Financing for Development: A Midsummer Night's Dream (FfD: MSND) - II

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The Divorce Revolution by Leonore Weiztmen

One common consequence for countries as they *develop* is that divorce rates quickly reach 50% of the married population – a telling-tale of the dire state of affairs of personal relationships in the world, and the need for some serious public-policies questions on *family life* and *family values.*

At present, countries around the world are all following the same trends began in the early 1970s after the passage of the first no-fault divorce laws in the West (Calif., USA). Sociologist Lenore Weitzman examines no-fault divorce laws in her book, *The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America*

> *In 1970, California instituted the first law in the Western world to abolish completely and requirement of fault as the basis for marital dissolution. The no-fault law provided for a divorce upon one party's assertion that "irreconcilable differences have caused the irremediable breakdown of the marriage." In establishing the new standards, the California state legislature sough to eliminate the adversarial nature of divorce and thereby to reduce the hostility, acrimony, and trauma characteristic of fault-oriented divorce.*
>
> *No-fault divorce reformed each of the basic elements in the traditional divorce law. As exemplified by the California statute, the new legislation reflects six major innovations:*
>
> 1. *No grounds are needed to obtain a divorce. This permissive standard facilitates divorce and represents a dramatic departure from the restrictive norms of the traditional law.*
> 2. *Neither spouse has to prove fault or guilt to obtain a divorce. This too is a radical change signaling a rejection of the oral framework of the old law.*
> 3. *One spouse can decide unilaterally to get a divorce without the consent or agreement of the other spouse.*
> 4. *Financial awards are no longer linked to fault. The new standards are based on the parties' current financial needs and resources rather than their past behavior, whether guilt or innocence.*
> 5. *New standards for alimony and property awards seek to treat men and women "equally," thereby repudiating the sex-base assumption of the traditional law.*
> 6. *New procedures aim at undermining the adversarial process and creating a social psychological climate that fosters amicable divorce.*

Weitzman also examines the consequences financial decisions made in family courts have on women and children, and the economies of those households in *The Divorce Revolution*. In considering the consequences of *equitable* financial standards, it is important to note that women are not only negatively impacted regarding the division of common property assets, but also alimony and child support rates.

> *No-Fault: Eliminating the Moral Framework*
>
> *When the new law abolished the concept of fault, it also eliminated the framework of guilt, innocence, and interpersonal justice that had structured court decisions in divorce cases. With this seemingly simple move, the California legislature not only vanquished*

the law's moral condemnation of marital misconduct; it also dramatically altered the legal definition of the reciprocal obligations of husbands and wives during marriage.

There were two rationales for rejecting the traditional concept of fault: it was based on the artificial conception that one person *was responsible for the marital breakup, and it was based on the assumption that the court could determine which person that was. The reformers argued that even if the court could determine who deserved the greater blame, which they thought unlikely, this question entailed an inappropriate invasion of marital privacy. The focus of the new law was to be on the present and the future (i.e., on fashioning an equitable settlement) rather than on the past (i.e., on trying to reconstruct who did what dreadful thing to whom).... (p. 22-23)*

...These no-fault divorce laws have shifted the focus of the legal process from moral questions of fault and responsibility to economic issues of ability to pay and financial need. Today fewer husband and wives fight about who-did-what-to-whom; they are more likely to argue about the value of marital property, what she can earn, and what he can pay.

The increase importance of these economic issues suggest the need for more complete information on the economic aspects of divorce…

No-fault's standard for alimony and property award have shaped radically different futures for divorced men on the one hand, and for divorced women and their children on the other. Women, and the minor children in the households, typically experience a sharp decline in their standard of living after divorce. Men, in contrast, are usually much better off and have a higher standard of living as a result of divorce.

The Unexpected Consequences

How could a simple change in the rules for divorce have such far-reaching effects? Why would a legal reform designed to create more equitable settlements end up impoverishing divorced women and their children?

When I initiated this research I assumed, in the optimistic spirit of the reformers, that the "California experiment" with no-fault divorce could only have positive results. It would not only eliminate the sham testimony and restore dignity to the courts; it would also facilitate fair and equitable economic settlements…. The law's aim of legal equality for men and women promised to eliminate the anachronistic legal assumptions about women's subordinate roles and to recognize wives as full equals in the marital partnership.

Yet these modern and enlightened reforms have had unanticipated, unintended, and unfortunate consequences. In the pages that follow we shall see how gender-neutral rules—rules designed to treat men and women "equally" have in practice served to deprive divorced women (especially older homemakers and mothers of young children) of the legal and financial protections that the old law provided. Instead of recognition for their contributions as homemakers and mothers, and instead of compensation for the years of lost opportunities and impaired earning capacities, these women now face a divorce law that treats them "equally" and expects them to be equally capable of supporting themselves after divorce.

Since a woman's ability to support herself is likely to be impaired during marriage, especially if she is a full-time homemaker and mother, she may not be "equal to" her former husband at the point of divorce. Rules that treat her as if she is equal simply serve to deprive her of division of marital property often force the sale of the family home, and compound the financial dislocation and impoverishment of women and children.

When the legal system treats men and women "equally" at divorce it ignores the very real economic inequalities that marriage creates. It also ignores the economic inequalities between men and women in the larger society.

In fact, it is marriage that itself typically creates the different structural opportunities that men and women face at divorce. While most married women give priority to their family roles, most married men give priority to their careers. Even if both of them are in the labor force it is more likely that she will forego further education and training while he gains additional education and on-the-job experience. As a result her earning capacity is likely to be impaired while his is enhanced. Even in two-career families most married couples give priority to the husband's career.

If the divorce rules do not give her a share of his enhanced earning capacity (through alimony and child support awards), and if divorce rules expect her to enter the labor market as she is, with few skills, outdated experience, no seniority, and no time for retraining, and if she continues to have the major burden of caring for young children after divorce, it is easy to understand why the divorced women is likely to be much worse off than her former husband. Faced with expectations that she will be "equally" responsible for the financial support of their children and herself, she has been unequally disadvantaged by marriage and has fewer resources to meet these expectations.

The result is often hardship, impoverishment, and disillusionment for the divorced woman (and their children). This research shows that, on average, divorced women and the minor children in their households experience a 73 percent decline in their standard of living the first year after divorce. Their former husbands, in contrast, experience a 42 percent rise in their standard of living.

The divorce man generally finds himself much better off financially after divorce because his work and income continue uninterrupted. The courts do not typically require him to share his salary with his former wife, nor do they typically require his to contribute equally to the support of their children. He is therefore left with a much larger proportion of his income and a higher standard of living than he had during the marriage.

Another unintended consequence of the new principle of equality results from its application to the division of marital property. Although an equal division of marital property sounds fair, when the family home is the family's only recognized asset, judges usually order it sold so that the property can be divided equally. (The traditional practice was to award it to the wife, especially if she has minor children.) The loss of the family home, and the subsequent residential moves it necessitates, disrupt children's school, neighborhood, and friendship ties, and create additional dislocations for children (and mothers) at the very point at which they most need continuity and stability.

The rules for dividing marital property often lead to another inequity: the courts systematically omit new forms of property from the pool of family assets to be divided upon divorce. Today the most valuable assets that most couples acquire during marriage are career assets—the major wage earner's salary, pension, medical insurance, education, license, the goodwill value of a business or profession, entitlements to company goods and services, and future earning power. Although there is considerable variations in the extent to which states recognize the assets (see Chapter 5), most states exclude some or all of them from the pool of property to be divided upon divorce. They thereby allow the major wage earner, typically the husband, to keep the family's most valuable assets. Thus the courts are not, in fact, dividing property equally or equitably. Rather, the current system of dividing marital property makes a mockery of the "equal" division rule.

Nor are the courts recognizing wives and mothers as equal partners in the marital partnership in alimony or spousal support awards. Even women who have been housewives and mothers in marriages of long duration, and who are fifty years old at the time of the divorce, are routinely denied the support they were promised. Although this research finds that both men and women in marriages of long duration assumed that they were forming a partnership, and both assumed that they would share equally in the fruits of their joint endeavors, when it comes to divorce the courts are redefining the terms of their "contract": they are treating the husband's income as "his" rather than as "theirs," and are telling her that she must find a job so that she can support herself.

The older homemaker typically feels betrayed by the new laws. She was promised, by both her husband and our society—her contract, if you prefer, both implied and expressed—that their marriage was a partnership and that he would share his income with her. Instead the courts have changed the rules in the middle of the game—after she has fulfilled her share of the bargaining. (Actually, it is the last quarter of the game because she can never recapture the years that she devoted to her family and she has passed the point where she can choose another life course.)

Mothers of young children also experience great hardships as a result of the new rules. Courts award inadequate amounts of child support which leave the primary custodial parent, who is the mother in 90 percent of the divorce cases, with the major burden of supporting the children after divorce. Yet even these minimal child support awards go unpaid. Enforcement is lax and less than half of the fathers fully comply with court orders to pay child support. This research shows that men who earn between $30,000 and $50,000[1] a year are just as likely to fail to pay child support as those who earn less than $20,000 a year.

The net effect of the present rules for property, alimony, and child support is severe financial hardships for most divorce women and their children. They invariably experience a dramatic decline in income and a drastic decline in their standard of living Even women who enjoyed comfortable middle- and upper-middle-class standards of living during marriage experience sharp downward mobility after divorce.

[1] 1985 a

The major economic result of the divorce law revolution is the systematic impoverishment of divorced women and their children. They have become the new poor.

While recent years have brought increased awareness of the feminization of poverty and the growth in single-parent female-headed household, what appears to be relatively unknown—or unacknowledged—is the direct link between divorce, the economic consequences of divorce, and the rise in female poverty. The high divorce rate has vastly multiplied the numbers of divorced women who are left alone to support themselves and their minor children, and the present rules for divorce settlements, leave most of these women without adequate economic resources to maintain their standard of living. (ix-xiv)...

CHANGES IN ALIMONY AWARDS: THE NEW STANDAR OF SELF-SUFFICIENCY

Since 1970 there have been several changes in the patterns of alimony, of "spousal support" awards, as they are now called. First, in accord with the new law's goal of making he wife self-sufficient after divorce, there has been a shift from permanent awards base on the premise of the wife's continued dependency, to time-limited transitional awards. Between 1968 and 1972 permanent alimony (until death or remarriage) dropped from 62 to 32 percent of the alimony awards []. By 1972 (and in subsequent years) two-thirds of the spousal support awards were transitional award for a limited and specified duration. The median duration of these fixed-time awards was twenty-five months, about two years. Thus average award carries an expectation of a short transition from marriage to self-sufficiency.

Second, the standard of the new law have dictated a greater reliance on the wife's ability to support herself. Economic criteria, such as the wife's occupation and her predivorce income, are therefore more important than under the old standards of fault and innocence. In light of the new criteria, it may seem surprising to find wives with rather low predivorce incomes ($10,000 a year) and wives with rather limited and marginal employment histories, being denied spousal support because the courts presume they are capable of supporting themselves. But that is indeed the case. While woman's chance of being awarded alimony are also influenced by her age, husband's income, and the length of the marriage, in general the courts are applying minimal and unrealistic standards of self-sufficiency and denying support to most divorced women.

The result of this approach is that the vast majority of divorced women, roughly five out of six divorced women were awarded alimony. Only 17 percent of the divorced women were awarded alimony in 1978 (these awards averaged $350 a month in 1984 dollars). Although the percentage of alimony awards is less than under the old law, alimony has always been rare because it was awarded only to the wives of middle-class and upper-class men—and these couples have always comprised a small minority of the divorcing population. But the patterns of awards within this group have been drastically altered by no-fault.

Thus the major impact of no-fault divorce on alimony awards is in its new expectations for middle-class and upper-class women*. Instead of the old law's assumption that these women would remain dependent and therefore need permanent alimony, no-fault has brought an expectation that they will become independent and self-sufficient after*

divorce. Thus, increasingly, middle-class women are either being denied alimony altogether, especially if they have worked or have earned even minimal incomes before divorce, or are awarded small amounts for short periods of time to "ease the transition." However, an award of $350 a month in 1984 dollars for a period of two years conveys a clear message to the middle-class recipient: she must find employment right away to earn enough money to support herself and her children.

It is interesting to note that the new law guarantees, in theory support for three groups of women who are exempted from the new standards of self-sufficiency: women with custody of young children, women in need of transitional support, and older homemakers incapable of self-sufficiency. However, despite the law's guarantees, the new legal norms are being applied to these women as well. Few of them are awarded support.

Consider the first situation of mothers of preschool children. Alimony awards to mothers of children under six have dropped more than for any other group under the new law. By 1978, only 13 percent of them were awarded spousal support.

Why does the presence of young children appear to have so little effect on alimony awards? In the chapters that follow we will see how the goal of making the wife self-sufficient has taken priority over the goal of supporting the custodial parent. Two-thirds of the Superior Court judges who hear family law cases in Los Angeles espoused this new ideology: it was "good" for a divorce woman to earn money instead of being dependent on her former husband; work was a healthy form of rehabilitation that would help her build a new life, and combining work and motherhood was now normal in our society. Although the sex-neutral standards of the new law give priority to the needs of custodial patents caring for minor children, the judges' responses suggest that they are always balancing the interests of children against the father's interest in keeping his income for himself. ***When they are able to rationalize work as healthy and good for all newly divorced women, they can conclude that her working is better for "the family as a whole." They thereby solve the problem of the husband's limited financial resources by allowing him to keep most of his income.***

Despite judges' reports of how they think they divide the husband's income, empirical analysis of the pattern of awards reveals that the husband is rarely ordered to part with more than one-third of his income to support his wife and children. He is therefore allowed to retain two-thirds for himself while his former wife and children, typically three people, are allowed the remaining one-third. Since living on this amount is usually impossible, the divorced woman must either work or seek other sources of support, such as welfare.

A similar combination of social and economic consideration is used to justify the low level of alimony awards to women in transition. The term "women in transition" refers to women who were employed early in their marriage, or have been employed in irregular or part-time jobs at various times, but who have not worked steadily and need a period of adjustment, retraining, and counseling to reenter the labor force.

As we noted above, women who worked before divorce (even at part-time marginal jobs) and those who earned at least $10,000 a year were typically "presumed" to be capable of supporting themselves after divorce. Thus many who could have benefited from the

education and retraining that transitional awards are supposed to provide were denied these opportunities. The small group of women who were awarded transitional support typically got short-term awards—a year or two—which were rarely sufficient in the turmoil and aftermath of a divorce. Nevertheless, judges are clearly reluctant to "require" a husband to "finance" his ex-wife's retraining.

This attitude is exemplified in the judges' responses to the following hypothetical divorce case. A nurse supported her doctor-husband for eight years through college, medical school, an internship, and residency. [] After eleven years of marriage, they decided to divorce. The wife, now twenty-nine years old, wants to go to medical school. Less than one-third (31 percent) of the judges said they would. They did not think it fair to saddle her husband with her "optional" expenses since she was clearly capable of supporting herself. If this is the judicial response to a "strong case" in which a woman had supported her husband for eight years, it is not surprising to learn that few judges seriously support the notion of awards for education and retraining.

The third group of women who were supposed to be exempted from the new law's standards of self-sufficiency are the older women who have been housewives and mothers throughout marriages of long duration. Although many more women in this category are awarded spousal support, one out of three is not. Once again, the judges approach these cases mindful of the husband's need for "his income" and his limited capacity to support two families.

Thus, the empirical consequences of the new standards for alimony awards poignantly illustrate the strength of the new legal norms of gender neutrality and gender equality. No-fault attempts to treat men and women equally—or as if they were equal—at the point of divorce. However, it ignores the structural inequality between men and women in larger society. Divorced women and divorced men do not have the same opportunities: the women are more likely to face job and salary discrimination and more likely to be restricted by custodial responsibilities.

A second problem with the reformers' attempt to institute equality at the point of divorce is that women have typically been unequally disadvantaged by marriage itself. If one thinks of the common marital pattern in which a housewife and mother supports her husband's career as a doctor, lawyer, or businessman, it is evident that marriage can vastly alter the employment prospects of the two spouses in different directions. His career prospects may be enhanced, while hers are impaired; his earning capacity may grow, while hers diminishes. Thus marriage itself can be partly responsible for the dramatically different prospects that men and women face after divorce. Their opportunities are not, in fact, equal.

In light of these structural impediments to postdivorce equality for men and women, it is not surprising that this research finds that women and the minor children in their households experience a 73 percent decline in standard of living in the first year after the divorce. This vast discrepancy between former husbands and wives is partially a result of the fact that men are typically not ordered to pay alimony and are asked to pay very meager amounts of child support. They do not, in effect, have to share their incomes with their former wives and children after divorce. This leaves them with much more money—absolutely—to spend on themselves.

Women, on the other hand, who typically earn much less money, often have custody of their children whom they are expected to support with little financial aid from their ex-husbands. As we noted above, it is just the wage and employment gap between men and women in the larger society, but also the different opportunities and responsibilities that marriage imposes and the way the law reacts—or fails to react-to them that leads to the rapid downward mobility of divorced women (and children) after divorce.

Sex-Neutral Responsibilities for Children

The final rejection of traditional marital roles involves the responsibility for children after divorce. The traditional custodial preference for the mother (for children of tender years) was replaced by a sex-neutral standard (the "best interests of the child") and more recently by a joint custody preference. Similarly, the new equality between the spouses is reflected in child support standards: the new law makes both husband and wife responsible for child support.

Nonadversarial Divorce: The New Social-Psychological Climate

The final but perhaps the most fundamental aim of the no-fault law was to alter the social-psychological climate of divorce by eliminating the adversarial process. As we have seen, the reformers believed that at least some of the acrimony of a fault-based divorce resulted from the legal process itself, rather than from the inherent difficulties of potentially "amicable," but the legal process *forced them to become antagonists.*

The reformers hoped that no-fault would create a different climate for divorce. By eliminating fault they sought to eliminate the hypocrisy, perjury, and collusion "required by courtroom practice under the fault system"; to reduce the adversity, acrimony, and bitterness surrounding divorce proceedings; to lessen the personal stigma attached to divorce; and to create conditions for more rational and equitable settlements of property and spousal support. In brief, the new law attempted to bring divorce legislation into line with the social reality of marital breakdown as a more common and more acceptable event in contemporary society.

Although it is difficult to measure hostility and acrimony in the legal process, several indicators suggest that the no-fault law has in fact served to reduce litigiousness. For example, the random samples of divorce cases drawn from court records reveal significant changes after 1970, when the no-fault law went into effect. There was a sharp reduction in legal activity between the filing and final decree, both suggesting a less acrimonious process.

A decline in litigiousness is also suggested by the reduction in the number of pages in case files. The percentage of thin files (under twenty pages) increased significantly after the no-fault law was instituted, while the percentage of extremely litigious ones (fifty pages or more) declined. At its minimum, a no-fault California divorce requires only five pages in a court file and approximately two minutes of court time.

... Professor Paul Bohannan, an anthropologist, conducted in-depth interviews with men and women going through the divorce process in California in the mid-1960s, under the old law.[] In the 1960s many divorcing men and women seemed preoccupied with making and defending charges of adultery and mental cruelty, with threats of telling the world, or

at least the court, of their spouses' personal failures and infidelities. Attorneys encouraged the vilification and stimulated adversarial behavior and animosity. Today, in contrast, with both the financial and legal incentives to exaggerate fault abolished, adversarial spouses are more likely to report being "cooled out" and cut off by their attorneys instead of being encouraged.

The greater antagonism and bitterness under a fault system is also evident in a second "comparative" sample. Sociologists Graham Spanier and Linda Thompson interviewed divorced men and women under a traditional fault law in the state of Pennsylvania in 1977, just one year before our California interviews. They reported that the majority of their respondents expressed a strong dislike of the legal system because it forced them to accuse and blame their partners...

Spainer and Thompson note that the fault-based legal system encouraged the parties to become adversaries to a greater degree than they already were, aggravated their already fragile relationship, fostered antagonism between them, and upset and humiliated them by forcing public discussion of their intimate problems. Their respondents reported they were urged to lie about each other and to use "dirty tricks." As one woman stated.

> *I just couldn't do the lying, so he did. It really got to me—all the dirty little games you have to play. Having to tell all those twisted half-truths.*

As this quote suggests, the Pennsylvania men and women were also disturbed by the dishonesty and perjury in the fault system.

A final complaint of the respondents in the fault system concerned the tactics attorneys used to prolong the divorce, increase fees, and make the parties behave like enemies...

Alimony

All states except Texas provide for alimony or maintenance to be awarded upon divorce. As in California, the most important changes in alimony awards involve their new "economic" basis, and the shift from permanent to time-limited transitional awards. Legal changes in many states reflect these "minimalist" aims for alimony.

Even before the 1979 decision of the U.S. Supreme Court in Orr v. Orr (which held gender-based alimony statutes unconstitutional), most states had "de-sexed alimony and authorized its award, under appropriate circumstances, to either spouse."

Consider first the new economic criteria for alimony awards. Most states still have a long list of factors for the court to consider in awarding alimony. These typically include the length of marriage, the standard of living established during marriage, the parties' age, health, needs, and earning capacities (including the time and expense necessary to acquire sufficient education or training to find appropriate employment), custodial responsibilities, homemaker contributions to the career or career potential of the other party, and tax consequences.

In practice, however, courts are paying less attention to the standard of living of the marriage and more attention to each spouse's earning capacity and (especially the wife's) ability to be self-sufficient. The words of a 1983 Colorado decision are indicative: in distinguishing between "alimony" under the prior fault-based law, and

*"maintenance" under the new law, the court said "maintenance, unlike its predecessor, alimony, is primarily concerned with insuring that, after dissolution, the basic (economic) needs of a disadvantaged spouse are met." The new terminology is highly significant: increasingly states have redefined alimony as maintenance, and have made maintenance directly contingent upon the recipient's earning capacity and economic need. Among the more extreme statues is the Indiana law which provides for court-ordered alimony "*only *to physically or mentally handicapped spouses."*

The shift from permanent to time-limited alimony awards is also evident throughout the United States. In theory, the duration of these time-limited awards is to be set to allow "the time deemed necessary by the court for the party seeking alimony to gain sufficient education or training to enable the party to find suitable employment." If, however, the California experience is typical, most of these awards are being limited to a few years at most. (They are often referred to by the insulting term "rehabilitation alimony," which suggests that the homemaker has not been engaged in productive or socially useful work during marriage.)... (p. 33-47)

EXPLAINING THE DISPARITY BETWEEN HUSBANDS' AND WIVES' STANDARDS OF LIVING

How can we explain the striking different economic consequences of divorce for men and women? How could a law that aimed at fairness created such disparities between divorced men and their former wives and children?

The explanation lies first in the inadequacy of the court's awards, second in the expanded demands on the wife's resources after divorce, and third in the husband's greater earning capacity and ability to supplement his income.

