." *Revista española de investigaciones sociológicas* 1984(27):79-106.
- Dingeldey, Irene. 2001. "European Tax Systems and their Impact on Family Employment Patterns." *Journal of Social Policy* 30:653-672.
- Dopffel, Peter. 1994. *Kindschaftsrecht im Wandel. Zwölf Länderberichte mit einer vergleichenden Summe*. Tübingen: J.C.B. Mohr (Paul Siebeck).

- Eliason, Marcus and Henry Ohlsson. 2010. "Timing of death and the repeal of the Swedish inheritance tax." in *Uppsala Universitet Working Paper 2010:5*.
- Eurostat. 2010. "Eurostat database: Proportion of live births outside marriage." Eurostat.
- Ferrand, Frédérique. 2005. "Die Rechtsstellung nichtehelicher Lebensgemeinschaften in Frankreich." Pp. 211-247 in *Die Rechtsstellung nichtehelicher Lebensgemeinschaften, Beiträge zum ausländischen und internationalen Privatrecht*, edited by J. M. Scherpe and N. Yassari. Tübingen: Mohr Siebeck.
- Gauthier, Anne Helene. 1996. *The State and the Family: A comparative analysis of family policies in industrialized countries*. Oxford: Clarendon Press.
- Graham-Siegenthaler, Barbara. 2002. "Switzerland." Pp. 661-701 in *Family Law in Europe*, edited by C. Hamilton and A. Perry. London/Edinburgh: LexisNexis Butterworths.
- Hamilton, Carolyn. 2002. "England & Wales." Pp. 95-161 in *Family Law in Europe*, edited by C. Hamilton and A. Perry. London/Edinburgh: LexisNexis Butterworths.
- Hamilton, Carolyn and Alison Perry. 2002. *Family Law in Europe*. London/Edinburgh: LexisNexis Butterworths.
- Hantrais, Linda. 2004. *Family Policy Matters. Responding to family change in Europe*. Bristol: The Policy Press.
- Hantrais, Linda and Marie-Therese Letablier. 1998. *Families and Family Policies in Europe*. New York: Longman.
- Haslinger, Alois. 1982. "Uneheliche Geburten in Österreich. Historische und regionale Muster." *Demographische Informationen* 1982:2-34.
- Heuveline, Patrick, and Jeffrey M. Timberlake. 2004. "The role of cohabitation in family formation: the United States in comparative perspective." *Journal of Marriage and the Family* 66:1214-1230.
- Hoem, Jan. 2008. "Overview Chapter 8: The impact of public policies on European fertility." *Demographic Research* 19:249-60.
- Kamerman, Sheila and Alfred Kahn. 1991. *Child Care, Parental Leave, and the Under 3s: Policy Innovation in Europe*. New York: Auburn House.
- Kiernan, Kathleen. 2004. "Unmarried Cohabitation and Parenthood: Here to Stay? European Perspectives." in *The Future of the Family*, edited by D. P. Moynihan, Timothy M. Smeeding, and Lee Rainwater. New York: Russell Sage Foundation.
- Kok, Jan. 2009. "Family systems as frameworks for understanding variation in extra-marital births, Europe 1900-2000." *Romanian Journal of Population Studies Supplement* 2009:13-38.
- Kulms, Rainer. 1994. "Österreich. Ausgewählte Probleme aus dem österreichischen Obsorge- und Unterhaltsrecht." Pp. 9-45 in *Kindschaftsrecht im Wandel. Zwölf Länderberichte mit einer vergleichenden Summe*, edited by P. Dopffel. Tübingen: J.C.B. Mohr (Paul Siebeck).
- Lamarca i Marquès, Albert and Laura Alascio Carrasco. 2007. "Parejas de hecho y pensión de viudedad." *InDret Revista para análisis del derecho* 2007(4):1-42.
- Lødrup, Peter. 2002. "Norway." Pp. 493-519 in *Family Law in Europe*, edited by C. Hamilton and A. Perry. London/Edinburgh: LexisNexis Butterworths.
- Martin, Claude and Irène Théry. 2001. "The Pacts and Marriage and Cohabitation in France." *International Journal of Law, Policy and the Family* 15:135-158.

