



Federal Ministry for
Family Affairs, Senior Citizens,
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Partnership and Marriage – Decisions in the Course of Life

Attitudes, Motives, Knowledge of the Legal Framework

Sinus Sociovision

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I.

Starting point

Summary

The societal changes in the reality of matrimonial and family life are associated with a radical change in the understanding of marriage (and family). The notion of marriage as an institution that is independent of the will of the partners and geared to a life-long dimension has been positively expanded by an inter-individual view of marriage and family as a creative task. Responsibility for each other is closely linked to love in this context – solidarity and fair compensation for disadvantages are important and a matter of course for the partners while the partnership exists. A far more critical approach is taken regarding whether and under what circumstances commitments persisting beyond the breakdown of the marriage may make sense. In this respect, the current changes in maintenance law, which had greatly strengthened continuing post-marital responsibility in the 1970s, are supported by the public's understanding of marriage and solidarity. However, the corresponding question as to whether the valid regulations for an existing marriage really do create the institutional framework that most couples would like to see for a partnership between equals today, indicates a need for political action. The acceptance of the reduction of post-marital compensation for disadvantages corresponds to expectations regarding the shape of equally entitled participation during an existing marriage. Most couples marry in order to put their “partnership in a sound framework” (85%). They expect – blindly, as it were – that this framework (offered by the state) ensures fair compensation between the partners. However, their assumptions regarding the valid regulations often prove to be incorrect. Terms like “statutory regime of matrimonial property” or “income splitting”, and also their actual meaning, are unknown to well over 50% of married people in the younger age group. People who have a high opinion of the statutory framework of marriage, consider it to be fair on the whole, but are not familiar with its details, intuitively assume that everything belongs to them in equal shares while their marriage exists.

There are clear differences between the sexes in this context: men believe more strongly in marriage as an institution. Far more than women, they expect marriage to make their partnership more crisis-proof and durable.

The high level of agreement with the statement “Since many young people cannot imagine all the things that may happen to them in the course of their lives, family law must take these imponderables into account by means of fair regulations” (84%) can be interpreted as a call upon the legislature, following the reform of post-marital maintenance, to now examine the regulations of matrimonial property law and, in this context, to give consideration to the wish for greater mutual compensation in existing partnerships, at least in connection with the chosen matrimonial property regime and the privileges under tax law.

Matrimonial law has traditionally attached great importance to matrimonial property law. The debate on introduction of the German Civil Code (BGB) also involved a deeply committed struggle regarding the question as to the decision-making powers that a married woman should have regarding (her share of) the property. The women’s movement and the feminist suffragettes primarily wanted to reform the existing matrimonial regime of joint ownership of property acquired during marriage¹ and joint administration² in such a way that the married woman was also given her own opportunities to take decisions. The aim of the feminists was to bring about legal equality of men and women. To them, personal responsibility for matrimonial property (separation of property) appeared to be the most suitable tool for achieving the equality of spouses in law³. Reviewing legal history, two aspects are important to this study:

■ The motivation and reasoning of the authors of the BGB of 1900 for viewing marriage as a community involving joint ownership of property acquired during marriage and joint administration was the change in roles in the emerging middle class. Before that time, up to the end of the 18th century, men and women were equally involved in **gainful employment** (both in the agrarian economy and in urban trades). The housefather and the housemother were in charge of gender-specific functions and very much reliant on cooperation based on the division of labour. In this context, the gainful element was rated more highly than unpaid housework. The role of the woman had changed fundamentally by the beginning of the 19th century. In the newly emerging middle class, women were, on the one hand, relieved of rough and heavy work, and also of management functions; on the other hand, they were reduced to their role as spouse, housewife and mother, and thus outside the sphere of gainful employment. In other words, with reference to the previous role, the law did not see this activity as being gainful employment. This separation of domestic work and gainful employment outside the home, and the clear assignment of the roles, was one

- 1 The system of joint ownership of property acquired during marriage of 1900 had “a strictly patriarchal structure: the man had the right of administration in relation to not only the joint matrimonial property, but also the separate or personal property of the woman, apart from individual exceptions”. (Meder 2010, p. 13).
- 2 The authors of the BGB of 1900 considered the man to be the master of the house and head of the family, who bore the matrimonial burdens alone and must therefore also possess a right of administration and usufruct of the property of the wife. “They moreover justified the patriarchal nature of the system of joint administration with the decision-making right of the man, regulated in Section 1354 BGB, and the lack of business experience of the woman. The purpose of joint administration was supposed to be to protect the wife against the dangers of business dealings.” (Meder 2010, p. 14 f.).
- 3 Regarding the history of the community of accrued gains, see Stephan Meder: Grundprobleme und Geschichte der Zugewinnsgemeinschaft: Wandel der Rollenleitbilder und fortschreitende Individualisierung im Güterrecht (Fundamental problems and history of the community of accrued gains: Changing role models and increasing individualisation in the law of matrimonial property). Halle-Wittenberg 2010, p. 11–26 (in German).

reason for the authors of the BGB no longer to justify a claim of the woman to participation in accrued gains in matrimonial property law – after all, because of the division of roles, they were of the view that the man alone bore the matrimonial burdens. Consequently, he was entitled to compensation under matrimonial property law in the form of the administration and usufruct of the property contributed by the woman. In contrast, the housekeeping and child-raising activities of the woman were not recognised as property-increasing merits.

From then on, the women's movement and feminist suffragettes battled against this traditional role image and for the **acknowledgement of the economic importance of domestic and family work**. They wanted to achieve economic equivalence of domestic work and gainful employment. After reaching a number of secondary goals on the way, the community of accrued gains was implemented as the statutory regime of matrimonial property in the German Equal Rights Act in 1958, with a supplement to Section 1360 BGB. Since then, the community of accrued gains with statutory separation of property has meant:

- a) The property brought into the marriage by the individual continues to belong to the individual and not equally to both spouses as a result of marriage (separation of property).
- b) Accrued gains in the sense of marriage-related increases in property originate not only from gainful employment out of the home, but also from the family work of the spouse not engaged in gainful employment, which enables the other spouse to participate in working life in the first place.

Today, this statutory regime of matrimonial property of community of accrued gains applies in the version of the reform of 1 September 2009. Problems regarding the community of accrued gains are today primarily seen in the practical dispensation of justice, where the question arises as to the “extent to which the individual property elements are to be allocated to the spouses either individually or jointly in the event of divorce” (Meder 2010, p. 10).

The community of accrued gains and its principle of (equal) allocation of the property acquired during the marriage reflects the basic understanding of current matrimonial law, which is primarily geared to catering to **divorce cases** and providing for post-marital compensation for the woman/man. The statutory regime of matrimonial property thus **focuses on misfortune**, not on the programmatic normal case of – life-long – continuation of the marriage. In this respect, law of matrimonial property loses sight of the actual marriage phase.

This needs to be emphasised because the “marriage phase” is assumed to be something unequivocal, clear and stable in the law of matrimonial property – while forces that regulate and provide for compensation in the form of law primarily appear to be necessary for the time after the marriage. However, this assumption seems to be hardly tenable any longer in our modern times characterised by the pluralisation of lifestyles and biographies.

The question therefore has to be asked as to whether the currently valid law of matrimonial property reflects, and does practical justice to, everyday reality and people's notions of marriage today. There are just reasons for doubt, since the current law of matrimonial

property is based on a “one-dimensional” married couple and marriage course. In our society, however, there is not only a host of different lifestyles and partnership forms, but also a wide variety of arrangements and approaches within the institution of marriage. This diversity is normal today. In close causal interaction with this are: a) the changing roles of women and men, b) the increasing participation of women in gainful employment, c) the discontinuity and perforation of individual life courses and career biographies, and d) various intervening events in the course of life that affect not only one individual in a marriage, but always both – since marriage establishes an economic community based on solidarity. In this respect, marriage cannot be regarded only as a (rigid) institution. Rather, particular attention must be paid to its **dynamic change in the course of life**. The law of matrimonial property must thus do justice to the fact that ...

- I ... the simultaneity of traditional, modern and post-modern role images of women and men, and
- I ... the increasingly discontinuous and perforated biographies within and outside a marriage ...

... have consequences (secondary consequences, remote consequences) for the respective spouses themselves and for indirectly affected persons. These consequences are virtually unpredictable for the spouses. Young women and men usually have no answers (for lack of knowledge and far-sightedness) for dealing with events in their biographies in such a way that the resultant advantages and risks are shared fairly between them purely on the basis of personal agreements.

In view of the demographic and sociocultural change in society, it is no longer in keeping with the times to reduce the law of matrimonial property to the question of what happens to the **property after the end of a marriage**. It is also a matter of combining **biographic events** (before and) **during a marriage** – with their material and social consequences for the directly and indirectly affected persons – with fair, solidarity-based compensation in property law during the existence of a partnership.

86% of married women and 83% of married men state that they married in order to put their partnership in a sound framework. (Almost 70% expressly refer to the legal framework, which is said to be important for the marriage.)

That brings us to the time of the wedding:

*Do people know what they are doing when they get married?
Are they aware of the legal framework they are stepping into?*

And for the actual marriage phase, the question arises:

Do the spouses have the necessary rules and behavioural self-confidence for reacting to intervening events and branching points in their biographies in such a way that the risks for both are balanced out?

Because, being a community of responsibility and an economic community, marriage enjoys the special protection of state order in Germany (cf. Art. 6 Basic Law), and because marriage biographies are at the same time fragile in many ways today, people's thoughts and knowledge relating to marriage cannot be disregarded. After all, these thoughts and this knowledge determine their behaviour. Upon marrying, both spouses individually enter into concrete legal commitments that are formulated on the basis of the idea that a marriage is a permanent partnership in which a wide variety of decisions are taken jointly – with different consequences and frequently a life-long impact. Because events and decisions in the course of a marriage lead to directly intended consequences, unintentional secondary consequences and frequently unpredictable remote consequences that can, in the given legal framework, give rise to structurally distributed advantages and **disadvantages** (with long-term consequences) for the spouses, every individual must have the most accurate possible knowledge of this legal framework before marrying, or there must be a legal framework that offers the spouses guidance and security **during** the marriage.

To determine the necessary dimensions for this legal framework that result from everyday reality, it is therefore important to obtain information from the public regarding the following aspects:

- 1.) *motives* for marrying,
- 2.) *knowledge* of the legal framework,
- 3.) *awareness* of obligations and consequences of events and decisions during a marriage,
- 4.) *willingness* to accept post-marital responsibility for events and arrangements during a marriage.

The **hypotheses** in this study are as follows:

1. The currently valid law on matrimonial property does not correspond to what people assume at the start of and during a marriage, what they expect of marriage and what they are prepared to bear in the way of solidarity (= responsibility) after the end of a marriage.
2. The consequences and risks associated with jointly reached decisions are misjudged by the spouses because of a lack of knowledge or inaccurate notions regarding matrimonial (property) law, with the result that less concrete, solidarity-based compensation is provided than desired during the existence of the marriage.

The **role patterns** in our society are not only diverse, but also usually asymmetrical, based on the division of labour and unequal between women and men in a partnership and marriage. Even in the case of couples with modern attitudes, the distribution of roles often undergoes retraditionalisation, particularly following events such as a career-related change of residence or the starting of a family. The **life courses** of women and men, especially in relation to child-raising and career biographies, do not proceed identically and synchronously (resulting in different incomes and possibilities for providing for old age) – but they are often intertwined: decisions and changes relating to one of the spouses have consequences for the framework conditions and range of options of the other spouse. Far more common than “lone decisions” or decisions taken against the partner's will are joint decisions at the start and in the course of a marriage. Most spouses reach important agreements at the start of their

marriage, but often later live differently than they agreed or expected. The reasons for this include, for example, intervening, exogenous influences (choice of career, choice of place of residence), the birth of a child, career interruption and occupational reintegration on the part of the woman, the opportunity for the man (or the woman) to achieve major career advancement – or also simply endogenous factors, such as the (individual or joint) modification, adaptation or even revision of the agreement. A key fact in this respect is that, even in the case of joint decisions, the **range of options** of the two partners does not change equally, but usually differently for each partner. Something that expands the options of the one partner can mean reduced options for the other. This creates an (equilibrium) state that is the basis for the possibilities of further options – and predetermines the horizon and the direction. In this respect, initial joint agreements, and the decisions based on them, have major consequences for the advantages and risks of the individual in the marriage – and also for the institution of marriage itself. After all, in addition to the individualistic view of personal ranges of options, it is important to see that the partnership as an “institution” also creates specific ranges of options that can be more or less large. Decisions taken by the individual bring about a shift not only in the individual ranges of options, but also in the range of options of the marriage (and the family). In this context, there are many pieces of evidence and many examples that show that many decisions taken on a partnership basis in the course of people’s lives and marriages enlarge or shift the ranges of options for the men, whereas these decisions can often result in reduced options for the women. It is therefore important to pay special attention to whether there are **differences between women and men** as regards motives, knowledge and willingness in connection with material and non-material matrimonial property.

The **empirical** findings on this subject primarily acquire their relevance in terms of matrimonial law and family policy against the backdrop of modern justice theories⁴. Concepts of justice are modern and **in keeping with the times** if they systematically combine the relationship between responsibility for oneself and solidarity with gender-specific role models and raise the question of **gender equity** in the process. In connection with the institutions of marriage and family, this can be referred to the two dimensions of a) justice between the spouses, and b) justice between the generations in a family (spouses; children). It is of elementary importance in this respect that the two dimensions interact when it comes to responsibility for oneself, responsibility for others and the sharing of roles. If a married couple has children, the demands on responsibility for oneself and for others (solidarity) increase and, owing to a lack of time and material resources, those arrangements based on the division of labour are called for that lead to gender-specific role patterns. The reasons for this are outlined below.

I The demand for **responsibility for oneself** that is elementary in a modern society occasionally has different consequences for men and women: “If, for example, it relates to the fact that the adult members of a family should each be separately protected against health risks and acquire an entitlement to independent provision for old age, this means something else for women (and a very few men), who primarily devote themselves during a certain, more or less lengthy phase of their adult life to raising children and/or caring for

⁴ The most important (and, at the same time, diametrically opposite) concepts in justice theory are utilitarian-individualistic liberalism (Rawls, Habermas) and communitarianism (Sandel, MacIntyre, Taylor, Etzioni, Walzer).

sick, aged or disabled relatives, than for men (and far fewer women), who continuously and primarily engage in full-time employment subject to compulsory social insurance during the phase in which they are able to earn a living.”⁵ On this subject, Heimbach-Steins also emphasises that a time index needs to be applied to the question as to responsibility – and thus refers to the perspective of the life course and changing phases of career and family-related arrangements during marriage: “The desire for economic independence from the partner also has something to do with experience relating to the fragility of partnerships or marital relationships. And people’s desire to relieve their children of worries regarding the financial security of their parents in old age can also be seen against the backdrop of generally less secure career biographies and awareness of the (not only) economic burden that has to be borne by the respectively active generations in an ageing society as it is.”⁶ At all levels of society, changes in the gender-specific division of labour during marriage have an impact on the assumption and distribution of joint tasks.⁷

I As far as the **gender-specific distribution of roles** is concerned, there is a direct link to legal norms in matrimonial and family law. The BGB of 1900 – criticised by the feminist suffragettes – already explicitly referred to change in the roles of women and men. With a critical eye to the present as regards the match between the law and the distribution of roles, Scheiwe emphasises that: “In family law, the gender-hierarchical marriage model of the BGB of 1900 has developed into formally gender-neutral models, in which, since the Marriage Law Reform Act of 1977, the state has left it to the individuals to reach a decision regarding the distribution of their roles – but there are nevertheless many rules in family and social welfare law (and also in labour and tax law) that put an egalitarian division of labour and roles at a disadvantage.”⁸ If transitions, and thus new arrangements and role distributions, occur in the course of a marriage, both spouses will have to cope with inter-role conflicts. There are significant examples that valid law makes the egalitarian distribution of tasks more difficult and gives incentives for asymmetrical role division.⁹ As long as the consequences of this asymmetrical role division, in terms of advantages and disadvantages for the woman and the man, are taken into account and fairly distributed/balanced, there is no problem from the point of view of justice theory. However, this requires binding rules that the spouses are aware of before marrying and that set the stage on which they reach their decisions on their arrangement regarding the distribution of roles.

5 Marianne Heimbach-Steins: Eigenverantwortung, Solidarität und geschlechtsspezifische Rollenleitbilder im Institutionenzusammenhang Familie. Sozialethische Modelle. In: Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (ed.): Eigenverantwortung, private und öffentliche Solidarität – Rollenleitbilder im Familien- und Sozialrecht im europäischen Vergleich. Documentation of the Conference on 04.–06.10.2007, Villa Vigoni, Como, Italy, p. 36 (in German).

6 Ibid.

7 Cf. Brigitte Rauschenbach: Politische Philosophie und Geschlechterordnung. Eine Einführung. Frankfurt a. M. 1998. Christa Schnabl: Solidarität. Ein sozialethischer Grundbegriff – genderethisch betrachtet. In: Michael Krüggeler/Stefanie Klein/Karl Gabriel (eds.): Solidarität – ein christlicher Grundbegriff? Soziologische und theologische Perspektiven. Zurich 2007, p. 135–161 (in German).

8 Kirsten Scheiwe: Auf den Spuren der Rollenleitbilder im deutschen Familien- und Sozialrecht – über Normen, die egalitäre Rollenteilung immer noch benachteiligen. In: Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (ed.): Eigenverantwortung, private und öffentliche Solidarität – Rollenleitbilder im Familien- und Sozialrecht im europäischen Vergleich. Documentation of the Conference on 04.–06.10.2007, Villa Vigoni, Como, Italy, p. 54 (in German).

9 Cf. *ibid.*, p. 54. Examples named by Scheiwe: Recognition of child-raising in the pension insurance scheme; small-scale employment in the “mini-jobs” sector; parental leave, parental allowance and simultaneous part-time employment of parents sharing child care; criteria for provision and allocation of scarce day-care places; role models of maintenance for providing care and in child maintenance law.

II.

Key findings

The representative survey of the German population between the ages of 18 and 60 years arrives at the following key findings:

1. The decision to enter into a marriage, and the decisions taken during a marriage, are of decisive importance for the biographies of women and men. Both expect their marriage to strengthen the binding character of the solidarity between the partners, as well as greater personal (economic, social, legal) security for themselves within a clear framework defined by the state. Most of them have no knowledge, or only a vague knowledge, of **what form** the expected economic and legal advantages will take in detail, and what the implications of events occurring in the course of their marriage will be.
2. For couples today, getting married is no longer a “necessity” expected by society, nor is it an automatic step. Rather, entering into a marriage is a conscious decision, taken on the grounds of different motives. The most important motive is to give an existing partnership a sound social and legal framework. Associated with this among both women and men are a variety of (ideal) notions, although these can often not be put into practice in reality or turn out to be different in terms of the law. People have great expectations regarding the institution of “marriage”, but, at the same time, little knowledge regarding its legal framework and the (life-long) consequences of decisions and events during a marriage.
3. Men believe more strongly in marriage as an institution in the sense of a **stable** construction: far more than women, men expect marriage to make their partnership more crisis-proof and durable (“safe haven”). Women, on the other hand, believe more strongly in the institution of marriage as a **communicative process** of continuous discussion of the current and future design of the “marriage” **project**.
4. Women and men have the wish that their marriage will last for life. However, they also realise that this is no longer a matter of course in reality and that success will not come automatically.
5. Virtually all the important concepts in the context of “matrimonial property law” are totally unknown to a major percentage of the population, and also of married people.

Knowledge regarding such concepts as statutory regime of matrimonial property, separation of property, income splitting, equalisation of accrued gains, initial property, etc.

increases with the number of marriages of a man or a woman, but not with the duration of the first marriage. Taking the example of “statutory regime of matrimonial property”, 28% of married people say that they are familiar with the term and know what it means – and this percentage does not change with the duration of the marriage. In contrast, the proportion of people familiar with the term is 26% among people in their first marriage, 40% among those married for the second time, and 54% among those who have married more than twice. Key findings:

- I The directly affected persons (married people) have relatively little knowledge of the meaning and the serious consequences of elementary terms and regulations relating to marriage as a constitutional institution.
- I This knowledge does not automatically increase as a result of experiences and decisions during a marriage. At the moment, the knowledge only grows in practice when marriages fail and end in divorce – i.e. when ex-spouses are confronted with the consequences and side-effects.
- I Notions of what a marriage *explicitly* means in legal terms are vague, based on intuition and projections, and are greatly influenced by significant outward forms, rituals and documentations, such as the acts of marriage solemnisation and divorce.

6. This behaviour is based on a fundamental confidence that the regulations of matrimonial law provide sufficient security. It is quite simply assumed – as a matter of course and uncritically – that the existing laws and state regulations are geared to the realities of life today and to people’s expectations of life. Women and men believe that, after entering into marriage and during their marriage, they need no longer worry about risks and consequences, because they work on the safe assumption that “everything” is regulated by the state.

- I Particularly great fundamental confidence in being “protected” by the regulations of matrimonial law is especially to be found among people intending to marry in the near future, people who married young and married people under the age of 30, as well as poorly educated people.

And this is where the BUT comes in: solidarity and willingness to accept responsibility for each other are strong while people are married. After the partnership has failed, however, there is only very little willingness to bear some degree of responsibility for the ex-partner, e.g. because his/her career occasionally took a back seat during the partnership.

7. There are substantial knowledge deficits regarding the rights and obligations of the individual vis-à-vis the partner, both in relation to the phase **during** marriage and in the period **after** a divorce.

8. Despite great agreement with the statement “**Getting married is a binding commitment to mutual solidarity**”, broad segments of the population, and also people who are currently married, show no willingness to continue to bear responsibility (especially in

terms of time and money) for the ex-partner following the failure of a partnership. The majority sees post-marital solidarity as **mental** attachment on the basis of subjective empathy. Most people do not see any practical, material responsibility **for** the ex-partner, or explicitly reject it. The terms “obligation”, “responsibility” and “solidarity” are highly subjectified and individualised in our society: the individual claims the right to jointly determine the scope and duration of her/his responsibility and solidarity. In this context, most married couples assume that the legal validity of the responsibility arising from their partnership is restricted to the phase “as long as the marriage exists”.

9. In the public’s perception, the legal acts of marriage and divorce **define** the beginning and the end of a marriage. They are seen as being the boundary lines of a marriage, and thus also of its legal framework. The everyday understanding of men and women is that a divorce marks the “liquidation” of a marriage as a social **and** legal form. It is hardly understood that the decisions and life courses emerging during a marriage can have legally binding consequences for life – even after a potential divorce. In relation to the consequences, most people think only of responsibility for common children and of the currently essential securing of the material existence of the ex-partner (as long as she/he is not in gainful employment or re-married). Beyond this, there are no further ideas regarding secondary and remote consequences, and hardly any time-related perspective (in relation to provision for old age, for example).

People enter into a marriage in the hope that it will last a lifetime – but they no longer have the expectation of sure success. There is the possibility of it ending prematurely – and thus being a phase in life. Should a marriage end prematurely, it has – in the minds of the population and of married people – clear, “final” boundaries. People take the terms “separation”, “divorce” and “dissolution of the marriage” literally. Most people no longer want to (have to) bother about the partner after a divorce, and want to structure their new phase of life independently and without being burdened by events in the past. The differences between a marriage and a non-marital partnership have become smaller in this respect, but they are still visible. Roughly 80% of the population see marriage as being a binding commitment to mutual solidarity; only 54% of the population rate moving in with the partner as constituting a commitment of this kind. However, many married people do not know whether and how the consequences of decisions and developments in a marriage are regulated for each of the spouses.

10. 93% of married people have not made additional arrangements in a matrimonial property agreement. In the younger generation of the under-30s, there are even only isolated exceptions who have made additional agreements. There are two main reasons for this: 1.) People don’t see any need for further contractual regulation; 2.) people are unaware of the topics and aspects, versions and options of the subjects that could be regulated in an agreement. There is so little knowledge that many people could not even ask the appropriate questions and would not know who they could turn to on the matter.

At the same time, people assume that the state has already created a complete framework in the institution of marriage. Reaching additional, individual agreements would imply that the framework defined by the state is incomplete or fragile.

11. If they were – hypothetically – once again to face the decision whether to marry, 17% of currently married people say they would inform themselves better about the legal consequences of marriage beforehand. This percentage rises with increasing duration of the marriage (and thus growing experience in the course of marriage). Of those who have been married for more than 20 years, 22% would inform themselves better before marrying, and 25% would rely less on marriage giving them greater financial security.
12. If people are unaware of the legal framework of a marriage, they cannot reflect on their decisions in the course of their marriage in relation to secondary and remote consequences. This has cumulative effects: married people are often not aware of the real and potential remote consequences of decisions they have already taken in the past, and thus of their current situation under matrimonial property law. However, this is a factor that can play a role in future decisions, either directly or as a result of interdependences. Again, most people are unaware of this. In this respect, and in the interests of education and responsible decisions, spouses ought always to have the latest information regarding the status of their situation under matrimonial (property) law, including the long-term accountabilities (responsibility for themselves and for others).

It can be concluded from these findings that matrimonial (property) law and associated information measures must not focus on the phase of divorce only but also – and with equal weight – on the phase of marrying and marriage, from the perspective of both the life course and the marriage course. Many women and men today enter into marriage on the basis of incorrect and unrealistic assumptions. During the marriage, they imagine themselves as having the safe expectation that everything is sufficiently regulated for their own economic security, and that decisions and events during the marriage have no serious, unfair impact on them in this respect.