Consider first the court awards for child support (and in rarer cases, alimony). Since judges do not require men to support either their children or their former wives as they did during marriage, they allow the husband to keep most of his income for himself. Since only a few wives are awarded alimony, the only supplementary income they are awarded as child support and the average child support award covers less than half of the cost of raising a child. Thus, the average support award is simply inadequate: even if the husband pays it, it often leaves the wife and children in relative poverty. The custodial mother is expected to somehow make up the deficit alone even though she typically earns much less than her former husband....

The second explanation for the disparity between former husbands and wives lies in the greater demands on the wife's household after divorce, and the diminished demands on the husband's. Since the wife typically assumes the responsibility for raising the couple's children, her need for help and services increases as a direct result of her becoming a single parent. Yet at the same time her need for income and her needs is wider after divorce.

In contrast, the gap between the husband's income and needs narrows. Although he now has fewer absolute dollars, the demands on his income have diminished: he often lives alone and he is no longer financially responsible for the needs of his ex-wife and children.

The economic disparity that divorce creates between former husbands and wives not only brings economic hardships for most divorced women and their children, it is also one of the major causes of economic inequality between men and women in the larger society. But before we move to these larger societal consequences, let us first look at some of the more immediate social effects on the participations themselves….

Financial Pressure and Stress

It is not surprising to find that the financial hardships generated by thepresent system of divorce created greater pressures on women than on divorced men at all income levels. Many middle-class women who "manage to survive" nonetheless report that they are in a constant state of financial crisis after divorce…. 70% of the divorce women we interviewed reported being perpetually worried about "making ends meet" and "not being able to pay their bills." They worried about obtaining court-ordered support, terrified by their own inability to earn enough or to find a better job, and overwhelmed by their steadily diminishing standard of living in an inflationary economy. (In contrast, most divorced men say they never worry about being able to meet their bills.)

Social Isolation

Since divorced women tend to be more readily excluded from former social networks, they are likely to become more isolated after divorce. Although most of the women we interviewed maintained one or two close friends, their larger circle of friends gradually dissolved. Divorced men were more likely to report being invited to dinner by old friends, being included in social activities, and "maintaining most of my old friends after the divorce."

Mental and Physical Health

…women seem to experience the greater stress and their stress seems to take a higher toll. Beyond question, much of the women's stress is attributable to their economic condition. This is to be expected in light of the well-known relationship between low socioeconomic status and both mental and physical illness… When present low income is combined with the prospect of continuing low income, stress is intensified. Anticipated income for the coming year is related to both physical and mental health following divorce; the lower the anticipated income, the less favorable the individual's physical and psychological well-being.

Clearly the sex-linked difference in stress and mental health are not a direct or necessary result of divorce itself. Rather, they are created in large measure by the present legal system which, through inadequate property awards and low poorly enforced support awards, drastically reduces the standard of living of divorced women and their children... (p. 341-351)

SOCIETAL CONSEQUENCES

The rise in divorce has been the major cause of the increase in female headed families, and the increase has been the major cause of the feminization of poverty. Sociologist Diana Pearce, who coined the phrase "feminization of poverty," was one of the first to point to the critical link between poverty and divorce for women. It was, she said, the

mother's burden for the economic and emotional responsibility for child-rearing that often impoverished her family.

Contrary to popular perception, most female-headed single parent families in the United States are not the result of unwed parenthood: they are the result of marital dissolution. Only 18 percent of the nearly ten million female-headed families in the United States are headed by an unwed mother: over 50 percent are headed by divorced mothers and the remaining 31 percent by separated mothers.

When a couple with children divorces, it is probable that the man will become single but the woman will become a single parent. And poverty, for many women, begins with single parenthood. *More than half of the poor families in the United States are headed by a single mother.*

The National Advisory Council on Economic Opportunity estimates that if current trends continue, the poverty population of the United States will be composed solely of women and children by the year 2000. The Council declares that the "feminization of poverty has become one of the most compelling social facts of the decade,

The Rise in Female Poverty

The well-known growth in the number of single-parent, female-headed households has been amply documented elsewhere. (The 8 percent of all children who lived in mother-child families in 1960 rose to 12 percent by 1970, and to 20 percent by 1981.) Also well-documented is the fact that these mother-headed families are the fastest growing segment of the American poor.

What has not been well documented, and what appears to be relatively unknown—or acknowledged—is the direct link between divorce, the economic consequences of divorce, and the rise in female poverty. The high divorce rate has vastly multiplied the numbers of women who are left alone to support themselves and their minor children. When the courts deny divorced women the support and property they need to maintain their families, they are relying, they say, on the woman's ability to get a job and support herself. But with women's current disadvantages in the labor market, getting a job cannot be the only answer—because it does not guarantee a woman a way out of poverty. Even with full-time employment, one-third of the women cannot earn enough to enable them and their job market in such that only half *of all full-time female workers are able to support two children without supplemental income from either the children's fathers or the government.*

In recent years there have been many suggestions for combating the feminization of poverty. Most of these have focused on changes in the labor market (such as altering the sex segregation in jobs and professions, eliminating the dual labor market and the disparity between jobs in the primary and secondary sectors, eradicating the discriminatory structure of wages, and providing additional services, such as child care, for working mothers) and on expanding social welfare programs (such as increasing AFDC benefits to levels above the poverty line, augmenting Medicaid, food stamp, and school lunch programs, and making housewives eligible for Social Security and unemployment compensation.)

A third possibility, which has not received widespread attention, is to change the way that courts allocate property and income at divorce. If, for example, custodial mothers and their children were allowed to remain in the family home, and if financial responsibility for children were apportioned according to the means of the two parents, and if court orders for support were enforced, a significant segment of the population of divorced women and their children would not be impoverished by divorce.

The Rise in Child Poverty and Economic Hardships for Middle-class Children of Divorce

Beyond question, the present system of divorce is increasing child poverty in America. From 1970 to 1982, the percentage of American children living in poverty rose form 14.9 percent to 21.3 percent. According to demographer Samuel Preston, most of the growth in the number of children in poverty occurred in the category of female-headed families…

Clearly, living in a single-parent family does not have to mean financial hardship. The economic well-being of many of these children is in jeopardy only because their mothers bear the whole responsibility for their support. That jeopardy would end if courts awarded more alimony, higher amounts of child support, and a division of property that considered the interests of minor children.

Although the deprivation is most severe below the poverty level, it affects children at every income level. In fact, middle-class children, like their mothers, experience the greatest relative deprivation. The economic dislocations of divorce bring about many changes which are particularly difficult for children: moving to new and less secure neighborhoods, changing schools, losing friends, being excluded from activities that have become too expensive for the family's budget, and having to work after school or help care for younger siblings.

Not surprisingly, the children of divorce often express anger and resentment when their standard of living is significantly less than that in their father's household. They realize that their lives have been profoundly altered by the loss of "their home" and school and neighborhood and friends, and by the new expectations their mother's reduced income creates for them. It is not difficult to understand their resentment when fathers fly off for a weekend in Hawaii while they are told to forgo summer camp, to get a job, and to earn their allowance. That resentment, according to psychologists Judith Wallerstein and Joan Kelly, is a "a festering source of anger"...

CONCLUSION: THE TWO-TIER SOCIETY

The economic consequences of the present system of divorce reverberate throughout our society. Divorce awards not only contribute heavily to the well-documented income disparity between men and women, they also lead to the widespread impoverishment of children and enlarge the ever-widening gap between the economic well-being of men and women in the larger society. Indeed, if current conditions continue unabated we may well arrive at a two-tier society with and underclass of women and children.

Thrust into a spiral of downward mobility by the present system of divorce, a multitude of middle-class women and the children in their charge are increasingly cut off from sharing the income and wealth of former husbands and fathers. Hampered by restricted

employment opportunities and sharply diminished income, these divorced women are increasingly expected to shoulder alone the burden of providing for both themselves and their children.

Most of the children of divorce share their mother's financial hardships. Their presence in her household increases the strains on her meager income at the same time that they add to her expenses and restrict her opportunities for economic betterment.

Meanwhile, divorced men increasingly are freed of the major financial responsibility for supporting their children and former wives. Moreover, these men retain more than higher incomes. They experience less day-to-day stress than their ex-wives, they enjoy relatively greater mental, physical, and emotional well-being, and have greater freedom to build new lives and new families after divorce. .

The economic disparities between men and women after divorce illuminate the long-standing economic disparities between the incomes of men and women during marriage. In theory, those differences did not matter in marriage, since they were partners in the enterprise and shared the husband's income…

The result is that the economic gulf between the sexes in the larger society is increasing. *Some of this would have occurred even if the traditional divorce law remained everywhere in force. But the new divorce laws—and the way these laws are being applied—have exacerbated the effects of the high divorce rate by assuring that ever greater numbers of women and children are being shunted out of the economic mainstream…*

The data on the increase in female poverty, child poverty, and the comparative deprivation of middle-class women and children suggest that we are moving toward a two-tier society in which the upper economic tier is dominated by men (and the women and children who live with them)… Those in the first tier enjoy a comfortable standard of living; those in the lower tier are confined to lives of economic deprivation and hardship… The concept of the two-tier society does not imply a static model. There is movement between the two tiers. But the structural conditions of the lives of women in the lower tier make it extremely difficult for them to improve their economic fortunes by hard work or any of the other traditional routes to economic mobility. The divorced women in the lower tier face not merely the sex-segregated job market and the male-female wage gap that confront all women, but also the responsibilities and restrictions that devolve upon heads of one-parent families… (p. 340-356).

An Incomplete Revolution: Feminists and the Legacy of Marital-Property Reform

Since the issues and problems within family courts are all following the same trends (Chesler) it is important to examine how the debate around divorce reform was formulated from its inception. Mary Ziegler provides an analysis of the issues within the context of the Equal Rights Amendment (ERA) debate in the USA in "An Incomplete Revolution: Feminists and the Legacy of Marital-Property Reform"[2]

[2] Zeigler, Mary "An Incomplete Revolution: Feminists and Legacy of Marital-Property Reform," *Michigan Journal of Law and Gender, Forthcoming,* No. 2012-12 (Saint Louis University, School of Law, Legal Studies Research Paper Series)

Did the divorce revolution betray the interests of American women? While there has been considerable disagreement about the impact of divorce reform on women's standard of living,' many agree that judicial practices involving the division of marital property and the allocation of alimony have systematically disadvantaged women. Most often, in the courts and the academy, commentators see these practices as evidence of the need for family law reform.

These conclusions rely on a shared account of the history of divorce reform. According to this account, the transformation of divorce law in the 1970s and 1980s was a "silent revolution," a reform led by legal experts that produced virtually no public debate or political controversy. Women's groups and women's interests did not play a significant role in this debate and did not meaningfully influence no-fault reforms, because feminists were too preoccupied with the campaign for the Equal Rights Amendment (ERA).

However, as this Article shows, the conventional historical narrative of the divorce revolution is not so much incorrect as incomplete. Histories of the divorce revolution have focused disproportionately on the introduction of no-fault rules and have correctly concluded that women's groups did not play a central role in the introduction of such laws. However, work on divorce law has not adequately addressed the history of marital-property reform or engaged with scholarship on the struggle for the Equal Rights Amendment to the federal Constitution. Putting these two bodies of work in dialogue with one another, the Article provides the first comprehensive history of the role of women, both feminists and antifeminists, in revolutionizing the law of marital property in the United States.

Moreover, as the Article will demonstrate, women's groups became involved and influential in the divorce debate because of, not in spite of, the ERA. In the early 1970s, women's groups like the National Organization for Women (NOW) did not focus on family law issues, be it in the context of the ERA or otherwise. However, between 1970 and 1975, anti-feminist organizations like STOP ERA and the Happiness of Women campaigned against the Amendment by highlighting its effects on divorce reform. By the late 1970s, NOW responded by campaigning for "pro-homemaker" divorce reforms: measures such as those calling for equal or equitable distribution of marital property and laws recognizing the contributions of homemakers in the division of marital property. These reforms themselves represent a revolution in divorce law. Equitable property division, rare in 1970. became the norm in all but ten states by the mid-1980s. Whereas no states had property-division rules recognizing the contributions of homemakers in 1968, 22 states had adopted such a policy by 1983.

By focusing primarily on the history of no-fault rules, current studies suggest that marital-property rules fail to protect women's interests partly because both progressive and conservative women remained largely uninvolved in debates about divorce reform. Other scholars have argued that current marital-property reforms reflect the shortcomings of the formal-equality principles endorsed by second-wave feminists." Instead of concerning themselves with equal outcomes after divorce, second-wave feminists sought primarily to ensure that marital property was evenly divided, an approach which, as we shall see, actually proved to disadvantage women.

However, if one looks at the divorce revolution debate in the context of the ERA struggle, different issues emerge. As we shall see, feminists did seek to rework the law of marital property, but the battle for the ERA heavily shaped the reforms they championed and the contentions they advanced. In particular, in countering the ERA-based claims made by antifeminists, feminists sought to establish that they deserved the support of homemakers and believed that homemakers' contributions and interests were as important as those of working women.

As the Article will show, by highlighting what homemakers did contribute to the marriage, feminists did not fully consider the contributions of wage-earning husbands or what counted as marital property in the first place. Specifically, the marital-property laws promoted by feminists (and ultimately adopted by many states) did not explicitly define a wage-earning husband's human capital-the future earning potential that both spouses helped to create-as a marital asset. This proved to be economically devastating to many women, since many courts have concluded that degrees or other sources of enhanced earning potential are not marital property,' notwithstanding the financial and non-financial contributions women made toward a degree from which they gained nothing, or the fact that such human capitall4 was and is the most economically significant asset in many marriages.' 5 In short, feminists became involved in marital-property reform because of, not in spite of, the ERA. However, the ERA debate shaped the terms of the marital-property revolution, leaving a troubling legacy for women at divorce.

There is a good deal at stake in understanding the history of the divorce revolution. The history presented here offers the first in-depth account of the role of women, both feminists and antifeminists, in the divorce revolution. In so doing, the Article offers a more complete picture of that revolution, focusing on the understudied evolution of marital-property rules.

The Article also offers new perspective on the flaws in current marital property rules. Since discussion in the 1970s focused so heavily on the value homemakers contributed to marriage, the laws produced in that period did not adequately address the human capital brought to a marriage by the wage-earning husband. The history of marital-property reform makes apparent the need for statutes and judicial decisions that define marital property more expansively. The problem with current rules is not, as scholars have argued, that divorce reforms failed to consider women's needs. Instead, as we shall see, the problem was that women involved in divorce reform did not fully consider how those needs could best be addressed.

The Article unfolds in three parts. Part I lays out the concerns about sex discrimination at the heart of many debates about divorce law. The Article argues that a standard historical account of the divorce revolution is at work in these debates, and challenges several of this account's basic premises.16 After setting aside these assumptions, Part II explores an alternative account of the divorce revolution, focusing on debate about marital-property reform in the ERA campaign. Part III considers the extent to which this debate impacted marital-property laws by analyzing three case studies from Virginia, Connecticut, and New York. Part IV examines the normative stakes of the history explored in the Article. Part V offers a brief conclusion.

1. THE SILENT REVOLUTION REVISITED

The effect of divorce on homemaking spouses has remained a flashpoint for debate about family law, sex equality, and divorce." In the academy, concerns about divorced homemakers and other women became central after the 1987 publication of Lenore Weitzman's The Divorce Revolution: The Unexpected Consequences for Women and Children in America.*' Weitzman's study reached several alarming conclusions: she found that judges tended to award women little or no alimony and less than 50% of the property acquired during marriage, and she argued that women suffered a significant decline in standard of living because of divorce.'9 Recently, in response to her critics, Weitzman has acknowledged that the decline in women's post-divorce standard of living was less dramatic than she originally suggested.*

There remains, however, a firm consensus that divorce hurts homemakers. Although family court practices have become somewhat more just over the past twenty years, women still tend to suffer a substantial decrease in standard of living after divorce. Estimates of the decrease range from 15 to 27%.24 Alimony awards are rare and, when offered, often inadequate. Most scholars agree that "divorce under the new divorce laws has been economically devastating for many women and children."

*For most critics, the only response is to create laws that explicitly recognize the needs of homemaking spouses. In the alimony context, some commentators propose new theories of alimony that will justify awards to deserving homemakers, relying on principles of contract, partnership, or human capital. Others emphasize the bargaining disadvantages that homemaking spouses face in divorce settlements because, intent on gaining custody of children, they may be willing to give up a considerable amount of property to which they are otherwise entitled. These scholars argue for new procedural rules governing divorce settlements. Still other critics stress narrow but concrete reforms, such as the introduction of equal, rather than equitable, property division. A second body of work focuses on redefining marriage, both in theory and in the courts. Many studies link the shortcomings of the present rules to the historical period that produced them. Scholars have focused primarily on the introduction of no-fault rules and have concluded, as stated by Herma Hill Kay, that the harms to homemakers were "an unanticipated cost" of the revolution. Ira Mark Ellman agrees that the divorce revolution was motivated not by concern for homemakers but entirely "by a desire to end the charade of perjured testimony and falsified residency that permeated consent divorces under the fault system." **Cynthia Starnes similarly attributes the mistreatment of homemakers to the 1970s no-fault ideology that "[e]ach spouse deserves a fresh start, a clean break."** In criticizing current divorce practices, **Martha Minow and Deborah Rhode have emphasized that women's groups and concerns played at most a minimal role in the no-fault revolution.***

Many of these critics rely on a shared historical account of divorce reform, one heavily focused on the introduction of no-fault rules. The main premise of this account is that the divorce revolution was silent, uncontroversial, and unacknowledged? The issue of divorce reform is argued to have produced little public debate and media coverage.

The divorce revolution is supposed to have been silent for several reasons. First, divorce reforms were presented as codifications or slight modifications of the legislative status

quo. This strategy is argued to have had several advantages. Because reformers could claim that their bills would be compatible with existing law, the public saw divorce reform as a "low-risk venture," and citizens saw little reason to protest the perceived changes. Existing laws enjoyed a presumption of legitimacy. Proposed "codifications" or "modifications" promised to change very little and consequently provoked little popular dissent.

Second, the reforms in question were presented as so complex that only family law experts could credibly debate them. Family law experts "often claimed a special prerogative to mold the new divorce laws because of their expertise with the legal system." This was especially the case for marital-property rules, which were perceived to be obscure and complex.

Finally, social movements and interest groups, especially feminist and anti-feminist ones, had a minimal impact on the divorce revolution, primarily because both sides were preoccupied by the struggle for the ERA. The lack of interest-group involvement is often attributed partly to a successful strategy employed by family law experts, who made the issue of divorce reform seem technical and low-stakes. According to the conventional historical account, those promoting no-fault reform framed the issue in a way that minimized public controversy, keeping it in "the shadow of deep obscurity and flourishing there."

According to the conventional account, the lack of interest-group involvement was also due partly to luck. "The feminists who might otherwise have been attracted to divorce law reform were preoccupied with the Equal Rights Amendment, abortion, and other issues." No-fault divorce was not part of the feminist agenda. When feminists did express concern, as was the case with the framing of the Uniform Marriage and Divorce Act, they are argued to have been unsuccessful in having their views adopted. Herbert Jacob's explanation for the irrelevance of women's groups is representative. Consider his account of the introduction of reform in Illinois: "In Illinois, the attention of feminists was riveted on obtaining ratification of the ERA from the legislature, an effort that ultimately failed but which drained all energy from alternative agendas."

This account is correct insofar as it addresses the introduction of nofault divorce itself. But the traditional account focuses narrowly on the introduction of no-fault rules. If we broaden our inquiry, we will see that women's concerns and women's groups did play a significant part in divorce reform, especially in regard to rules governing alimony and the distribution of marital-property. Part II explores the frustrations with, ambitions for, and debates about homemakers' concerns, developing a fuller historical account of the divorce revolution.

11. THE HOMEMAKER QUESTION: DIVORCE AND THE ERA

In 1970, California became the first state to introduce "no-fault" divorce, which was available unilaterally when one spouse did no more than cite irreconcilable differences. In the same year, at the fourth annual national conference of the National Organization for Women, the nation's largest women's organization, the issue of divorce reform was notably absent." The main issues considered by the group included "the Political Clout of Women's Liberation" and "How to Fight Job Discrimination." Some activists did discuss

family law issues, such as the need for publicly funded daycare and the best strategy for redefining marriage. As we shall see, however, NOW leaders primarily discussed these issues only insofar as they related to the needs of women working outside the home. As NOW activists explained in 1970, the organization "aimed at changing not only discriminatory laws but the entire concept of man as bread-winning, decision-making head of household and woman as his subordinate helpmate."

NOW was certainly not the only influential women's organization in the period, or the only group critical of traditional gender roles in the family. The Redstockings, a group committed to direct-action protest, suggested that in traditional marriages women were exploited as "sex objects, breeders, servants, and cheap labor." The Feminists, a splinter group of former NOW members, formally opposed the institution of marriage and staged protests that labeled marriage a form of slavery.

Nonetheless, there are several reasons to focus on NOW's role in divorce reform. Unlike many radical organizations, NOW worked primarily at the national level, and its members were skilled at lobbying or otherwise "working within the system" to achieve law reform.61 Moreover, other mainstream national organizations, like the National Women's Political Caucus, were not active throughout the entire period studied here and tended to focus more narrowly on elections and party politics.

NOW initially showed little interest in the rights of homemakers. Formed in 1967 by Betty Friedan, an influential feminist and the author of The Feminine Mystique*, NOW's goals reflected Friedan's well-known critique of the roles women were expected to play in the home and the family. For example, Alice Rossi and the first NOW Task Force on the Family proposed the following as a "guiding ideology": "NOW should seek and advocate personal and institutional measures which would reduce the disproportionate involvement of men in work at the expense of meaningful participation in family and community, and the disproportionate involvement of women in family at the expense of participation in work and community." NOW's ideology recognized the importance of divorce reform and the legal proposals related to it, but did so primarily to reinforce other measures intended to end employment discrimination.*

The concrete proposals made by NOW in 1967 reflected a similar point of view. These proposals included: the subsidization of child care, the introduction of no-fault divorce, the revision of tax laws to allow deductions for homemaking and child-care services for working women, revision of Social Security laws to expand coverage for widowed and divorced women, and laws prohibiting pregnancy discrimination and guaranteeing family medical leave.

Indeed, before 1973, NOW's family law reform agenda focused not on homemakers but on the redefinition of marriage and the creation of publicly funded daycare. The organization's interest in public daycare became stronger in 1970 after the beginning of the White House Conference on Children and Youth.68 In 1970, Florence Dickler, the leader of the NOW Child Care Task Force, explained that the Conference offered a perfect opportunity to make child care a national priority. Moreover, as Dickler explained to Wilma Scott Heide, NOW's then President, the Conference would give NOW a chance to set the terms of the daycare debate.