- Neyer, Gerda and Gunnar Andersson. 2008. "Consequences of Family Policies on Childbearing Behavior: Effects or artifacts?" *Population and Development Review* 34:699-724.
- Noack, Turid. 2001. "Cohabitation in Norway: An accepted and gradually more regulated way of living." *International Journal of Law, Policy and the Family* 15:102-117.
- O'Donoghue, Cathal and Holly Sutheland. 1998. "Accounting for the Family: The treatment of marriage and children in European income tax systems." UNICEF, Florence.
- Perelli-Harris, Brienna, Michaela Kreyenfeld, and Karolin Kubisch. 2010. "Harmonized histories: manual for the preparation of comparative fertility and union histories." *MPIDR Working Paper*.
- Perelli-Harris, Brienna and Nora Sánchez Gassen. 2010. "The reciprocal relationship between the state and union formation across Western Europe: policy dimensions and theoretical considerations (2010)." *MPIDR Working Paper* WP-2010-034.
- Perelli-Harris, Brienna, Wendy Sigle-Rushton, Trude Lappegård, Aiva Jasilioniene, Paola Di Giulio, Renske Keizer, Katja Koeppen, Caroline Berghammer, and Michaela Kreyenfeld. 2009. "Examining nonmarital childbearing in Europe: How does union context differ across countries?" *MPIDR Working Paper* WP 2009-021:1-42.
- Perelli-Harris, Brienna, Wendy Sigle-Rushton, Trude Lappegård, Renske Keizer, Caroline Berghammer, Michaela Kreyenfeld. 2010. "The educational gradient of nonmarital childbearing in Europe." *Population and Development Review* 36:775-801.
- Ryrstedt, Eva. 2005a. "Legal Status of Cohabitants in Norway." Pp. 439-454 in *Die Rechtsstellung nichtehelicher Lebensgemeinschaften, Beiträge zum ausländischen und internationalen Privatrecht*, edited by J. M. Scherpe and N. Yassari. Tübingen: Mohr Siebeck.
- . 2005b. "Legal Status of Cohabitants in Sweden." Pp. 415-437 in *Die Rechtsstellung nichtehelicher Lebensgemeinschaften, Beiträge zum ausländischen und internationalen Privatrecht*, edited by J. M. Scherpe and N. Yassari. Tübingen: Mohr Siebeck.
- Saldeen, Åke. 2002. "Sweden." Pp. 619-660 in *Family Law in Europe*, edited by C. Hamilton and A. Perry. London/Edinburgh: LexisNexis Butterworths.
- Siegfried, Dirk and Kees Waaldijk. 2005. "Major legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners in Germany." Pp. 107-120 in *More or less together: Levels of legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners. A comparative study of nine European countries*, edited by K. Waaldijk. Paris: Institut National d'Etudes Démographiques.
- Sobotka, Tomáš and Laurent Toulemon. 2008. "Overview Chapter 4: Changing family and partnership behaviour: Common trends and persistent diversity across Europe." *Demographic Research* 19: 85-138.
- Vallés Amores, María Luisa. 2006. "La posición jurídica de la mujer a través de las reformas del derecho de familia." *Feminismo/s* 2006:115-129.
- Waaldijk, Kees. 2005. "Major legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners in the Netherlands."

- Pp. 137-154 in *More or less together: Levels of legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners. A comparative study of nine European countries*, edited by K. Waaldijk. Paris: Institut National d'Etudes Démographiques.
- Wellenhofer, Marina. 2005. "Rechtsprobleme bei Auflösung der nichtehelichen Lebensgemeinschaften - unter Lebenden und im Todesfall." Pp. 101-136 in *Die Rechtsstellung nichtehelicher Lebensgemeinschaften, Beiträge zum ausländischen und internationalen Privatrecht*, edited by J. M. Scherpe and N. Yassari. Tübingen: Mohr Siebeck.
- Ytterberg, Hans and Kees Waaldijk. 2005. "Major legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners in Sweden." Pp. 169-186 in *More or less together: Levels of legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners. A comparative study of nine European countries*, edited by K. Waaldijk. Paris: Institut National d'Etudes Démographiques.