The great measure of ignorance regarding the legal framework of a marriage, with the actual and potential consequences of decisions during the marriage, was symbolically illustrated at the end of the representative survey. Simply through the questions asked and the possible answers, a social-science interview that asks neutrally about attitudes and knowledge always also provides interviewees with information that outlines and expands the horizon of a topic, examines personal knowledge and triggers reflection. Just the 20-minute interview on this topic had the effect that 25% of all married people and 30% of those who had married recently (less than five years ago) explicitly said immediately after the interview that **the interview had made them more thoughtful about the subject of marriage and that they had found that they knew too little about matrimonial property law and the consequences for the course of their lives.**

As – in addition to many other private and public meanings of marriage – one purpose of marriage can be seen as to jointly shoulder tasks and cushion risks in the course of life, the institution of marriage itself may not be allowed to become a risk for the wife or the husband. An assessment from the point of view of the social sciences and jurisprudence shows that ...

- I ... influencing factors of various origins (division of roles of the spouses, child-raising periods, parental leave, career interruptions, scope of occupational activities over the course of time, labour law, tax law) are in practice so closely interconnected that they lead to gender-specific patterns and paths in the course of life that can hardly be undone or reversed by the individual spouses because of the great financial, occupational and social risks.
- I ... women and men take their own development paths in a marriage, each having different advantages and risks, that result as a consequence of the personally taken decisions (e.g. type and extent of gainful employment) and the respective legal regulations (law of succession, maintenance law, etc.).
- I ... most women and men are unaware of the direct and indirect consequences of the current legal framework of a marriage, and they do not gear their decisions to this framework. In this respect, it must be borne in mind that any amendment of the legal framework can only have an impact on behaviour if people are informed about the legal framework before and during a marriage.

The task arising for the present and the future is not to warn people against marriage, but to inform people about a legal framework for marriage that fairly equalises the advantages and risks for **both** (!) spouses. In this context, this legal framework must cater to not only the legal principle of gender equity, but also the factual-empirical role patterns and life courses of women and men in a marriage. Only then would the institution of marriage correspond to the motives and advance assumptions of people who have married – and possibly be an incentive for non-married couples to enter into wedlock.¹⁰

¹⁰ Particularly among men, the reasons for not getting married are surprisingly clearly linked to the greater financial risk of a separation. 63% of men indicate that this is their reason for not marrying. In comparison, only 32% state that “the partner is not the right one”, and 26% point out the absence of tax benefits (all figures for men).

III.

The results in detail

3.1 Attitudes towards partnership and marriage

In the representative study, the interviewees were given various statements regarding partnership and marriage and asked for their personal degree of agreement or disagreement. The broad range of attitudes among the public is dominated by one particular statement, to which 82% of all women and men entirely agree: **“You’re responsible for people you love”**.¹¹ Hardly anyone disagrees with this attitude. The moral and functional connection between love and responsibility is a societally universal norm.

On the other hand, last place in the hierarchy of attitudes is taken by the statement **“There are grounds for continuing to bear a certain responsibility for your ex-partner, even after the end of the partnership”**. This statement is formulated neutrally: it does not specify a compelling argument, but broadens the subjective room for interpretation for “any” grounds; it does not target a particular form and degree of responsibility, but refers to a subjectively non-committal “certain” responsibility. Nevertheless, only 18% of women and 23% of men entirely agree with it.¹² As in the previous statement, this statement centres on the term “responsibility”. However, in relation to the phase of life following a partnership, people no longer **want** to have anything to do with responsibility for the ex-partner, seeing and accepting this as a societally non-binding norm.

The willingness of people to bear responsibility for the partner centres partly on the **subjective** feeling of love, and partly on the prerequisite in terms of **time** that the partnership currently exists. Although 80% of the population (85% of married people) are firmly convinced that **marriage is a binding commitment to solidarity**, marital solidarity is subject to the conditions of subjectivity and temporality in the everyday consciousness of the population.

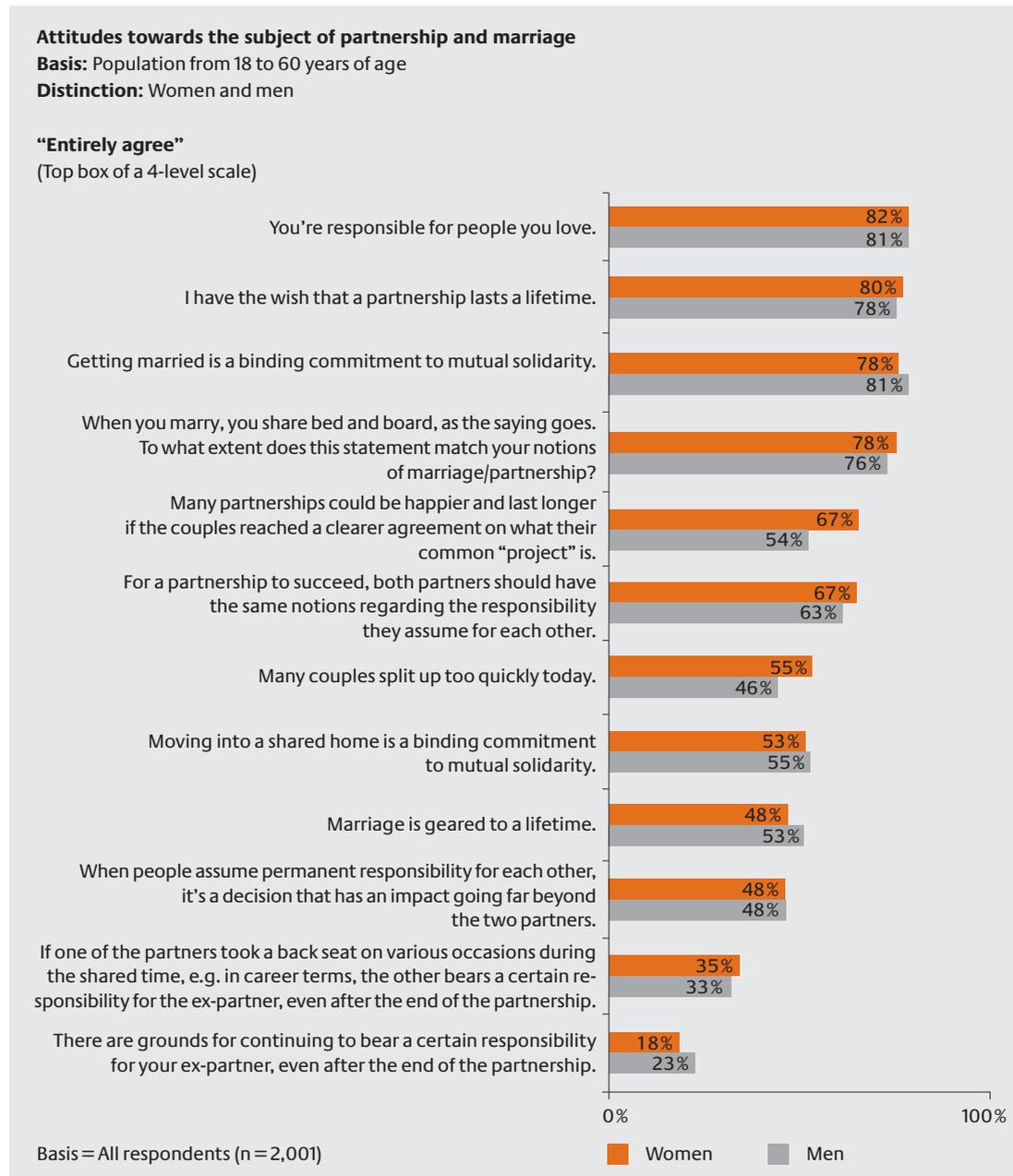
Nevertheless, roughly 80% of people have the strong **wish** that a **partnership** lasts a lifetime. 71% of unmarried people say this, and 87% of married people.¹³ This difference is significant and gives grounds for the hypothesis that there is a certain (reciprocal) causal relationship between the wish for a lifelong partnership and the wish to get married: people who get

¹¹ A further 14% “tend to” agree, meaning that a total of 96% of the population has this attitude.

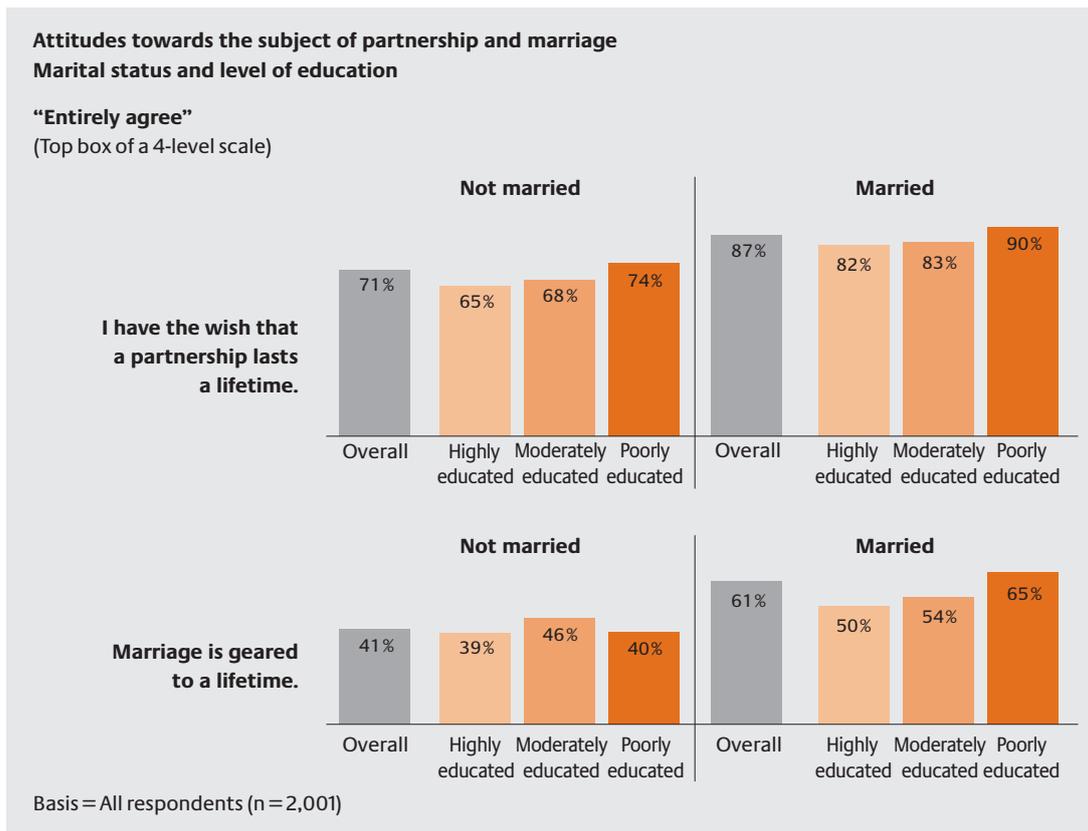
¹² 48% of women and 58% of men agree here in total (“entirely agree”, “tend to agree”).

¹³ The percentages refer to the response “entirely agree”. Additionally taking into account those who “tend to agree” with the statement, the figures are 98% of married people who wish their marriage to last a lifetime and 90% of non-married people who wish their partnership to last a lifetime.

married have the slightly more pronounced prospect of a lifelong partnership – and vice versa. However, the wish for a lifelong partnership is not exclusively tied to marriage.



From the sociodemographic point of view, it can be seen that there is hardly any difference between women (80%) and men (78%) when it comes to the wish for a lifelong partnership, although there are significant differences in terms of education: the lower the level of formal education, the stronger the wish that the partnership or marriage last a lifetime.

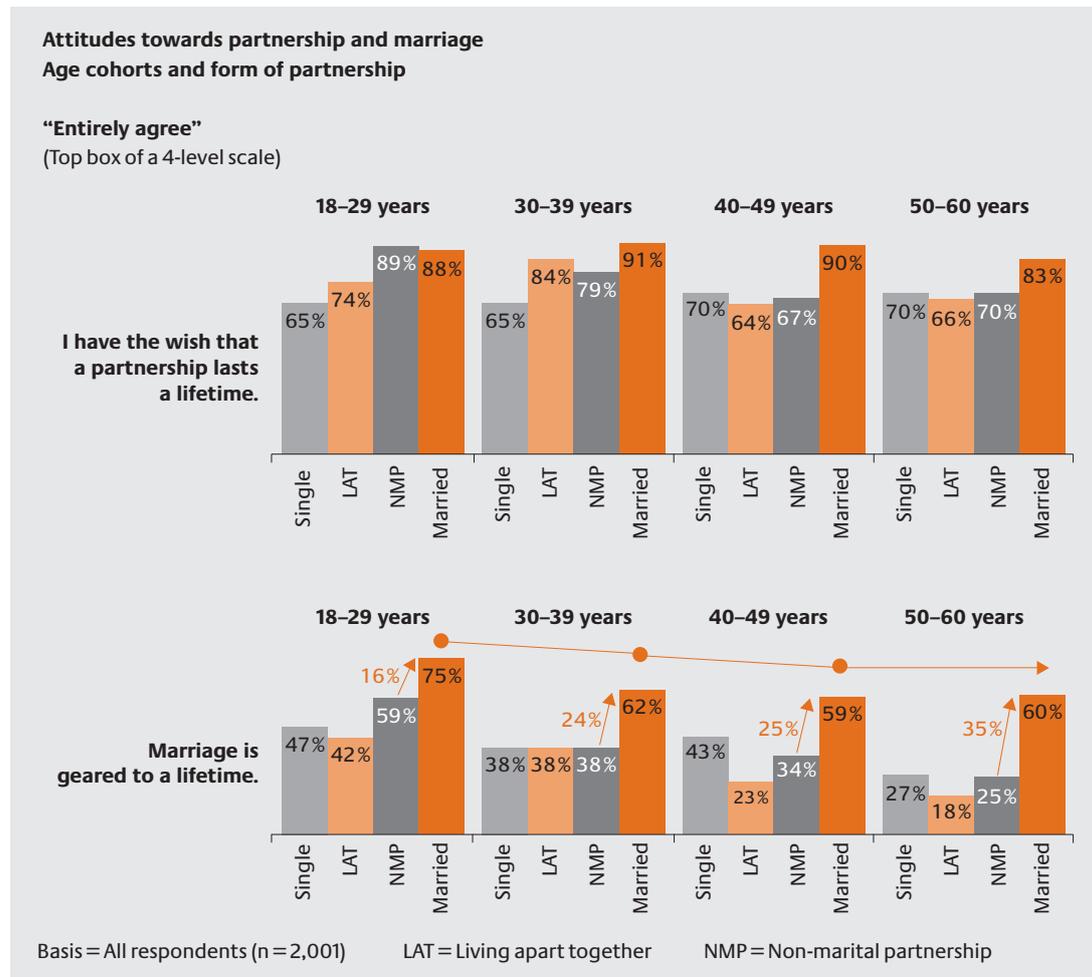


The attitude is far more reticent as regards the lifelong orientation explicitly of **marriage**. Only 50% of all 18 to 60 year-olds (53% of men, 48% of women) entirely agree with the statement that marriage is geared to a lifetime. At 61%, the figure is significantly higher for married people (41% for non-married people) and a further 21% of married people “tend to” agree with this attitude. Thus, a total of 82% of married people work on the assumption that marriage is geared to a lifetime. Conversely, however, this means that 18% of currently married people (almost one in five!) explicitly have doubts about the lifelong orientation of marriage in that they do not believe that a marriage/their marriage is certain to last a lifetime.

In this context, there are significant differences ...

- | ... between educational strata: The lower the level of education, the more frequently is marriage seen as having a lifelong orientation. In strata and milieus at the upper end of society, there are far stronger tendencies to view marriage as a temporary project that will hopefully last a long time, but that can be completely and finally terminated a) at any time and b) in every respect.
- | ... between age cohorts: The younger the married people, the stronger the attitude of marriage having a lifelong perspective (75% of 18 to 29 year-olds, 60% of 50 to 60 year-olds).
- | ... between married couples with children and those without children: 55% of married people without children, but 67% of married people with children, are convinced that marriage has a lifelong orientation. Those without children distance themselves most from this attitude: 26% of them reject the notion of a lifelong orientation of marriage.

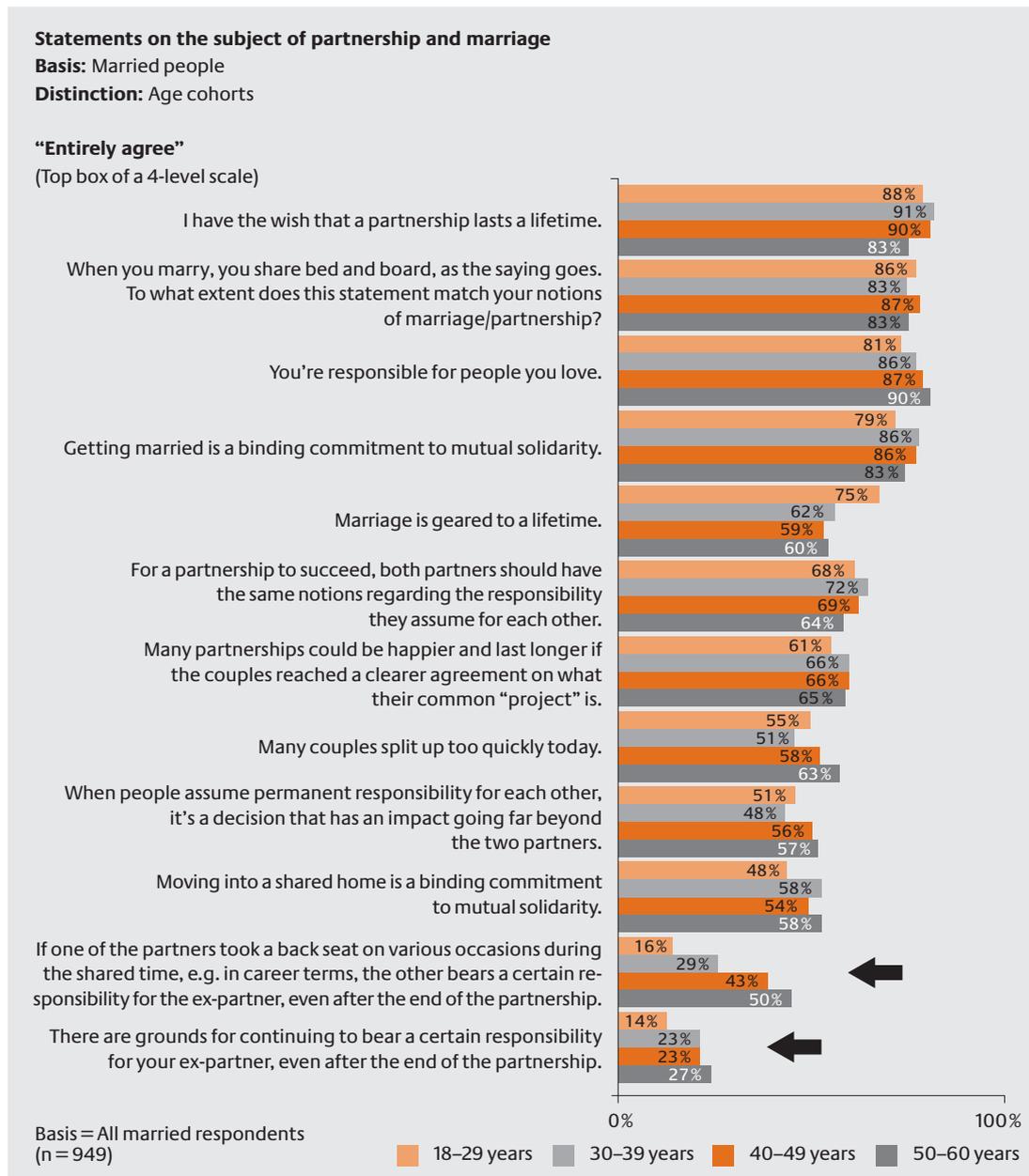
... between stages in the course of partnership and life: The greater the bonding to a partner (from living apart together and non-marital partnership to married), the stronger the view that marriage has a lifelong orientation. At the same time, an age (cohort) effect is superimposed on these degrees of partner bonding. This can be illustrated by comparing non-marital partnerships (NMP) with married couples: among 18 to 29 year-olds, agreement with the lifelong orientation of marriage is 16% higher among married couples than among non-marital partnerships, and 35% higher among 50 to 60 year-olds.



This results in two different, but interconnected theses and perspectives:

- 1.) **Life course perspective:** Younger people are more optimistic than older people, having more idealistic notions regarding marriage. This optimism wears off with increasing age and personal experience in a partnership (and those of friends). Increasing age and everyday life in a partnership sober up people's ideas. While the ideal of a lifelong marriage maintains a high level among married people (also as a means of stabilisation), divorced people and people who have never been married simply no longer believe in the lifetime perspective of marriage.

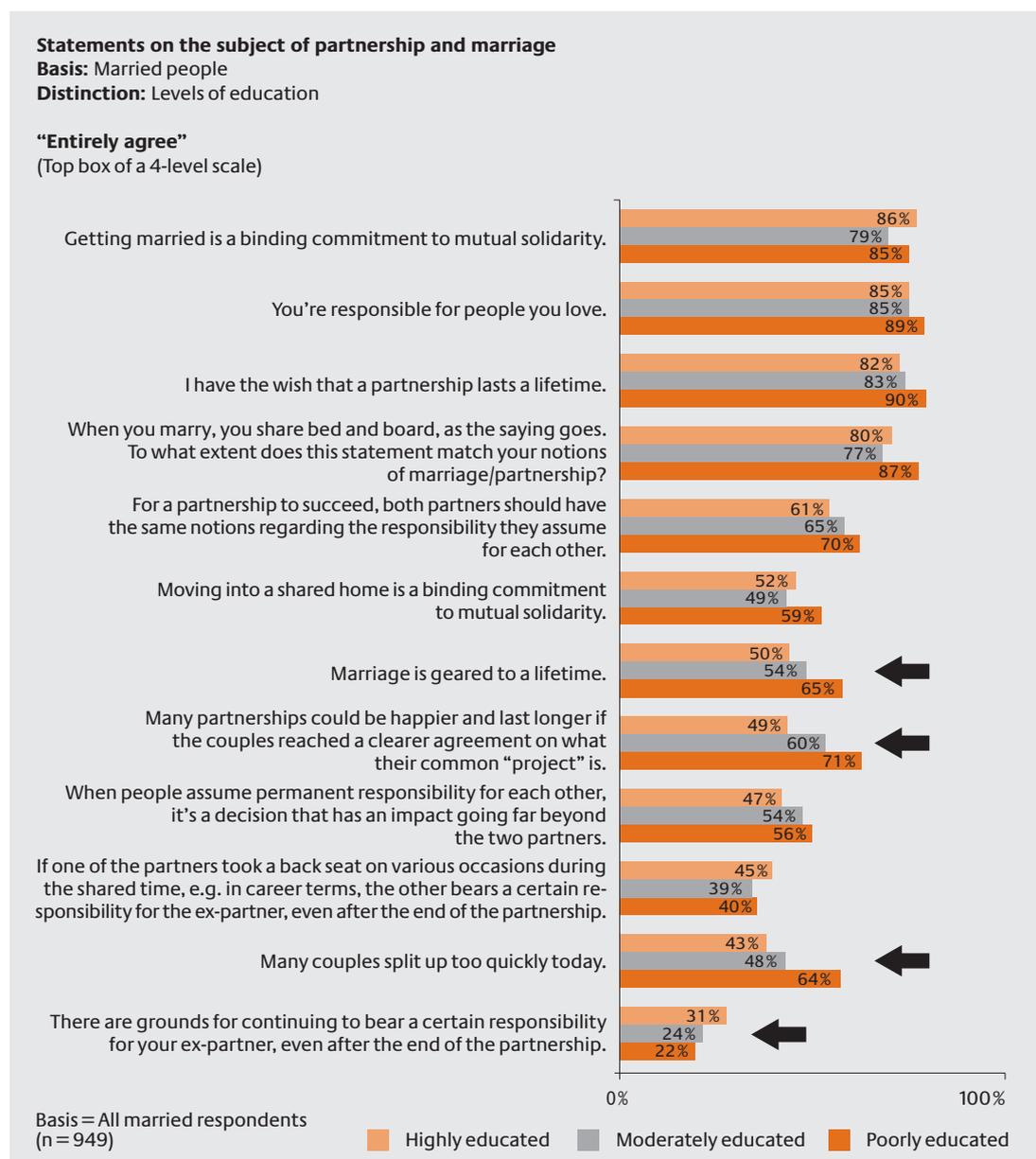
2.) **Generation perspective:** There are two opposite segments among people born between 1950 and 1960 as regards their interpretation of marriage. On the one hand, there are those who see marriage as being a lifelong bond, rooted in tradition and religion: marriage as the normal and final form of partnership and, in this respect, an unconditional, moral, social and legal norm. On the other hand, there are those who – in the trend towards emancipation, self-realisation and individualisation – see marriage as being fetters, want to be happy even without a marriage certificate and do not want to tie themselves for life, but design their lives freely in sub-projects. The young pole of this generation perspective is formed by the people born between 1980 and 1990 who, as a reaction to the gradual breakdown of bonds and security, are re-discovering the lifelong perspective of marriage for themselves and hold it in great esteem.