For this purpose, Dickler and other members of the Task Force prepared a position paper designed to frame the debate, entitled "Why Feminists Want Child Care." The first key argument in the paper explained that daycare was an issue of women's rights: "Women wi never have full opportunities to participate in our economic, political, [and] cultural life as long as they bear [child-care] responsibilit[ies] almost entirely alone." A second key argument challenged the idea that women's biology was their destiny. The paper attacked the notion that, "because women bear children, it is primarily [women's] responsibility to care for them, and even that this ought to be the chief function of a mother's existence." As Dickler's position paper suggested, in the early 1970s, NOW challenged conventional arguments about the unique value of homemakers as mothers.

In the same period, NOW members considered a proposal to redefine marriage as a truly and almost exclusively contractual matter.76 Under the proposal, the institution of marriage would have no fixed terms.77 Instead, potential spouses would have to agree contractually before marriage about how household chores, financial burdens, and child-care responsibilities would be divided during marriage, and how property would be divided upon divorce.

However, in the early 1970s, dissenters within the organization demanded that NOW focus more on family law in general and in particular on the needs of homemakers in divorce. The activist who arguably played the largest role in shaping this debate was Betty Berry, the coordinator of New York NOW's Committee on Marriage and Divorce. Berry approached the NOW National Board in September 1970 after Board members defeated resolutions calling for educational programs for homemakers and a bill of rights for married women. Berry recognized that "[w]omen's organizations [had] made great strides in the last two years in employment rights, abortion law repeal and the establishment of day care centers."", However, Berry noted that NOW was "one of the few women's organizations that [did] anything about the rights of the housewife or divorced women." She offered several ways that NOW could assist homemakers. Berry argued it was most urgent that the organization seek to reform property-division laws in place in 42 common-law property states. In the early 1970s, common-law states allocated property acquired during a marriage to the holder of legal title. Berry argued that under such a regime wives functionally "forfeited their ability to earn money and accumulate property."

Berry expressed further concern about the elimination or reduction of alimony awarded to women. In Berry's view, liberal alimony rules were "imperative" until "such time as housewives [were] compensated for their time." She proposed several reforms designed to recognize homemakers' contributions, including equal division of marital property, rules restructuring "alimony as a pension or deferred compensation, and rules making it easier for homemakers to access Social Security and pensions before and after divorce."

Partly because of Berry, New York became the center of the marital property debate between women's groups in the early 1970s. In January 1972, when a group of attorneys held a hearing on the potential financial impact of new, no-fault reforms, members of New York NOW turned the hearing into a consciousness-raising session, stressing the plight of homemakers and the need for marital-property reforms that would benefit them. At this hearing, NOW's founder Betty Friedan argued that no-fault reforms should be

accompanied by property rules recognizing "the reality today [.. .1 that most wives [were] not equipped to earn adequate livings for themselves."

The efforts of Berry and other NOW activists in New York culminated in the 1972 introduction of New York NOW's "Equal Rights Divorce Reform Bill," written by Berry. The Bill called for equal division of marital property, equitable alimony with cost of living increases, and statefunded training programs for divorced or separated homemakers. Berry's concrete proposals were complex. She called for the equal distribution of marital property but approved of the newly-proposed measures of the Uniform Marriage and Divorce Act supporting equitable division, which permitted a judge to determine which property was acquired during a marriage and to divide that property according to his own sense of fairness. Her major criticisms were reserved for the existing system, which allocated property according to formally held title. As for alimony, Berry recognized that some form would be necessary-whatever its justification-especially for divorced women with no job experience or marketable skills," older women, and those who carried on as homemakers after divorce." She argued that "the time is long overdue to establish clearly a financial formula for compensating the dependent housewife in and after marriage," and that states should use alimony until other "viable financial safeguards" were in place.

In spite of Berry's urging, NOW did not make divorce reform a central legal priority at that time. As Herbert Jacob and others argue,97 the organization's central priority was the ratification of the Equal Rights Amendment. Even the other goals pursued by NOW had little to do with homemakers' rights. For example, in 1970, with the election of Aileen Hernandez, the organization confirmed its emphasis on employment equality." A former member of the Equal Employment Opportunity Commission, Hernandez described NOW's goals as: "the repeal of abortion laws, free day care centers where mothers who work can leave their children, equal employment opportunities for women, passage of the Equal Rights Amendment [. . .], and getting a woman on the Supreme Court.""

Another example was the organization's 1971 national conference, which had a "political thrust" and focused on the "need to elect feminist men and women to office." Beginning in 1972, the organization was also partly focused on how to deal with the growing prominence of lesbians the "lavender menace," as Betty Friedan said-in the women's movement. At the 1973 National Conference, NOW focused on alliance building with other groups-including men, civil rights' organizations, and poverty-rights activists. The underlying priorities endorsed by the organization remained the same, challenging "the traditional separate roles played by men and women, and [analyzing] how these ought to be changed."

Moreover, in campaigning for the ERA, NOW rarely discussed its effect on homemakers or the ways in which the Amendment might potentially benefit them. Instead, like other major national organizations involved in the ERA campaign, NOW focused on the Amendment's likely effects on employment discrimination, particularly the kind produced by so-called protective labor legislation. "Special 'protective' labor legislation limited the number of hours that women, but not men, could work." Feminists were divided in the period about whether protective labor legislation furthered women's equality or undermined it. Indeed, in the 1970s, ERA opponents raised arguments against the

Amendment based on its effects on such legislation; for example, Myra Wolfgang, one of the heads of the Restaurant Employees and Bartenders' Union and a key opponent of the ERA, told the Chicago Tribune in 1970, "[t]he principal victims" of the Amendment would be "mothers who are employed outside the home."

There were several reasons why the ERA debate focused on protective labor law. Beginning with Alice Paul, ERA proponents emphasized the harm done by such laws to working women. Supporters like Gale Carrigan of the United Auto Workers' Women Department echoed such claims, suggesting that "[o]ur experience has proven to us that those so-called 'protective' laws are the real deterrents to obtaining equal pay and equal opportunity for working women." Proponents of the ERA also used protective labor arguments to counter opposition claims that the ERA was unnecessary because of the protections available under the Fourteenth Amendment and Title VII of the Civil Rights Act. An anti-ERA editorial published by the Los Angeles Times summarized these opposition arguments as follows: "[a]s a device for achieving certain useful changes in law, the amendment is not necessary. These changes can be achieved-they are being achieved-by less dramatic measures."

Perhaps most importantly, the emphasis on protective labor laws reflected that employment law was an organizational priority of major national women's organizations like NOW. Betty Friedan's comments in a 1973 New York Times editorial were representative: "[flor women to have full human identity and freedom, they must have economic independence."

However, in the same year, NOW addressed the issue of no-fault divorce for the first time. Above all, the national organization stressed that it would oppose no-fault reforms unless adequate economic safeguards for women and children were introduced, although the organization laid out both benefits and drawbacks associated with reform.' NOW also adopted a number of more concrete proposals, including laws ordering the equal division of marital property in all states or requiring the payment of "equitable" alimony as compensation for past, unpaid labor.

While national NOW did publicly discuss the issue of no-fault divorce in 1973, the organization did little to draw public attention to the issue or to campaign for reform of marital-property laws in the states. In the summer of 1974, Elaine Forthoffer wrote to the national NOW Board with the following concern: "The current emphasis on eliminating discrimination against women in the job market, while valid, obscures the right of wives to opt for homemaking as their primary vocation-in fact, not only obscures but threatens such right."

NOW's 1974 presidential election offers some sense of why advocates like Forthoffer were concerned. Even though the vast majority of states still applied rules that disadvantaged homemakers upon divorce, neither major 1974 NOW presidential candidate expressed interest in divorce or homemakers' rights. In 1975, NOW elected new officers, agreeing that ERA ratification would be a primary goal of the organization and passing a resolution stating that lesbian equality was a "national priority of the organization."

By 1975, in spite of the best efforts of activists like Berry, NOW had paid little attention to homemakers. Within a short time, however, NOW would become fully engaged with issues related to homemakers' rights.

A. Libbers Against Homemakers, 1973-1975

The ERA struggle geared up in early 1972, as organized opposition to the Amendment became more vocal and threatened the success of the Amendment in unratified states. These grassroots opponents made divorce reform a central part of the ERA debate.

This shift in the ERA discussion began with the formation of women's groups opposed to the ERA and the feminist movement. These organizations first appeared on the national stage in the spring of 1972."9 Founded in Kingman, Arizona, by Jacquie Davison, Happiness of Women (HOW) was formed after the Senate passed the ERA, and the group had 3,000 members by April.120 As Davison explained to the Chicago Tribune that year, the group had formed so that housewives could "pull on the combat boots and battle those dragging the word 'housewife' through the mud."121 A similar organization, the Anti-Women's Liberation League, was formed by J. J. Jarboe in San Francisco in the same period.12 2 Jarboe opposed the ERA because the Amendment would take "away things most women cherishlike [...] the right to alimony and child custody in divorce."

The most famous of these organizations, STOP ERA, founded in 1972 by Phyllis Schlafly, led efforts to focus the ERA debate on divorce reform. As early as May 1972, Schlafly prominently argued, "[the] ERA will wipe out the financial obligation of a husband and a father to support his wife and children, the most important of all women's rights." In 1973, she cited cases from Colorado and Pennsylvania, both of which had state ERAs, allegedly forcing wives as well as husbands to pay spousal maintenance after divorce.

By July 1974, the Washington Post had identified Schlafly as "the standard-bearer" of the ERA opposition. In the same year, Schlafly reiterated her position that the ERA would "degrade the homemaker role, and support economic development requiring women to seek careers." In a later interview, a reporter asserted that Schlafly "look[ed] surprised when someone point[ed] out that her major objection to the ERA is that it might deprive some women of alimony." She elaborated on these worries in a 1975 edition of The Phyllis Schlafly Report, arguing that ERA proponents "tipped their hand" by introducing "specific bills on family support f...] in various state legislatures." She told her readers how they could determine what the Equal Rights Amendment truly meant and what its consequences would be:

> *All this specific legislation supported by the ERA proponents in the various state legislatures proves that-despite their denials when they are talking in the press ERA proponents are working assiduously to make the financial obligation for family support fall equally on the wife . . .*

Schlafly's arguments resonated with homemakers.5 2 As Deborah Rhode explains: "To traditional homemakers, a constitutional mandate seemed to offer an unnecessary and unwelcome exchange: they would pay the price of expanding some abstract set of opportunities that they had never experienced and would never enjoy."'

B. Valuing the Homemaker, 1975-1983

Advocates within NOW verbalized the threat posed by STOP ERA and its appeal to homemakers. In order to succeed in the ERA struggle, as prominent NOW member Toni Carabillo stated in a confidential strategy memorandum, NOW had to show that STOP ERA "deserve[d] neither credibility nor trust" when its members claimed to be "homemakers' champion[s] and defender[s]."' In order to accomplish this task, in 1975 the NOW Task Force on Marriage and Divorce proposed a comprehensive legal-reform program concerning divorce, marital property, and displaced homemakers.'

The NOW Task Force Report ("the Report") took positions on the ownership and division of marital property in both community property and common law states. In community property states-where property acquired during marriage belongs to both spouses and is divided equally upon divorce-the Report recommended that states permit the joint management and control of property while marriages were intact. In common-law property states-where most courts still awarded property according to title-the Report demanded that homemakers' contributions be recognized in some way. Although stating preference for the equal division of marital property, the Report also endorsed measures intended to guide judges in equitably dividing marital property. In particular, the Report stressed that it was important for these guiding measures to explicitly mention the non-monetary contributions of homemakers as a factor for judges to consider in dividing marital property. Ten years later, all of these reforms had either been adopted at the federal level or had passed in more than twenty states.

In order to build further support among homemakers for the ERA, NOW began sponsoring homemaker-related reforms in Congress: measures permitting divorced or widowed homemakers to create retirement pensions, receive Social Security payments, or benefit from vocational or educational programs after divorce. Two so-called "displaced homemakers," Tish Sommers and Laurie Shields, had campaigned successfully for a post-divorce training law in California in the mid-1970s. In the same period, Sommers and Shields became the heads of the Task Force on Older Women. As the heads of the Task Force, Shields and Sommers emphasized the economic impact of divorce on homemakers, especially those too young to receive Social Security benefits and too old to receive the kinds of assistance available to younger mothers, like that offered by Aid to Families with Dependent Children. Within two years of the passage of the California law, twenty-eight states had introduced similar displaced-homemaker laws, and the federal Department of Labor had authorized $15 million for similar training and educational programs.

The changes within NOW soon became apparent outside the context of the organization's Task Force on Older Women. In 1977, Eleanor Smeal, a homemakers' rights activist and housewife, became President of the NOW National Board. As President, Smeal began by creating a Homemakers Rights Committee and selecting activist Susan Brown to lead it. In the same year, NOW voted for a Homemakers' Bill of Rights, calling for, among other things, "comprehensive review of current domestic relations laws to challenge and change those laws, statutes, procedures, and codes that deprive homemakers of dignity, security, and recognition."

By contrast, NOW did not give much consideration to which advantages or assets of wage-earning husbands constituted marital-property. The organization's priorities were

shaped by the terms of the ERA debate. As we have seen, in order to win the support of homemakers, NOW worked to demonstrate its belief that homemakers' contributions to a marriage were equal to those of wage earners.

The issue of marital-property reform became equally important to most other national women's organizations. At the national Conference for International Women's Year (IWY), a major feminist convention, a Committcc on the Homcmaker hcadcd by key ERA supporter Rcprcsentativc Martha Griffiths also focused on divorce reform.so As had NOW, Griffiths and the Committee called for marital-property reform necessary to "assure that as a minimum the economic protections for dependent spouses and children of the Uniform Marriage and Divorce Act [were] included."

At the same time, new organizations formed to campaign for the ERA and to link it to pro-homemaker divorce reform. Organized on a local basis in 1973, Homemakers for the ERA (HERA) went national in 1978.152 Within a year, the group had 2,000 members and as many as 15 state chapters. As Anne Follis, the President of HERA, explained, "[w]ithout a constitutional amendment, [homemakers would] continue to be at the mercy of the whim of the courts and the lawmakers."' Organizations like HERA tied the ERA to divorce reform and publicized the necessity for certain kinds of marital-property reform. In a 1976 brochure, for example, HERA argued that the ERA was desirable because of the divorce reforms it would require, including measures recognizing the contributions of homemakers. As the brochure explained, the ERA would "force the law to recognize that a homemaker's services constitute the homemaker's contribution to the support of the family" and "would entitle a wife to financial support in compensation for her services as a homemaker." Other feminist organizations, like the Women's Equity Action League (WEAL) took up the controversy surrounding homemakers and divorce. In a 1977 pamphlet, citing marital-property and alimony reforms, WEAL argued that the "homemaker wife and mother need[ed] the Equal Rights Amendment more than any other class of woman."'

Between 1975 and 1985, the marital-property debate differed considerably from the conventional account often given for the divorce revolution. The debate was neither technical nor politically obscure; it took place very much in the public eye. Press coverage took two general forms. One involved the ERA and its impact on divorce law; dozens of stories discussed the necessity of pro-homemaker reforms and questioned whether the ERA would mandate them. A second form of coverage focused on the personal costs of existing laws for divorced homemakers. Taken together, both kinds of stories brought considerable public attention to the issue of marital-property reform.

III. DIVORCE AND THE HOMEMAKER: THREE CASE STUDIES

Thus far, we have seen evidence that the national marital-property debate was very different from the way the no-fault revolution has been described conventionally; in actuality it was divisive, intense, and very public. The debate took place in the shadow of the campaign for the ERA, and discussion of the Amendment shaped the terms of debate and made it more controversial.

But what was the practical impact of the marital-property debate? This section looks closely at marital-property reform in three states: Virginia, Connecticut, and New York.

The conventional account-that the divorce revolution was silent-is best tested in states like these, where the ERA debate was particularly intense. As we shall see, discussion in the period was heated in Virginia because the state had not yet ratified the ERA and because Amendment proponents came close to victory in several state legislative votes. Connecticut witnessed intense debate after the state's early ratification of the ERA because activists on either side used developments in the state as evidence of the probable effect of the federal ERA. New York, for its part, was the site of intense debate after the failure of a state ERA. Nationally and within the state, observers saw New York as a bellwether and presented its debate as a representative one.

The divorce revolution is often argued to have been silent because women's groups were too preoccupied with the ERA to become involved in divorce reform. That the women's movement influenced divorce reform in the three states studied here goes to the heart of the problems with conventional historical claims. The ties between the processes in each state should not be overstated, but several underlying themes emerge. In each state, marital-property reform measures were described as "women's bills," laws intended to benefit homemakers economically and to valorize their contributions. In each state, reform took place only after several false starts and only after considerable controversy. And in each state, marital-property reform was linked to the struggle for the ERA.

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A. Virginia

Virginia first considered marital-property reforms in January 1974, when a state legislative commission recommended changes to the statutes in place at the time. As its members explained, the measures proposed by the commission were intended to "ameliorate the bitterness and hostility of divorce proceedings." To the extent that these reforms addressed genderbased discrimination, the commission showed more concern for men than for women. In this vein, the commission recommended laws permitting men to receive alimony, requiring women to share in the responsibility for marriage-license fees, and allowing men as well as women to hold property in their own names immune from inheritance taxes. Moreover, as originally worded the reforms proposed by the commission assigned relatively little importance to gender equality. As one member explained, the main result of the proposed reforms was to make "getting married in Virginia a little harder and getting a divorce a little easier."'

When divorce reforms finally passed in Virginia in 1979, the stated purpose of the law had changed significantly. Ultimately described as the "women's bill," marital-property reform was linked to the ERA and strongly promoted by female legislators and women's groups. Notwithstanding these efforts, the Amendment was rejected in the Virginia House of Representatives in February 1974. After 1974, as we have seen, ERA ratification efforts focused increasingly on the issues of marital-property reform and homemakers' rights. These efforts made some impact: the Virginia Senate defeated the Amendment by only a very narrow margin in January 1977. Virginia never went on to ratify the ERA.

The ERA struggle ultimately shaped the purpose and terms of divorce reform in Virginia. Mary Sue Terry, a leading proponent of marital-property reform and supporter of the ERA, explained that the bill was intended to address "the concerns of home makers who have been fearful of the controversial Equal Rights Amendment."' Terry described the bill as part of the ERA battle. As she stated, "the same women the opponents of the ERA say they want to protect-the homemakers-are the same women this bill speaks to."

The actual terms of the "women's bill" were also intended to benefit homemakers. First, the statute abandoned a title-based system of property allocation and recognized the concept of marital property. The statute authorized the equitable division of marital property, and for the first time, permitted trial courts to consider the non-monetary contributions of homemakers. The law also offered a significant, and fairly "pro-homemaker," definition of marital property, establishing that each party was "to share in the accumulated net worth of the marriage regardless of monetary contributions."

The bill's key supporters and opponents also described it, like the ERA, as centrally concerned with gender-equality issues. Representative Gladys Keating described the measure as a "family security bill," intended to benefit homemakers and their children.1 Representative Elise Hens echoed this account, stating that the spouse "doing all the home work should not be precluded from owning property." Even opponents of the legislation agreed that the law primarily addressed sex-based discrimination, contending that current laws were sufficient because existing rules treated female "spouses and their property equally in divorce cases."'

By 1979, partly because of the ERA campaign, marital-property reform was defined as a women's issue in Virginia. Because of interest-group involvement, divorce reform addressed not only the reduction of in-court acrimony but also the rights of homemakers in divorce.

B. Connecticut

Unlike in Virginia, women's groups in Connecticut were heavily involved in the debate from the beginning. In 1971, members of NOW endorsed no-fault laws without focusing heavily on protections for vulnerable dependent spouses At a winter 1971 presentation to a state legislative committee, members of NOW and WEAL focused on the need in Connecticut for a "no-fault system in which neither spouse needs to be deemed guilty in court." In February 1973, Judy Pickering of Connecticut NOW linked the state organization's support for no-fault to its campaign for the ERA. She asserted that the Amendment would "revamp divorce laws which [. . .] discriminate against women."1so In Pickering's view, alimony issues were of only secondary importance and would probably vanish once no-fault laws were enacted. As Pickering told the Hartford Courant, "[n]o-fault divorce laws [. . .] would eliminate the need for alimony payments."

Some members of Connecticut NOW, however, already disagreed with Pickering's approach. In 1973, Spalding wrote the state legislature, urging that they reject a no-fault bill that did not address the organization's concerns. The state passed no-fault reform that year and, as the Connecticut Supreme Court later stated, the legislative history of the law indicated an intention to account for the value homemakers added to marriage.

The ERA campaign affected the evolution of reform in Connecticut, but did so differently than it had in Virginia. Because Connecticut ratified the federal ERA early on, opponents of the Amendment argued that reforms enacted by the state in anticipation of the ERA's passage into law illustrated the potential impact of the Amendment. " In a well-publicized 1972 paper on the effects of the Amendment on alimony and support rules, Mary Ann Hawco, a member of STOP ERA, focused on the laws passed in ratified states. Phyllis Schlafly honed this tactic in 1975, arguing the true impact of the Amendment could be determined by looking at the laws in place in ratified states.

By the mid-1970s, organizations like NOW and Homemakers for ERA realized that the divorce reforms introduced in ratified states like Connecticut played an important role in persuading homemakers to endorse the ERA. NOW's new President Ellie Smeal told the press that the meaning of the federal ERA could be determined by looking at what "actually happened in the 14 states that added a state [or federal] version of the ERA."

Other NOW members reached similar conclusions; for example, NOW leader Gail Falk asserted that "countering [Schlafly]" required "a sensitive combination of education that things [were not] very good now, and [information that,] if anything, things [would] be better rather than worse after ERA."

As a ratified state, Conneticut appeared to offer feminists important evidence of the kind of marital-property reforms that the ERA would require or permit. Partly for this reason, the Connecticut Permanent Commission on the Status of Women began lobbying in 1976 for a number of pro-homemaker laws, including measures calling alimony "spousal maintenance" and requiring a clearer mandate for judicial consideration of the non-monetary contributions of homemakers when equitably dividing marital property.o 90 Even after the Connecticut Judiciary Committee resoundingly rejected these proposals, the Commission publicly and vehemently demanded that equitable property division rules explicitly require recognition of homemaker contributions.

Ideas put forth by national NOW and by Liz Spalding in Connecticut shaped the marital-property bill that ultimately passed in 1978. At this time, the measure was still controversial: those on either side invoked the ERA, and the vote on the bill was close (for example, in the House, the vote was 124-120 in favor). Opponents told the Hartford Courant *that homemakers should not have rights unless they demonstrated their value to their husbands. As one legislator explained: "if a homemaker's value is to be considered, it seems reasonable for a judge to leave the court [. . .] and see how good a job this particular spouse does in everyday homemaker tasks." By contrast, proponents described marital-property reform as an issue related to the Amendment and the gender-equality issues that it addressed. Ernest Abate, a key supporter of the bill, explained that reform, like the ERA, was necessary because "[c]urrent law [was] written to have the judge consider the husband in a more favorable light."" Ultimately, Connecticut passed a law permitting the equitable division of marital property and ordering judges to consider homemakers' contributions as a highly salient factor in making that division.*

C. New York

As was the case in Virginia and Connecticut, the controversy surrounding divorce reform in New York was closely tied to the battle for the ERA and its alleged impact on homemakers. In New York, though, the relationship between the Amendment and divorce laws was different. Like Connecticut, New York ratified the federal ERA early on. " However, after the spectacular defeat of a state ERA in 1975, both feminists and antifeminists identified New York as a bellwether state.

At the national level, prominent activists agreed with this assessment. Betty Friedan accused the leadership of national NOW of having a "lack of tactical common sense" in addressing the attack mounted by ERA opponents." "While lies were spread by ERA opponents, [. . .] they fed real fears of women," she said. "We must understand these fears, and if the movement is to continue to grow, to give these women strength."' Martha Weinman Lear, a prominent author and ERA supporter, agreed that the reasons for the defeat of the New York state ERA could be generalized nationally. As Lear put it, "[b]y focusing on the law, which is far removed from its application, opponents of ERA were able to scare the hell out of homemakers, conjuring up for them visions of being thrust into a cold world which they had never been trained to conquer. "

When Massachusetts was considering its own state amendment, Jacqueline Basha, a leading member of the pro-ERA coalition in the state, agreed that most opposition to the Amendment came from homemakers and other "women who [felt] genuinely threatened by changes in society." Similarly, New York activists agreed with Basha that pro-homemaker divorce reforms were an important part of the strategy to ratify the ERA. As Basha explained, it was only in this way that ERA proponents could show that "the people who [. . .] benefited most were homemakers." For example, at an IWY event in Albany, one important issue was J,. J L L _ __ - 1 -1 homemakers' rights in divorce, and tile vest-attended workshops involved homemakers' concerns.

Women's groups had an impact on property-reform proposals in New York in 1976, when the Legislature first considered a bill addressing the issue. Shaped by ERA proponents, the bill was advertised as a homemakers' "equity" bill. The proposed measure finally disposed of a system based on legal title, instead requiring the equitable distribution of marital property and permitting judges to consider homemakers' non-monetary contributions in dividing property. 206 Opposition to the measure focused on the harms produced by divorce itself rather than on any gender-equality argument.20 7 As the New York Times reported in June 1976, the constituency "violently opposed to divorce" "would interpret any attempt to change the laws as tantamount to favoring divorce itself."208 Because of the strength of this opposition, the bill was defeated in legislative committee by a vote of 10-5.2

Between 1976 and 1980, when New York finally passed marital-property reform, feminists' involvement with homemakers' rights changed significantly. As we have seen, before 1975, national NOW was led by feminist attorneys and activists like Karen DeCrow and Arlie Scott who were relatively uninterested in family law or homemakers' rights issues. At the time, NOW focused to a greater extent on the rights of working women, as well as on preventing date rape and other forms of sexual violence. Partly out of dissatisfaction with this course of action, thirteen activists broke away from NOW, protesting the supposed failure of the women's movement, as Friedan put it, to move "out of the revolution and into the mainstream." The thirteen activists, Friedan among them, argued that the women's movement had failed to focus on the mainstream issues of "marriage and divorce, older women, [and] homemakers." As Shelley Fernandez, one of the thirteen, explained: "What we are saying is that [homemakers] are vital, they are coming into the movement, and they are bringing up our children, and rhetoric would have them put down."

Between 1976 and 1980, the national discussion of homemakers' rights also changed significantly. NOW's public image changed when DeCrow, an attorney, was replaced as NOW President by Eleanor Smeal, a homemaker. In debating rights on homemakers' access to pensions, Social Security, and post-divorce training, Congress made homemakers' concerns after divorce more public and legitimate. By 1980, dissident groups no longer distinguished themselves by focusing on homemakers' rights. Instead, as the New York debate reflected, disagreements were about how best to protect those rights.

In 1980, women's organizations campaigned heavily in New York for a bill recognizing the value of divorced homemakers' contributions to marriages. As Ernest Burrows, a key

sponsor of equitable-distribution legislation, explained, reform would show that marriage should "be a partnership that definitely includes economic equality."218 The law would replace the widely despised title-based system with one based on the exercise of discretion and the equitable division of property. The Burrows Bill would also redefine alimony as maintenance, compensation for "a woman's role as a homemaker, or for either party's contribution to the career of the other."

To the extent that there were disagreements about the Burrows Bill, arguments addressed how, not whether, to best recognize homemakers' contributions. Linda Winikow of the Senate Minority Task Force sponsored an amendment requiring equal, not equitable, distribution of marital property for this reason.222 Winikow justified the amendment by stating that the law should "give equal value to the homemaker's contribution."

Although New York NOW opposed the Burrows Bill (which was ultimately passed in June 1980), the measure reflected many of the concrete policy proposals advocated by national NOW and other ERA proponents. The law rejected a title-based system of allocation, required consideration of homemaker contributions in the division of marital property, and stated that "modern marriage should be viewed as a partnership of equals."

As we have seen, organizations like national NOW and Homemakers for ERA had promoted these reforms as part of an attempt to shore up support for the Amendment and to beat back opposition of the kind that defeated the state ERA. Although those working to help homemakers did not agree on the best direction for marital-property reform, these divisions did not prevent the women's movement from having an impact. The New York bill was still unmistakably a women's bill - a reflection of ideas advanced as part of the ERA campaign.

IV. NORUATIVE IMPLICATIONS

Leading studies suggest two problems created by the history which shaped modern marital-property rules of the kind introduced in Virginia, Connecticut, and New York. Martha Minow and Deborah Rhode, for example, argue that divorce reformers did not really consider the impact of the new rules on women. This account echoes standard arguments about the introduction of no-fault rules: because feminists had little influence in the no-fault revolution, new laws did not reflect women's concerns or needs. By contrast, Martha Fineman has asserted that feminists did play a part in shaping marital-property rules. Fineman argues that feminist reformers embraced a legal vision based almost entirely on formal equality: so long as property was divided equally, women would be treated fairly. Fineman has been highly critical of this formal-equality approach, contending that, instead, "result equality should have been the objective of [marital-property] reforms."

The history considered here offers a different perspective on the influence of 1970s reformers on contemporary divorce law. Because of the ERA battle, as we have seen, feminists found themselves struggling to convince homemakers that the Amendment was in their own best interests. In order to win the support of these homemakers, feminists pushed divorce reforms that recognized and valued the contributions of non-wage-

earning spouses. By contrast, feminists paid relatively little attention to which contributions of the earning spouse should count as marital property.

In the years to come, this omission would prove costly. With few exceptions, since at least the late 1990s, courts have refused to treat the value of degrees or other forms of enhanced earning power as marital property. Some attribute these past decisions to the courts' perception that degrees or other forms of enhanced earning power are the product of the individual talents and hard work of the earning spouse. Other scholars point to the courts' apparent belief that supporting spouses make a less meaningful contribution to the acquisition of education or enhanced earning power than do those who directly acquire greater human capital. Some courts may also be systematically devaluing noneconomic contributions, at least in the context of intangible human capital.

While there are many reasons that courts have not deemed human capital to be marital property, the most crucial is that equitable-property division statutes do not make clear that it should be considered marital property. Courts seem to be relatively attuned to clear statutory instructions on the subject of property division. As Suzanne Reynolds has shown, following statutory commands that define and order the equitable division of marital property, courts divide marital property relatively equally.235 But whereas many state property statutes explicitly recognize that a homemaker's contributions should be a factor in the allocation of marital property, state laws give little guidance as to how courts should analyze human capital.236 This omission partly reflects the terms of the debate that produced marital-property reform in the 1970s. By focusing on the equal treatment of wage earners and homemakers, reformers pushed laws that recognized the value of homemakers' contributions but did not consider which contributions of wage earners should count as marital property.

What should be done to address this oversight? Feminists interested in ensuring equal outcomes, rather than formally equal treatment, should at least consider completing the marital-property revolution begun in the 1970s. Statutes should spell out that human capital is a form of marital property and value the contributions of women, both homemakers and wage earners, to it.

CONCLUSION

According to many, the divorce reformers of the 1970s and early 1980s got a considerable amount wrong. These reformers are argued to have focused on reducing the acrimony and fraud that characterized the fault system, paying little attention to the impact of divorce reform on women or homemakers. According to many accounts, this oversight was part of what made divorce reform disastrous for many women.

Although modern critics offer various reform proposals to address homemakers' concerns, many depend on a shared historical account of the divorce revolution focused on the introduction of no-fault rules. The divorce revolution is seen to have been a mostly silent one. We can identify several premises of the conventional narrative: 1) a claim that women's organizations were too preoccupied with the ERA to concern themselves with divorce reform; 2) a contention that the primary proponents of divorce reform presented it as an uncontroversial modification of existing rules; and 3) an argument that marital-

property reforms were too technical and detailed to be widely discussed by anyone but legal experts.

However, by paying greater attention to the evolution of marital-property rules, this Article offers a different account, one that brings together important work on divorce law and on the history of the ERA. Viewed through this lens, the marital-property revolution was one led by and for women. The ERA made feminists and their opponents more, rather than less, interested in marital-property reform. Between 1972 and 1975, in fighting against the Amendment, groups like HOW, STOP ERA, and the Anti-Women's Liberation League focused on marital-property reform in criticizing the alleged effects of the Amendment. In order to refute these claims, national NOW began discussing and promoting pro-homemaker divorce reforms. In states like Virginia, Connecticut, and New York, these debates left their mark on the property reforms that were ultimately adopted.

The stakes of more fully understanding the history of the divorce revolution are high. This Article offers the first in-depth history of the movement for marital-property reform, a struggle with distinctive participants, stakes, and terms. The Article also offers new perspective on the legacy of the divorce revolution of the 1970s. Partly because of the demands of the ERA debate, feminists promoted pro-homemaker divorce reforms designed to shore up the support of "traditional" women for the Amendment. ***Because of this focus, feminists advanced reforms that reflected what homemakers, rather than their husbands, contributed to marriage. In the process, feminists did not adequately address what should count as marital property, especially in the context of the human capital of the wage-earning husband. From a history of divorce reform, we can see the promise and constraints of the arguments advanced for greater gender equality in the division of marital property. We can see, too, that contrary to what some have implied, the marital-property revolution was neither silent nor complete.***

Dr. Joni Hersch, "Marriage, Home Production, and Earnings"

As seen in the analysis above, homemaker's interests and rights were entirely left out of the debate regarding division of property as well as alimony—leaving the terrain open for the *right* and patriarchal rights groups to take control of the dialogue, and therefore *debate*. The discriminatory nature, and double-standards, with the courts regarding women's contribution to the home and marriage is high-lighted in the study by Dr. Joni Hersch, "Marriage, Home Production, and Earnings"[3]

Whether employed in the labor market or not, married women on average spend considerably more time on home production than their husbands do. [] The observed gender-based allocation of labor is consistent with economic theories of marriage and bargaining within the household. However, wives' contribution to family welfare via home production comes at a personal cost: time spent on housework has a substantial negative impact on own wages. Wives' willingness to incur this opportunity cost is also an indication that housework has real economic value. Since economic loss in the event of disability or wrongful death includes the value of lost home services. As a result, valuing home production time is an essential component of personal injury litigation.

[3] Joni Hersch, "Marriage, Home Production, and Earnings," (Harvard Law School, Cambridge,) Discussion Paper No. 275, 2/2000 http://www.law.harvard.edu/programs/olin_center/papers/pdf/275.pdf

Similarly, in many divorce cases, the main claim of wives to the assets accumulated during marriage is their contribution to home production. I summarize the empirical evidence on home production time and discuss methods of valuing this time. To demonstrate the salient legal issues, I discuss the Wendt v. Wendt divorce case, in which Lorna Wendt claimed that her role as a corporate wife was essential to her husband's career success, entitling her to a larger share of the marital assets than conventionally awarded...

Survey data and time diaries indicate that employed ***married women spend two to three times as much time on housework as their husbands****.... First, labor market opportunities and outcomes are affected by time in home production, via lower job skill acquisition, more limited professional opportunities, and lower wages. Second, home production has important implications in a litigation context. In the case of wrongful death litigation, the economic loss will be the sum of the value of lost earnings and the value of lost home services. In many cases the economic loss of a wife's home services exceeds her earnings loss. This is due to the large amount of time spent by wives on home production, as well as to the lower market earnings that result from this time allocation. Similarly, in many divorce cases, the main claim of wives to the assets accumulated during marriage is their contribution to home production. The chapter discusses economic theories that lead to the division of home production time along observed gender lines, evidence on the allocation of home production time between spouses, and the economic consequences of this division....*

Does marriage itself, or expectations of marriage, lead to women earning less than men? Under certain assumptions, economic analysis predicts precisely this outcome....

Leaving aside the determination of who marries and who marries whom, let's consider a married household with two adults. Goods consumed at home can either be purchased in the market or produced at home in combination with purchased goods. Theories of specialization and exchange imply that it is optimal for one spouse to specialize in home production and for the other spouse to specialize in labor market work (Gary Becker 1991). In doing so, the household maximizes its utility and generates greater output to be shared among the household than the sum of the individual outputs. Households produce private goods, consumed only by individuals, as well as public goods that are shared by all members of the household, without reducing any individual's consumption. For example, if a wife washes her husband's laundry, this is a private good that benefits only him directly (although see the Wendt case discussed later for an example of investing in the husband as an investment in family human capital.) Raising nice children is an example of a public good that both parents can enjoy. The spouse who specializes in home production will optimally invest less in labor market skills, such as education and job training. Economic theory, supported by a vast number of empirical studies, predicts higher earnings for individuals with greater amounts of labor market oriented human capital....

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this pattern would lead to women developing a comparative advantage in home production, leading to the observed gender based division of labor within the household....

The bargaining models of Marilyn Manser and Murray Brown (1980) and Marjorie McElroy and Mary Jean Horney (1981), and the market models of marriage of Becker (1973) and Amyra Grossbard-Shechtman (1984) predict that the partner who will be relatively better off if divorced has greater bargaining power. If housework is considered undesirable, the spouse with the weaker bargaining position will perform a greater share of the household responsibilities. Since on average the husband has higher earnings, he is better able to purchase market substitutes for home produced goods possibly provided by his wife and thus has a relatively stronger bargaining position....

The effect of housework time on earnings Whether she is a full-time homemaker or works both in the labor market and at home, a wife's home production affects her own earnings by lowering her stock of labor market related human capital. In addition, as reported below, time spent on home production also directly reduces earnings for women. At the same time, a wife's home production enhances her family's well being. Her contributions may also allow her spouse to be more successful in his education and career. Estimates from wage equations that include time spent on housework provide quite consistent evidence of a negative relation between housework and own wages, particularly for women. This negative impact for women has been found using a variety of data sets: by Coverman (1983) using the 1977 QES; Hersch (1985) using data collected in 1980 from piece rate workers; Shelton and Juanita Firestone (1989) using data from the 1981 Time Use Survey; Hersch (1991a) using data collected from wage and salary workers in Oregon in 1986; and Hersch (1991b) and Hersch and Stratton (1997) using data from the PSID for the years 1979 - 87. The evidence for men generally does not indicate that housework influences wages; the exceptions are Coverman (1983) and Hersch and Stratton (1997), both of whom restrict their analyses to married men and women. While the studies by Coverman (1983), Hersch (1985) and Firestone and Shelton (1989) estimated wage equations controlling only for standard human capital characteristics, the negative relation between housework and wages persists after further analysis. Hersch (1991a) finds such an effect for women after controlling for working

conditions as well as for human capital characteristics, number of children, and marital status. Estimates based on more sophisticated statistical techniques yield similar results.4 The inverse wage-housework effect appears to be real....

The effect of housework specialization on husband's earnings A large number of empirical studies find a marriage premium for men of at least 10 percent.5 That is, controlling for human capital and other characteristics, married men earn more than single men with the same characteristics. A leading explanation for this marriage premium is that specialization within the household results in genuine labor market productivity differences between married men who have the opportunity to specialize in labor market work and unmarried men who lack this option.... In addition to receiving wages, labor market workers have access to social security, disability, Medicare, and unemployment compensation benefits. Working conditions are subject to OSHA standards, and most jobs are covered under the NLRA regulations (e.g., time and one-half pay for overtime hours, the right to organize). In contrast, spouses who work only on home production do not receive social security benefits accruing from their own labor, but instead receive social security tied to their spouses' earnings.8 Individuals who work only in home production are not eligible for disability benefits. The closest concept to unemployment compensation is alimony (now usually called maintenance). In contrast to unemployment compensation in which the benefit is tied to wages at the former job, the amount of maintenance is determined by need. While OSHA regulates job safety, private homes are not regulated. Homes involve much work with household chemicals, potential fire and burn hazards from stoves and irons, sharp instruments such as kitchen knives, and activities such as standing on ladders changing light bulbs. There are more unintentional disabling injuries in the home than in the workplace and in motor vehicle crashes combined (National Safety Council 1999.) Many feminist scholars consider housework demeaning and generally harmful to women by relegating them to an inferior status, making them dependent on their spouses for financial support. Under this view, equality means equality in the labor market. To this end, scholars have recommended changes in tax law that eliminate the subsidy of housework relative to labor market work and thereby increase women's labor market activity. For instance, McCaffery recommends lowering married women's tax rates. Nancy Staudt (1996) proposes an alternative that preserves the notion that housework is valuable and should not be assumed to be inferior to labor market work. Her suggestion is to tax the imputed value of housework and allow home workers access to benefits tied to the labor market, including social security and disability benefits. VI. The value of housework in divorce or death Despite the exclusion of housework from measures of Gross Domestic Product (GDP), economists recognize that housework is productive work. As Katharine Silbaugh (1996) describes, this view is not shared by the U.S. legal system. Instead, U.S. laws regard housework largely as a marital obligation and an expression of affection. A contract stating that the wife will perform housework for payment is not enforceable. The underlying rationale employed by the courts is that marriage requires spouses to support and provide services to one another. One could not contract for payment for household services since one cannot be paid for something the individual is already legally obligated to perform. Silbaugh cites a number of cases in which courts refused to enforce agreements between spouses in which one spouse would pay the other for personal care through provisions in the will. The courts' rationale in refusing to enforce such

agreements is that such payments are degrading and commodify marriage. Instead, services within marriage should arise from love and affection between spouses. How, then, is a wife who specializes in home production compensated in the event of divorce? There is no direct connection between the wife's home production contribution to her family and the financial aspects of divorce...

Maintenance is awarded for need, not in recognition of housework as a contribution to family wealth. Courts generally divide assets equally. But most couples have limited assets so the main asset is human capital investments. Wives who defer or limit their labor market investments during marriage are rarely given a supplement in recognition of their reduced employment prospects post-divorce. The one area in which housework is valued is torts. In the event of wrongful death or injury to the spouse, one spouse may sue the injurer for the lost services formerly provided by the spouse. As Silbaugh (1996, p. 34) notes, these "loss of consortium damages may be owed to one spouse when the other is injured on the theory that the first spouse had a legal right to services the injurer has taken away." However, whether testimony on these economic damages is allowed varies by jurisdiction. When allowed, the plaintiff presents evidence on lost earnings as well as the value of lost home production. How to value such lost home production is described next. VII. Valuing home production In litigation, housework is usually valued at either the replacement cost or the opportunity cost.9 The replacement cost method values household production by assigning the market cost of replacing the home production. There are a number of issues that arise in valuing time using replacement cost....

Throughout their 31-year marriage, Lorna Wendt raised the couple's two daughters, was a homemaker, and entertained business associates in her unpaid role as a corporate wife. The witnesses testified that she was an exemplary wife and mother, and supported her husband's rise through the ranks of GECS by accompanying her husband on vacation and other trips paid for by GE and hosting an annual Christmas party for business associates. The financial decisions at divorce involve providing for custodial children, alimony, and division of property.

Lorna Wendt's position was that a less than 50 percent division was unfair to her and that "a woman's worth has value, a corporate wife has value." She maintained that her specialization within the home enabled her husband to succeed in the labor market thus entitling her to half of the $52 - $100 million estate. Professor Myra Strober, at the time a Stanford University professor of education, testified on behalf of Lorna Wendt. She proposed three methods of valuing Mrs. Wendt's nonmonetary contributions: market value replacement, opportunity cost, and human capital....

As this chapter discusses, whether employed in the labor market or not, married women on average spend considerably more time on home production than their husbands do. This gender-based allocation of labor is consistent with economic theories of marriage and bargaining within the household. However, wives' contribution to family welfare comes at a personal cost: time spent on housework has a direct substantial negative impact on own wages. Further, if labor market human capital investments are curtailed by time spent in home production, wives' labor market opportunities may be reduced over their lifetimes. In contrast, there is little evidence that men's earnings are affected by their time in home production, nor is there evidence that the widely observed male

marriage premium is due to specialization within the household.... Other fruitful areas for research include how housework should be valued in the division of assets in divorce, particularly ***in situations in which one spouse's specialization in home production permitted greater labor market success for the spouse specializing in the labor market****.*

The Feminist Movement of the 20th Century and Implications for Trailing-Spouse, Trophy-Wives

As demonstrated above not only do wives spend more time on taking care of their home and family than husbands, but their work translates into higher earnings (and higher future earnings) for their husbands. It should be further noted that women's work within the home also translates into lower income for women throughout her lifetime—significantly widening the income-gap between divorced women and their husbands. Additionally, the case of expatriation provides an opportunity to examine families where 71% of the *breadwinning* population (expatriates) experiences higher earnings,[4] with a 58% increase in saving and investing for these households.[5] Of further consideration, is that these populations are experiencing divorces rates similar, or higher, than those of *developed* countries—complicated by added challenges associated with expatriation (McNulty, 2014). Even though the elevated earnings and savings of these families (as well as the elevated contribution of the expat spouse in developing this "marriage asset", Malek, 2014[6]) is well documented within global mobility literature.

Global Relocation Trends: 2012 Survey Report by Brookfield Global Relocation Services

Family and spouse/partner issues remain as critical challenges to assignment success.

Like last year, the top critical family challenges identified were spouse/partner resistance, along with family adjustment and children's education. Respondents indicated that the top reasons for assignment failure remained the same as last year, with family concerns far outweighing all the rest at 34%, followed by spouse/partner career at 17% and compensation and benefits and career aspirations at 14% each. Spouse/partner employment continues to be a key consideration in international assignments... With only 12% of employed spouses continuing to be employed during the assignment, potential loss of income, long-term career impact, and transition/adjustment issues are real considerations for assignment acceptance, especially given the current economic environment.

The 2014 Expat Explorer

Higher earners enjoy spending boost abroad

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[4](HSBC Expat Explorer Survey, 2011) "Although expats benefit from higher earning potential and income, moving abroad also leads to more complicated finances with 71% of expats saying their finances have become more complex since relocating. The complexity seems an inevitable consequence of being an expat: most of those who say their finances have become more complex attribute this to moving money between countries (73%), finances being in different currencies (70%) and managing finances in both home and host countries (68%). Just over half (54%) blame their financial frustration on having a more complicated tax situation than before relocating.... For expat parents, ensuring their child has good quality childcare and education is understandably important. It also has huge financial implications: the average annual cost of childcare for expats is $7,500 and $11,500 for education...."