The focused examination of educational strata in our society shows that the notion of marriage having a lifelong orientation is particularly pronounced among married people with

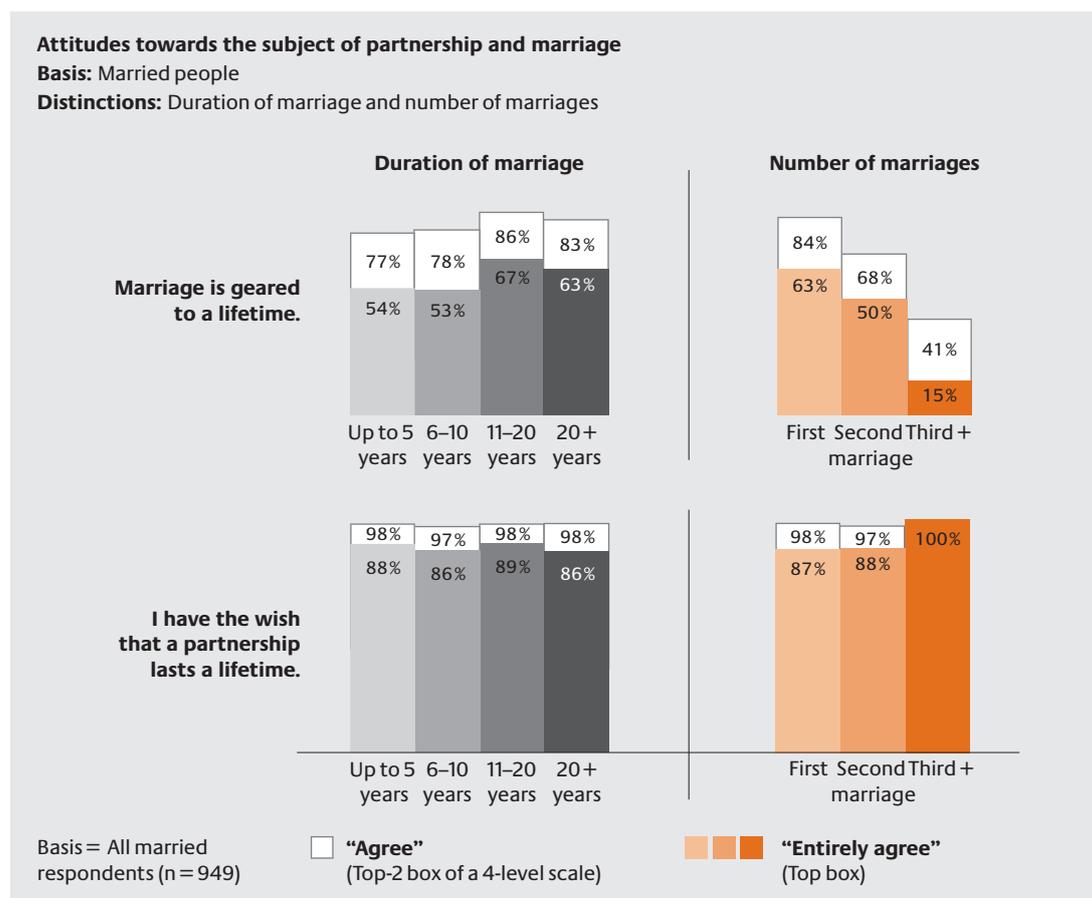
little educational capital, as are regret and criticism regarding the fact that many couples split up too quickly today. At the same time, however, there is hardly any understanding and willingness when it comes to continuing to bear a certain responsibility for the ex-partner following the end of the partnership: this applies to 19% of women and 26% of men with a lower secondary school certificate (average: 22%). This can understandably be explained by the poor material resources in these life settings at the lower end of society and the resultant maxim (for survival) that people have to manage financially for themselves in the respective present and have hardly any leeway to provide for others as well.

However, the willingness to bear post-marital responsibility is also only marginally greater among people with a higher level of education: this applies to 27% of married women and 34% of married men with university entrance qualifications or a degree (average: 31%). As statistically significant as this difference may be, the willingness to remain responsible for the ex-partner in the event of divorce is also relatively low among married people with a higher level of education.

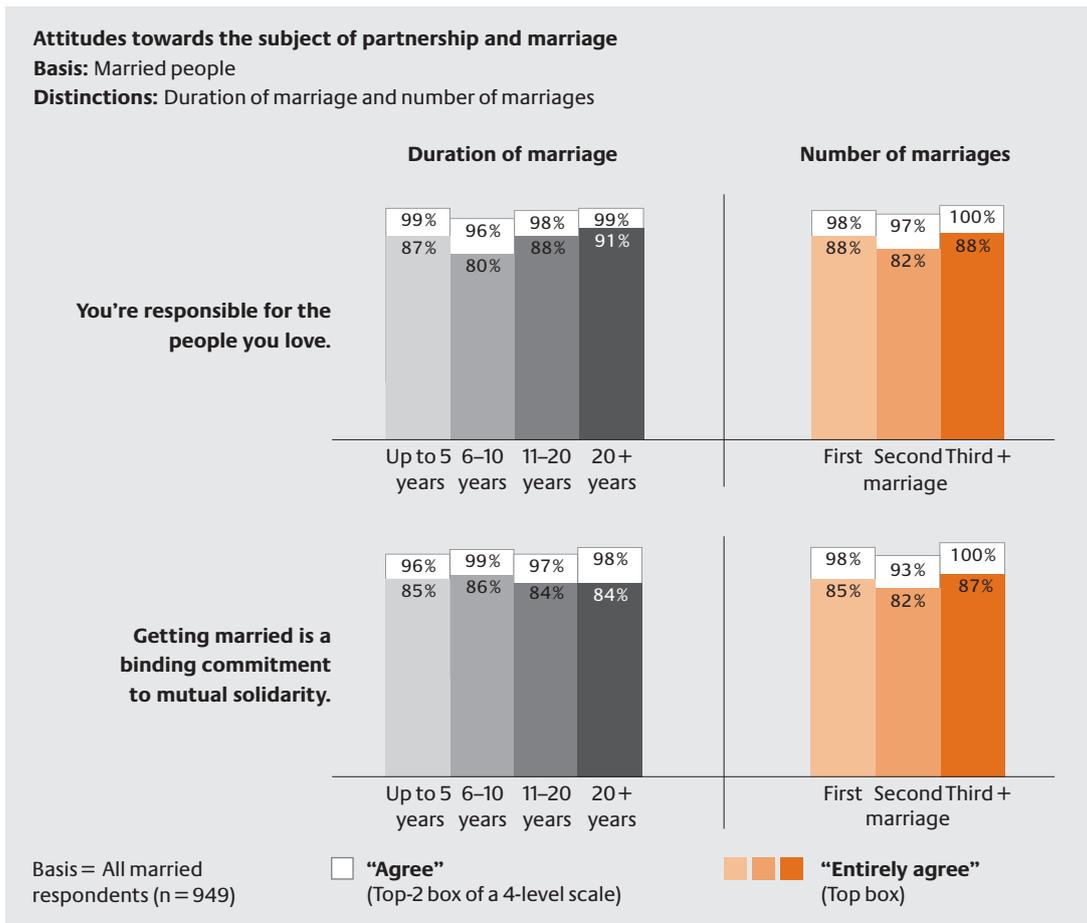


What are the factors in the course of life that have a decisive influence on attitudes towards solidarity between partners? In addition to the quality of the individual relationship, two external factors come to the fore in this context: 1.) the duration of the marriage; 2.) the number of marriages (or people who have been divorced on one or more occasions). Some interesting relationships can be seen in this respect:

1. The attitude that a marriage is geared to a lifetime is to be found among roughly half of all couples in the first few years of marriage, but gets new impetus after about ten years of shared marriage. The conclusion to be drawn from this: for many married people, the **principle** of the lifelong orientation of marriage, which women and men fundamentally consider to be right and desirable, needs to be confirmed by experience. This normative force of the facts is gauged by the duration of the marriage, and a period of about ten years is the yardstick for many married people in this respect.
2. If a marriage fails, women and men have reservations when entering into a new marriage: although they still have the wish that their new **partnership** will last a lifetime, the concept of the lifelong orientation of their **marriage** has been put into perspective by their personal experience. The myth has lost its magic.



3. Unaffected by the duration of the marriage and by divorce(s), and consistently high, are the attitudes among women and men a) that you are responsible for the person you love, and b) that marriage is seen as being a binding commitment to solidarity – also and especially among people who have been divorced more than once.

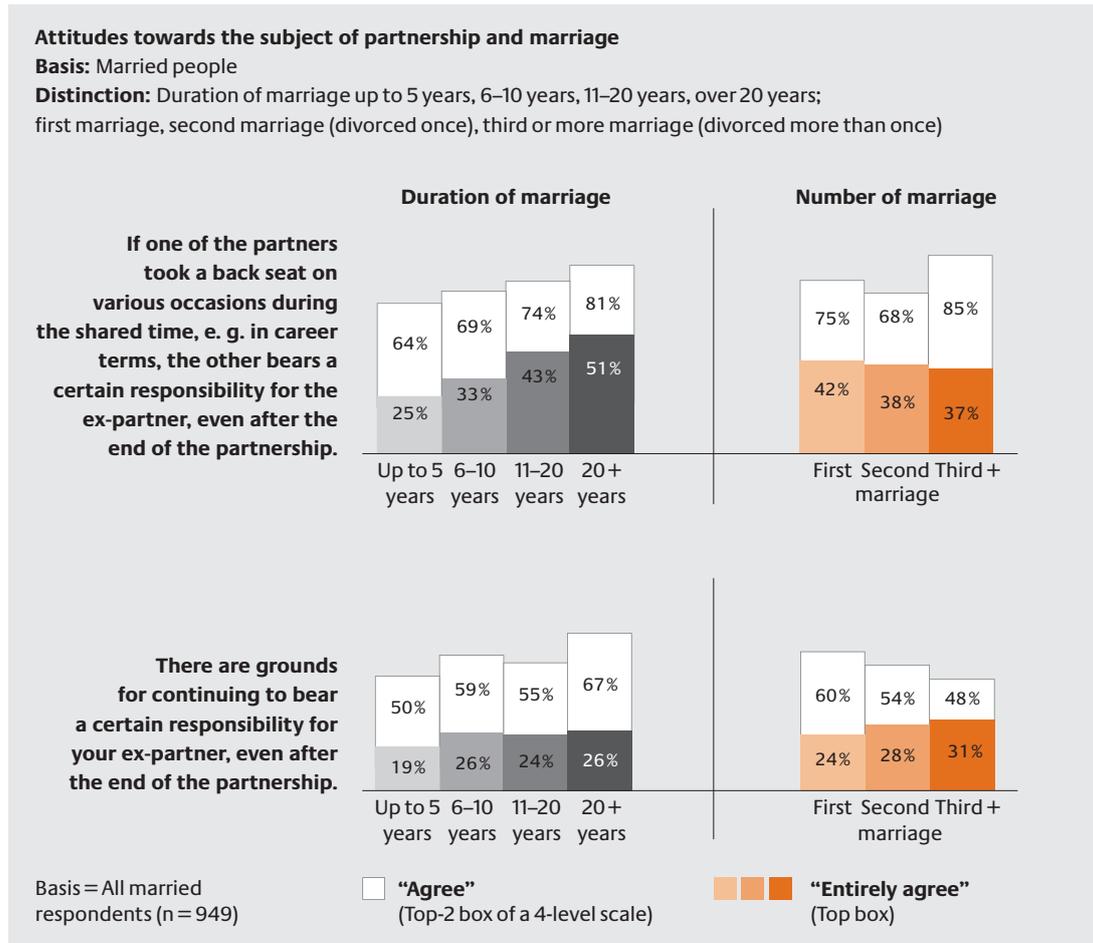


4. As the marriage continues to last longer, there is a steadily increasing willingness to bear responsibility for the partner after the potential end of the marriage, if this partner took a back seat during the shared time (main responsibility for looking after and raising the children; reduction or sacrifice of gainful employment to clear the way for the partner, to accompany him/her when working abroad, to enable him/her to seize career opportunities):
 - 23% of men married for a maximum of 5 years entirely agree (75% agree in total).
 - 56% of men married for over 20 years entirely agree (87% agree in total).
 - 25% of women married for a maximum of 5 years entirely agree (54% agree in total).
 - 47% of women married for over 20 years entirely agree (76% agree in total).

5. The willingness to bear **post-marital responsibility** for the ex-partner is quite strictly subject to the **condition** that the **partner took a back seat on various occasions during the marriage**. So, there is willingness to bear post-marital responsibility. But it is not absolute and regardless of experience, but conditional and relative, based on the degree of (perceived) sacrifice during the shared time. Thus, without this condition, there is significantly less willingness to bear post-marital responsibility. In this context, this condition acquires increasing weight, the longer the marriage lasts.

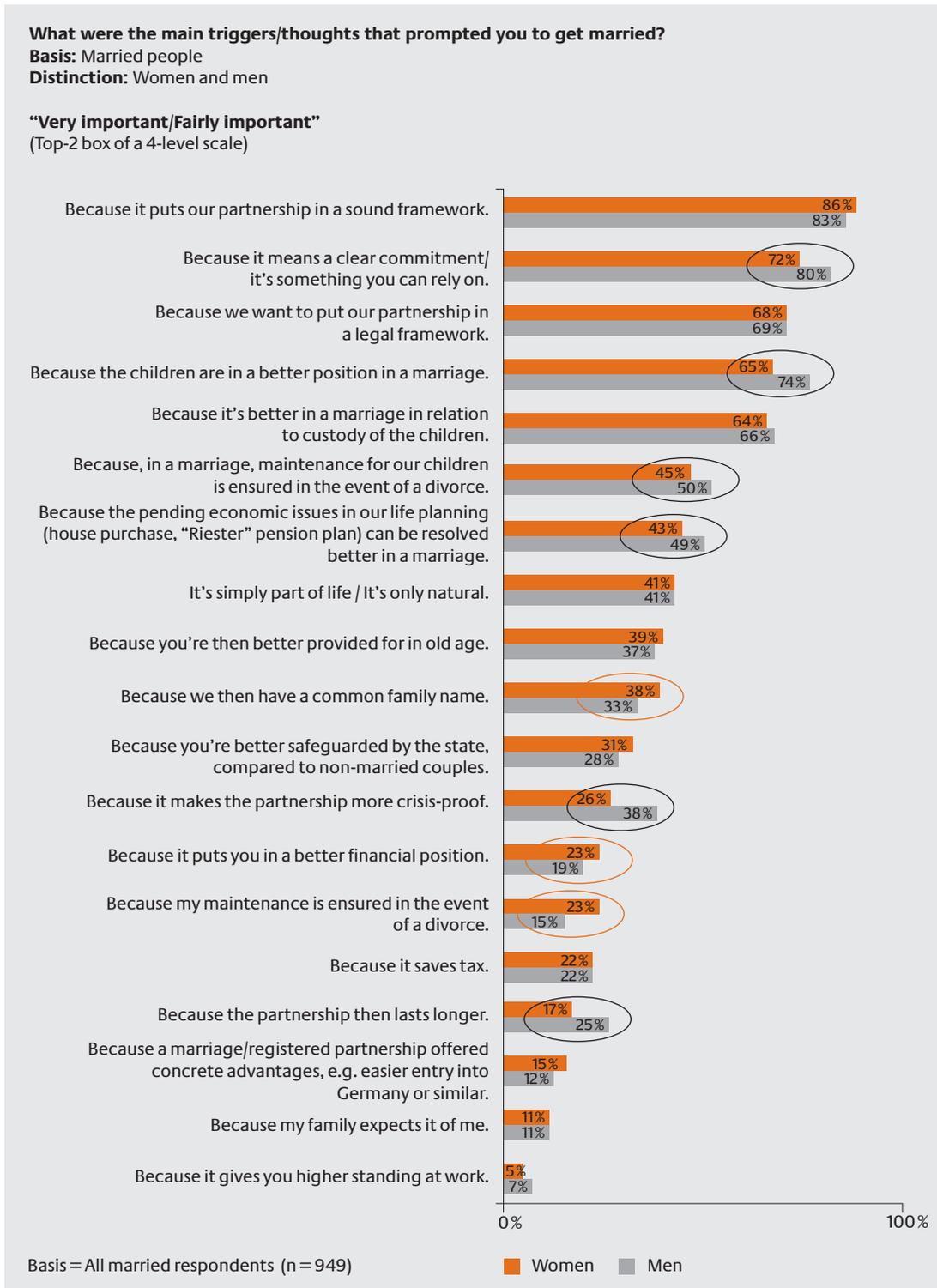
- Marriages under 5 years: 19% unconditional willingness to bear post-marital responsibility versus 25% conditional;
- Marriages over 20 years: 26% without the condition versus 51% with the condition.

If people are conscious of the need for statutory adjustment of pension rights in accordance with the “merit principle” following the end of a marriage, it would be an important task to consider, first, how “sacrificial merits” can be quantified for the post-marital adjustment of pension rights and, second, how they can already be registered during the marriage.



3.2 Motives for marrying

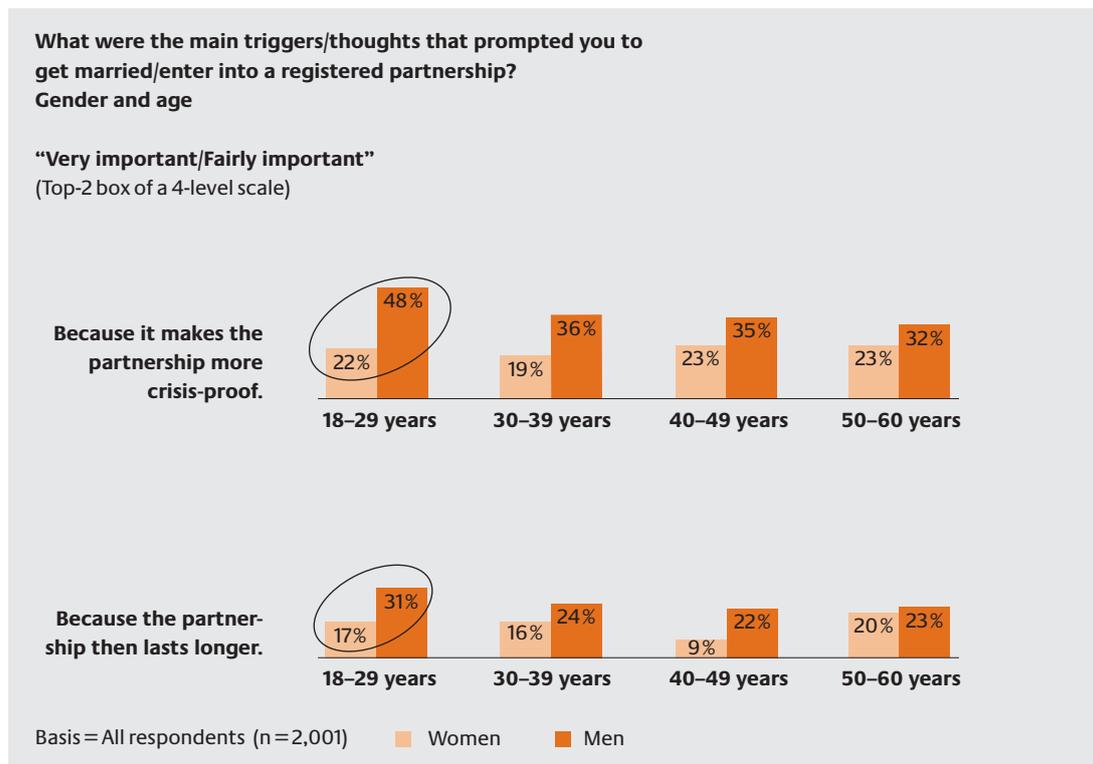
The analyses so far give grounds for examining the question as to the motives that married partners had for marrying. For most of them, getting married is not a matter of course or a step taken without thinking, but a conscious decision based on various motives with different degrees of importance.



It is striking to note that one very great expectation (or also the intention) of men when marrying is that their partnership will then be more crisis-proof and last (longer). This motive is less relevant for women.

Examination of the age groups also shows for men that this motive of strengthening the relationship is far more pronounced among younger men (48%) than among older men (32%). In contrast, there is no trend among women in this respect, and also no shift in the

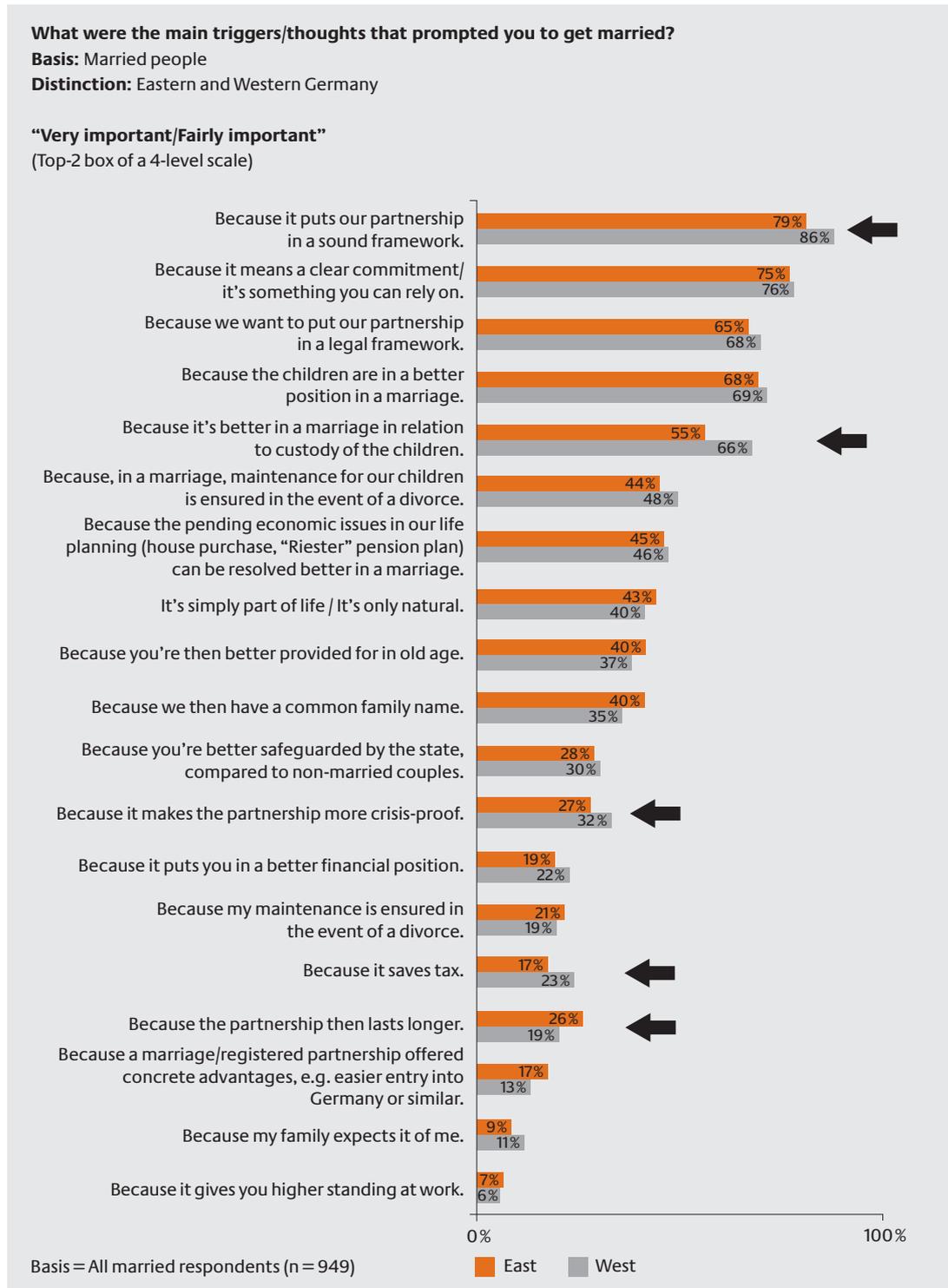
course of life (remaining constant at approx. 22%). This leads to the finding that, among younger couples, there is a relatively great divide between the sexes when it comes to seeing getting married as having a stabilising function, although it becomes smaller among older couples (or with increasing age). This can be interpreted as a biographical reconciliation (of the men with the women): confidence in, and agreement on, the stabilising function of marriage grows, the longer couples are together. On the other hand, the great divide between young couples regarding this issue can be taken as being a generation-specific trend towards men and women drifting apart. The sociocultural background is that young men today are massively insecure as regards their partnership, that they are not (or no longer) certain of their partner in a non-marital partnership, fear splitting up and therefore see marriage as a tool for securing their partnership and their partner.



Examining the whole range of motives for marrying, it can be seen ...