[5](HSBC Expat Explorer Survey, 2008) "expats spend more whilst still being able to save. Over half (58%) of expats save and invest more than they did in their country of origin. 52% also spend more on food, 49% more on shopping and 45% more on socialising in their new country of residence... 0=

[6] results highlight the different reliance on support providers that expatriates and their accompanying spouses found beneficial for acclimatizing to the host country environment. Improved adjustment in turn was found to have positive effects on expatriates' performance.

The 2014 Expat Explorer survey reveals how higher earning expats - those with an annual income of more than $250,000 p.a. - are more likely to move countries to boost their earning potential than any other income groups. Nearly a third (32%) say they moved to improve their income (compared with a global average of only 20%) while over seven in ten (71%) say their income is higher than it would 71% say their income is higher than it would have been at home The growth in the income of wealthy expats is even higher when local prices are taken into account, with three-quarters (75%) of wealthy expats saying their disposable income is higher than it would have been at home, compared with 53% of the global average.

Family law lawyers who are not utilizing this information to promote or defend the economic interests of women (and their children) in cases of international divorce and division of assets are clearly negligent in executing their duties, within their omission of action. It is important to note that expatriates are ~70+% more likely to have complicated financial and tax issues[7]. So given alimony/maintenance rates of ~10%[8] (and the elevated difficulty in collecting these monies in a transnational context), failure of lawyers to solicit all, and any, financial records and assets (including international financial ones) for women clients, particularly homemakers, is, **under the reasonable principle, failing to exercise due diligence in the execution of his or her duties.**

HSBC Expat Explorer Survey 2011

Expats lead the way with social media

Embarking on the expat journey can often mean leaving much-loved friends and family behind, especially for expats who have been on more than one posting. Despite often being thousands of miles apart, technological advances mean that keeping in touch is easier than ever with a wide range of channels available from the traditional letter to more modern media such as Skype and Facebook. The results of this year's Expat Experience report show that while email remains the most popular method of communication, with 52% of expats using it to stay in touch with friends and family twice a week or more, social media is ever more popular. For example, 39% of expats use Facebook more than twice a week to stay in touch and 36% are using video calling services such as Skype. These channels are more popular than traditional methods such as landline (14% using more than twice a week) or mobile phone (16% using more than twice a week), perhaps because new technologies are cheaper to use...

"The Relation Between Work-family Balance and Quality of Life,"[9]

We examined the relation between work-family balance and quality of life among professionals... Three components of work-family balance were assessed: time balance (equal time devoted to work and family), involvement balance (equal involvement in work and family), and satisfaction balance (equal satisfaction with work and family). For individuals who invested substantial time in their combined work and family roles, those who spent more time on family than work experienced a higher quality of life than

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[7] (Expat Explorer, 2011),

[8] Based on rates reported in the USA (Winner) and http://www.ine.es/jaxi/menu.do?type=pcaxis&path=/t18/p420/p01/&file=inebase Institute Nacional de Estadisticas

[9] *J. Greenhaus, K. Collins, and J. Shaw*, "The Relation Between Work-family Balance and Quality of Life," *Journal of Vocational Behavior 63 (2003) 510-531*

balanced individuals who, in turn, experienced a higher quality of life than those who spent more time on work than family. We observed similar findings for involvement and satisfaction.

"Social Support and Work-family Conflict: A Test of an Indirect Effects Model"[10]

Three major contributions emerge from the results of this research. First, this study provides support for the COR theory, which suggest that individuals may conserve and optimally utilize resources to reduce conflict and ensure overall well-being in their lives (Hobfoll, 2001). In this research, work related resources were found to indirectly reduce FIW via WIF. Therefore employees who experience high level of support from the work domain may transfer some of their resources to the family domain and reduce strain in that domain. Similarly, since spouse support was indirectly related to WIF via FIW, employees who had high levels of family support may transfer some of their resources from family to work domain to be effective in that domain. These patterns of results also support the resources between the work and family domain. Second, our study extends the work-family literature by examining cross-domain indirect effects of social support in work and family domain on work-family conflict. Previous research on cross domain effects of social support on work-family conflict has been sparse and restricted to cross domain direct effects. In contrast to previous research which showed insignificant direct cross domain effects (e.g. Luk & Shaffer, 2005), in this research we focused on cross domain indirect effects and as predicted by the COR theory and Frone et al. (1992) model, we found significant effects. Thus, our research focus on indirect cross domain effects contributes to a better understanding of cross domain linkages of social support and work-family conflict.

Third, the results also provide support for the notion that models of social support should consider generic and family-specific norms of support systems were indirectly related to reduced levels of FIW which further underscores the importance of work-family specific policies in reducing FIW. The current research is an important extension of Kossek et al.'s (2011) study as our research pertains to indirect cross domain effects. Additionally, the pattern of results is consistent with Kossek et al.'s (2011) observation that generic support systems may be significantly related to work-family conflict when the relationship is examined separately, but when both generic and work-family specific support systems are examined simultaneously, generic support systems may be less important predictor of work-family conflict.

This research also has significant practical implications. The research suggest that various family-specific social support systems such as FFOP and FSOC can directly influence WIF as well as indirectly reduce FIW via WIF. Thus, organizations can improve quality of life of employees not only in the work domain, but also in the family domain by adopting supportive policies at work. It seems that family-specific policies and climate have a greater impact in reducing conflict suggesting that organizations should enact family-friendly policies and ensure a family supportive organizational climate so that employees are not constrained from utilizing the policies. Although generic support

[10] T. T. Selvarajan, P. Cloninger, and B. Singh, "Social Support and Work-family Conflict: A Test of an Indirect Effects Model" *Journal of Vocational Behavior*, Volume 83, Issue 3, December 2013, Pages 486–499

systems such as POS and PSS, are helpful, family-specific policies are needed to have a greate[r] impact in reducing conflict in the work and family domains. Even if family friendly policies are not available at the organizational level, supervisors can create a family supportive climate at their work group level which can greatly reduce work-family conflict for the employees in the work group at no additional cost. This research also has implications for individual employees struggling to balance competing demands in the work and family domains in that employees can use existing resources in one domain to balance competing demand in the work and family domains in that employees can use existing resources in one domain to compensate for lack of resources in another domain. Also, at the societal level, majority of employees today are part of the "sandwich generation", who provide care both to aging parents and to their children (Parker & Patten, 2013). Therefore, support in the work domain for managing work-family conflict. The differential impact of instrumental and emotional spouse support on work-family conflict indicates that partner/spouse may not be in a position to provide instrumental support in the work domain but any emotion support provided can facilitate employee well-being (e.g. better mood), which can spill over to work domain by any emotional support provided can facilitate employee well-being (e.g. better mood), which can spill over to the work domain.

Look at flow of argumentation

All too often the needs of women and children are subordinated to the interests of corporations and big-money, with government policies more concerned with promoting mass- and massive-consumption societies, than producing eco-friendly, economically-stable, and productive societies.

Additionally, public-policies exclusively aimed at *full-employment* of populations fail to consider the wants and needs of women in modern societies. The principle reasons that *trailing spouses*[11] of relocating employees agree to a domestic or international transfer are because of work-life balance/double-shift/dual-career issues that women face in modern work-forces. The "gainfully employed" rate of accompanying spouses drops by 55% during an expatriation (from 90% before expatriation to 65% after)[12]. So obviously there is a *pull* and *motivation* of large populations of women (est. in tens of millions *trailing spouses* globally) who prefer to "stay at home to raise children" rather than build careers, and "job streams." This was definitely my case – I was *pulled* by my deep, deep desire to have children, and my *pull* to expatriation and traveling. And, to be "punished" for my maternal instinct, as well as my love of travel, during my divorce in Spain, is not only an abuse of power by my lawyers and the courts, but it is highly illegal under Spanish

[11]The term **trailing spouse** is used to describe a person who follows his or her life partner to another city because of a work assignment. The term is often associated with people involved in an expatriate assignment but is also used by academia on domestic assignments. -- https://en.wikipedia.org/wiki/Trailing_spouse

[12] International Survey Summary Report 2008 by the Permits Foundation "Almost 90% of spouses and partners were employed before expatriation. This figure fell to 35% during expatriation. Three quarters of those who are not working want to work. This is particularly so among the younger age groups, men, graduates and unmarried partners… PROFILE OF ACCOMPANYING SPOUSES AND PARTNERS, 120 nationalities working in 117 host countries -- GENDER: 85% women, 15% men -- MARITAL STATUS: 93% married, 7% unmarried partners, (2% registered partners or in civil partnerships: 1% engaged) -- HIGHLY EDUCATED: 8% hold high school diploma, 10% hold vocational college diploma, 36% hold bachelor's degree, 40% hold master's degree or postgraduate diploma, 6% hold doctorate level/PhD qualification -- PROFICIENT IN FOREIGN LANGUAGES: 21% speak one language, 34% speak two languages, 29% speak three languages, 16% speak four or more languages -- STATUS OF INTERNATIONAL EMPLOYEE: 86% are accompanying new recruits, 3% accompanying locally hired foreign staff"

and international law. Unfortunately, systematic discrimination against women in the courts is just one more example of the government-sanctioned oppression of women in Spain.

In addressing the needs, and wants, of society and its members, the solution lay not in pursuing a policy of *full-participation/full-employment,* but rather public policies which promotes work-life balance, and flexible work-schedules (including teleworking options) – particularly in cases of women who wish to remain primary-caregivers in their families. This is the policy governments need to pursue for this homogenous group of women – a policy which enables and engenders women to fulfill their *natural* care-giving role in society, as well as their desire and need to remain financially independent. And, is a model that I would have constructed by now (with Global Expats' platform), if not for the exorbitant criminal negligence of implicated lawyers, judges, and consulates in my case.

However, in consideration of the global plight of women, it should not be over-looked that the percentage of women whose *breadwinning* spouses earn enough so that the family can financially afford for one parent to 'stay home' is a small minority. Most women, particularly those in the lowest socio-economic brackets, do not have the luxury of a "choice." Not only do these women (the bulk of women globally) carry the burden of low-wages and hard-labor, with only the cheapest and most *precarious* of child-care option available to them, they are also disproportionately exploited, and obligated to carry the world's burden of the socialization/education of future work-forces on their shoulders. Ehrenreich and Hochschild explain the situation and its consequences in *Global Women,*

> *Women who want to succeed in a professional or managerial job in the First World thus face strong pressures at work. Most careers are still base on a well-known (male) pattern: doing professional work, competing with fellow professionals, getting credit for work, building a reputation, doing it while you are young, hoarding scarce time, and minimizing family work by finding someone else to do it. In the past, the professional was a man; the "someone else" was his wife. The wife oversaw the family, itself a flexible preindustrial institution concerned with human experiences the workplace excluded: birth, child rearing, sickness, death. Today, a growing "care industry" has stepped into the traditional wife's role, creating a very real demand for migrant women.*
>
> *But if First World middle-class women are building careers that are molded according to the old male model, by putting in long hours at demanding jobs, their nannies and other domestic workers suffer a greatly exaggerated version of the same thing. Two women working for pay is not a bad idea. But two working mothers giving their all to work is a good idea gone haywire. In the end, both First and Third World women are small players in a larger economic game whose rules they have not written.*
>
> *The trends outlined above—global polarization, increasing contact, and the establishment of transcontinental female networks—has caused more women to migrate. They have also changed women's motives for migrating. Fewer women move for "family reunification" and more move in search of work. And, when they find work, it is often within the growing "care sector," which, according to the economist Nancy Folbre, currently encompasses 20 percent of all American jobs.*
>
> *A good number of the women who migrate to fill these positions seem to be single mothers. After all, about a fifth of the world's households are headed by women: 24*

percent in the industrial world, 19 percent in Africa, 18 percent in Latin America and the Caribbean, and 13 percent in Asia and the Pacific. Some such women are on their own because their husbands have left them or because they have escaped abusive marriages. In addition to these single mothers, there is also a shadow group of "almost" single mothers, only nominally married to men who are alcoholics, gamblers, of just too worn down by the hardships of life to make a go of it….

The attitude of the courts, and societies in general, that women should be "ashamed if they choose to stay at home with their children" – as opposed to having gone out and gotten a "real" (paying) job – is more a reflection on our faulty value system, rather than a position, or argumentation, that possesses any logic or veracity. The assumption that women, particularly intelligent/educated women, are "wasting" their time and their lives caring for children, their spouses, and promoting his (or her) career, fails to appreciate the value and importance of educating future generations, as well as maintaining stable, productive home environments for *workers* in the modern world – with the devaluation of the children's and women's rights implicit in the matrix. Nor does it recognize that many stay-at-home moms do very, very many things other than take care of their families. The idea that women must be "forced" to enter the workplace is as egocentric as the idea that all women should remain in the home "bare-foot and pregnant," so to speak. The important element here is providing those who prefer care-giving roles the opportunity to do so, and if this implies remaining at home to raise children and support breadwinning spouses career—that is a personal, individual choice, and one which should not be denigrated, or punished, by society for exercising that right.

Additionally, instead of demeaning the work of home-makers, societies should be praising her work and contributions. Studies consistently shown that the back-bone and *moral compass* in societies for thousands of years. It is also this *work-force* that has moved in droves into the remunerated work-force in the past ~30 years, leaving a void in the community work these women have traditionally worked for no remuneration, or official recognition. The stereo-typical trophy wife is a myth that mainstream media has invented and promoted as part of a *backlash* to the women's right movement of the '70s (Faludi, Hochschild) – but one which has little veracity in today's modern world, or any other world.

Globally mobile homemakers, commonly referred to as *trailing spouses,* are women who give up their jobs and careers in deference to the relocation of their husbands at a rate of ~55%[13]. Decades of research in the global mobility has demonstrated that a successful international relocation of expatriated families depends on the networking and *survival techniques* of the *trailing spouse*—which translates into a productive and content *worker* and *family*. My articles published on the Huffington Post in 2011 highlight the issues.

Trailing Spouses: The Unsung Heroes of an International Relocation

by Quenby Wilcox

http://www.huffingtonpost.com/quenby-wilcox-/trailing-spouses-the-unsu_b_4295981.html

Every year tens of thousands of Americans pack up all of their belongings and move to another country, joining over 6 million of their compatriots who live abroad. Millions of these brave souls are the mothers and wives of expatriated employees, commonly known

[13] International Survey Summary Report 2008 by the Permits Foundation

as trailing or accompanying spouses. These women, willingly and sometimes unwillingly, give up their jobs, careers and income to follow their husband half way around the world.

These homemakers, who risk so much for the well-being of their husbands, their families, and their children, are the unsung heroes of the expat relocation. They are the ones who deal with all of the nitty-gritty of an international move, of finding and furnishing a new home, of making sure children are adapting to new schools and making new friends, of planning and organizing a new social life for the entire family. The list is unending.

It is their hours and hours of endless hard-work that makes for a successful international relocation. And, given the fact that transferring an employee overseas costs multi-nationals billions of dollars each year, these companies have a vested interests that the family manager/homemaker receives the support and assistance she (or he) so desperately needs. So why are HR departments and relocation vendors not stepping up to the plate and developing assistance programs that truly help the expat families?

The answer is rather simple. Those in the global mobility industry are not in the "family services" business, and therefore do not understand the challenges of the expat family. Nor do they have the resources to provide the daily assistance that these family needs on an ongoing basis. The only person with the experience, knowledge, and qualifications to develop the needed services is the trailing spouse herself.

Unfortunately, most expat employers, HR people and those in the global mobility industry still see the expat spouse as a throw-back from the 50s; a helpless, pampered, Barbie doll, rather than the highly efficient, intelligent and competent woman of today. The trailing spouse of today needs to be given a voice, as well as an active role, in producing and delivering solutions to what everyone in the global mobility industry agree is their number one challenge; the adaptation and integration of the expat family.

Some of the "voices" HR should be listening to are found in Family Matters! Survey by ExpatExpert.com/AMJ Campbell International Relocation. And, are as follows: -

> *"[We need] Information about the living conditions in the new location; advice for career development for the accompanying spouse; details about the local school(s) and the number of people attending them from the expat community; information about the availability of internet connectivity and speed... Knowing where the decent suburbs were. What bank to use; how to get a social [security number]... There was a handbook that was helpful. It was the only consolidated source of information."*
>
> *"The company claims to provide assistance with area orientation, setting up services (opening bank accounts, gym memberships) locating shopping facilities, language classes and driving orientation. None of this actually happened... Had there been a local 'on the ground' consultant to help out when we first arrived, perhaps some of the benefits of the new location could have been shown immediately rather than us having to fumble around in the dark to discover them on our own."*

"Organized events helped us to meet new people... Also, it helped having a sponsor. Someone to take me around and show me the shops and businesses that I would need while posted there."

"It's important to be considered a team member in this process. Acknowledgment is also critical from the working partner for the HUGE effort required to move home and family every 3 years or so."

Expat homemakers need above all practical information, advice, and recommendations about the goods and services they need upon their arrival, and in their daily lives. This is where multi-nationals HR departments and global mobility vendors need to concentrate their efforts in providing assistance to multi-tasking, homemakers. The challenges expat moms face in their daily lives are little different from those in their home country; they just have to do it in a foreign language, in the context of foreign traditions and customs, and with no social network at their disposal.

Multi-nationals could save themselves a lot of money and headaches, as well as a lot of heart-ache for the expat families, if only they would heed the cries of these unsung heroes and provide them with the assistance they so desperately need.

Dual-Career Challenges for the Expat Family: Why Expat Employers Should Be Concerned

by Quenby Wilcox

http://www.huffingtonpost.com/quenby-wilcox-/dualcareer-challenges-for-the-expat-family_b_4421109.html

Most people believe that an international assignment with a multinational footing the bill is highly sought-after amongst corporate executives. However, this is far from the truth. Americans turn down expat posts at a rate of 94%, with 70% of these refusals due to a spouse's refusal to give up their job or career. Therefore, in an increasingly competitive global economy, multi-nationals have a vested interest that solutions are found to what in global mobility jargon is referred to as the "dual-career challenge."

According to the Permits Foundation, 90% of spouses are employed before an international move with only 35% employed afterwards, even though ¾ of these spouses wish to work. While the most obvious obstacle for accompanying spouses in finding a job abroad is obtaining a work permit, the work permit question is always a catch-22 situation. One cannot get a work permit without a job offer, but one cannot get a job offer without a work permit. For this reason, most efforts by multi-nationals in the past decades have concentrated on resolving the work permit challenge, believing this to be a cure-all solution.

Unfortunately, the work-permit issue is only the first of many obstacles the trailing spouse faces in her (or his) efforts to find a job or maintain a career abroad. These expats lack professional networks, face language and cultural barriers, possess job qualifications and/or licenses which are not recognized in the host country and very few local companies are willing to hire trailing spouses who might be forced to move from the host country at a moment's notice.

To make matters worse for the job-seeking spouse, career assistance is rarely forthcoming from expat employers, leaving expat spouses to fend for themselves in finding a job abroad. As stated in Permits Foundation's International Survey Summary Report, "most employers prefer to ignore spousal employment issues." The good news is that developments on the Internet in the past five years have opened up many new opportunities for the accompanying spouse. Online jobs are an increasing possibility, as well as online learning. And, for those who possess an entrepreneurial spirit, networking on the Internet has opened up a whole new world of opportunities.

Furthermore, for those looking for a traditional corporate job, several job search websites targeting expat populations have been created in the past few years. One such company is Expat Network, a UK-based organization for expats seeking work and assistance overseas, whose services cover "from showcasing the best jobs across the globe to sending the mother-in-law on a spa weekend." Other such websites are Expat Exchange, a job search and networking site which boast a growing community of hundreds of thousands of expats across the globe; Expat Careers which "addresses the genuine needs of employers and recruiters who required a single site to advertise managerial, executive and expatriate positions from all industries and locations within a single job search platform;" and Overseas Jobs which "has been working for well over a decade to provide employers easy access to a wide, targeted audience of job seekers."

While the aforementioned have improved the situation for trailing spouses in finding jobs abroad, they do not address the emotional challenges trailing spouses face. As Robin Pascoe writes in A Moveable Marriage: "We've always associated grief with the loss of a loved one, not with the loss of something intangible like a career or an identity. But make no mistake. Grief is all about loss, and who can deny how much is lost when a career is abandoned? During a relocation, a healthy woman will experience the different stages of the grief spectrum."

Pascoe quotes Yvonne McNulty (www.expatresearch.com) who states that ***"I was not actually mourning the loss of a career, but grieving over the loss of the choice to have one."*** *And, Pascoe further explains that "The price of relocation to follow a husband's career is eerily similar to the costs incurred by jumping onto the so-called Mommy Track. The identity crisis is almost exactly the same."*

Leslie Morgan Steiner explores the identity crisis that women across the global are facing as they enter the work-force en masse, in her book Mommy Wars. She sums up the inner conflict of these women when she states: "I never hated other mothers. My anger came from years of competitiveness with other women, and my own internal agony of seeing, in stay-at-home moms, what I was missing at home when I was at work, and in ambitious working moms the career sacrifices I was making by working part-time."

The dual-career challenge of the expat family, and the difficulties it poses for expat employers in recruiting expat employees will continue to plague HR departments for decades to come, with no easy answers or quick fix solutions. In order to rise to these challenges expat employers and global mobility service-providers need to start "looking

outside the box" in the services they are developing and offering to job-seeking trailing spouses.

A comprehensive and effective solution to the dual-career challenge of the expat family needs a holistic approach; one which empowers the estimated 5+ million, global labor-force of trailing spouses. These women (and increasingly men) are highly educated, with work-life experiences that are not recognized, nor taken advantage of, in traditional labor markets. Given the ways and means, these job-seekers can make positive and unique contributions to industries across the globe, as well as be instrumental in providing a comprehensive solution to the adaptation and integration of the expat family.

In relation to Ms. Pascoe's remark, *"I was not actually mourning the loss of a career, but grieving over the loss of the choice to have one."* This was my own case—not the loss of a career, but rather my loss of a *choice* to have one. My own "passion-career" died on Capitol Hill in the early '80s during the Reagan Era. And, while I missed the financial independence afforded a career, my *career* as a mother was always much more important to me than anything I could ever accomplish in the remunerated work-force. The values, knowledge, intellectual curiosity, etc. that I encouraged and propagated in my children (and my communities) far surpass anything I could contribute as a *worker* in the public or private sphere. While, as is the case for thousands of years, I put myself in a situation of dependence by marrying and voluntarily (and willingly) gfhaving children

If efforts towards empowering *women* are to become effective, then they MUST start listening to the voices of these women and offering them a *choice*—a *choice* to who she chooses to be in the public and private sphere. **And, that societies start defending the right of women to make this choice in the same way that they defend the right of men to make that choice.**

Clearly the *homemaker* (trailing spouse, or not) plays a vital role in the success of the *breadwinner's* productivity at work, and success in his career—which translates into productivity for the company and society. The refusal of courts to recognize, and reimburse a woman for this contribution, is discriminatory as it fails to recognize women's work in the home at par with other workers in the work-force. Workers in the remunerated workforce perform the same functions as homemakers, but who, unlike homemakers. are financially reimbursed for their work. The attached reports (Doc. #) from the global mobility industry provide proof and evidence as to the elevated importance and value of the trailing spouse, and care-giver, in the family.

Till stress do us part: the causes and consequences of expatriate divorce, Yvonne McNulty

Additionally, important to examine is the situation that these women are put in when they move abroad—noting that their elevated financial dependence make them and their children particularly vulnerable, and in need of protection, from abusers as well as discriminatory court systems. One of the leading researchers on *trailing spouse* issues of expatriated families, Yvonne McNulty, PhD, reports in her study *Till Stress Do Us Part: the Causes and Consequences of Expatriated Divorce,*

Introduction

Most women don't think much beforehand about the impact a [international] relocation is going to have on their marriage. No one tells us the complete truth, either. It's like the having-a-baby secret. Women don't tell each other how painful

> *childbirth really is, because who in their right mind would do it if they knew the truth? The same can be said about moving a marriage (Pascoe, 2003, p. 2).*

For at least the past 30 years, a substantial body of literature has focused on expatriate families, particularly the challenges of family adjustment (Black and Gregersen, 1991; Caligiuri et al., 1998; Fish and Wood, 1997; Fukuda and Chu, 1994; Haslberger and Brewster, 2008; Howard, 1980; Lazarova et al., 2010; Rosenbusch and Cseh, 2012; Tung, 1986), willingness to expatriate (Brett and Stroh, 1995; Dupuis et al., 2008; Harvey, 1983; Richardson, 2006; Mincer, 1978; Noe et al., 1988; Tharenou, 2008), the work-family interface (Caligiuri and Lazarova, 2005; Schutter and Boerner, 2013; Shaffer et al., 2001; Tung, 1987), premature return (Black and Stephens, 1989; Harvey, 1985; Shaffer and Harrison, 1998), relationship stress among couples (Brown, 2008; McNulty, 2012; Sweatman, 1999), and dual-careers (Harvey, 1995, 1998; Harvey et al., 2009; Moeller et al., 2013). Yet, despite the progress in research on this important topic, and the fact that the familial challenges of international relocation remain a top reason for assignment refusal and assignment failure (Brookfield Global Relocation Services, 2014), including a growing body of anecdotal evidence suggesting that many expatriate marriages fail often at huge cost to organizations (Farrar, 2009; Nunan and Vittorio,2009; Sullivan et al., 2013;Swaak, 1995; Wilkinson and Singh, 2010), there is not one academic study yet published on expatriate divorce. Much like Pascoe suggests in the opening quote, the case may be that expatriate divorce is too much of a "taboo" subject where few researchers dare to venture. The current study contributes to the literature on expatriate families by being the first to empirically examine the causes and consequences of expatriate divorce...

The nature of expatriate marriage

Recent statistics show that 71 percent of expatriates are married and 47 percent of couples do so with their children (e.g. Brookfield Global Relocation Services, 2014). Yet international assignments can be inherently problematic for families leading to the widely held belief that stress is a central component of international relocation (e.g. Ammons et al., 1982; Anderzen and Arnetz, 1997; Arkin, 1993; Brown, 2008; Lynem, 2001; Moyle and Parkes, 1999; Munton, 1990; Sweatman, 1999; Takeuchi et al., 2007; Walton, 1990; Wilkinson and Singh, 2010). Undoubtedly, when marital breakdown occurs during international assignments, there are likely to be crossover effects in the family-to-work domain, and spillover effects between spouses and children (Lazarova et al., 2010). While the expatriate family bears the brunt of the emotional and psychological toll that an impending divorce may bring, often without access to adequate support mechanisms (e.g. legal counsel), the sponsoring organization where one or more spouses is employed is also at risk of being impacted in terms of providing unplanned HR, repatriation and legal support, and potential decreases in productivity for employees distracted by ongoing divorce proceedings. While these side effects are also common among non-divorcing families where high levels of family conflict or low-quality spouse-family relationships exist, I argue that, because expatriate divorce almost always involves separation and custody disputes across geographical boundaries, the legal act of engaging in divorce proceedings produces higher levels of stress and psychological trauma and results in more serious outcomes (e.g. bankruptcy, destitution, homelessness)

than most high-conflict/low-quality spouse-family relationship families would normally encounter.

In spite of these challenges, the majority of companies do not offer spouse/partner assistance support across a range of assignment types, including long-term, short-term, and permanent one-way moves, beyond only language and cross-cultural training (Brookfield Global Relocation Services, 2014; Dickmann, 2014). Of those that offer more, the most common support is a one-time cash allowance and the use of a specialist provider in addition to assistance with education/training and career-planning assistance. Notably, no study or survey in the literature provides evidence that the support offered to expatriate families extends beyond their cultural and career needs. These figures consequently paint a bleak picture of marital support for global employees.

Marital stress

While family stress is a major factor in international relocations, only three recent studies in the international HRM literature examine marital stress. Brown (2008), in a study of 152 expatriate couples, investigated the dominant sources of stress for employed expatriates and their accompanying partners, finding that insufficient time together and uncertainty about their future after the assignment were causes of stress for both spouses. However, whereas at-home spouses were more stressed by identity and isolation issues, only employed spouses were more stressed by strains on the relationship, suggesting significant crossover effects between home and work. In another study by McNulty (2012), in which 264 trailing spouses were surveyed over four years in relation to organizational support provided by their spouse's company, it was found that professional support to address the dual-career issue and social support to alleviate marital stress were perceived by the participants as having the greatest impact on identity re-construction and, in turn, their adjustment, yet both types of support were lacking. As one spouse in the study explained (p. 429): The breaking up of marriages is dealt with like an embarrassing individual failure and the more than 50% separations and divorces is simply ignored. The rest of these marriages is having affairs or uncontrolled eating, shopping, drinking, suicidal attacks, depression or drug abuse. After two different support groups I have seen it all. However, while McNulty's study was focussed on organizational support, female at-home spouses also blamed their husbands for contributing to marital stress, for example, where many felt their marital needs were trivialized because they were perceived by their spouses to be on holiday, having "a cook, a maid, and a driver and you get to do whatever you want at any time of the day" (p. 429)....

In a third study by Lazarova et al. (2015), based on qualitative data from a sample of 656 respondents (primarily trailing spouses), it was found that considerable marital tension is caused by the absence of expatriate working spouses due to excessive job demands, over-time at the office, and business travel. This leads to stay-at-home spouses feeling resentful, lonely, and anxious, particularly when these types of habits cause longer-term marital problems, as the authors illustrate (p. 20): A lack of trust in a marriage is a key factor in assignment failure, particularly when there is a change in the working culture for the employed spouse. Changes in some countries include "heavy drinking like in Korea and Japan, womanizing, or even second wives." There are also infidelity-related

problems arising from "things that happen when mom and the kids leave for the summer!" and the "availability of cheap local options!!" that can create longer-term problems for expatriate families. One respondent went so far as to suggest that "men end up having affairs and women end up being lonely." When families do struggle, family counseling is an option they would like to access. For example, in the above study, while nearly 90 percent of respondents indicated that training/support with regards to family/marriage counseling was "not applicable" to them, nearly 70 percent still said that relocation policies should include the funding of transition counseling or coaching for the family...

The nature of expatriate divorce

Living and working abroad can take a toll on marriages (see Brown, 2008; Sweatman, 1999). In a recent study, McNulty (2012) found that 6 percent of trailing spouses indicated that they were considering separating or divorcing because of the stress of relocating. In comparison, 99 percent rated "a strong and stable relationship" as the most important adjustment factor during an international assignment. The Telegraph claimed that 445 foreign couples living in Dubai ended their marriages in 2011, a 30 percent rise on 2009 (Hyslop, 2012), whereas Sweatman (1999) found among 67 married missionaries on their first assignment abroad that the quality of one's marriage either exacerbates stress leading to increased depression, or buffers stress leading to decreased depression. Lazarova et al. (2014) further found that the majority of respondents (92 percent, in their study of more than 650 expatriate family members) believe that relocation-related marital tension filters down to the family...

Marital problems among expatriates undoubtedly result from a divergence of priorities among couples, often as the number of assignments increases and as high-level careers advance (Lazarova et al., 2015; McNulty and Inkson, 2013).

Studies of expatriate divorce While it is true that "family concerns" and "spouse/partner's career" continue to dominate as the major reason for refusing to undertake an international assignment and "family concerns" remains a top reason for early return (Brookfield Global Relocation Services, 2014), there is no academic research examining divorce as one of the family issues that might arise for global employees, with only two exceptions stemming from industry literature. The first is by Canadian author Robin Pascoe (quoted above) whose book, A Moveable Marriage: Relocate Your Relationship Without Breaking It, brings expatriate marriage and divorce into the public domain and delves deeper. She found that trailing spouses are just as likely to be as unfaithful as their employed husbands, but for different reasons: whereas unfaithful men typically have the opportunity to stray "thrown at them" in the anonymity of business trips, unfaithful wives more often seek emotional support in new relationships because of their absent husbands (Pascoe, 2003). In a follow up study, it was similarly found that "marital breakdown" was reported by nearly 70 percent of expatriates and their spouses as the most important reason why relocations fail (see Lazarova et al., 2015; Lazarova and Pascoe, 2013). As Pascoe herself explains, drawing on the experiences of others as well as her own 20-something years as a married expatriate wife: The marital relationship, more valuable than any of your possessions, typically journeys in an unprotected fog of exhaustion, its principle guardians two irritable adults

sniping at each other over passports, trying to keep cranky children occupied in airport-bound taxis with mountains of baggage. Perched as the adults are on the precipice of frayed nerves, one good gust of wind (a minor argument over a flight time can do it) is enough to plunge them into a full-blown marital storm. This shouldn't come as a surprise (p. 7).

The second is by Anne Copeland at The Interchange Institute whose report "Voices from home: the personal and family side of international short-term assignments" examines the impact of unaccompanied international assignments on the lives of the families of the traveling employees. In her study of 68 at-home spouses of people who were on, or had recently been on, a STA or EBT, Copeland found that when organizations do not address additional financial costs (e.g. childcare) arising from the employed-spouse's absence, and when couples feel coerced into accepting short-term and EBT assignments, there are more negative outcomes for the families involved, including children with more behavior problems, and the at-home spouse being more depressed and more likely to consider divorce. These feelings can increase when the athome spouse is not living in their home-country and is unfamiliar with the resources and support networks that may be available to assist them in the host-country (Gardiner, 2005). In contrast, Copeland found that when both spouses feel that they are "in this together" (p. 30), the respondents have more positive feelings about their marriage. Other factors found to contribute to marital satisfaction for STAs and EBTs include when the traveling spouse does more housework when home, when levels of worry about safety (at home) are lower, when the fundamental marital relationship and way of parenting is unchanged, and when the at-home spouse realizes potential benefits arising from the assignment. Theoretical positioning of expatriate divorce Prior research on expatriation demonstrates that there are significant family system effects during expatriation (Caligiuri et al., 1998; Takeuchi et al., 2002). These include crossover effects between married couples that can influence the attitudes and behaviors of each (Lazarova et al., 2010; Shaffer et al., 2001), and in turn, cause problems during an assignment. One such trait among married expatriate couples that may have serious crossover effects, potentially leading to divorce, is polarization behavior.

Polarization Processes Polarization Processes (PP) is a construct from the literature on marriage and is defined as behaviors, cognitions, and emotions that spouses use to exacerbate marital distress preceding a divorce, wherein individual differences become more pronounced, conflict is more entrenched, and there is a general lack of tolerance toward each other (Baucam and Atkins, 2013; Jacobson and Christensen, 1996; Wheeler et al., 2001). The outcome of PP is dysfunctional relating between spouses, an inability to work together to create and preserve intimacy, and lack of flexibility to respond to and resolve conflict. As PP is a cyclical and escalating process, it typically results in one or both spouses "feeling increasingly hopeless, separate, and deeply dissatisfied" (Baucam and Atkins, 2013, p. 150). Importantly, PP is a dynamic process that can either magnify marital distress when spouses engage in more extreme forms of behavior over time or it can quell disharmony when spouses engage in accommodation behaviors (pro-social responses to objectionable behavior from one's partner) as a means of avoiding polarization.

PP is a powerful theory upon which to explore expatriate divorce for three reasons. First, it represents a narrowly focussed conceptualization that describes a particular set of marital distress-producing processes and conflict-producing behaviors, including their related risk factors which, in this case, can result in divorce (Baucam and Atkins, 2013). PP is therefore a theory that can help to determine expatriate divorce antecedents. Furthermore, PP illustrates that it is not simply the existence of differences between spouses that causes relationship stress during expatriation, but rather how spouses react and respond to resolving their differences that impacts on the polarization behavior each chooses to engage in and whether and how these behaviors ultimately end in divorce (Baucam et al., 2005).

Second, because PP is typically theme based wherein one or both partners attempt to change the other around a particular issue (Wheeler et al., 2001), the theory explains quite well the change in dynamics that unfold during expatriation for married couples. For example, expatriation often causes changes for one or both partners in relation to cultural values (monogamy vs infidelity), family values (conflict over the division of labor, e.g. time with children vs time at work/business travel), financial spending habits as a result of a change in lifestyle (saving money vs flashy spending), and/or social activities (e.g. alcohol consumption and where to holiday; see McNulty, 2012). These differences can emerge as incompatibilities that may not be discovered for some time or they may be recognized but the impact is underestimated until it is potentially too late. The typical outcome of the PP is "the trap" wherein one or both partners feel helpless about the situation and futile to change it (Wheeler et al., 2001). In instances where behaviors become too offensive, one partner invests considerable effort in avoiding or escaping from the relationship, either through unhealthy psychological or emotional distractions (extra-marital affairs, shopping) or by physically leaving altogether (divorce).

Lastly, in their study of 182 couples, Eldridge et al. (2007) contend that polarizing behaviors can be influenced by gender, with wife-demand/husband-withdraw behavior being greater than husband-demand/wife-withdraw patterns. For expatriates, this suggests that when wives become intolerant of their husbands behavior and attempt to change it (i.e. demand), husbands increase their polarizing behavior (i.e. withdraw) in response to holding the burden for change. In the opposite scenario wives are proposed to engage in polarizing behaviors less often. While this finding may be explained by the disproportionate number of wives undertaking international assignments as the trailing spouse (compared to husbands) for whom relationship problems and distress are often more keenly felt due to isolation, vulnerability, and loneliness, and whose husbands are able to simultaneously use the "excuse" of excessive work demands to avoid dealing with issues that are raised by their wives (see Lazarova et al., 2015; McNulty, 2012), it must also be noted that international assignments take couples away from their "normal" (home-country based) support networks. Thus, an alternative explanation for husband's withdrawal patterns may be their limited access to, and knowledge of, solution-focussed couple activities (e.g. therapy) in the host-location. Importantly, gender polarity may explain among expatriate couples whose behavior (husband or wife) is "blamed" for the divorce, whether it is the husband or wife that files for divorce, and which of the partners

might agree to speak openly about their divorce experiences in a study such as this (e.g. it is worth noting that 97 percent of the participants in this study are wives).

Risk factors associated with expatriate divorce

One of the risk factors associated with PP includes that the forces that initially bring spouses together (e.g. going abroad, a desire for personal adventure) can also end up tearing them apart (e.g. living abroad, lack of independence; see Sweatman, 1999). Thus, the tendency to simplify expatriate marital stress as arising from one-off events that precipitate thoughts of separation and divorce (e.g. an extra-marital affair) can be inaccurate. Additionally, PP takes into account expatriates' interpersonal variables across many levels of family ties and other relationships that represent risk factors impacting on marital functioning; this includes the absence or presence of children and/or step-children; family role models in the form of parents and extended relatives in the home-country; and local citizens (particularly women in Asia and Africa) that are attracted to foreigners. These variables may be mediated by discrepancies in shared values and poor conflict management skills of the expatriate couple (Baucam and Atkins, 2013).

A third set of risk factors relates specifically to the context in which expatriation unfolds for married couples, namely the foreign environment. Here, it is common for one spouse to "hold all the cards" in terms of rights of residency, work permit, sponsored employment, housing, bank accounts, and an in-built professional and social support network, with the trailing spouse having fewer, if any, of these entitlements and benefits (see Barling and MacEwan, 1992; Lazarova et al., 2015; McNulty, 2012). This then creates a situation where the rewards vs costs of staying in an unhealthy relationship while abroad may be mitigated by the power each spouse perceives they have to act as an "agent of change" to leave the relationship without incurring further hardship (i.e. legal recourse via the courts system re loss of assets or custody of children by leaving the host-country; Eldridge et al., 2007).

While the theoretical rationale behind divorce is one where "leaving a relationship with a surplus of benefits would only be considered when there are feasible and more attractive life choice alternatives" (Demo and Buehler, 2013, p. 267), this may not always be the case for expatriates. Rather, because of the power imbalance that expatriation frequently creates for expatriate couples (where one spouse is often required to give up their career, and along with it their earning power and independence; see Tichenor, 1999), the decision to leave a marriage while abroad becomes not only one of costs vs benefits, but also of choosing between the lesser of two evils – incurring financial hardship and/or losing custody of one's children vs tolerating an unhealthy marriage. Access to social support, financial resources, and legal advice for one or both spouses while abroad may therefore impact on the decision to divorce more than any other International relocation stress.

A fourth risk factor related to the foreign environment in which expatriates live is that expatriation is a uniquely, and inherently, stressful way of life which, in many cases, cannot be prevented. International relocation stress is defined as:

> *[…] a psychological state that develops when an individual faces a situation that taxes or exceeds internal or external resources available to deal with that situation (Lazarus, 1966). There are three major components of stress: uncertainty concerning outcomes, lack of control over situations, and ambiguity concerning expectations. By their very nature, overseas assignments are characterized by uncertainty, lack of control, and ambiguity (Wilkinson and Singh, 2010, p. 169). Consider, for example, that of the 40 most stressful life events, at least half can be directly or indirectly associated with the international relocation of a family, including a change in financial status (ranked 15th), a change or new line of work (17th), wife starting or stopping work (25th), and changes in residence (31st), school (32nd) and social activities (34th; Holmes and Rahe, 1967).*
>
> *Consider further that, even without engaging in international relocation, divorce and marital separation are ranked second and third as stressful life events, as is marital reconciliation (ninth). Beyond the stress of one-off and unexpected events during an assignment, such as the death of a child or a close relative in the home-country, fears of kidnapping in the host-country, or job loss while abroad, expatriates typically live with a level of daily stress to which they have to become accustomed in order to live abroad (e.g. stressors related to cultural, social, legal, religious, and political adaptation, among others). As noted above, the uncertainty, lack of control, and ambiguity that characterizes international relocation represents a level of stress that can easily shape marital interactions that, over time, can lead to varying degrees of marital quality. For example, some studies (e.g. Pearlin and Johnson, 1977; Sweatman, 1999) show that marriage can serve to protect against the distress of everyday life, including hardships, and to lessen the threat of external events, whereas other studies show that when people experience too much stress there can be psychological (mental health) or psychophysiological consequences (e.g. addiction, illness; McNulty, 2012; Patterson, 1988; Wilkinson and Singh, 2010) causing a decline in marital quality. Thus, the degree to which expatriate couples are able to develop a strong "risk and resilience" framework to enhance marital quality can explain why some couples fare better than others in coping with international relocation stress (see Hetherington, 1999; Patterson, 2002). Furthermore, such an approach involves more attention on the context within which expatriation unfolds as a way of better understanding variations in expatriate couples' resilience...*

As demonstrated in Dr. McNulty's research, expatriated women are even more dependent upon their spouses for emotional and financial support than non-migratory women, but are in a catch-22 situation upon their relocation abroad—upon arrival in the new (host) country it can be, and is being, "declared" country of habitual residence, and therefore, the country of jurisdiction in case of divorce. *Trailing spouses* are in the same position as the *traditional* wife; dependent upon her husband, for not only income and all means of subsistence, but also her visa, with which she may live and/or work in the host country. In most cases, these millions of globally migratory women risk expulsion within 60-90 days after a divorce is pronounced in the host-country. So if host-country family courts award custody of minor children, then women are obligated to leave the host-country and their children.

Mothers on Trial: The Battle for Children and Custody by Phyllis Chesler (Ch. 17)

This situation becomes even more dire for victims of domestic abuse, as abusers are increasingly utilizing the discriminatory norms within the courts to re-victimize victims. Unfortunately, as explained by Phyllis Chesler in *Mothers on Trial: The Battle for Children and Custody*,

> *The International Custody Situation*
>
> *I am worried that men are said to be the children's owner, yet I spend nine months carrying the baby in my stomach, and then the next twenty to thirty years looking after her or him. A woman has no property at home and she has no children. When she gets divorced, she goes away naked.*
>
> *Anonymous, Zimbabwe*
>
> *There was no court of appeal. Mother was sent away for labor reform. My father disassociated himself from Mother and eventually "denounce" her. When she came to visit us he would scream: "The children in this house need a Revolutionary mother, not a Rightist mother." The court awarded custody of the children to the father. So perhaps inevitably, over the years, I came to resent my mother for making life so miserable. I began to believe she really had done something wrong. My father and teachers said so, and my classmates hated me for her supposed crimes. At last I no longer wished to visit her despite my loneliness, and when I saw her at a distance I didn't even call out to her. I cut her out of my life just as I had been told to do, and became solitary and self-reliant.*
>
> *Liang Heng, China*
>
> *Early in 1980 the wife of a UN diplomat requested an emergency appointment with me.*
> *"My freedom and possibly my life are being threatened."*
> *"Have you contacted the police or told your husband?" I asked*
> *"My husband is the one who is threatening me," she said*
> *May arrived at my office that evening. She told me the following:*
>
> *I was born into a well-known Carribean family. My husband and I met in Europe when we both were in school. We married upon graduation and moved to my mother-in-law's home in Africa. I rarely saw my husband after that except at large family and public events. My mother-in-law was very domineering. She did not permit me to work. I gave birth to three children in six years.*
>
> *When my husband's government appointed him to the United Nations, I was overjoyed. My husband had a good salary and an expense account. He provided for his family well. He employed many servants. He also bought many homes and, with the help of friends, had a substantial investment portfolio. He kept everything in his name only. Whenever I tried to talk to him about this, he would stare at me and ask whether I or my children were hungry or without clothing. Then he would leave the room.*
>
> *My husband traveled all the time. Over the years he began to drink and became something of a womanizer. He had two children with two different women. He could have married either of them but didn't—because he was a "modern" man. But he did expect me to accept these children into my home without rancor and graciously. Whenever I*

suggested a separation or divorce, he would stare at me and say "I can't allow you to desert my household. If you force the issue, I will have you declared mentally incompetent and put away. You will never see your children again."