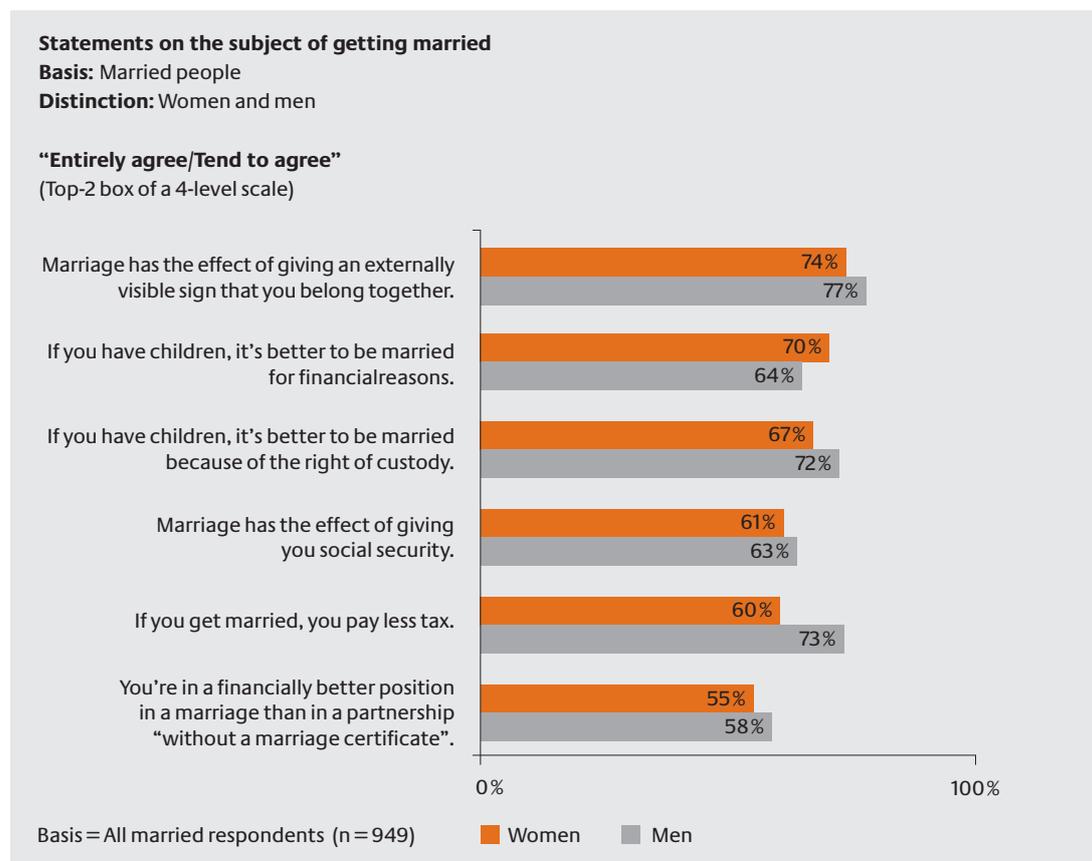
- | ... **that women and men want** to give their partnership a solid, and also legal, framework by getting married. They also decide in favour of getting married because a marriage means clearly defined commitments and is something you can depend on. These motives at the start of a marriage are instructive and significant because many spouses hardly see themselves as having any commitments and obligations towards their partner after the possible end of their marriage.
- | ... **that men**, in particular, look for stability and dependability of their partnership in marriage, as well as security for existing or planned children.
- | ... the central motive for getting married is – contrary to the popular view – not the desire to have common children or the birth of a common child. When deciding in favour of marrying, the subject of children is one important aspect **alongside** other aspects.

... that women expect their marriage to give them personal social security (which may target the widow's pension, etc.).



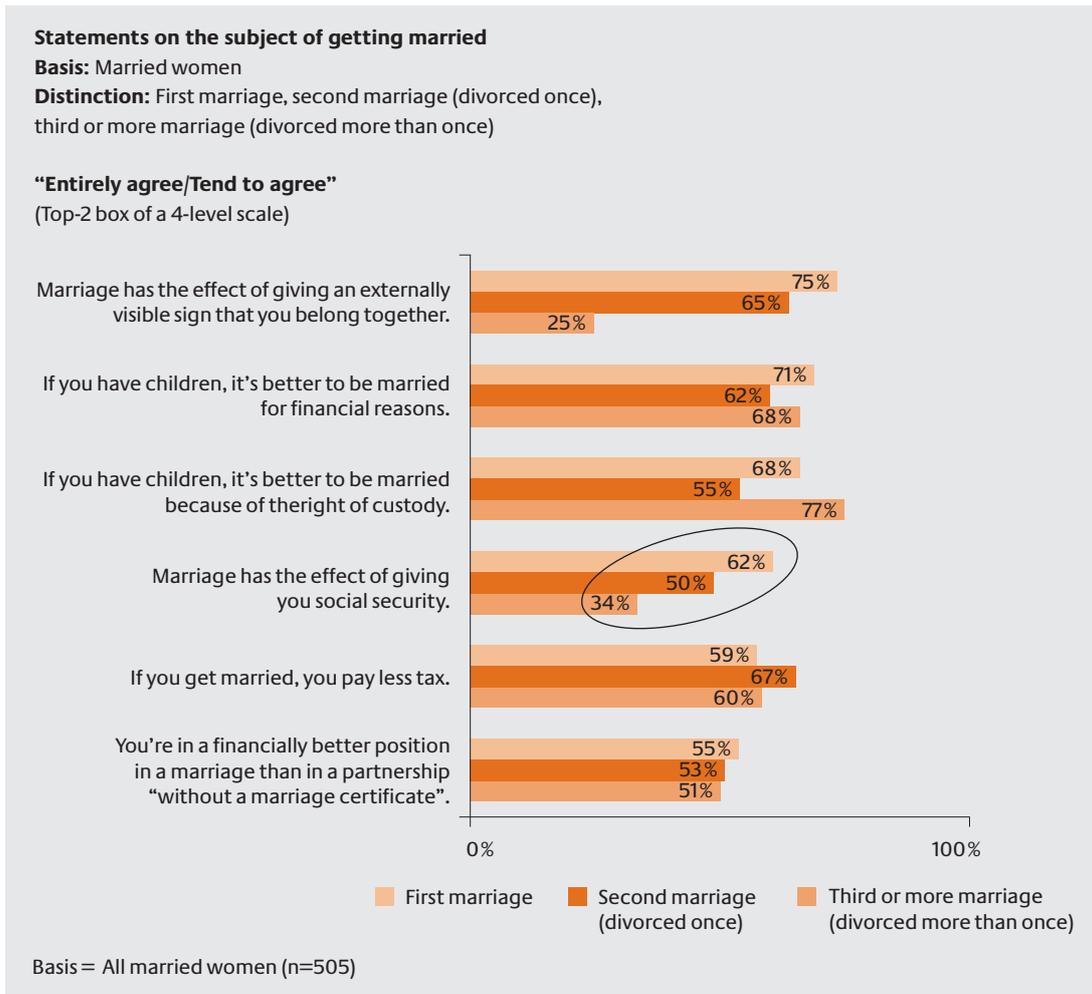
3.3 Purposes and effects of a marriage

A distinction has to be made – at least analytically – between the subjective motives for marrying and the anticipated, additional beneficial effects of a marriage compared to a non-marital partnership.¹⁴ Here, too, it becomes clear that joint custody of the children is just one aspect alongside many others (and in no way dominates). The most important effect that the partners expect is the external visibility of their partnership and solidarity – i. e. a non-material message relating to society. Women and men alike have the equally great expectation that marriage will have the effect of providing social security. These expectations are confirmed and become stronger, the longer the marriage lasts.



If people married for the first time are compared with people who have been divorced once or more (and are again married), the picture is somewhat different – and marred by experience. 64% of men and 62% of women in their first marriage expect their marriage to give them social security. The figure is just 50% for women who have been divorced once (and re-married), and as low as 34% for those who have been divorced more than once (and re-married). The experience of a failed marriage has shown these women that, as a result of the valid laws, the function of marriage of providing economic and social protection and security did not work in their case, and that marriage did not (or does not) give them adequate protection and security.

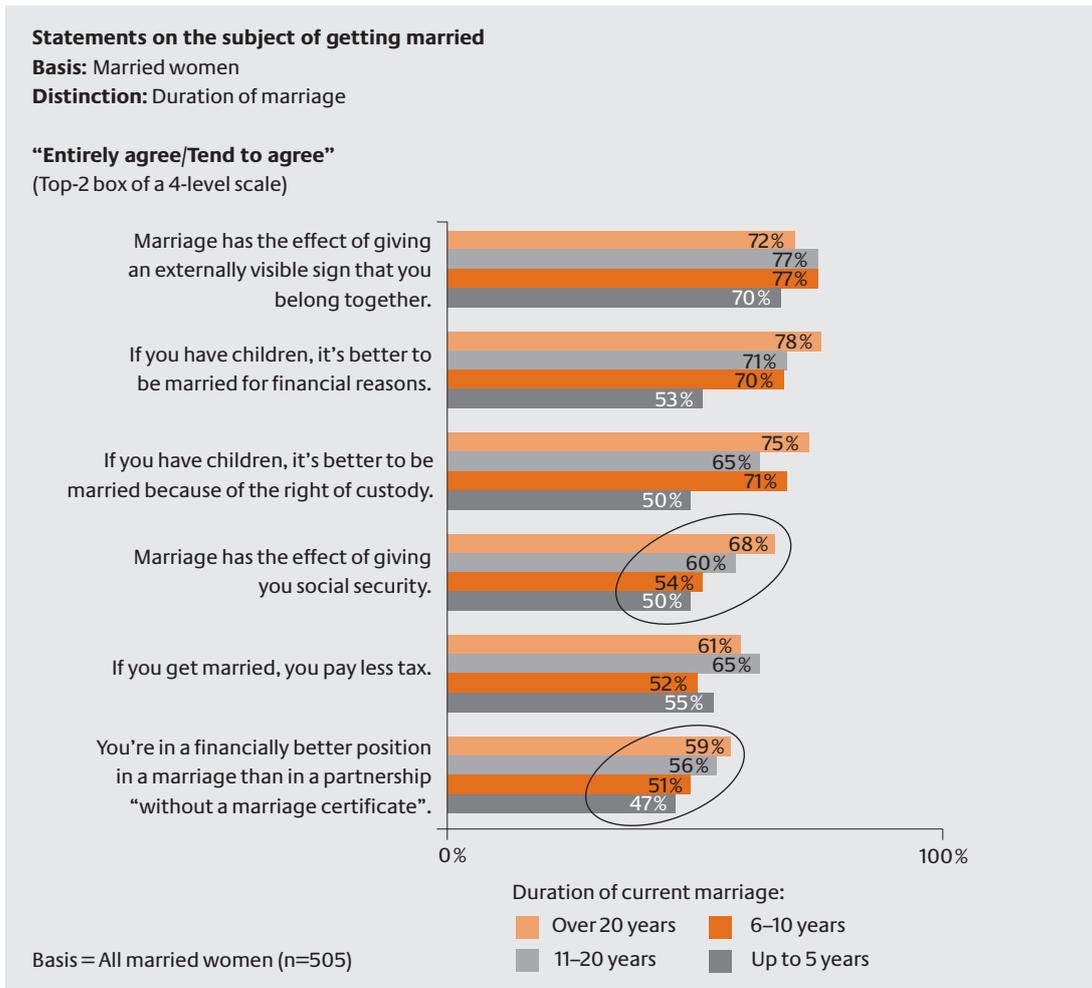
¹⁴ Even though the beneficial effect is an important motive for marrying in some cases.



In contrast, the longer a marriage lasts (i.e. with increasing “durability”), the stronger becomes the perception that married people are socially secure and in a better financial position than people living in a partnership without a marriage certificate.

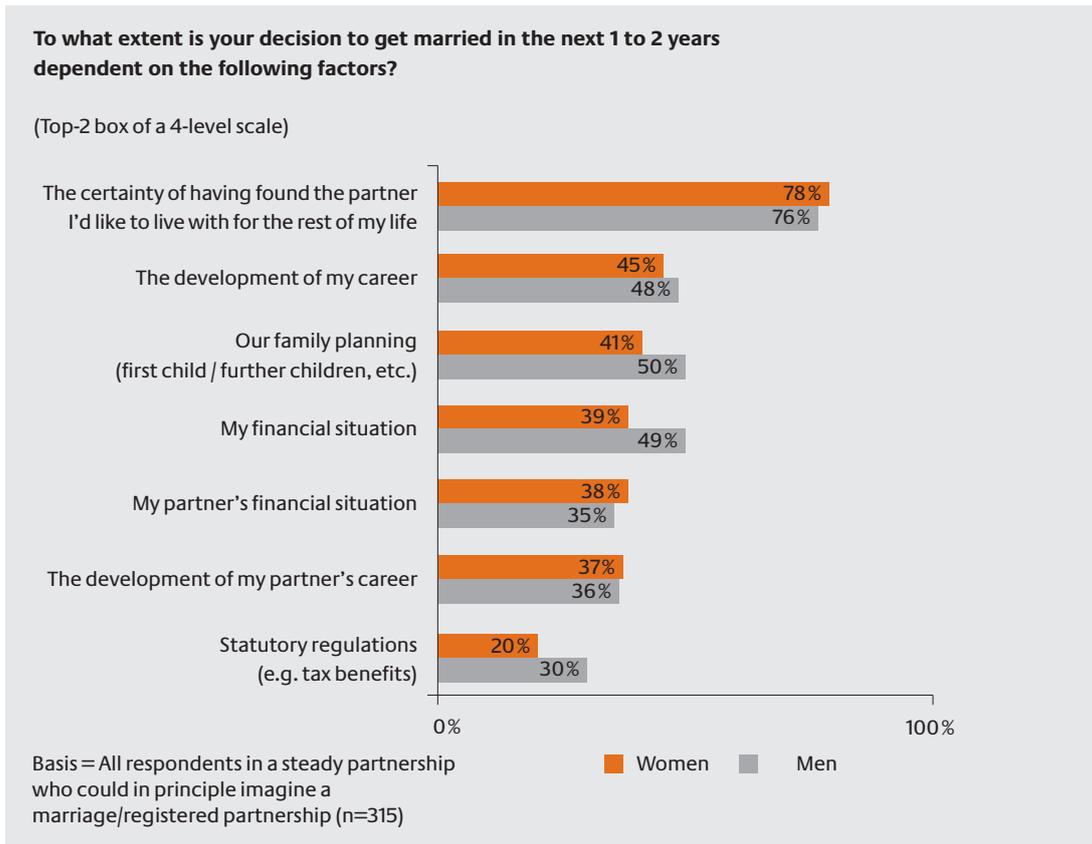
■ This finding can, on the one hand, be interpreted as the experience that marriage strengthens the social and financial security of the partners, the longer the marriage lasts.

On the other hand, it can be interpreted as “security through habituation”, as a pre-conscious attitude for avoiding cognitive dissonances: after many years, and contrary to any willingness to weigh up the risks, people consider marriage to be better, and themselves to be socially secure, because they would otherwise provoke irritation and uncertainty, and be forced to explain why they are (still) married.

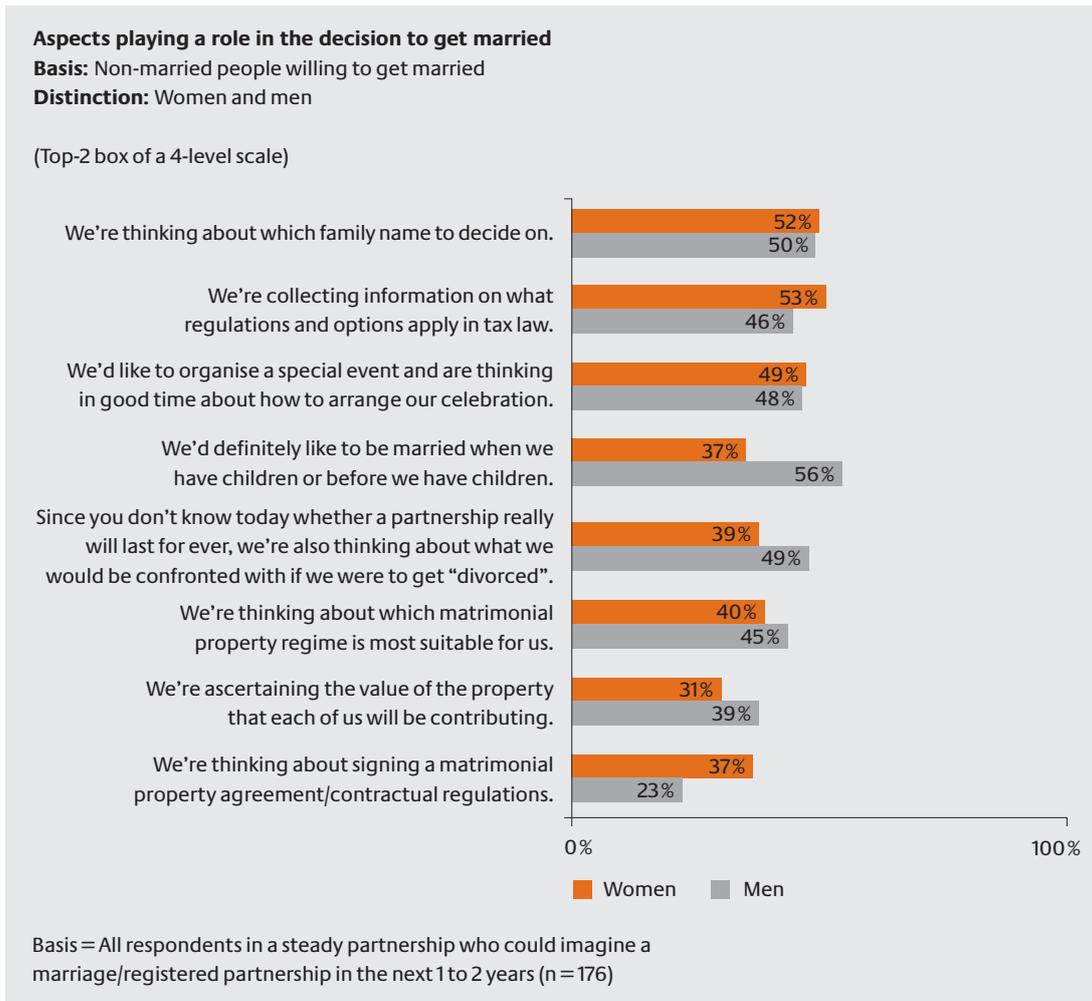


3.4 Thoughts ahead of marrying

Of the people living in a steady relationship, 32% (women 29%, men 35%) intend to marry in the next one to two years. Another 36% (women 30%, men 42%) do not plan to marry so soon, but possibly at a later time. The decision in favour of marrying within the next one to two years is dependent on several factors, although they are dominated by the subjective **“certainty of having found the partner you want to live with for the rest of your life”**. This makes it clear that these people basically see marriage as being permanent and geared to a lifetime.



And what topics, questions and aspects play a role for women and men in the months before the wedding? The list is headed by the choice of the family name, the tax options, and the preparations for the wedding celebrations. Well behind – way back in last place among the aspects examined here, at least for the men – comes the question of a matrimonial property agreement or – for the women – the determination of the initial property. And yet, given the statutory regime of matrimonial property of community of accrued gains, determining the property at the start of the marriage would be of great benefit.

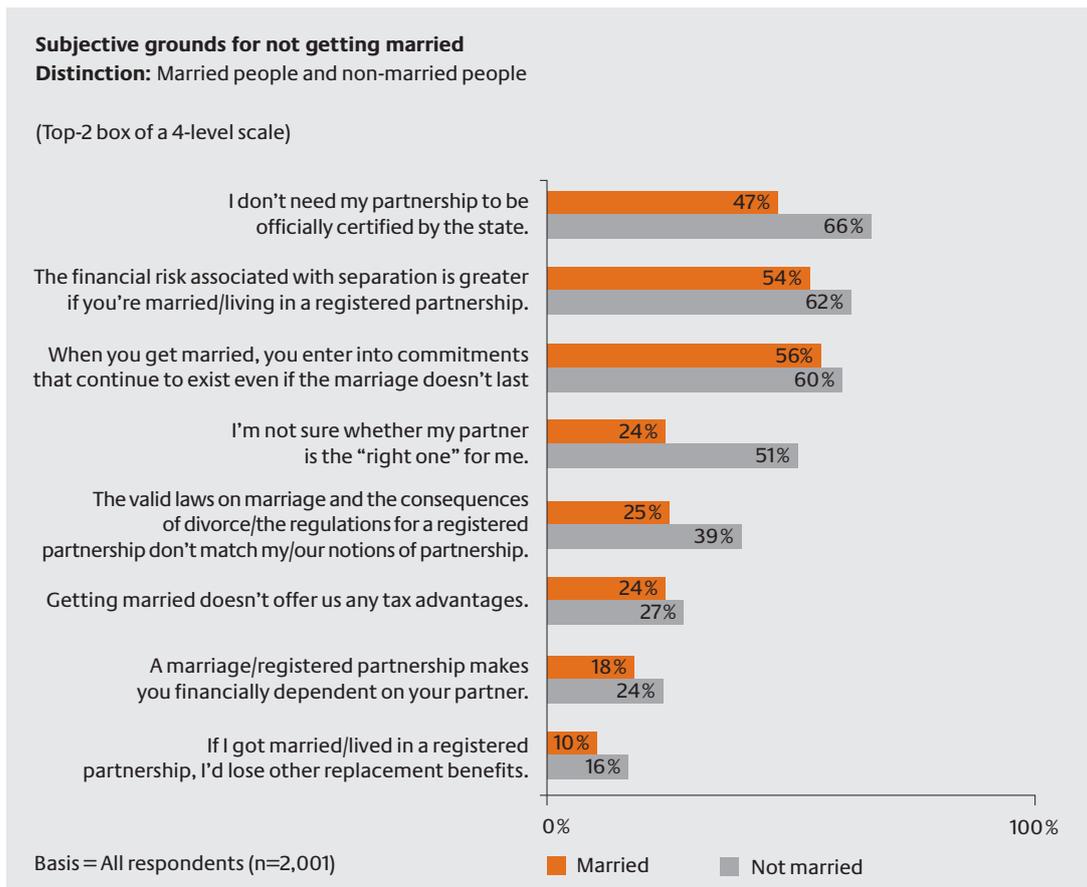


3.5 Aspects against marrying from the point of view of women and men

Unmarried women and men primarily voice three arguments against marrying:

1. You don't need your partnership to be officially certified by the state.
2. In the event of separation, the financial risk is greater in a marriage than in a non-marital partnership.
3. When you get married, you enter into commitments that continue to exist even after a divorce.

It is remarkable that the last two aspects are also the greatest concerns among roughly half of all married people – which can be interpreted as worries regarding their own financial situation and prospects in life.



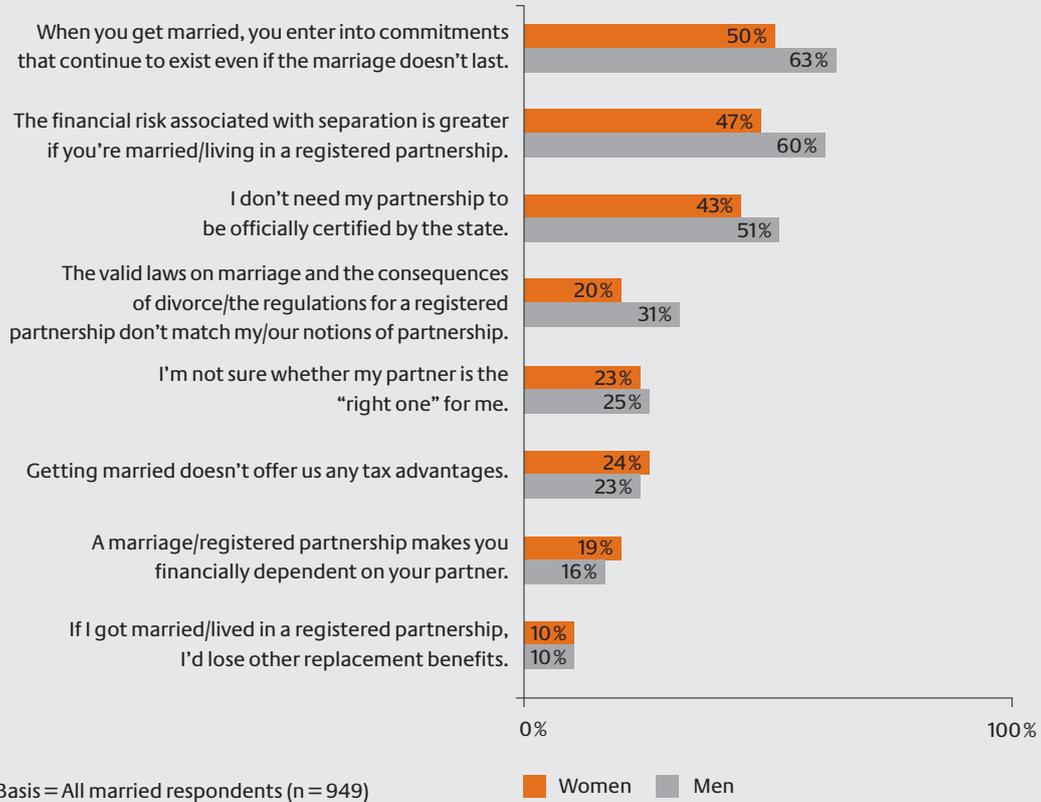
So, reservations concerning the institution of marriage primarily focus on financial risks and burdens – **following failure** of a marriage. Married men are particularly sensitive to the risks of a divorce and much more often of the opinion than women that the valid laws on matrimony and on the consequences of divorce do not fit in with their notions of partnership (39% of men, 25% of women)¹⁵. The perception of financial risks remains relative stable among women and men with increasing duration of marriage.