Who would help me if I forced the issue? My husband is a tribal chief. Would his tribe or its laws find me entitled to custody and a decent settlement if I were the one who wanted the divorce? Would the laws of my own country have any power in this situation? Could I turn to the International Court in The Hague or to the United Nations itself? My own father said he couldn't help me. He said I could always return to him—but only as I'd left him, without my children.

If I fled my marriage anyway, what would happen to my children? My husband might punish them for my desertion. He'd treat them as the offspring of an immoral mother. He'd send them back to his family in Africa. He might never allow me to see them.

Therefore, I never left. However, a year ago, when our youngest turned fifteen, I obtained my first real job since completing graduate school. My husband has been threatening t disinherit our eldest son and to have me declared mentally incompetent if I don't quit and return to running the household. What should I do? Can my husband really have me declared mentally incompetent when it's not true? Should I hire a lawyer or simply stop working? Does anyone specialize in persuading a husband to allow his wife to work?

This chapter is not based on studies and statistics, since they do not exist. It is a passionate survey of the custodial status of women from twenty-nine countries around the globe, countries in Europe, the Middle East, Asia, Africa, and South America. It is based on formal and informal interviews. It is also shaped by my reading, my travels, my work at the United Nations, and conferences that I've attended, coordinated, or about which I've read. It now contains some recent cases.

My questions in this chapter are, quite simply, the following: Is there any place on earth in which mothers have as many rights as they have obligations, in which mothers are automatically entitled to child custody or tend to obtain it even when a father of the state contests it? Is there any place on earth in which fathers do not abandon their families or in which fathers are forced to support their children, even against their will?

EUROPE

United Kingdom

According to barrister Alec Samuels, the majority of British fathers traditionally did not want (or did not think they could obtain) custody of children.

The mother usually wins because the father does not contest the application, contests only halfheartedly, or is unable to provide for the care and attention of the child, especially during the day when he is at work. In other words, the mother wins on merit and not by reason of prejudice or presumption. Even where the mother does gain

custody, she only gains day-to-day looking after. Unresolved disputes over major matters, such as religion or education, may still be taken by a father to the court for decision.

When fathers do contest custody, they do so by accusing mothers either of sexual or "uppity" behavior or my kidnapping the children. Dr. Martin Richards has noted that

> *what seems to be a growing problem [in the United Kingdom] is the kidnapping of children and the taking of them overseas. Usually, but not always, the kidnapper is, of course, the father. The major problem is that very few, if any, countries will recognize the orders made in British courts so that the mother has to start afresh in the new country—assuming, of course, that she is able to trace the children. Also, British embassises have been very reluctant to provide help for parents trying to retrieve children... The major significant change in recent years [in British custody] is growing belief that joint [not to be confused with split] custody should be the normative arrangement.*

In the past, the British state systematically challenged the custodial rights of poor, single, dark-skinned, immigrant, and lesbian mothers. According to Norma Steele, many such mothers traditionally faced state-imposed poverty and separation from their children.

...At the appeal, Lord Justice Thorpe said it was the third time recently that the court had upheld properly reasoned decisions in favour of fathers. Miranda Fisher, of London solicitors Charles Russell, said later that the activities of groups such as Fathers 4 Justic had tipped the balance—and courts were taking a tougher line on partners who denied contact between their children and ex-partners...

France

Puissance paternelle (fathers' rights) has dominated the legal codes of northwestern Europe. Mothers could retain child custody under paternal guidance; and only if husbands and the state judged them to be "moral." According to law professor Christopher L. Blakesley, French law has never expressly articulated a "maternal preference." In both France and Holland, domestic legislation emphasizes paternal rights and maternal responsibilities. Legal formulations are ambiguous, but clearly designed to favor a patriarchal system in terms of inheritance, ownership of names, etc. European divorce procedures are terrible. In many cases, the children are assigned to the 'care' of the mother, but it is the father who is invested with the authority and power to decide matters pertaining to the children's education and future..

Greece

According to Margaret Papandreou, former president of the Greek Women's Union,

> *Until 1982, all authority and decisions involving the family resided in the husband; he could decide where the family would live, how the children would be*

brought up, and whether his wife would work or even take the children out of the country. Strictly speaking, a man could file for divorce on grounds that his wife was a poor house-keeper. Wives were responsible for the physical care of the hose, and physical care of the children. In the case of divorce, a boy child of ten could be taken by the father, and often her could have the girl children too, if her desired. Naturally, the attitudes that have to do with the man's position and role in the family do not automatically change when written into law.

Italy

According to my Milanese informant, Virginia Visani,

> *Italy is a country with strong patriarchal attitudes about the family. Maternity is still considered a woman's unique destiny and her most important function. It is understood that children under seven need to be cared by their mother or another female relative, such as the grandmother. Children are assigned to the father only in exceptional case—that is, in case of the mother's illness, immoral behavior. A mother might also be deemed "unfit" by a judge if she works or does not want to take traditional care of her children. Children over fourteen are often allowed to decide whom they want to live with. From time to time a father claims custody or visitation as his legal or natural "right" or kidnap his child*

A remarried father kidnapped his ten-year-old son twice. The father claimed he had married a "housewife" who could stay at home with the boy. He deemed her a better mother than his ex-wife because the latter had worked outside the home for three years since their divorce.

Alma is a sophisticated career woman. She is also a traditional Italian Catholic mother. After fifteen years of marriage Alma's husband left her for a woman half his age. Alma is a sophisticated career woman. She is also a traditional Italian Catholic mother. After fifteen years of marriage Alma's husband left her for a woman half his age. Alma immediately agreed to joint custody as the "progressive" thing to do.

> *I thought joint custody was the right thing. He was their father. He helped quite a lot with their upbringing. He had a right to remain close to them. I also thought I could rebuild my life if I had some time alone. I had the children during the week. He had them from Thursday to Sunday night. His girlfriend was only ten years older than our eldest child. They went to pop concerts and took skiing vacations together.*
>
> *My children didn't lose "family life." Only I did. I grew more and more depressed. My ex-husband condemned me as too old-fashioned. My children all agreed with him. So did our friends. I became more isolate than ever. I had to watch what I said. If I was too angry or too depressed my children would yell at me. Even though I'm educated and have a profession, at heart I'm a good Catholic girl still in love with my husband. We were both forty when we*

separated. At forty, my mother was already a grandmother. I tried to date, but I only felt ridiculous.

I have lost everything. I am too shy and too sad to start over again. Nature is cruel to women. I can't have any more children. I always thought that when our children left home, I'd still have my husband—and then grandchildren. A career, even a lover can't replace a family life for me.

Sweden
According to Cecilia Onfelt, and advocate for battered women,

Custody battles are in the air in Sweden. Men almost always get normal visiting rights even if they are convicted wife beaters or child abusers. One particularly horrible case involved a "feminist" father who was sexually molesting his five-year-old daughter. Another case involved a father who had been threatening to murder the baby. The mother fought like a tiger and refused him access to the baby. For this she was fined $300. The court decided that the man could see the baby but not alone. A young social assistant took the baby to the man's flat, went into the kitchen and left the man with the two-year-old in the bedroom. He stabbed the baby about twenty times, swiftly and quietly, without the social assistant noticing. When she came into the room the baby was already dead. The bailiffs still wen to collect the mother's fine even after the murder. I think people felt that was really a bit too much and the government stopped it all.

I discussed custody with a male colleague. Should fathers have access to children regardless of their behavior? His answer was: "If I put a quarter into a candy machine and get out a candy bar, is the candy bar mine, or is it the machine's?" His metaphor told me he thought women are machines for male use."

Denmark

The incidence or child abduction by unwed fathers in Denmark is so severe that a special legislative commission has been established to cope with the problem. Danish laws tend to favor mothers over unwed fathers. One out of every four children is born out of wedlock.

THE ARAB AND MUSLIM WORLDS

Bahrain

Fifty-four Muslim countries have not signed the Hague Convention, which requires the return of parentally kidnapped children when the other parent has been granted custody in their home country. In these countries, the custody of children is viewed as a male religious, tribal, and legal right.

Women who grow up in these countries know this, which is why many of them do not seek divorce and "accept" second and third wives into their homes. But western women are different.

Many traditional Arab men tend to marry those Western women who have been raised on romantic fairy tales, women who are vulnerable and trusting. The men routinely wine and dine them, treat them with great charm and every courtesy, and make outsize promises which the women unwisely believe. After they begin an affair or marry—usually after men get their green cards—everything changes, often overnight.

For example, in 2004 Mexican-born naturalized American citizen Maria married Mohammed, a college student and Bahraini national. Later that year, their daughter, Leyla, was born in Arizona. Mohammed paid no child support and spent little time with his new family. He spent most of his time back in Bahrain. In rout years, he visited only three times. In January 2009 Maria finally divorce him and received custody in Arizona.

However, in 2010, after suffering some major economic setbacks that included losing her job, Maria visited Mohammed in Bahrain. Apparently he had promised her that he would get her a good job, an apartment of her own, a car, and a cell phone that both she and Leyla would be part of a loving extended family.

He lied. He and his family, which now included a new and pregnant wife, were nice only that one time. When Maria returned, they were hostile and threatening. And Mohammed promptly filed for custody of Leyla in a Bahraini court and easily won visitation and a series of hearings.

But Maria already had custody of her daughter in an American court. Thus she tried to flee with her daughter. The two even managed to clear customs at the airport when an American embassy official told her to cross back to the other side, saying it was just a formality and they would soon be free to return to America. The American official was wrong. As soon as Maria re-entered Bahraini jurisdiction, Bahraini police seized her daughter.

The judge told me Leyla could not leave Bahrain because her father did not want her to leave," Maria said. "They told me, 'If you want to leave, you can leave. But the girl stays.' Obviously, I wasn't going to leave my baby."

With help from a tireless advocate, Maria's case caught the eye of one of her senators. In January 2010 he sent a letter to Bahraini ambassador Houde Erza Nonoo, urging her to "expeditiously resolve" the custody dispute and allow Maria and Leyla to return home.

The custody dispute has not been expeditiously resolved. Mohammed won visitation-custody of Leyla for three days a week. At first, Leyla resisted. Maria told me that Leyla is terrified of her father's family and even once hid under a coffee table when she saw some of her Bahraini relatives approaching. She said, "I don't want to see my father. He will take me so that I will never see you again."

Thus Maria went into hiding in Bahrain. When the police finally found her, they stormed into the house and dragged Leyla away.

Maria, shaken, told me, "When the police came, Leyla was afraid. I told her to be strong. She's only five and she's going through a very traumatic time. She was crying, saying, 'Mama, I can't sleep without you.' She didn't put on her sandals because she thought that if she wasn't wearing her sandals they couldn't take her. She hid in the bathroom so that no one would get her."

Maria's situation is grim. She also does not know whether it is safe for her to remain in the country. She has no money, no job, no financial resources, and no powerful relatives who can help her fight for her daughter. Her rights as an American citizen do not matter in Bahrain, nor does the fact than an American court has granted her custody of Leyla. Maria is traumatized, ashamed that her own naïve, "trusting nature" has potentially deprived her daughter of an American future.

"Leyla is not the same little girl she was when she arrived in Bahrain," Maria told a reporter. "She has crying spells. She misses home, she misses her (older) brother. That's where our home is in Arizona."

When last I spoke with Maria, she described a process of paternal brainwashing that was already fully under way after only three days. Although it took nearly three days to undo the hostility that Leyla expressed toward her mother for the first time ever, Maria remains optimistic that she can still retain her daughter's affection.

Sadly, she may not be thinking that she will have to face an "undoing" process each and every week, which will get harder and harder to do over time. Absent a miracle, Leyla's fate will be that of a servant to her father's family and a source of income when they arrange a marriage for her, possibly when she is a as young as twelve.

The odd thing is that at some point, Maria converted to Islam. She told me so in a whisper. One might think that as an American Muslim she might find support from American Muslim organizations. That has not happened as yet, nor has Maria received support from the American government. Only her Bahraini lawyer, who has represented her pro bono, rose to the level of a hero. He managed to get himself arrested, briefly when he tried to stop the police from taking Leyla.

Egypt

My respondent, Dr. Nawal El Saadawi, the prominent Arab feminist, author and physician, research the question of Egyptian custody for me. She wrote,

> *According to Egyptian law, it is the father only (and not the mother) who has the authority over his children, males and females, until they reach the age of twenty-one....*

Iran

According to Iranian dissident Dr. Reza Baraheni, domestic life in pre-Khomeini Iran was based on "absolute male dominance": "The children absolutely belonged to the father. He had the final say over what children can and can't do. Fathers were dictators over their children. Very traditional wives from good families could subtly influence their husbands. They could never oppose them."

Marva is a professor who has been in exile from Iran since 1981. I asked he about women's custodial status in post-Khomeini Iran. She said that "everyone is afraid. Everyone knows that they are only safe if they obey the Qur'an and public opinion. Iranian children have always belonged to the fathers and to their father's family. The husband of my close girlfriend died. They were both middle-class professionals. The paternal grandparents sued for custody of the two children. They charged my friend with being unfit because she wasn't a devout Moslem. She had many Western ideas. The grandparents won custody. Miraculously, my girlfriend still managed to escape with her life, her sanity, and her children.

With the further Islamification of Iran, it is doubtful that women's custodial rights have improved....

Algeria

According to Algerian feminist Nadine Claire, a divorced Algerian mother is "given" responsibility for boys until they are "nine or ten" and girls "until marriage."

Turkey

Naila Minai is the Turkish born author of Women in Islam. *She responded to my questions about custodial matters in this way:*

> *The sexual double standard in Turkey has always influenced the court's interpretation of immorality in custody litigation. Ex-wives have been dragged back into court by vindictive ex-husbands who happened to see them sitting with male friends in public restaurants. Under the secular government, courts are more consciously pro-feminist. I could not dig up one case where the courts are more consciously pro-feminist. I could not dig up one case where the courts decided to take the child away from the mother just because she dined in public with a male friend. But the point is that no man has ever been dragged to court for dining out with a woman friend.*

ASIA

China

Margery is a mother and engineer She escaped from communist China in the 1970s.

> *I was born in 1935. My father was a bourgeois capitalist. After the Revolution. I was sent to a special school. I married another engineer in good party standing. If married another engineer in good party standing. In 1963, I became the mother of twins. I began to quarrel with my husband and with his family. They all felt I wasn't obedient enough to them. My husband began to spread rumors about me, implying I wasn't obedient to the Revolution. I became very afraid. I could be relocated to another province. Maybe my capitalist origins could still be used against me. I fled the country. I have not seen my children since. I have no way of knowing whether they've ever received my letters.*
>
> *What could Margery have done to retain custody of or access to her children as their* mother. *Like all resources, they belonged to the Chinese state.*

Japan

According to feminist psychologist Dr. Kiyomi Kawano (who translated my first book, Women and Madness*, into Japanese).*

> *Few Japanese men want custody. Therefore, most divorces result in maternal custody. Men cannot raise children. They can't even take care of themselves. Japanese men tend to be "workaholic." They live in a culture where to be "hung up" on children is considered "sissy." A Japanese man doesn't want to be "Mr. Kramer" [or the film* Kramer vs. Kramer*]. He is suppose to "die out on the economic battlefield."*
>
> *One of my good friends got divorced about three years ago. She had a hard time winning custody of her children. She was lucky. She had the financial resources to keep fighting her husband for two years. There was no mother-in-law ready to take over. Most divorce mothers face severe psychological and economic problems unless they come from very wealthy and modern families. This is the reason that so many women choose to suffer in abusive marriages rather than to leave them. Needless to say, this allows men to remain arrogant.*

Keiko, a twenty-five-year-old kindergarten teacher, was raped by the father of one of her pupils. He threatened to expose their sexual "relationship" if she didn't become his "mistress." Keiko became pregnant. The man tried to force her to abort. A week after giving birth, Keiko asked this man to acknowledge paternity legally. His response was to have the infant kidnapped.

Eventually Keiko found her kidnapped son. He had already been adopted with Keiko's forged consent. Keiko sued for legal custody. She lost her suit in 1071. The court noted that "Keiko was unmarried," that she "kept company with the father of a pupil," and that she had had the child "without any solid plan" and therefore probably did not have

"true love for the child." In 1975 Keiko kidnapped her then five-year-old son. She also obtained legal custody, but only after she paid "consolation money" to her rapist's legal wife.

Korea

According to my respondent Grace Liu-Volckhausen

> *All countries with a Confucian tradition have a strong tradition of paternal rights and authority. Children carry their fathers' names and belong to them. In 1960, my mother fought for women's inheritance rights in Korea. The Chief Justice met with a women's delegation. He said: "How can a field have any rights? Only the farmer, only seed has rights." Korean women often have no [first] names. They are known as the "number-one daughter of Mr. So-and-So." Many Asian women will describe themselves as "the lady who lives next to the post office," or "the lady who is the mother of Mr. Ahn's number-one son."*

Nepal

According to Nepal's national code, "A mother has no right upon the issues she has given birth to. The law is based on the Hindu concept of women as jaya*, or one who bears children for her husband. The mother simply gives birth to children for her husband."*

AFRICA

Ethiopia

According to Daniel Haile, parental rights in Ethiopia are customarily exercised by the father, by his appointed guardian, or by the other men in his family. Unless the mother is considered "unfit," she customarily retains custody of children under five.

Although the code says that this is the best interests of the children, there is reason to believe that this practice is really based upon the proposition that it is the mother's duty to raise young children who, when they grow up, become productive members of their father's homestead or business, as the case may be.

> *Haile also notes that in Ethiopia*
>
> > *In any marriage, parental rights are exercised by the father. Next, the person appointed guardian by the father, next the eldest brother, then the grandfather, the paternal uncle and then the paternal nephew. Similarly, pursuant to the Sharia rules, the father is the guardian, [and in] order of priority: the father's executor. However, it must be emphasized that even though both the Fetha Negast (the Ethiopian civil codes) and the Sharia do not recognize the mother as legal guardian, they do not prohibit her being a guardian by appointment.*

Normally, unless there are serious grounds for deciding otherwise, the children are entrusted to their mother up to the age of five years and to the father over the age of five. The father is obliged to assist the mother by providing assistance to the children under her custody, since raising children is more or less a full-time job. The end result of divorce is the transformation of the woman from a relatively unequal partner in the marriage to having full responsibility for caring for the children and no assistance from the children's father.

Nigeria

According to Dr. J. O. Debo Akande, "customary" Nigerian law grants custody to the father or, upon his death, to his family. Nursing mothers are entitled to temporary custody, and in some areas children are entitled to a woman's *care until they are seven. However "a woman's care is not necessarily the mother's care and if the father is able to make provision to have a woman look after the child he may take the child... A father could defeat the mother's right to appoint has a better right to custody than the mother... The court [can] award the custody of an infant under seven to the mother, provided that she has not committed adultery [or is] considered absolutely unfit....*

South Africa

In many parts of Southern Africa, including Lesotho, Mozambique, Tanzania, Zambia, and Zimbabwe, once a husband has paid lobolo *(bride price), he owns all the children his wife produces and is entitled to keep them after divorce. In Mozambique, "child custody is determined not by what is best for the child, but according to which lineage he is considered to belong. Muslim children always belong to the father; in matrilineal societies their guardian is the mother's brother, and in patrilineal groups, once the lobolo has been paid, they belong to the father's lineage. Moreover, if the children go with their mother, for whatever reason, the father feels no responsibility to help support them.*

In 1975 women were allowed to initiate divorce for the first time in Mozambique's history. "People's tribunals" were established to arbitrate issues of divorce, marital property, and custody. Women's families still discouraged divorce, as the lobolo *would have to be returned. Courts tried to convince fathers that children should be allowed to remain with their mothers and that fathers should become responsible for providing food for their children.*

Fathers do not accept their responsibility to provide food for their families; they expect this to come from the plots on which their wives grow cereals and vegetables. Many men in southern Mozambique who migrate either to the South African mines or to the urban or rural employment centers in Mozambique in search of paid employment use their wages to pay taxes and buy consumer goods, but they never send their wives money for food. If these husbands don't comprehend their responsibility to feed their families,

serious problems can arise, especially in urban areas, where many women no longer have plots of land to cultivate.

SOUTH AMERICA

Argentina

According to Argentinian novelist Luisa Valenzuela,

> Patria potestad—*or fathers' rights, embodied by individual men or by the state—completely governs family life in Argentina. A mother I know was accused of being against the government—by her husband. She had to leave the country immediately. Her husband wouldn't let the children go. He didn't let the children see their mother's relatives either. For about ten years he kept moving them from school to school. Luckily, his attempts to turn them against my friend were unsuccessful. She was finally able to struggle them out of the country. I have another friend who couldn't get her children out of Argentina for ten years, even to a visit, because her husband wouldn't allow it. She saw her children only after they turned eighteen.*

Brazil

According to sociologist Dr. Heleith I. B. Saffieti, Brazilian mothers considered very "important" for children only if they are "moral" or if the father doesn't want the children.

> *Most men don't fight for custody. If the mother behaved badly, custody might to the grandparents. Generally, women keep children. This is more often a burden than a right since fathers seldom pay child support. More and more, men are abandoning their families. Fathers also are away all day working, or they're drunk, or they don't want to take on family responsibilities. Many women tolerate violence from men because it is very hard for a mother to feed her children alone...*

Peru

According to Nancy Greene,

> *An American mother divorced her Peruvian husband and attempted to take her nine-year-old daughter back to the United States with her. The American mother returned to the States and attempted to get ISS [International Social Security] to help her. She obtained a custody order in the United States and returned to Peru to reclaim her child. The father had remarried, obtained his own Peruvian custody order, and sent his daughter away to boarding school.*
>
> *The American mother returned to Peru, found her daughter and physically took her away. The father managed to pay off some Peruvian border officials, who*

restrained the mother and put her in jail for several days. The mother is desperate to have her daughter. The father won't allow it. In Peru, that is his right. It's not as though the father even sees his child. He just wants to make sure that the mother doesn't have her. The Peruvian courts will back him all the way.

OCEANIA
Australia

According to Maureen, an Australian businesswoman now living in Europe,

> *In the mid-1970s, my children were brainwashed against me because I had a career. My working was help up to them as proof that I didn't love them. My refusal to be tied down in a traditional way to motherhood or marriage caused me endless suffering. My own family turned against me, once it was clear that I was not willing to fight for custody if it meant losing my job, or if it meant winning and having to be a traditional mother. No one allowed me to mother in my way. No one encouraged or supported me in my fight for liberal visitation. No one believed that I really loved my kids.*

New Zealand

Lawyer Catherine Mallon traced the history of custody in New Zealand. She wrote,

> *The courts have made it clear that the presumption [of the child's best interests being served by the mother] is not in any sense a rule of law and is liable to be displaced by other considerations in the child's best interests. The law has never recognized the mother principle as having the status of a rule of law. It is a factor of importance which varies from case to case. The courts over the years have consistently taken the view that where all other considerations are equal, it is in the best interests of growing boys that they should be in the care of their father.*

Mallon also notes that the courts do not consider it "in the child's best interest for custody to be given to the mother where her relationship with the child is destructive, where she is significantly mentally ill, or where someone else has replaced her in the child's life as the established mother-figure."