In contrast: the estimation of the financial risks **drops** among men who have been divorced once or more (from 61% among men in their first marriage to 48% among divorced men). Among women, however, the biographic event of divorce has a very different, converse effect. While 46% of women in their first marriage emphasise the financial risk in the event of their marriage being dissolved, the figure among divorced (and re-married) women is 58%. This may well be attributable to experience in connection with a divorce (especially the provision of financial security by the ex-partner).

¹⁵ The survey was conducted immediately after the reform of maintenance law in 2009, meaning that it can be assumed that the respondents' agreement/disagreement primarily referred to the old maintenance law. However, certain methodological difficulties do arise in this context.

Aspects against getting married**Basis:** Married people**Distinction:** Women and men

(Top-2 box of a 4-level scale)

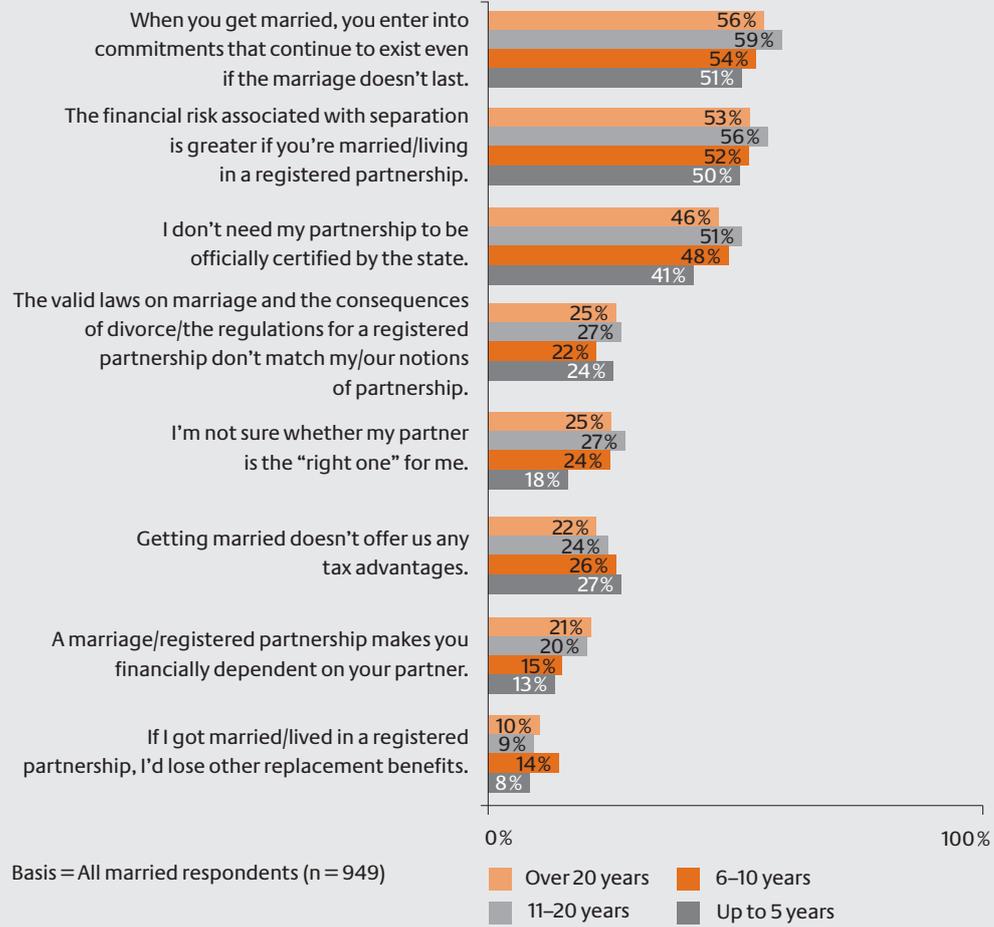


Aspects against getting married

Basis: Married people

Distinction: Duration of marriage

(Top-2 box of a 4-level scale)



Aspects against getting married

Basis: Married people

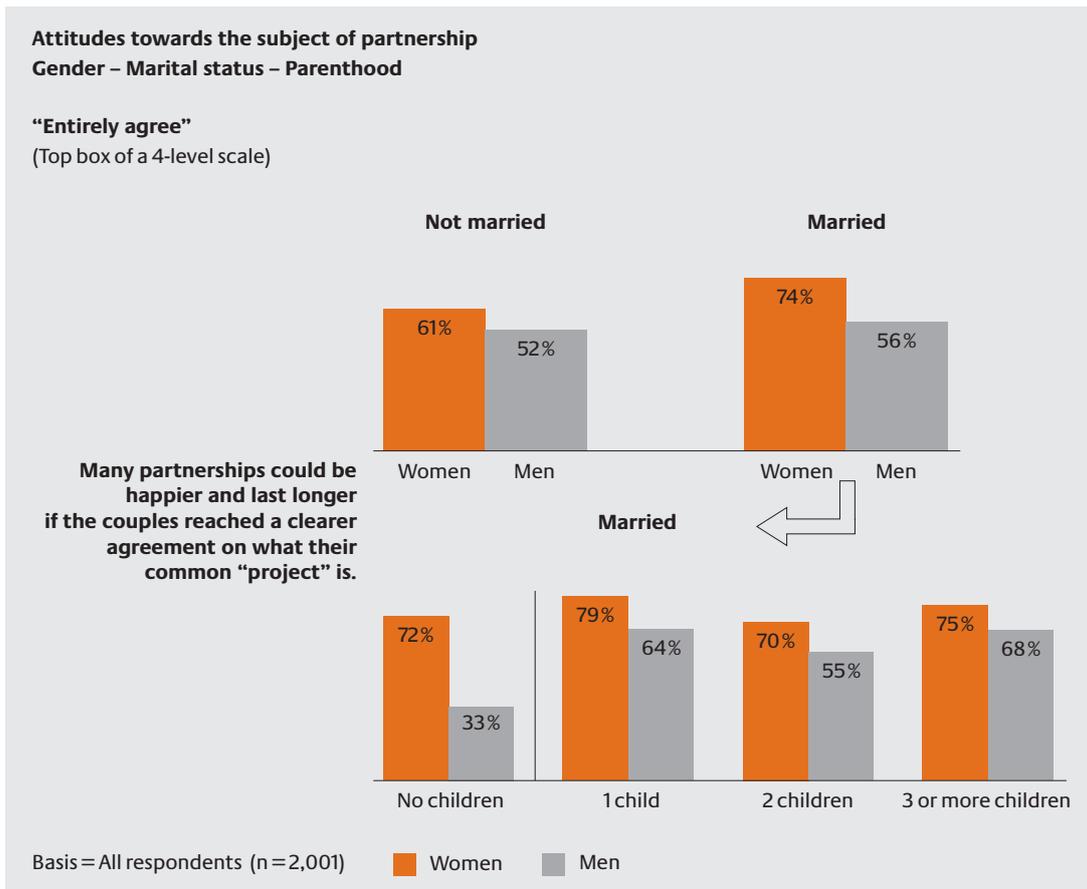
Distinction: First marriage, second marriage (divorced once), third or more marriage (divorced more than once)

(Top-2 box of a 4-level scale)



3.6 Common understanding on the "marriage" project

More than men, women see the key to the success and enduringness of a partnership as being to reach an understanding, as a couple, on what the **joint project of their partnership** is – on significant occasions or also continuously. This is particularly emphasised by married women! Among men, on the other hand, it makes hardly any difference whether they are married or not.



The formulation of the item (stimulus, statement) is selected in such a way that the subjunctive-conditional comparative (“**could be happier if ...**”) expresses a subjective assessment of deficiencies and wishes for improvement with a view to society: are the feelings of individuals as regards their marriage, and also the stability of the partnership, perceived as being sub-optimum? The statement implies that the necessary agreement on common goals, and taking stock of the actual situation, usually do not take place. In this respect, the item expresses uneasiness and dissatisfaction regarding communication with the partner, as well as the worry that the common basis of the partnership is threatened by erosion.

Against this backdrop, the data lead to the finding that, in the experience of married women, communication with the male partner on “common issues” breaks off/threatens to break off, or would be particularly important (but is not adequately dealt with from their point of view). While there is hardly any difference between unmarried men and married men as regards this question, this awareness of communication increases rapidly among women as they enter into marriage. Faced by the new challenges of parenthood, the perceptions, assessments and orientations of women and men as regards their shared day-to-day life apparently move in different directions.

In this context, it is striking and instructive ...

- 1.) ... that complaints about a lack of communication regarding the common project are less pronounced among married couples without children (47%) than among married couples with children (68%). However, it is important here to consider the different perception of women and men.

2.) ... that the gap between the perception of women (72%) and men (33%) is far greater among **married couples without children** (difference: 39%) than among married couples with children. Men in a marriage without children apparently display far less mind for, and attention to, the discussion of common issues with their partner than men in a marriage with children. In that the child can become the “common project” for both partners, it fills the gap so painfully perceived by women up to that time. So, for men, it is not the act of marrying, but (only) the experience of (the start of) parenthood that leads to a change in awareness and increased communication regarding the necessity of a “common project” for the happiness of the partnership. This means that the gap between the perception of women and men shrinks as the number of children increases; it is gradually also the men who come to realise that clear communication regarding a common project makes the partnership happier and more durable.

The shared event of parenthood in a couple’s biography, the new arrangements and distributions of domestic work, child-raising and gainful employment, and the new role patterns create or strengthen the awareness that the common partnership needs communication and agreement on the perspectives, but also that this often does not take place (or not sufficiently for both partners). It is mainly women, but also men, who emphasise and complain that communication regarding the common project does not take place in a form satisfactory to both partners and on a basis of mutual agreement.¹⁶

These responses to the statement indicated can be a self-diagnosis of the respondent’s own marriage or, with an eye to the close and wider environment, a societal diagnosis. Of decisive importance for the objective of our study are the different dimensions and sensitivities in the perception of the realities of marriage today. And the gap between the perception of women and men regarding this issue is an indication of a different understanding of the institution of marriage: women tend more to have a dynamic, process-oriented concept of marriage that is strongly normative with a view to the continuous work of both partners on communicating and reaching agreement. Men, on the other hand, are more inclined to have a static concept of marriage as a way of preserving the existing situation. All in all, the findings relating to the motives for marrying and the understanding of marriage lead to the following result:

I Men primarily see marriage (consciously or preconsciously) as being a stable institution with a solid framework, defined for all time and all events. They tend not so much to see marriage as meaning continuous communication regarding the common project. Men are inclined to consider the legal framework of the institution of marriage to be “carved in stone”, meaning that it guarantees stability, security and crisis-proofness. In this respect, men tend to have a **static understanding of the institution “marriage”**.

¹⁶ There is always a basic group of people who agree almost by reflex when asked whether more communication with the partner helps to improve a partnership. However, this is usually a basic group of less than 10%. In this respect, the figure of more than 70% of married parents who see a need for improvement here is substantial – particularly since it relates only to complete agreement. If general agreement to this statement is considered (tend to agree/entirely agree), the figure is 92% of married parents.

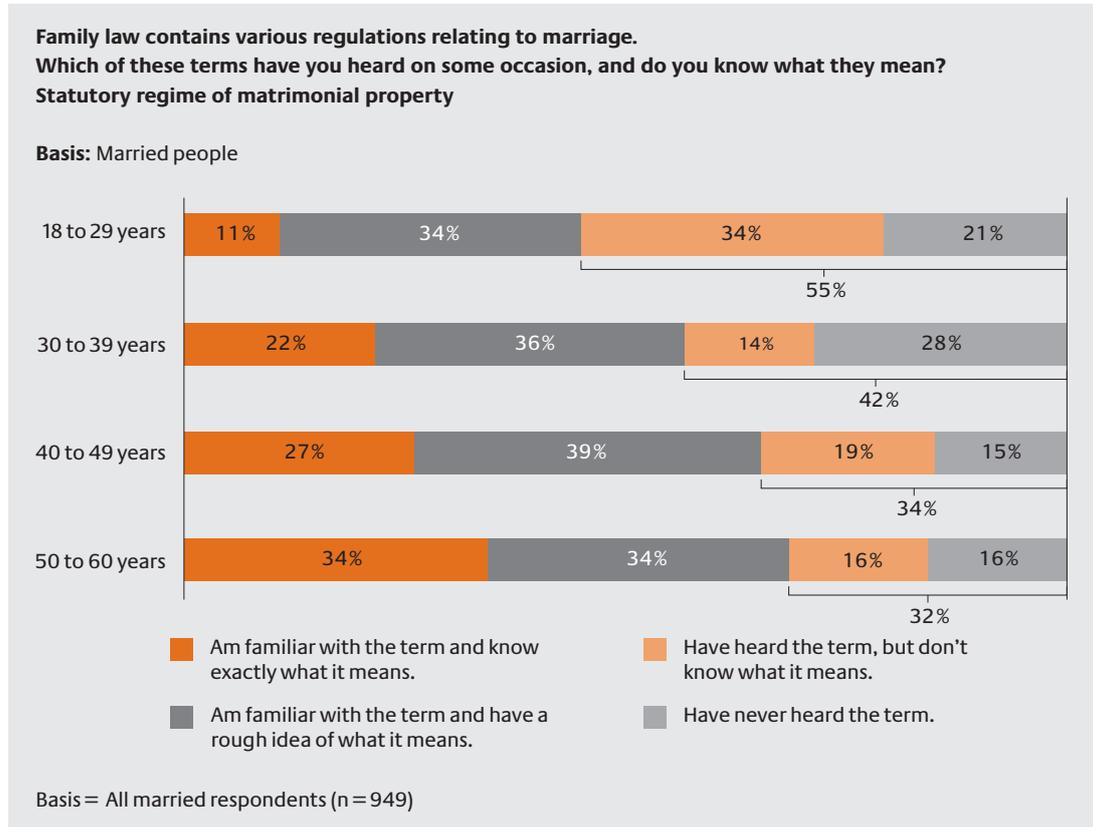
- I Women likewise see marriage as being a stable institution with a solid framework, but at the same time also as a process of communication on common issues. Their institutional understanding of marriage is fruitfully complemented by an inter-individual view of partnership as a creative task. For women, this includes critically taking stock – preferably in a dialogue – of their practical reality in comparison with the originally formulated, common idea of their partnership. Naturally, the aim is to correct the course their marriage is taking, if necessary. Unlike men, women do not have the notion that the institution of marriage should be “carved in stone” by the legal framework, thereby gaining stability and crisis-proofness, but that it should necessarily take into account events occurring in the course of life. This calls for women and men to readjust their partnership time after time in processes of communication and negotiation. From the point of view of women, only this gives the institution of marriage the stability they hope for and contributes to it being fair for both partners. In this respect, women tend to have a **dynamic understanding of the institution of marriage**.
- I It is interesting to note that the fundamental understanding of marriage of women and men becomes dynamic at different transitions between biographical stages: at the transition to marriage among women and at the transition to parenthood among men.

3.7 Knowledge of the legal framework of marriage

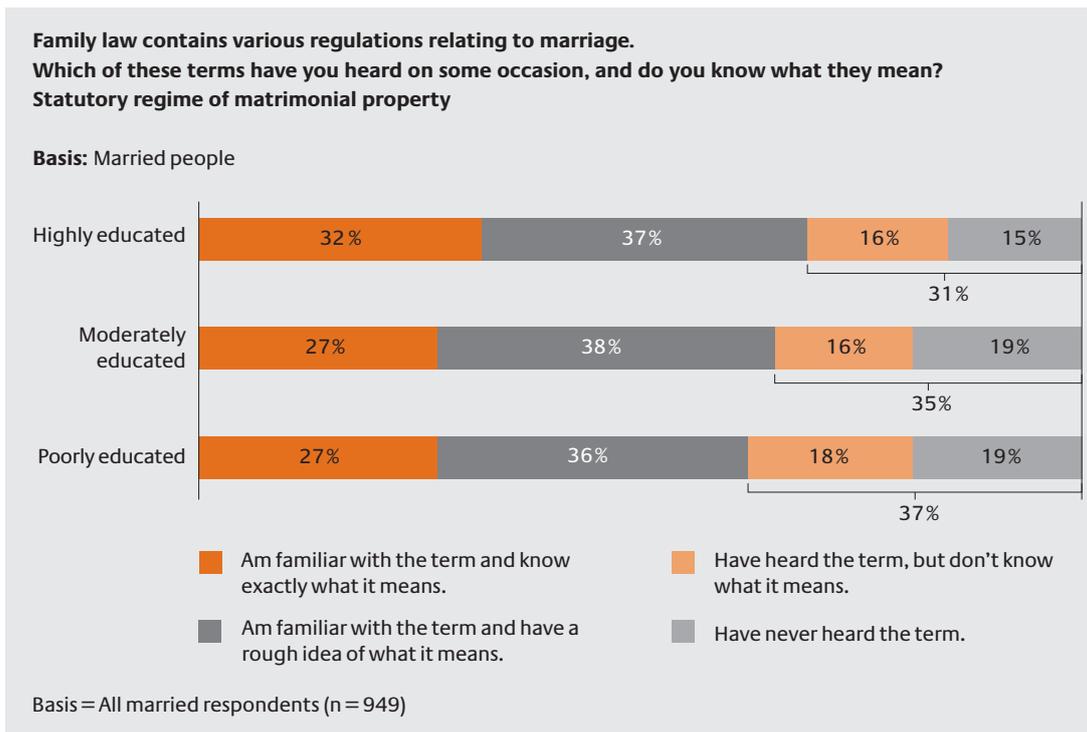
Women and men take it for granted that “marriage” has something to do with economic and legal situations or changes of situation. The majority of people who get married still have the general notion that, as a result of marrying, they are somehow in a better position compared to a non-marital partnership (56% of the respondents say “you’re in a better financial position in a marriage than in a partnership ‘without a marriage certificate’”). However, this conviction is not particularly strong, and many people who are married or planning to marry do not know, or only vaguely know, **to what concrete extent** their economic and legal situation changes as a result of getting married. Terms like “statutory regime of matrimonial property” or “income splitting” and the meaning of their content are frequently unknown – among well over 50% of the younger age group of married people. Ignorance regarding these terms and topics decreases with increasing age, this possibly being attributable to experience with tax returns and divorce. It is, however, alarming to see that knowledge regarding the legal frameworks and consequences is missing among the majority, particularly in the young phase of life when most people marry. Many people are not even aware that these things exist at all, and that they need to be observed or even regulated – although they apply for life and have binding, material and social consequences, and although the key motive for getting married is the desire for a dependable legal framework. People obviously rely on the state having seen to all the necessary regulations and precautionary measures.

According to their own statements, only 34% of married people between the ages of 50 and 60 know exactly what a **statutory regime of matrimonial property** is. A further 34% have a rough idea. However, 32% say they have never heard the term “statutory regime of matrimonial property” or do not know what it means. As worrying as this ignorance is in the genera-

tion of people who have mostly been married for a relatively long time, it is worse still if the younger generation is examined: according to their own statements, only 11% of married people between the ages of 18 and 29 know what a statutory regime of matrimonial property is, a further 34% having a rough idea. However, 55% are unaware of the term or its meaning. And these people are in a phase of life (particularly starting a family) where decisions are taken that are of relevance, and have consequences, in terms of matrimonial property law.



It could be assumed that ignorance is an attribute of people with a low level of education. When it comes to this subject, however, that is not true! Knowledge relating to the statutory regime of matrimonial property is only marginally better among women and men with a high level of education than among those with a moderate or low level of education. Even 31% of married people with a high level of education state that they have never heard the term “statutory regime of matrimonial property” or do not know what it means. If knowledge relating to the economic and legal framework of marriage is missing among one-third of people in higher-class strata and settings, this indicates a substantial information and communication deficit. In these milieus – where people are sensitive to, and give thought to, economic issues and risks – this can ultimately only be explained by great confidence being placed in the state that it will have regulated everything correctly and fairly, and that there is no need for the individual to worry about the matter.



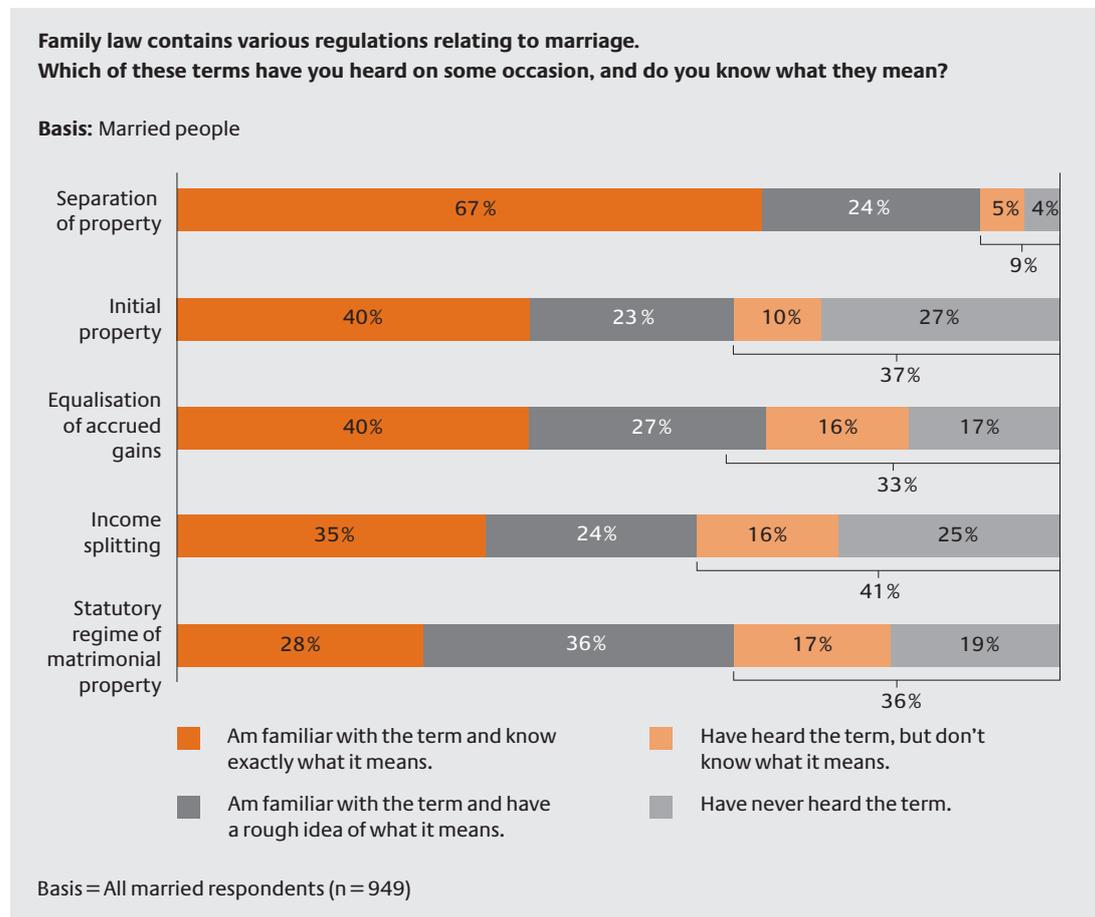
If the **range of concepts in family and tax law of relevance to a marriage** is examined, and married people are asked whether they have ever heard of them and are aware of their content (of think they are aware of it), the following picture is obtained:

Two-thirds (67%) have heard of “**separation of property**” on some occasion and think they know exactly what it means.¹⁷ Only few (9%) say the term is unknown to them. The order of the other terms whose name and content are known is as follows: initial property (40%), equalisation of accrued gains (40%), income splitting (35%), statutory regime of matrimonial property (28%).

It is surprising to note that, although it comes up fairly often in everyday political speeches, the media and chat shows, the term “**income splitting**” is only known and familiar to a relatively small proportion of the population, even among married people. 41% of married people say they have never heard the term “income splitting” or have no idea what it means. This contrasts with the initial hypothesis of this study, which assumed that this term ought to be familiar to almost everyone. Survey psychology helps to explain this response behaviour in people, and this finding: in an interview situation, many people are afraid of knowledge-related questions and do not want to be exposed. Particularly in connection with terms very familiar from the media, some then prefer to say “No, never heard of it” – for, if they said they knew the term, they could then be asked exactly what it meant, and that would possibly embarrass them. It is presumably precisely this effect of protective ignorance as a defence mechanism that we can see in connection with income splitting.

¹⁷ 67% said they knew what “separation of property” was. However, it is not known whether their subjective knowledge on the subject matches the actual legal realities. It can be assumed that some people will have developed their own individual notion that derived associatively from interpretation of the elements of the term (“separation” – “property”) – and has little to do with the actual legal concept and is thus incorrect.

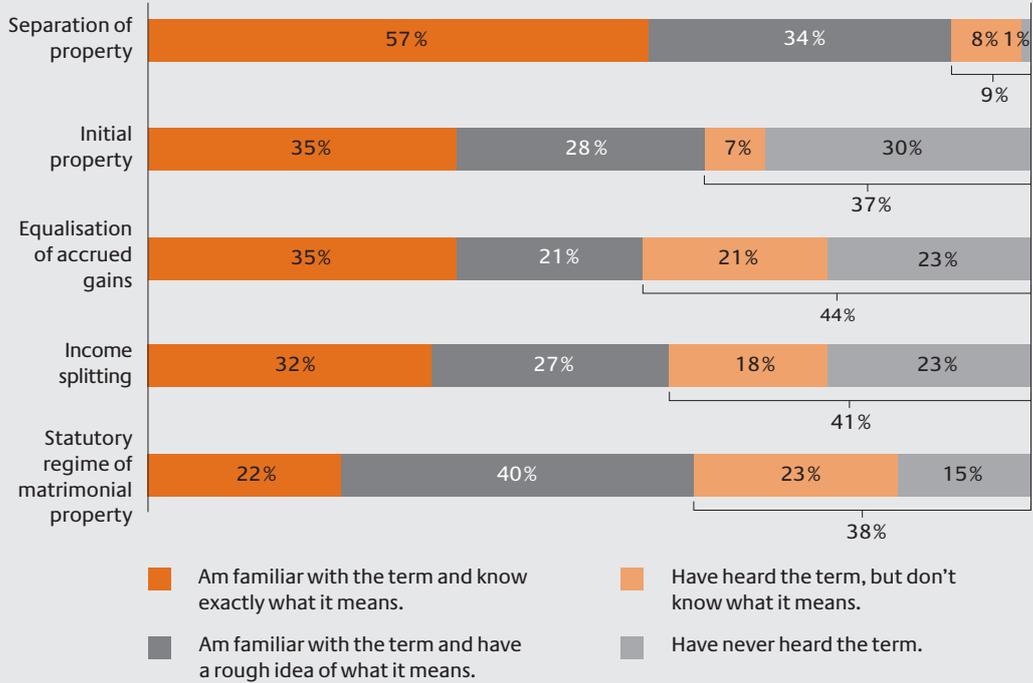
Also, 37% of married people do not know what the **initial property** is, and 33% do not know what the **equalisation of accrued gains** is. Although these concepts are of fundamental importance in matrimonial law, and even though they are to be found in the media time after time, large segments of the population and many affected people are apparently unaware of their meaning.



This **ignorance regarding elementary legal aspects of a marriage** is roughly equally prevalent among men and women. Especially in the younger generation, very many people have absolutely no notion or idea of the legal framework applicable to their marriage. In this context, it must be assumed that this finding obtained in the survey is even more pronounced in reality: the factual ignorance is greater than that indicated and admitted by people in a survey.

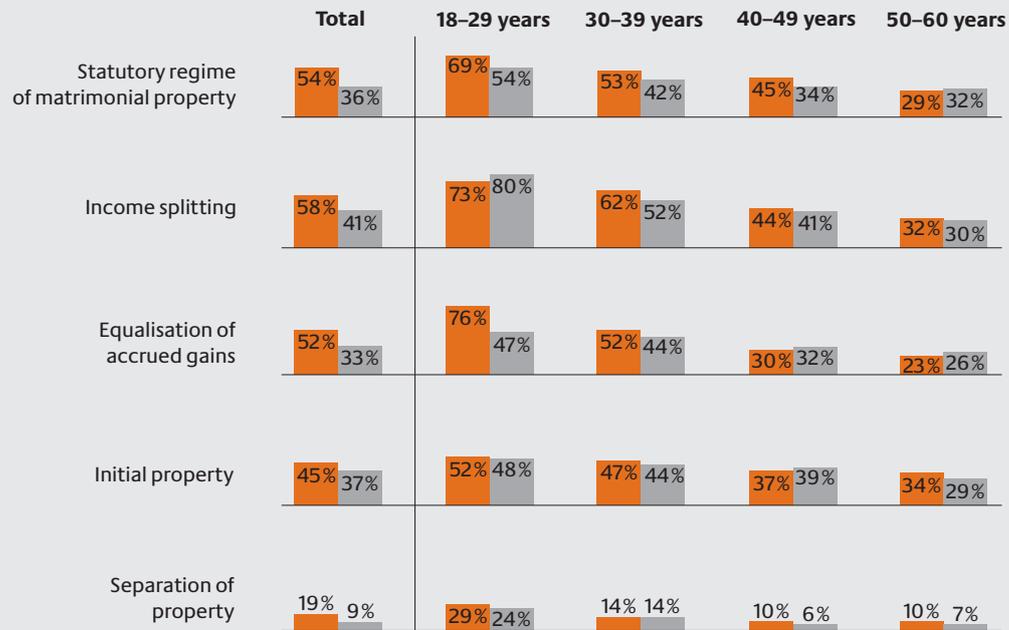
**Family law contains various regulations relating to marriage.
Which of these terms have you heard on some occasion, and do you know what they mean?**

Basis: Married people in Eastern Germany

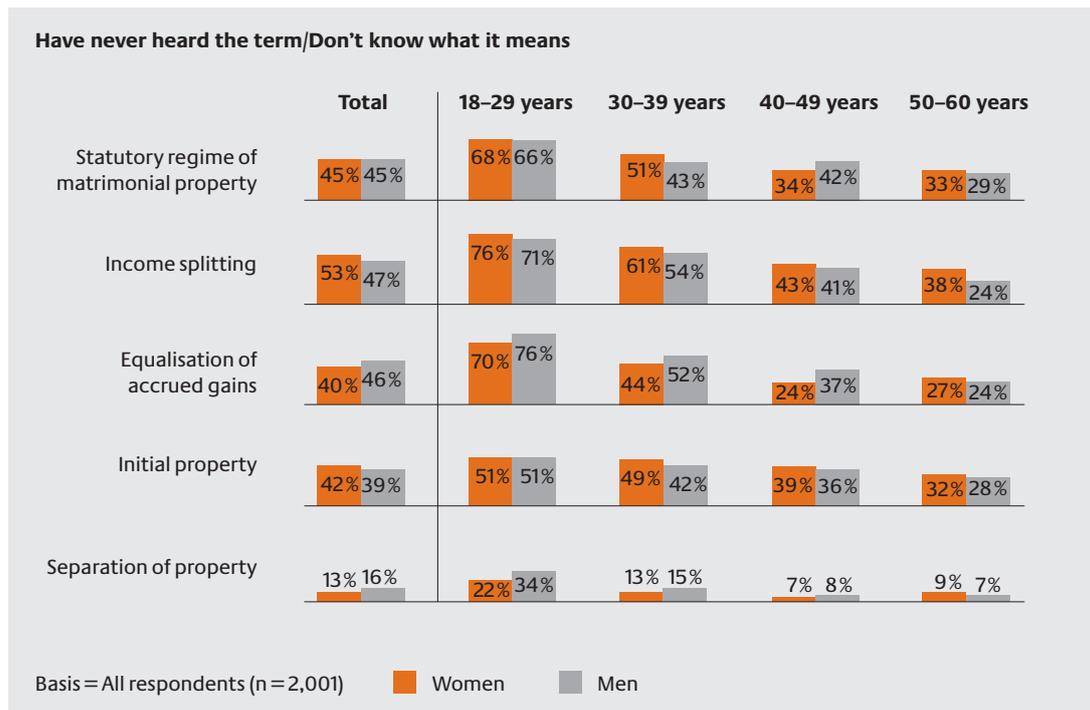


Basis = All married respondents currently living in Eastern Germany (n = 162)

Have never heard the term/Don't know what it means



Basis = All respondents (n = 2,001) Not married Married

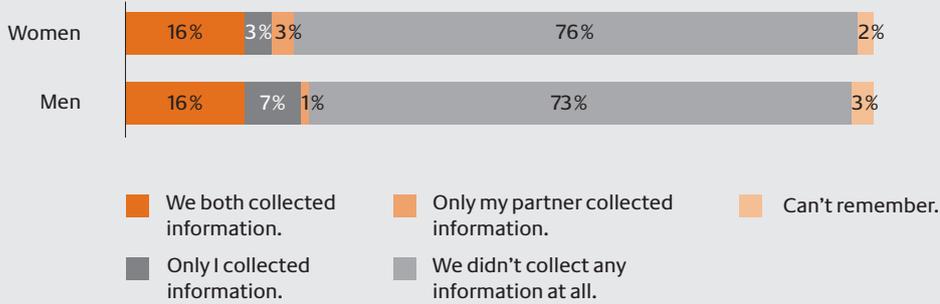


Only one-quarter of married people and those planning to get married in the next one to two years informed themselves about the legal regulations before marrying. This relates to aspects of tax law, property law, the law of succession, pension law and maintenance law, although people have the greatest tendency to seek information regarding tax-related aspects (22% of women, 24% of men) and the least tendency to enquire about maintenance law regulations (12% of women, 18% of men). In other words, attention focuses mainly on those aspects that have consequences directly in the present and less on the negative scenarios of the future (see following chapter).

The main sources of information are conversations with friends and acquaintances, but also the tax office (particularly for women) and various Internet forums. The information-gathering patterns are clearly different among the under-30s: compared to other sources, conversations with friends and the search for information on the Internet and at counselling centres/associations become even more important in this group, and the registrar's office is also more important than for older groups.

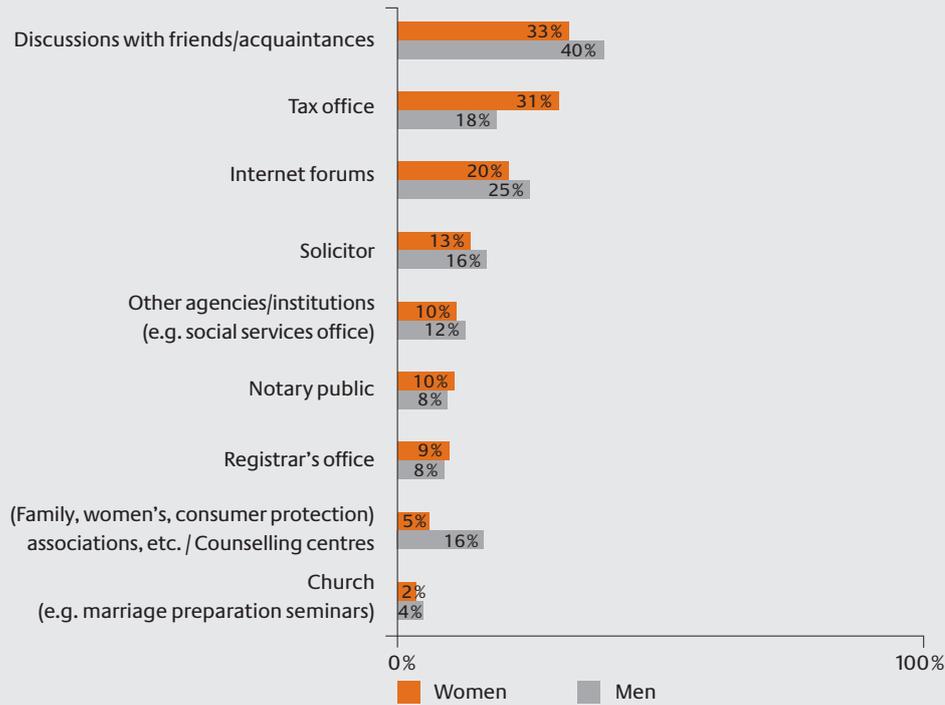
To what extent did you collect information on the tax-related effects before deciding to get married/enter into a registered partnership?

Basis: Married people

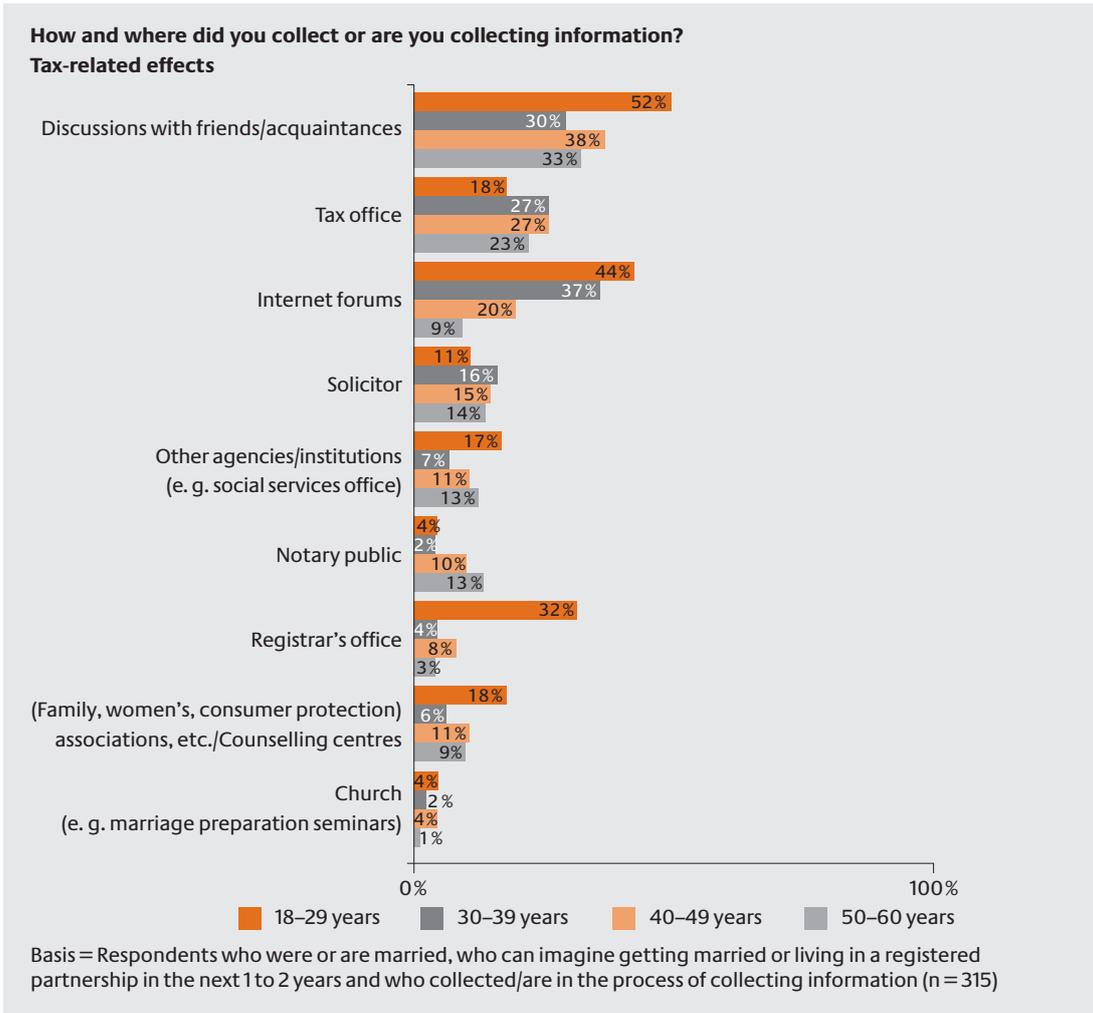


Basis = All married respondents (n = 949)

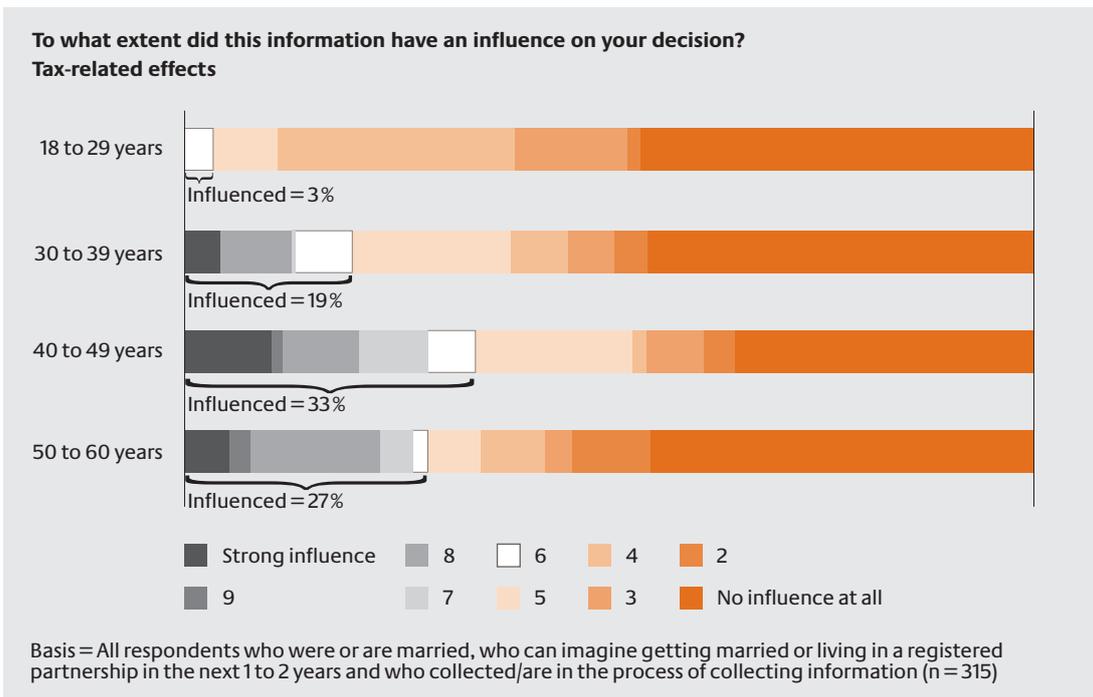
**How and where did you collect or are you collecting information?
Tax-related effects**



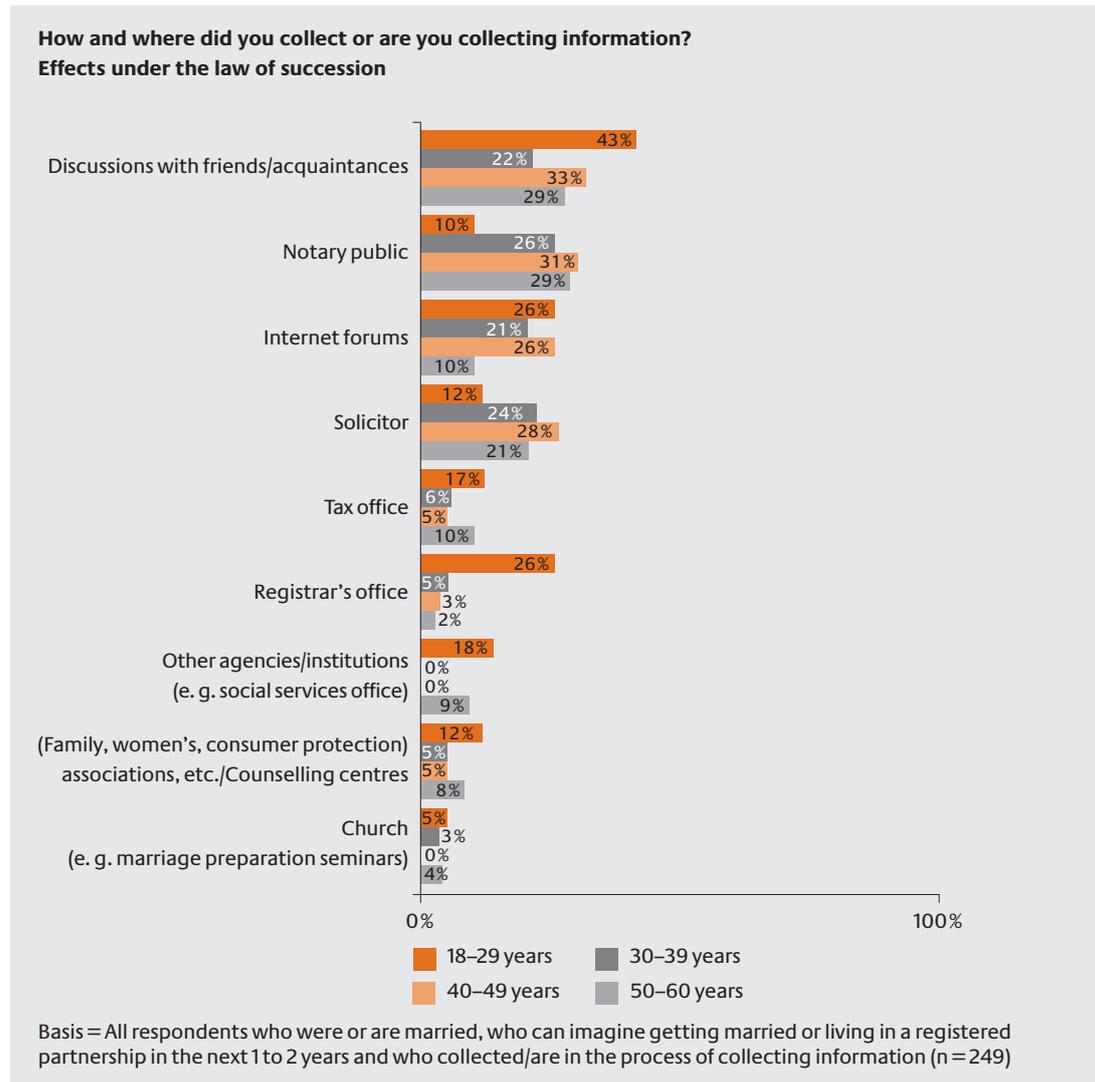
Basis = Respondents who were or are married, who can imagine getting married or living in a registered partnership in the next 1 to 2 years and who collected/are in the process of collecting information (n = 315)

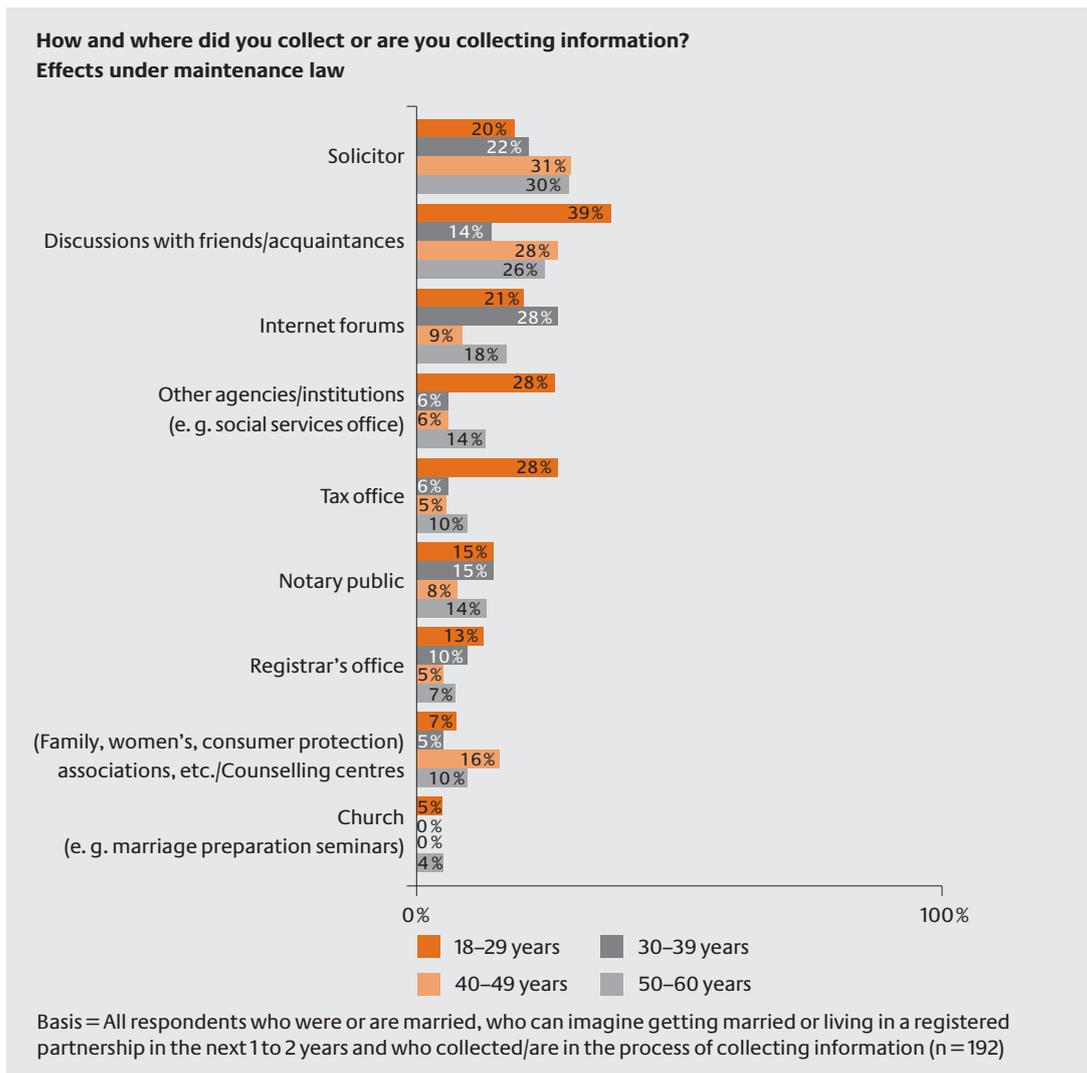


Although more than three-quarters of the married people interviewed rated the information they obtained as being useful, far fewer said that it had influenced their decisions. The under-30s, in particular, said that the information from those sources had not affected their decisions.



Regarding the other legal regulations, the dominant information sources, particularly among younger people, are conversations with friends. It is remarkable to note that the younger generations (up to the age of 40) tend more to turn to Internet forums for information on maintenance law issues, rather than directly consulting a notary public or a solicitor. After friends and acquaintances, Internet forums are the most common source of information on maintenance law issues. The picture is slightly different as regards regulations relating to the law of succession: in this case, the notary public and the tax office are (so far) slightly ahead of the Internet forums. The figures in the following charts clearly show that Internet offerings are a low-threshold information source for younger married people.





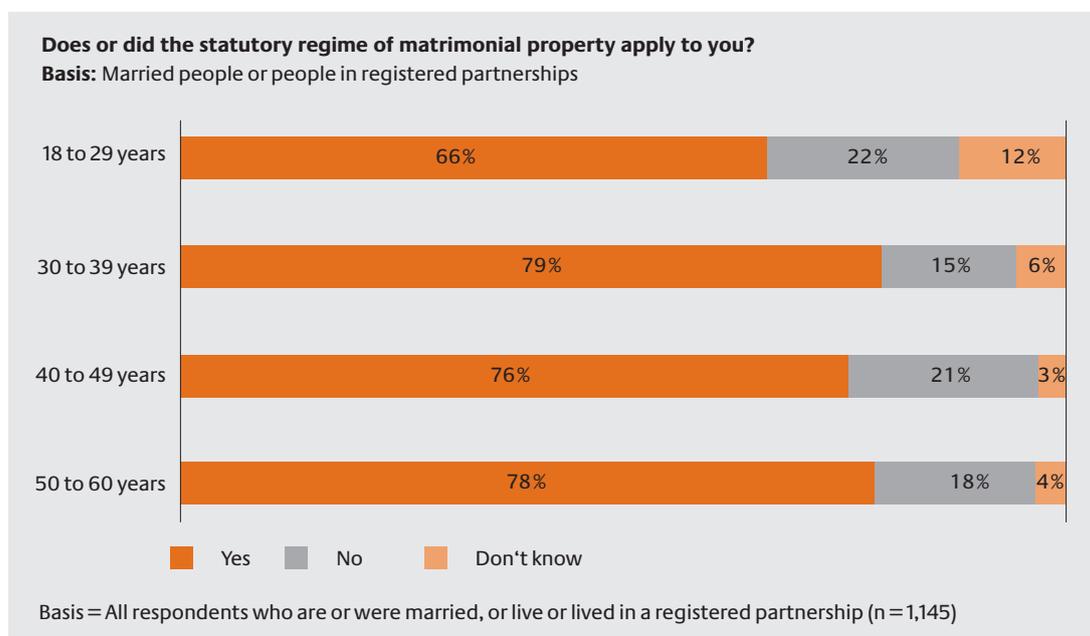
3.8 The personal matrimonial property regime: ignorance and (erroneous) notions

A lack of knowledge is often interpreted as being an indication of a lack of interest in a subject. The above descriptions of the attitudes towards marriage, the motives for getting married, knowledge and information-gathering behaviour before and during marriage signal that this conclusion is unfitting in this context. Failing to actively collect information, overlooking or ignoring key passages in information brochures, simply forgetting explanations given by the registrar or the notary public, is based on a (culturally) deeply rooted fundamental trust that the institution of marriage, established and protected by the state, ensures that “everything” is fair and above-board, and that the state has established a dependable set of tools that protects every individual, should the marriage fail after all. How firmly this consciousness is embedded in the minds of married people – and that substantial misconceptions arise in this context, based on that ideological, moral and political fundamental trust – will be illustrated in several steps below.

To this end, let us first consider all married people: In reply to the question of which regime of matrimonial property applies to them, 78% of married people state the statutory regime of matrimonial property. 18% say they have a different regime of matrimonial property, and 4% that they do not know their personal regime of matrimonial property. 14% of married

people under the age of 30 do not know their own regime of matrimonial property. This lack of knowledge regarding their legal situation (the targeted framework) is substantial, especially in the younger generation of “newly-weds”.

But even the 78% who indicate the statutory regime of matrimonial property are not really informed about the content of the valid regulations – the ignorance regarding what a statutory regime of matrimonial property actually is, is far greater. Only 28% of married people state that they are familiar with the term “statutory regime of matrimonial property” and know what it means. 36% of married people say they have “rough” knowledge on the subject. However, 17% say that they have heard the term at some time, but have no idea at all what a statutory regime of matrimonial property is. And 19% of married people have never heard the term “statutory regime of matrimonial property” at all. Ignorance as regards this decisive dimension of a marriage is particularly pronounced in the generation of married people under the age of 30: 55% have either never heard the term or have absolutely no idea what it means. In this respect, we are dealing with a reflex when it comes to the question of the personal regime of matrimonial property: many people do not know which regime they have, and therefore indicate the “statutory” one. So, according to their own statements, more than 75% of the over-30s have the statutory regime of matrimonial property, while the figure for the younger generation is only 66%. This is a significantly lower value. As in the older generations, too, only roughly one in five in this group says he/she has a different regime of matrimonial property. 12% simply do not know whether the statutory regime of matrimonial property applies to them. This reveals a generation-related trend: only 3% did not know among the 40 to 49 year-olds, the figure already increasing to 6% among the 30 to 39 year-olds. This percentage doubles again in the young generation of the under-30s.

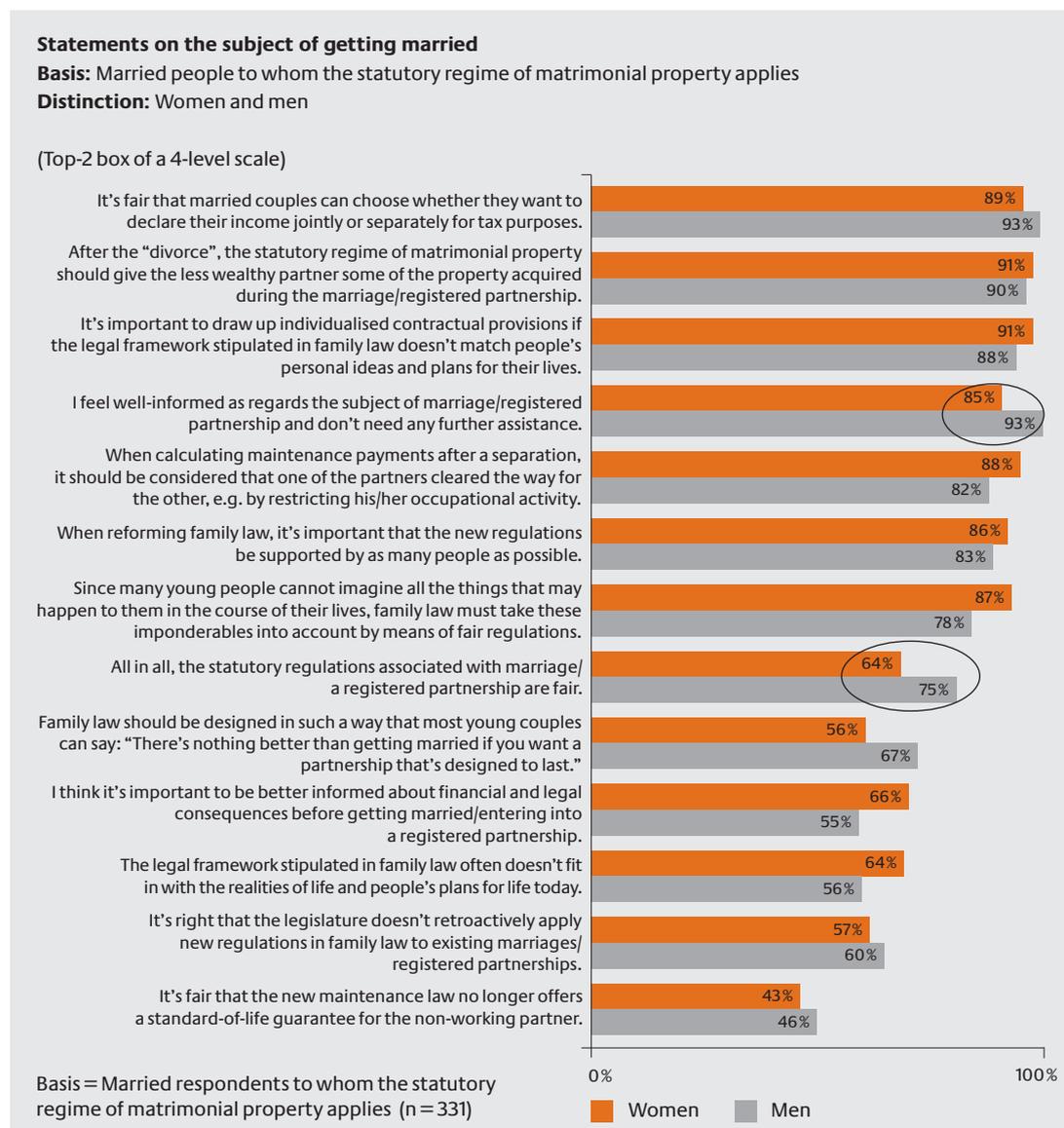


“False” notions of the statutory regime of matrimonial property: Of even more decisive importance than knowledge of the technical terms in matrimonial property law is knowledge of their concrete meaning and content – particularly if people are already married and think they are aware of their regime of matrimonial property. In this respect, it is worthwhile taking a look at the group of people living in a community of accrued gains, or intending to select it, and their misconceptions as regards matrimonial property law:

- 89% believe that everything acquired during a marriage belongs equally to both partners (93% of women, 87% of men).
- 61% assume that the entire property jointly belongs to both partners “per se” (69% of women, 62% of men).

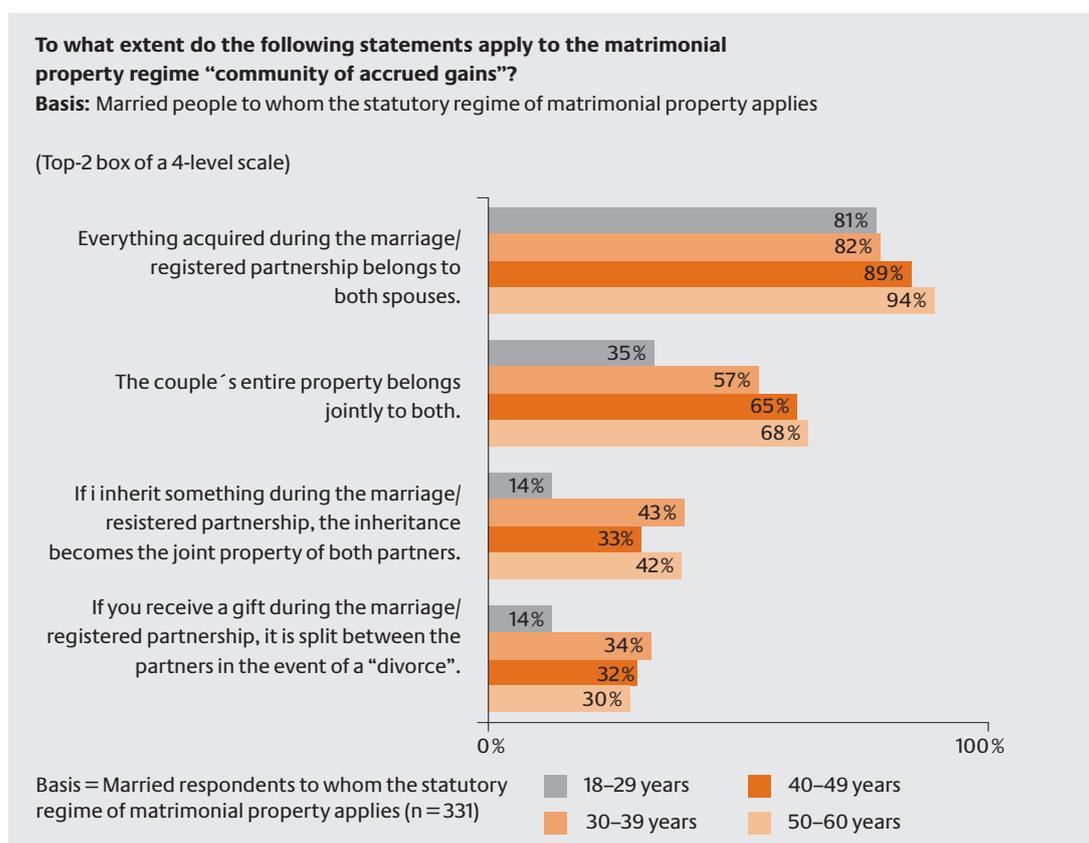
Both views are wrong!

Compared to men, these false estimations (and thus incorrect expectations regarding the statutory regime of matrimonial property) are significantly more often present and established in **women**. These wrong notions are preserved, cultivated and consolidated with increasing **age** (generation effect) and increasing **duration of marriage** (life-course effect) – which is understandable from the psychological point of view. 98% of women who have been married for more than 20 years believe that everything that has been and will be acquired in their marriages belongs equally to them and their husbands. These are often women with a traditional role pattern and little gainful employment. 77% of women whose marriage has lasted for more than ten years assume that their entire property belongs jointly to both partners. **The majority of married people with the statutory regime of matrimonial property assume that they live in a “community of property”.**



From the standpoint of the interviewees, it is perfectly logical that they think they are sufficiently informed on the subject, despite having gaps in their knowledge (93% of men and 85% of women). They quite simply assume that the possible consequences are in harmony with their own sense of justice. Accordingly, they rate the statutory regulations associated with marriage as being just (75% of men and 64% of women), although agreement to this statement displays a marked slump when the first child has arrived (83% agreement among couples without children, 58% agreement among couples with one child).

The consciousness of equal distribution of, and actual participation in, property acquired jointly in the marriage increases not only with age and the duration of marriage, but particularly with the **number of children**. This is significant in that, especially for families with children, the economic consequences of reducing the level of personal gainful employment are particularly important (above all for the woman), and it makes a major difference whether these consequences are borne separately or jointly.



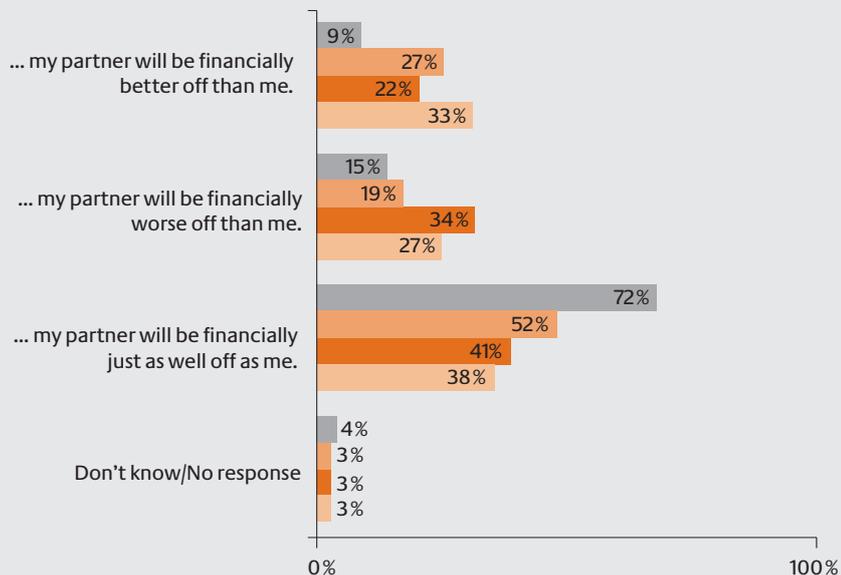
It is therefore of interest to enquire in more detail about the economic consequences that married people imagine in the event of a divorce, if they think they know they are living in a community of accrued gains, but at the same time have the above misconceptions. 47% assume that their partner will fare just as well as they themselves in financial terms. An **egalitarian logic regarding the consequences** is particularly widespread (71%) among 18 to 29 year-olds. It is worth noting that optimism regarding this balance declines rapidly as the number of children increases. While the figure in this group is still above 70% before the arrival of the first child, this belief drops to just less than one-half among families with three children and more.

If your marriage/registered partnership should ever come to an end ...

Basis: Married people to whom the statutory regime of matrimonial property applies

Distinction: No children, 1 child, 2 children, 3 or more children

(Statement: True)



Basis = Married respondents to whom the statutory regime of matrimonial property applies (n = 331)

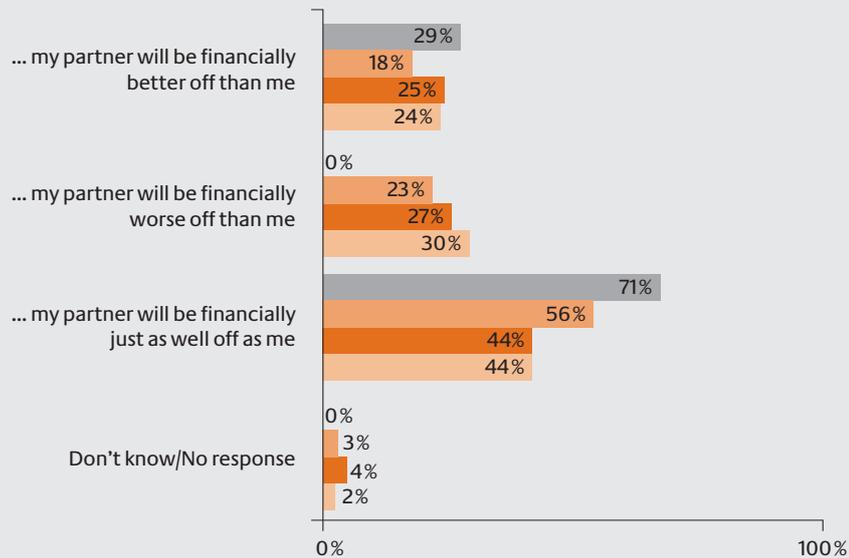
Legend: No children (grey), 1 child (light orange), 2 children (dark orange), 3 or more children (medium orange)

If your marriage/registered partnership should ever come to an end ...

Basis: Married people to whom the statutory regime of matrimonial property applies

Distinction: Age 18–29 years, 30–39 years, 40–49 years, 50–60 years

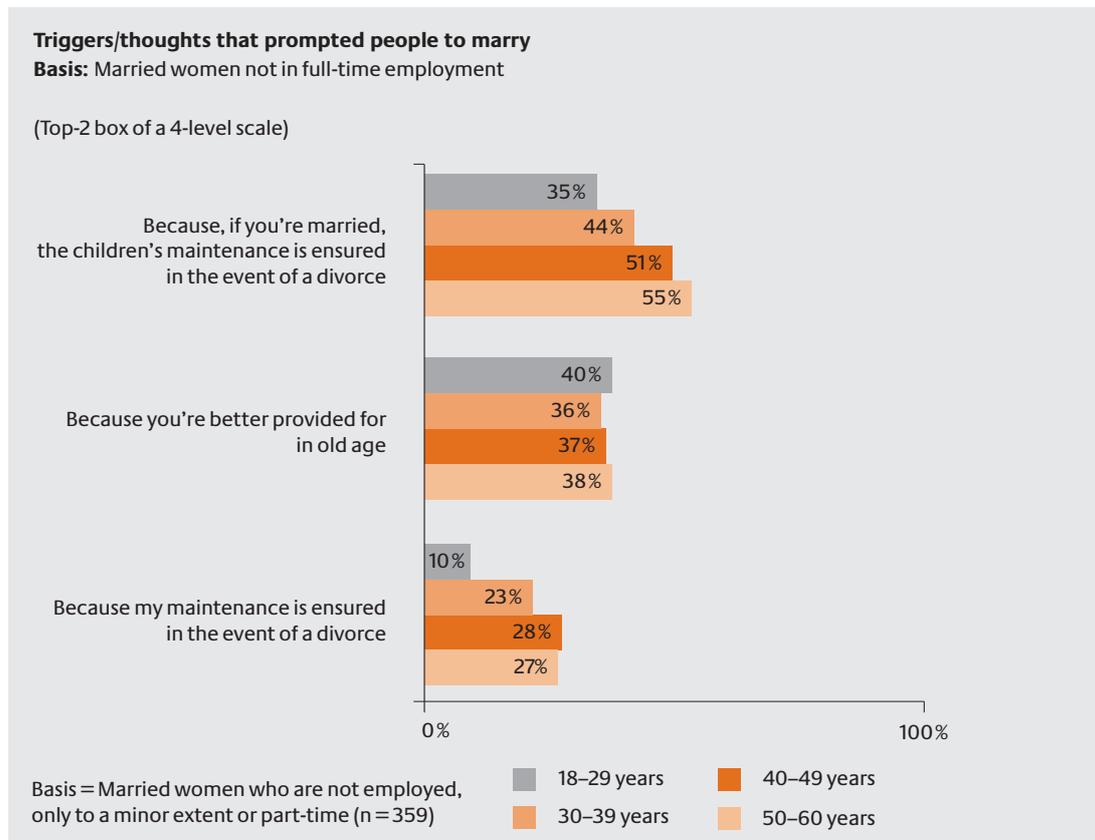
(Statement: True)

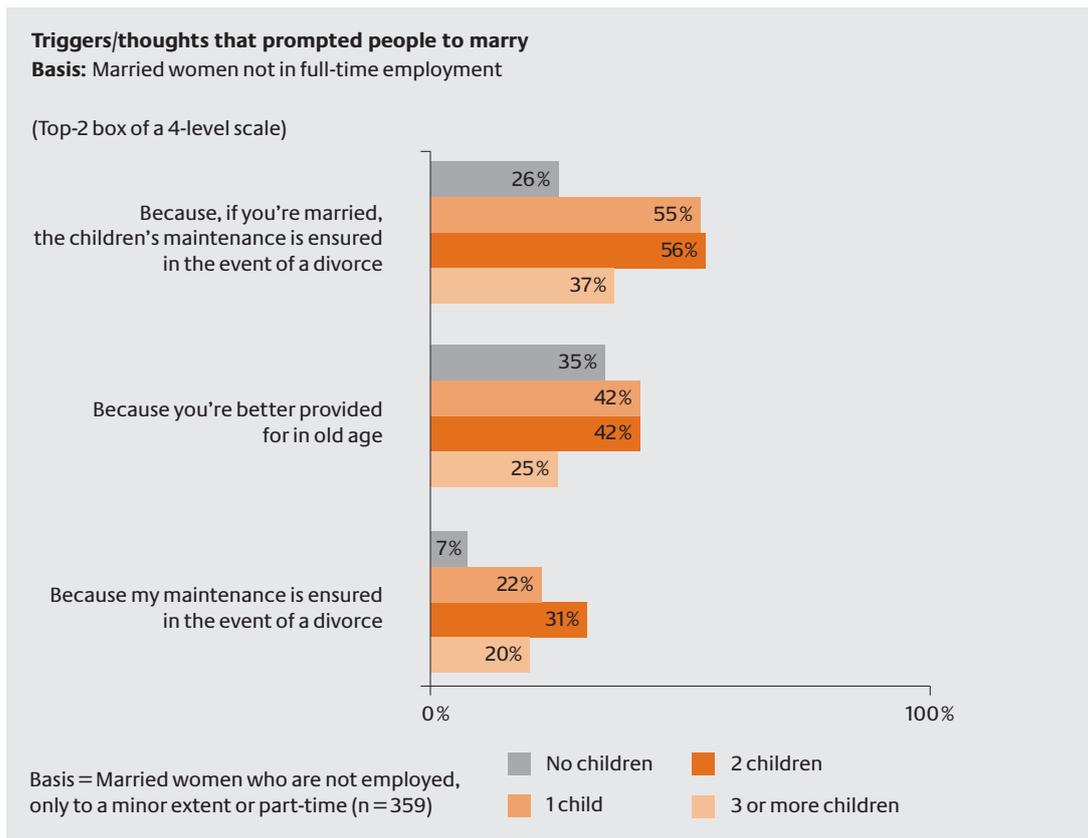


Basis = Married respondents to whom the statutory regime of matrimonial property applies (n = 331)

Legend: 18–29 years (grey), 30–39 years (light orange), 40–49 years (dark orange), 50–60 years (medium orange)

Finally, one more example will show the great degree to which different life courses shape the view of marriage. Women who are not in full-time gainful employment have the recognisably great hope that the institution of marriage will help them better secure the maintenance of the children at least. Considering married women who are not employed, only to a minor extent or on a part-time basis, almost half of these women state the motive for marrying as being to secure the maintenance of the children in the event of a divorce. In this group, too, only a good third attached importance to anticipated advantages for their own provision for old age. The data collected regarding the importance of their own maintenance are even lower than these figures although, given the time of the survey, it is not clear whether and to what extent the new maintenance law had already or not yet “got through”.





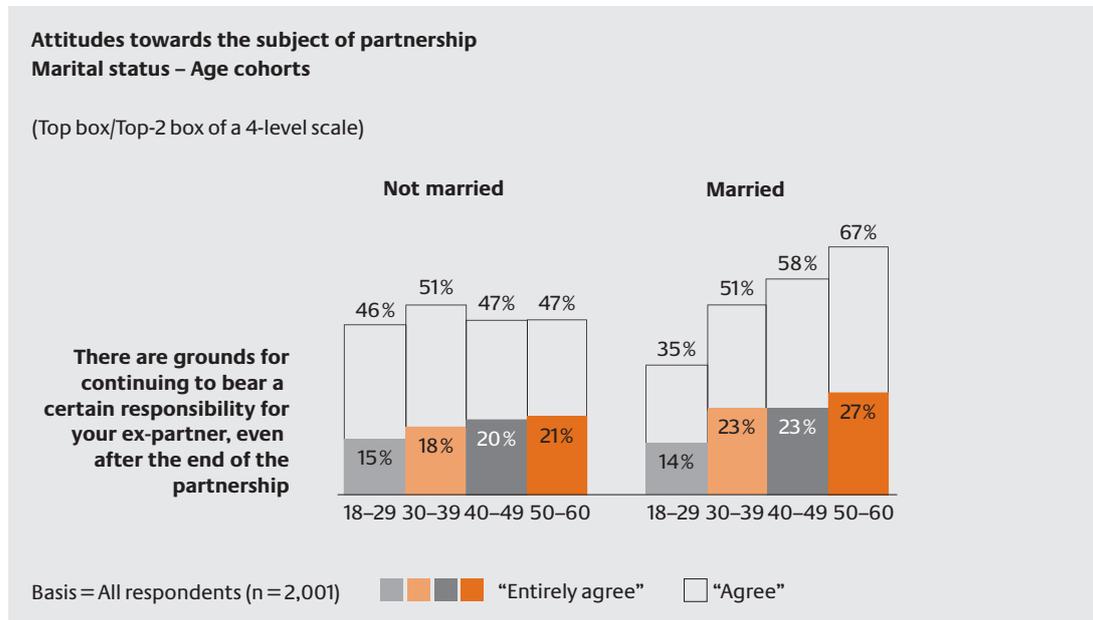
It can be stated in summary that a large segment of married people reveals a pattern that is essentially **pragmatic** and **geared to the present**. Only those stocks of knowledge are acquired and activated that are of relevance for the current situation in life and for pending decisions. People want to suppress thoughts regarding divorce and the possible consequences (including those of an economic nature) as long as their love and responsibility for the partner is beyond question. This explains why young couples, in particular, know so little about matters of matrimonial property law and maintenance law. This almost stoic tranquillity, the reflex action of suppressing or even tabooing risk calculation, the delegation of protection to the state, and the deferment for the emergency that it is hoped will never occur, can also be seen as a desire to reduce complexity. Marriage is considered (particularly by those who haven't been married for a long time yet) to be a constant, and people would preferably like to rely on its legal framework without any reservations. In this respect, the metaphor of the "haven of marriage" is reflected in the fundamental understanding of women and men today: for them, marriage is, in the best "naive" sense, a safe haven where they are protected and well provided for.

3.9 Responsibility for the partner after the marriage

The people between the ages of 18 and 60 were asked whether you bear a certain responsibility for your ex-partner even **after the end of the partnership**. 21% entirely agreed and a further 32% tended to agree: all in all, there was thus 53% agreement. In gender-specific terms, 58% of the men and 48% of the women expressed this opinion.

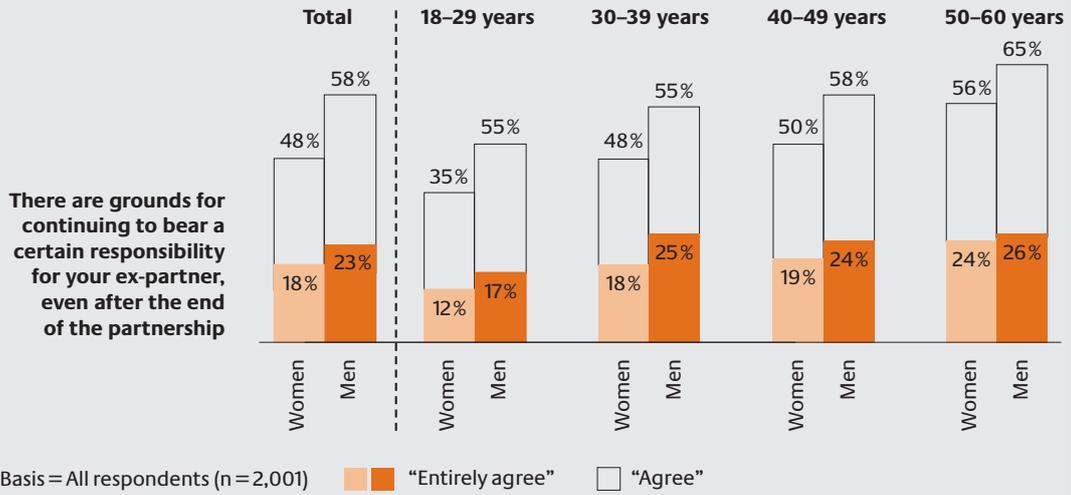
Conversely, this means that 42% of the men and 52% of the women have the attitude that, following the possible end of a partnership, responsibility for each other is completely dissolved and there are no longer any reciprocal obligations and responsibilities. This view is particularly pronounced among the younger generation (especially among married people under the age of 29) and among young women.

When answering this question, it is, of course, important whether the people are married or not. Only 18% of those who are not married “entirely agree” with post-partnership responsibility, and a further 30% “tend to agree” (48% in total). Those who are married show greater agreement: 24% “entirely agree”, 35% “tend to agree” (59% in total). Here, too, men (66%) demonstrate far greater consciousness of post-marital responsibility for their partner than women (52%) for theirs. **This means that 48% of married women and 34% of married men are not of this opinion and are not willing to continue to bear a certain responsibility for their partner in the event of a divorce.**



Attitudes towards the subject of partnership
Gender – Age cohorts

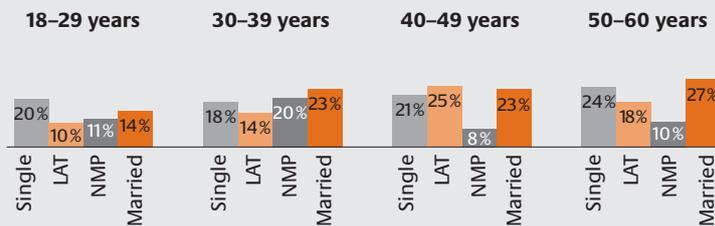
(Top box/Top-2 box of a 4-level scale)



There are grounds for continuing to bear a certain responsibility for your ex-partner, even after the end of the partnership

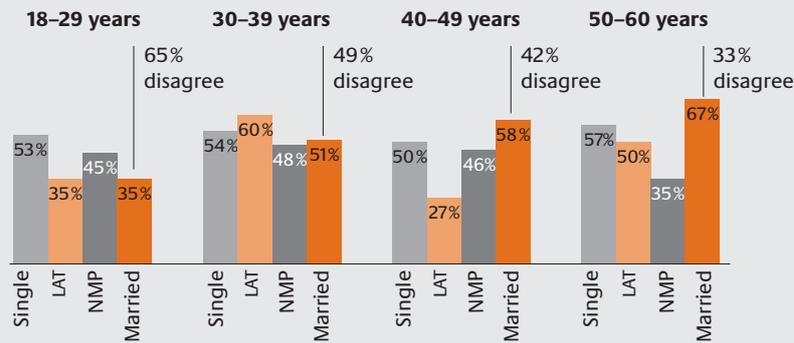
"Entirely agree"

(Top box of a 4-level scale)



"Entirely agree/Tend to agree"

(Top-2 box of a 4-level scale)



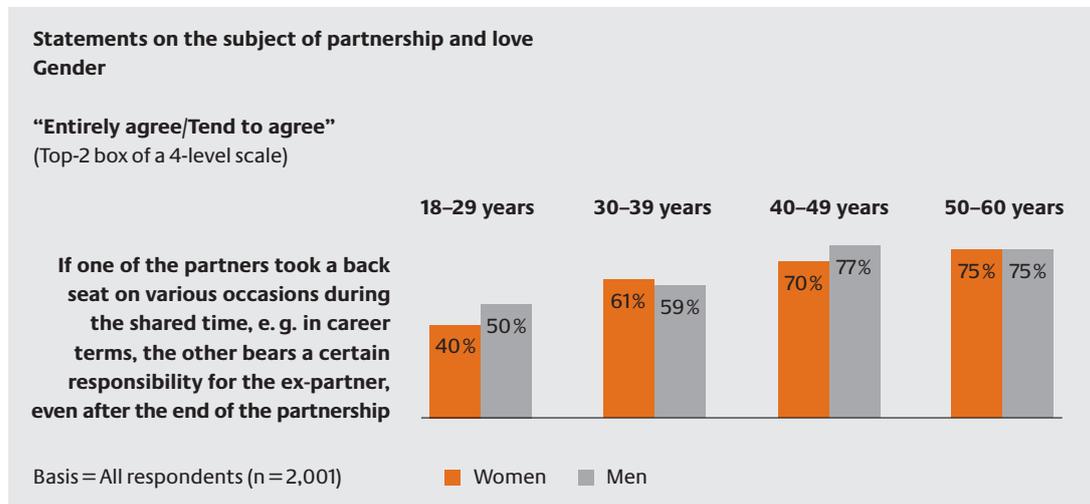
Basis = All respondents (n = 2,001)

LAT = Living Apart Together

NMP = Non-marital partnership

The major gap between younger and older married people is significant: only 35% of married people between the ages of 18 and 29 see grounds for continuing to bear a certain responsibility for their ex-partner even after the end of the partnership – this means that 65% reject this kind of responsibility or see no grounds for bearing it. 67% of married people aged between 50 and 60 can see and accept such grounds – here, “only” 33% reject post-marital responsibility.

The accounts are closed when a partnership is formally separated. Compensation for previously taking a back seat in favour of the partner then no longer counts and can no longer serve as a basis for any claims. That is the opinion of 38% of women and 34% of men. This dispensation with post-partnership responsibility is particularly pronounced among the younger generation (60% of women, 50% of men). Members of the older generation demonstrate the strongest attitude that they continue to have a certain responsibility for the partner who took a back seat, even following separation (75% of women and men).



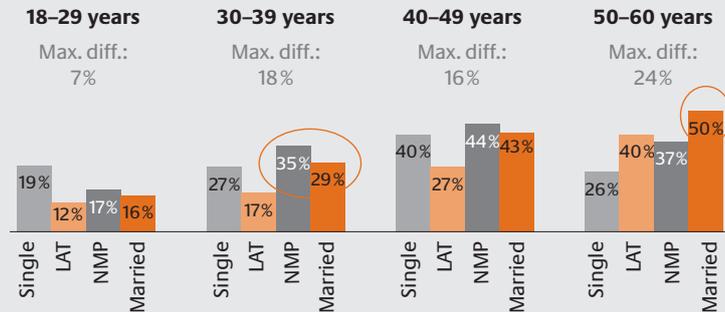
The fundamental attitude that you continue to be responsible for your ex-partner, even after separation, if she or he took a back seat on various occasions during the shared time, is at its strongest among older married people – well ahead of people living in legally non-binding forms of partnership (LAT, NMP).

In the younger age cohorts, however, married people in no way have this notion of partnership-based responsibility. In addition, there are hardly any differences between married and non-married people regarding this issue. In the age group of 30 to 39 year-olds, and also among 18 to 29 year-olds, the consciousness of responsibility for the partner who took a back seat in career terms is actually even slightly greater in non-marital partnerships than among married people.

If one of the partners took a back seat on various occasions during the shared time, e. g. in career terms, the other bears a certain responsibility for the ex-partner, even after the end of the partnership

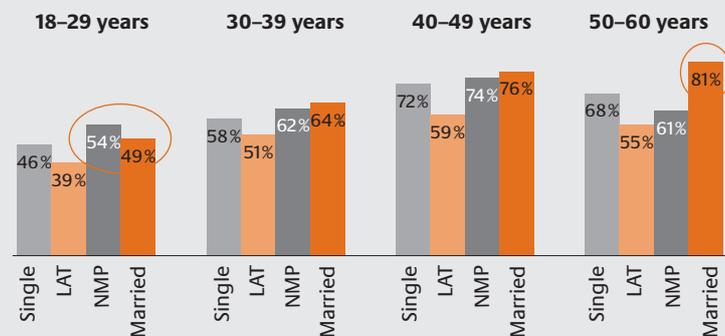
“Entirely agree”

(Top box of a 4-level scale)



“Entirely agree/Tend to agree”

(Top-2 box of a 4-level scale)



Basis = All respondents (n = 2,001)

LAT = Living apart together

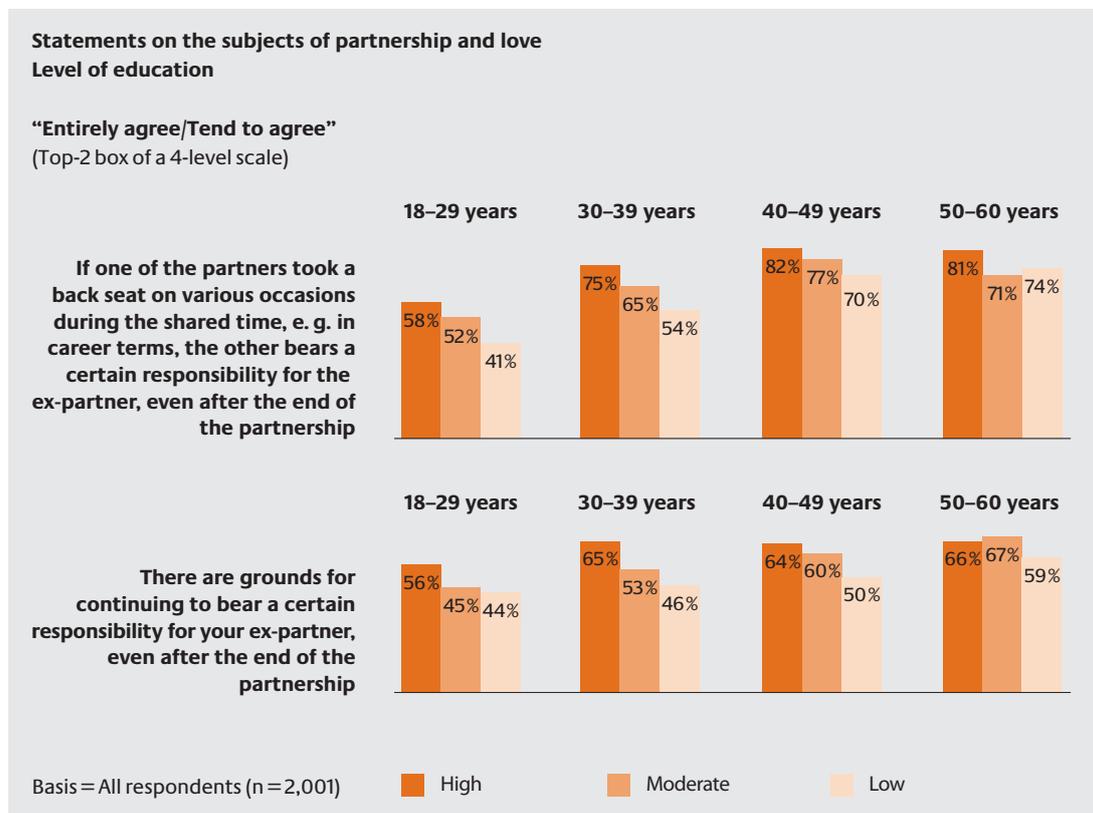
NMP = Non-marital partnership

In all age cohorts, people living in “loose” couple relationships (LAT = living apart together) are least willing to continue to bear a certain responsibility for the partner who took a back seat in career terms after their separation. However, it is essential to consider the form of partnership when assessing these findings. And against this backdrop, it appears that ...

- 1.) ... the gap between married couples and LATs tends to be small;
- 2.) ... the willingness of LATs is relatively great: more than half of LATs over the age of 30 are willing to acknowledge this merit (= taking a back seat) of the partner, and also to acknowledge and “remunerate” it in some form or other, even after separating;
- 3.) ... the willingness of young married people tends to be slight. 51% of under 30 year-olds, 36% of 30 to 39 year-olds, 24% of 40 to 49 year-olds and 19% of 50 to 60 year-olds are not willing to continue to bear responsibility for the ex-partner after the end of the partnership, even if she or he took a back seat on various occasions during the partnership.

Based on the data, there are thus indications that both generation effects **and** life-course effects play a role as regards attitudes towards post-partnership responsibility. In this context, the influence of the generation is slightly stronger than that of biographical stages in life. It is significant that ...

- ... people with a high level of education display greater willingness to bear responsibility for the partner, even after the end of the partnership, than people with a low level of education;
- ... this difference between the education segments is much greater in younger age groups than among older people.
 - ▮ This leads to the optimistic interpretation that willingness to bear responsibility continues to grow with increasing age, also in the poorly educated strata (life-course perspective).
 - ▮ However, there is also the pessimistic interpretation that the younger generations in general, and especially in the lower education segments, are not willing to continue to look after their ex-partner after separating (generation perspective).



3.10 Marriage in the course of life

The analyses so far have spotlighted individual motives and purposes in connection with marriage, knowledge and ignorance, attitudes and decisions of married women and men. This made it clear that marriage is a process. Within this process, the institution of marriage remains stable as a legal form, but a dynamic development emerges for the wife and the husband in the different phases in the course of marriage and life. Above all, the shared course generally has totally different consequences for the two spouses.

Beforehand and at the time of marrying, the partners mainly want to bond themselves to each other closely and permanently. By choosing the institution of “marriage”, they want to create a social and legal framework for this special bond that is ideally intended to last a lifetime. The impulse for doing so is the idealistic idea and norm of “solidarity” and “sharing”, which is geared to concrete everyday life from the outset. The partners know from the very beginning that, even in a marriage, life will not progress steadily for the two of them, that there are “natural” phases (starting a family and family life, occupational activity in different stages and places, retirement from working life, etc.), that unpredictable things will happen (as a result of their own decisions or due to external influences) and that a marriage can also fail and be dissolved. And, right from the start, women and men naturally assume that the framework of marriage, defined and protected by the state, takes all this into account and encompasses it, taking all the necessary precautions to safeguard the individual.

Biographical events, such as the birth of a child, an inheritance, career leaps or interruptions of employment, forced occupational flexibility (e.g. shift work, weekend work) and mobility (trips abroad, commuting), caring for relatives and much more, are not only significant events for the individual, but also affect the partnership. If the social and material resources of one partner change, this usually also has a direct impact on those of the partner – and not always in the form of a positive knock-on effect, but often also in the form of secondary consequences. When a child is born, one partner (usually the woman) cuts back her occupational activity, sometimes partly or entirely giving up her employment for several months or even years, while her partner sees himself as bearing growing obligations in this situation, as having the role and pressure of the main bread-winner. Individual, sometimes emotional and spontaneous decisions often have effects and impacts with lifelong implications – without the partners intending or foreseeing them. The practical idea of solidarity through marriage leads – more so than in non-marital partnerships – to a (practical and rational) division of tasks between the partners. However, it is not the case that both partners always return to the starting point when new situations or decisions arise. Rather, the decisions and paths taken previously prejudice the pending decision and the further course. It thus already happens to many couples in the first few years of their marriage – even if they started out with the same goals and opportunities – that the wife and the husband take different paths in their life course because of their division of tasks. This means that not only the life courses and life-course opportunities of the woman and the man drift apart, but also the personal perspectives and securities.

In practice, the respective paths taken by the partners are not later brought back together, their form and rhythm rather being coordinated and harmonised instead. For example: if, following the birth of a child, the woman assumes the principal task of looking after the child, this interrupts her gainful activity for a short or longer period. If she returns to work, then often on a part-time basis, resulting in greater income inequality. And if her partner by then earns substantially more than a few years previously – because he currently has prospects of success in his attempts to achieve job promotion, or has even already climbed the career ladder – then it often appears nonsensical to the couple, in terms of economics and prospects, if the man stays at home when the next child arrives and the woman with her currently reduced working hours has to feed an even larger family. What is completely forgotten in this context is the growing imbalance to the detriment of the woman, whose personal career opportunities and material securities for a self-responsible life are increasingly eroded.

Nevertheless, even after many years of marriage, many women are still firmly confident that the framework of marriage continues to afford them personal protection – precisely **because** they gave up some of their career prospects and opportunities for independent material provision or transferred them to their husband.

Misconceptions regarding the regulations of matrimonial property law (“both share everything and each owns half”) are not eliminated with increasing duration of a marriage, but reinforced and consolidated by shared daily life. Only when a marriage is about to be dissolved, or the divorce is through, does the process of education and realisation regarding the true situation under matrimonial property law begin. But by then, all the opportunities have been missed for correcting or even preventing the imbalance by way of the division of tasks and different life courses of the partners.

IV.

Results and conclusions

The results of the representative survey of the population lead to five interconnected core statements:

- (1) People have a wish for couple relationships that are designed to last, and are fundamentally willing to organise responsibility and solidarity in their partnership. For women and men, marriage is associated – specifically for the duration of the marriage – with solidarity in the partnership as an elementary moral and functional principle. This corresponds to the interest of the state that solidarity in the partnership succeeds (and in no way only because of the children).
- (2) The decision of women and men to give their partnership the nature of a binding form isn't a natural, socially desirable or unreflected step (any longer today), but a conscious decision that – ahead of many other motives – is linked to the expectation that marriage is a legal framework, created and protected by the state, that fits in with a partnership based on solidarity and guarantees standardised, fair compensation between the partners for disadvantages and gains occurring in the course of life. People have great fundamental confidence that, when deciding to afford special protection to the institution of marriage, the state simultaneously created a legal framework with regulations and precautions, a) on which the individual can **depend**, b) that takes into account people's situations in life and their biographies, and c) that is based on gender **equity**. The decision to marry is closely linked to the certain knowledge that this dependable and just framework exists.¹⁸
- (3) Most women and men – including the married ones – are **not** familiar with this legal framework and the coordinates of the institution of marriage. Elements and concepts such as “income splitting”, “separation of property”, “initial property” and “community of accrued gains” are unknown to many people – even the terms themselves. Most people even have only associative notions and no substantial information regarding concepts frequently used in the media (“income splitting”, “separation of property”). Only few people say they have a relatively accurate knowledge of the meaning behind these concepts that are of central importance for the institution of marriage. Married women and men are generally unaware of their own situation as regards the current status of their property – of relevance in matrimonial property law – and in relation to the future material and social consequences that they could face as a result of certain decisions or

¹⁸ Thus, the motive for marrying is primarily not “children”, but the expectation of the special legal framework. As a rule, “children” are only a trigger and an additional reason for putting the partnership in this framework.

events (assumption of child-raising and reduction of gainful employment; partner dies; marriage is dissolved, etc.). The reason for this is the fundamental confidence in the responsibility of the state: the everyday philosophy of “comprehensive insurance delegation”.

- (4) With this (certainly justified) delegation attitude, people expect institutionalised support for subsidiary provision and care in the family, which they simply cannot arrange themselves in view of the diverse and often discontinuous life courses of men and women in our modern society. In and during a partnership, people do not, on the one hand, want to constantly count up their performances for each other in monetary terms (trust, solidarity); on the other hand, they do want fair equalisation based on solidarity during their marriage (security).
- (5) The great majority of women and men limit the applicability of solidarity as a moral and functional principle to the duration of their marriage – not beyond. Only few married women and men have any understanding for, and are willing to provide, **post-marital** assistance. The concept of post-marital compensation for disadvantages has little attraction as a concrete form of solidarity and subsidiarity in a partnership. Most people consider that the legal act of divorce “liquidates” (almost) all the concerns and consequences of their marriage. Since there is no post-marital solidarity as protection and a safeguard, e.g. against poverty in old age, there is a subjective and objective need to transform “post-marital equalisation based on solidarity” into “marital equalisation based on solidarity”, or at least to strengthen equalisation based on solidarity in the phase of existence of a marriage.

If spouses consciously rely on the state to such a degree (that they do not even inform themselves), this can be seen as a mandate for the state to create dependable framework conditions. In a permanently changing, complex society, the state is constantly called upon to ensure that, as far as possible, consideration is given to all relevant contingencies and secondary consequences that could unjustly put one of the partners at a disadvantage, systematically and in individual instances. There is today a wide range of role patterns in partnerships in the society of the Federal Republic of Germany. However, different arrangements regarding the division of tasks (for earning income, caring for and raising children, the household, caring for relatives, etc.) exist not only in society as a whole (macrocosm), but also, in the biographical perspective, in the individual biographies of life partners (mesocosm). The possibility of a discontinuous and perforated biography is the natural expectation of normality, particularly for women. And, like their partners, they assume that the matrimonial framework also ensures fair equalisation in this life-course perspective.

So, instead of separation of property (with post-marital equalisation of accrued gains), it must be made easier for couples to have the option of a ruling under property law and matrimonial property law that turns joint acquisitions during the marriage into equally joint property (joint ownership of property acquired during marriage)¹⁹. Compensation for

¹⁹ On this subject, cf. also “Rahmenbedingungen für das Gelingen stabiler Partnerschaften in Ehe und Familie verbessern”. Declaration of the Central Committee of German Catholics, 03.05.2002, retrievable at www.zdk.de (in German).

disadvantages should enjoy tax privileges during the marriage (rather than being penalised as at the moment), and the possibility of joint tax assessment could be made dependent on the matrimonial property regime of community of property.

In sociopolitical terms, it is a question of

1. providing a legal framework, or alternative frameworks, for securing **fair opportunities** for both partners in a marriage in view of societal change;
2. developing a concrete and binding definition of the **time of responsibility** of the spouses for each other, geared to material and occupational capital, referred to the respective performances (for income, family, children, care), and to the life courses of traditional, modern and post-modern women and men.

All in all, the consequence of this is that imbalances during marriage should be corrected not after the end of the marriage, but during the marriage, and that preventive and synchronous regulations should be offered in this respect. This corresponds to women's and men's original concept of marriage as regards solidarity and subsidiarity in a partnership.

V.

Survey method

- | **Population:** Resident population between the ages of 18 and 60 years in private households in the Federal Republic of Germany (approx. 48.5 million)
- | **Sample size:** 2,001 interviews
- | **Sample design:** Representative, stratified random sample
- | **Survey design:** CATI (computer-assisted telephone interviews)
- | **Survey duration:** 23 minutes on average
- | **Survey period:** 04.01.2010 to 16.02.2010

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