CONCLUSION

As we have just seen, once a mother has been custodially challenged, she is immediately at risk—anywhere in the world. In most non-Western mother may be terrified that such laws exercised against her motherhood. However, when and if they are, neither she nor her children necessarily consider her to blame.

In the West, children are presumably never removed from "fit" mothers—or never automatically *removed. First, there is a trial, in which every mother is presumed guilty*

until proven innocent. In the West, when a mother lose custody, she is allowed to blame herself. The governments of Western developed countries do economically subsidize married, abandoned, divorced, widowed, and unwed mothers and their children—but very inadequately.

This chapter surveyed the paternal right to child custody on every continent in twenty-nine countries. In the countries surveyed, most fathers were legally, religiously, and customarily entitled to custody and to other paternal rights without having to fulfill reciprocal paternal obligations.

Just as fathers were entitled to rights without reciprocal obligations, mothers were obligated to care for and support their children without any reciprocal rights. Mothers around the globe were not automatically entitled to custody of their children by law or custom or when it was contested by individual fathers or the state. No mother could count on obtaining physical or legal custody, even of a paternally kidnapped child, in her country of origin.

In these countries, women had few rights as individuals and no rights as mother to protect them from the rights that men have over women, that husbands have over their wives, that fathers have other mothers, and that states have over citizens. In general, mothers everywhere are at the mercy of legalized father right—whether that right is embodied by a legal or genetic father or by the state, tribe, clan, or paternal family acting as a surrogate father.

Domestic Violence and The Hague Convention on International Child Abduction

As Chesler demonstrates above, discrimination against women within family courts is a truly global phenomenon—with family courts around the world all following the same socio-political trends as seen in the USA within the past 50 years. As seen, expatriated women are exposed to the same discriminatory norms as the local-nationals, on top of discrimination against them as foreigners. Victims of domestic abuse are particularly exposed to the negative effects of intersectional discrimination under The Hague Convention on International Child Abduction (1980). This treaty, without an accompanying *reformation* within family courts (and instead a strengthening of patriarchal rights within these courts in the past 30 years) has left victims of domestic abuse particularly defenseless—and are increasing being incarcerated in their efforts to protect themselves as well as their children.

The Hague Convention Domestic Violence Project

http://gspp.berkeley.edu/global/the-hague-domestic-violence-project

The Hague Convention on the Civil Aspects of International Child Abduction
The Hague Convention on the Civil Aspects of International Child Abduction was completed in October 1980 and put into effect in the US through passage in 1988 of the International Child Abduction Remedies Act (ICARA). The Hague Convention establishes international law for handling cases in which children are abducted from one country to another. Member states are expected to help quickly return abducted children to their countries of "habitual residence." It is in the child's country of habitual residence where

other issues such as custody are expected to be resolved by local criminal justice system (Hilton, 1997).

Exceptions to the Required Return of the Child
The Hague Convention acknowledges several exceptions to the otherwise mandatory return of the child to his or her country of habitual residence: more than a year has passed since the child had moved from his original habitual residence; the left behind parent acquiesced or consented to the child's removal; a forced return would put the child in grave risk; or the return would go against international standards for protecting human rights and fundamental freedoms. It is the grave risk defense under Article 13(b) of the Hague Convention on which our team focuses our efforts.

Domestic Violence Is Not Yet Seen as a Grave Risk to the Child
Article 13(b) of the Hague Convention states, "A court need not return a child if the return would pose a grave risk … that … return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation." There is significant social science evidence to suggest that violence against the mother will expose a child to the possibility of psychological and/or physical harm (see Edleson, 1999). Domestic civil and criminal law often takes this exposure into account, but in Hague Convention cases there is a general reluctance to acknowledge this as an acceptable reason for not returning a child back to another country.

The Effects of Forcing a Return in Cases Involving Domestic Violence
Current training curricula for judges and lawyers on the Hague Convention equate violence against women to "a custody issue," and insist that it should be settled in the child's country of habitual residence (Hoff, 1997 and OJJDP, 2002). Yet, decisions taken under the Hague Convention may effectively determine child custody by requiring children to be returned to the "left behind parent," who may be a perpetrator of violence against the child's mother.

Also, mothers who fled to a safe haven are viewed perpetrators abduction under national and international laws. The forced return of the child often forces the mother to choose to return with her child at her own expense. This may put her and her child back in a violent situation without the support of social and criminal justice services.

EXECUTIVE SUMMARY
Mothers who flee with their children because of domestic violence may have few other options to ensure their safety and that of their children in the face of their partner's violence. Yet when their flight takes them across international boundaries, they become vulnerable to being legally treated as an "abducting" parent by the courts. This report focuses on the situations of women who experienced abuse in another country and came to the United States in an effort to protect themselves and their children, but who then faced civil actions in U.S. state or federal courts for child abduction under international legal agreements. We interviewed battered mothers around the world, their attorneys, their husbands' attorneys and examined published judicial decisions in cases involving the Hague Convention on the Civil Aspects of International Child Abduction where there

were also allegations of domestic violence by one parent against the other. The research team interviewed 22 mothers who responded to Hague petitions in U.S. courts, 23 attorneys representing both mothers and fathers in these cases and five specialists, such as expert witnesses. The research team also analyzed 47 published U.S. Hague Convention court decisions involving allegations of domestic violence.

Battered mothers who fled across borders to the U.S. to receive help from their families were often victims of life threatening violence, and their children were frequently directly or indirectly exposed to the father's violence. The women sought but received little help from foreign authorities or social service agencies and received little help from U.S. authorities once they came to the U.S. In fact, these mothers – most of whom were U.S. citizens – often faced U.S. courts that were unsympathetic to their safety concerns and subsequently sent their children back to the custody of the abusive fathers in the other country, creating potential serious risks for the children and mothers.

Summary of Key Findings

Below we summarize our key findings in seven areas. Chapter 11 includes a table that discusses the policy and practice implications for each of these findings.

1. Mothers and children often experienced severe violence from the left-behind fathers who filed Hague Convention petitions to have their children returned.

- *Most of the mothers in this study faced serious physical and sexual assaults, coupled with life threatening behaviors by their husbands that led these mothers to believe that their and/or their children's lives were in danger.*
- *The children in these homes were often also physically assaulted or exposed to extensive violence against their mothers resulting in reported profound effects on the children, consistent with a growing social science literature on child exposure to violence.*
- *The majority of mothers in this study voluntarily resided in the other country but a significant number of mothers (40%) reported their choice of residence was coerced, forced or the result of deception by their husbands, leading to questions about the intentions of parents when establishing a child's habitual residence.*
- *A number of women followed through on expected steps such as leaving their violent husbands and receiving custody of their children from the other country's courts, only to face continued violence and threats from their husbands when they remained in the other country.*
- *The seriousness of the domestic violence the mothers faced was further reinforced by the fact even those who succeeded in retaining their children in the U.S. faced continued threats and extensive fear from their former husbands, consistent with the social science literature on post-separation violence.*

2. Mothers were unable to access helpful resources in the other country, so they left with their children to seek safety and support of family members in the United States.

- *Most mothers reported multiple attempts to seek informal and formal help in the other country, prior to leaving the country, with little success and sometimes*

resulting in further reinforcement of their violent husbands' positions by the authorities.

- *The process of leaving to the U.S. was a difficult one for most women, some of whom planned their move and some of whom made the decision on short notice.*
- *In almost all cases, both for U.S. citizens abroad and for immigrant women, leaving the other country for the U.S. was a way to obtain the emotional and financial support of family members residing in this country.*

3. U.S. authorities and courts were not receptive to mothers' safety concerns.

- *The majority of women in this study had their children returned to the other country by U.S. courts, and most of the time this meant their children's return to a life with the mothers' violent husbands.*
- *The overwhelming social science evidence, developed over the last three decades since the Convention was established, indicates that children exposed to domestic violence are at risk of physical and psychological harm by living with a violent father. In only one of the mother's cases did a U.S. court explicitly recognize a child's exposure to domestic violence as potentially harmful to the child.*

4. Mothers and children faced great hardships after a Hague Convention decision.

- *Fathers used U.S. court Hague decisions to leverage their positions in custody cases upon return of their children to their habitual residence.*
- *Women and children faced high levels of hardship when they returned, with many women unable to work in the other country because of their immigration status.*
- *Almost half of the women and/or children who returned to the other country were victims of renewed violence or threats by the fathers on their return to the other country.*
- *Mothers reported that none of the court ordered or voluntary undertaking aimed at protecting them and/or their children upon return to the other country were implemented.*

5. Legal fees and representation were major barriers for women responding to Hague Convention petitions.

- *The cost of litigating a Hague Convention case was a major barrier to legal representation for mothers and one that greatly concerned attorneys in these cases. Mothers did not have access to the same sources of legal representation as did left-behind fathers.*
- *Fathers were more often were represented by attorneys in the U.S. Department of State's Attorney Network who were more likely to have access to larger firm resources. Fathers could receive additional U.S. government assistance in locating their child, travelling to the U.S. for court appearances and in preparation of their attorneys.*
- *Mothers were more often likely to locate an attorney on their own in a legal assistance agency or a small family law practice.*

6. Hague Convention decisions have not considered two decades of research on child exposure to domestic violence when deciding on grave risk.

- *Analyses of published judicial decisions reinforce both mothers' and attorneys' views that children exposed to extensive domestic violence by fathers against their mothers are seldom seen by U.S. courts as at grave risk of physical or psychological harm. The findings from mother interviews in this study and the extensive social science research on children's exposure to domestic violence are contrary to most of these published court rulings.*
- *Evidence of harm to children presented by attorneys through their briefs and through expert witness testimony, was a key factor in cases where grave risk was found.*

7. Safety for battered mothers and their children facing Hague petitions requires training for attorneys and judges on both domestic violence and the law surrounding Hague Convention cases.

- *Interviews with mothers and attorneys as well as an analysis of judicial rulings in published cases clearly indicates the need for greater awareness among and training of attorneys and judges in three primary areas:*
    1) *the meaning of all Articles in the Convention, including exceptions;*
    2) *the social science literature on domestic violence and the effects of child exposure to abuse in the family; and*
    3) *the experiences of mothers and children both before they leave to the U.S. and then after Hague case decisions are made whether they remain in the U.S. or return to the other country.*

U.S. Judicial Implementation of the Hague Convention in Cases Alleging Domestic Violence by William M. Vesneski, Taryn Lindhorst, and Jeffrey L. Edleson

ABSTRACT
This qualitative study examined U.S. legal cases where battered mothers living abroad fled with their children to the United States. These women subsequently faced child abduction lawsuits brought by their batterer. The cases are governed by the Convention on Civil Aspects of International Child Abduction (the Hague Convention) which was ratified by the U.S. in 1988. Using content analysis, the study analyzed 47 published U.S. state and federal judicial opinions involving the Convention and allegations of domestic violence. It finds that U.S. courts are reluctant to employ Convention provisions that could prevent children from being returned to their mother's batterer.jfcj_1058 1..21

INTRODUCTION
Transnational family relationships have become more common in the past thirty years. For abused women with children, ending these relationships is exceedingly complicated. Women with abusive partners often turn to family members for assistance in coping with abuse and repairing their lives (Goodkind, Gillum, Bybee, & Sullivan, 2003; Rose, Campbell, & Kub, 2000). However, when turning to family means leaving one nation for another, international treaties may determine children's placement and which courts decide it.

This article focuses on battered mothers and children who enter the United States from another country to seek safety, but who then face child abduction lawsuits filed by their abuser. These lawsuits are brought pursuant to the Convention on the Civil Aspects of International Child Abduction (hereafter referred to as the "Hague Convention") (Hague Conference on Private International Law [HCPIL], 2010). In this article we describe and present findings from a study that analyzed 47 published U.S. state and federal appellate judicial opinions. These opinions were written to resolve Hague Convention cases among families where domestic violence is alleged. The first section of the article is a brief overview of the Convention, its history, and policy goals. Second, we provide details about the opinions in the study sample and we describe the two methods (descriptive and content analyses) that were used to complete the research. Third, we present the results of our work. Key among these is the identification of five factors that courts look to when determining whether the Hague Convention's exceptions apply to a case involving domestic violence allegations. We also show that domestic violence, even in extreme instances, does not necessarily prevent application of the Convention and children's possible return to their mother's abuser. Fourth, we discuss the significance of the study's results in light of current social science research and recommended family law practice. In the fifth and final section, we offer suggestions for further action...

THE HAGUE CONVENTION

The Hague Convention was finalized in 1980 and has since been adopted by 82 countries. In July 1988, the United States Congress implemented the Hague Convention by enacting the International Child Abduction Remedies Act ([ICARA] 42 U.S.C.A. § 11603). The Hague Convention defines child abduction as the removal of children in violation of another parent's custody rights, or the retention of children in a country other than their "habitual residence" (HCPIL, 2010). When children are abducted, the Convention requires their prompt return to the habitual residence (Hague Convention, Article 1). Although not defined in the Convention, habitual residence is generally understood to mean the country where children have usually resided.1

In general, the Convention assumes that some parents may abduct their children and move them from one country to another in order to obtain a more favorable custody decision, a tactic referred to as "forum shopping." Discussions during the drafting of the Convention centered on the significant negative impact of parental abduction on children's development and well-being. Concern over this negative impact led to the Convention's conclusion that a prompt return of children to their habitual residence facilitates better outcomes than permitting child abduction to pass unaddressed (Perez-Vera, 1981). Parents who bring their children into the United States without the other parent's permission can be taken to civil court under the Convention. The parent bringing such a lawsuit is referred to as "the petitioner" and the parent defending against the lawsuit is "the respondent."

The Hague Convention acknowledges that there may be a limited number of circumstances in which children should not be returned to the habitual residence. Consequently, the respondent parent can argue that one or more of five exceptions (which are discussed in greater depth in the Results section of this article) prevent the

children's return to the habitual residence and, potentially, to the abusive parent. These five exceptions apply when: (1) children will face a grave risk of physical or psychological harm or an intolerable situation when returning to the habitual residence; (2) the petitioning parent consented to the children's leaving the habitual residence; (3) the children are now resettled in the new country; (4) the children are mature enough to voice an opinion and object to return; or (5) returning the children to the habitual residence would violate their basic human rights. When one or more of these exceptions is successfully argued, the court may either dismiss or deny the petition and permit the children to remain in the new country with the taking parent.2

Because the Convention focuses exclusively on children, it does not explicitly recognize domestic violence between children's parents as a reason to deny children's return to the habitual residence, even if return means placement with the children's abusive parent. This gap in the Convention is significant because social science research tells us that many families experience both domestic violence and child maltreatment (Edleson, 1999). With little legal scaffolding in the Hague Convention itself, U.S. courts have wrestled with cases that ask what role domestic violence should play in decisions about children's placement. Previous research has described and analyzed this situation (Bruch, 2004; Kaye, 1999; Shetty & Edleson, 2005; Silberman, 2000; Weiner, 2000, 2004). Our study is the first, though, to pinpoint the specific factors courts look to when deciding these cases.

Overall, the number of Hague Convention cases heard by U.S. courts is likely to be small compared to the total number of domestic custody disputes. Understanding the experiences of battered women facing Hague petitions nonetheless remains important for three reasons. First, children are at the heart of these cases, and there is currently considerable legal dispute about what constitutes "harm" to children whose mother is a victim of domestic violence. Second, these cases provide general insights into how U.S. courts consider domestic violence when they make decisions that affect family relationships. Third, with the advent of globalization, we can anticipate a growing number of transnational families. For example, the number of American children with at least one foreign-born parent increased from 15% in 1994 to 22% in 2008 (Federal Interagency Forum on Child and Family Statistics, 2009). Given this, we can expect a rise in the number of transnational custody disputes, including ones in which battered mothers flee across national borders with their children...

Habitual Residence and Domestic Violence
One of the first decisions a court must make in a Hague Convention case is whether the children have been removed from their habitual residence. Using data drawn from our content analysis, we identified only three cases (7%) in which the court linked the coercive and controlling attributes of domestic violence to children's habitual residence.

TABLE 3
Outcomes of Petitions

Petition Outcome	*Number*	*Percent*
Dismissal/Denial	22	46.8
Granted	20	42.6
Remanded to Lower Court	5	10.6
Total	47	100.0

First, in Tsarbopoulos v. Tsarbopoulos (2001), the court explicitly considered a battered mother's isolation in a country where she was not familiar with cultural norms and did not speak the local language. The court found no habitual residence in Greece—the country from which the battered mother took the children—because she had been coerced into living there. The court found that the father's violent behavior left the children's mother socially isolated, unable to communicate with others, with limited access to financial assets, and living in fear of violence. In sum, the court wrote that the husband had "control of all major decisions of the couple" (Tsarbopoulos, 2001, p. 455).

Second, in re Ponath (1993), the court found that the petitioner (father) prevented his wife and two-year-old son from leaving Germany and returning to the United States by "verbal, emotional and physical abuse" (Ponath, 1993, p. 366). The father was also arrested for physically attacking a family member while he was trying to see the mother and their child. Altogether, the father's violent history led the court to conclude that the mother and child "were detained in Germany against her desires" (Ponath, 1993, p. 367). The court concluded that under such circumstances, the child was not habitually resident in Germany.

In the third case (Ostevoll v. Ostevoll, 2000), an abused wife argued that by the end of the couple's relationship she was not permitted to leave her home in Norway without her abusive husband. The court also noted that the husband hid the wife's and children's passports, thus preventing them from leaving the country. The court held that Norway was not the children's habitual residence because for much of the wife's time there she remained "voluntarily, albeit reluctantly" (Ostevoll, 2000, p. 42). Defenses to a Hague Petition Respondents to Hague petitions may argue that any of five exceptions prevents return of their children to the habitual residence. The first exception is premised on Article 13(b) of the Convention, which applies when a "grave risk" appears that a child returned to the habitual residence will suffer "physical or psychological harm," or an "intolerable situation." We address this exception more fully in the next section.

The Convention's second exception is consent. Under Article 13(a), if the parent filing a Hague petition initially consented to a child's removal, the removing parent can offer that consent as a defense against a Hague claim. In Friedrich v. Friedrich (1996), the court stated that consent needed to be a formal "act or statement," such as "testimony in a judicial proceeding; a convincing renunciation of rights; or a consistent attitude of acquiescence over a significant period of time" (Friedrich, 1996, p. 1070). Subsequent

cases have differentiated between consent and acquiescence and have indicated that consent can be informal (Baxter v. Baxter, 2005).

Third, under Article 12, the Convention allows a child to remain with the removing parent if the child has been away from the habitual residence and is settled in the new environment, typically after one year. Judicial opinions make clear, however, that if a removing parent has hidden a child from the other parent, this exception may not apply. The one-year time limit was designed to prevent a left-behind parent—who was aware of the child's removal and in ongoing contact with the child—from later petitioning a court and asking that the child be returned to the original country. This defense also reflects the understanding that children need continuity and stability in their lives.

Fourth, Article 13 of the Convention states that where a child objects to return and has attained an age and degree of maturity at which it is appropriate to take the child's views into account, the objection may constitute an exception to return (Ostevoll v. Ostevoll, 2000). The Convention does not set a specific age at which the child's views should be considered because the drafters felt such a specification was "artificial, even arbitrary" (Perez-Vera, 1981). Instead, the Convention leaves the decision of when to consider children's views to a court's individual discretion.

Fifth, according to Article 20, a child's return is not appropriate when it contravenes "the protection of human rights and fundamental freedoms" of the child. This exception has been interpreted to mean that children should not be returned to countries where their fundamental human rights may not be secured. Weiner (2004, p. 583) has noted that Article 20 defenses are "seldom used and frequently unsuccessful" in Hague litigation.

Overall, the five exceptions were effective only occasionally in the cases we studied. Altogether, a Hague exception prevented return of a child in 18 disputes or 38% of the cases in our sample. Table 4 summarizes how often exceptions were raised and their success rates. Grave risk was the most frequently asserted exception (raised in 81% of the 47 cases), but was successful in only one-quarter of the disputes. The other four exceptions were raised less frequently and were rarely successful.

TABLE 4
Success Rates for Defenses (n = 47)*

	Asserted		*Successful*	
Defense	*Number*	*Percent*	*Number*	*Percent*
Grave Risk	38	81%	12	26%
Consent/Acquiescence	14	30%	1	2%
One-year/Settled	12	26%	3	6%
Child Opinion	9	19%	2	4%
Human Rights	7	15%	—	—

*Totals do not add to 47 because multiple defenses can be argued in the same case.

Judicial Rulings on Grave Risk

Because the courts in our sample only occasionally accepted the grave risk defense—despite its seeming relevance to domestic violence—we sought to understand the reasoning behind their decisions. To do this we closely reviewed the 38 opinions written in cases where grave risk was argued as a defense. We also used content analysis to examine the passages of these opinions that addressed the defense. The results of this analysis suggest that courts respond to five distinct factors when determining grave risk: (1) whether the petitioning parent directly maltreated the children; (2) whether the children witnessed domestic violence; (3) whether the children suffer from Post-Traumatic Stress Disorder; (4) whether the abuser threatened to kill the children or others; and (5) whether expert testimony was heard by the court. Table 5 identifies how often each of these factors was present in the cases in which grave risk was asserted, and whether the court accepted this defense.

Child Maltreatment

Of the 12 disputes in which the grave risk defense was successful, courts found evidence of child maltreatment in almost all (11, or 92%). Maltreatment nearly always consisted of direct physical or sexual child abuse. For example, the petitioner in Van De Sande v. Van De Sande (2005) "physically abused" his daughter by spanking her repeatedly and at "least once" delivered "a sharp blow to the side of [the child's] head" (Van De Sande, 2005, p. 569). In Rodriguez v. Rodriguez (1999), one child involved in the case testified that "his father first began to beat him when he was six years old" when he was struck "with a one inch belt about the legs, back, and buttocks. The force of the blows, and resulting welts and bruises, were such that the [the child] was caused to miss a week of school" (Rodriguez, 1999, p. 459). The father told the child that if he had bruises from maltreatment "[he] must not tell anyone" (Rodriguez, 1999, p. 459). Similarly, the court in Elyashiv v. Elyashiv (2005) accepted the grave risk defense where the children's father "routinely used his belt, shoes or hand to hit [the children]" (Elyashiv, 2005, p. 394), The Elyashiv court concluded that "most frequently, the abuse occurred when the children's playing interfered" with their father's sleep. Once, for example, "[their father] became so enraged that he placed a pillow over [his son's] face to quit his crying" (Elyashiv, 2005, p. 399).

Successful grave risk defenses are not limited to instances of physical abuse, however. In Tsarbopoulos v. Tsarbopoulos (2001), the court denied a father's Hague petition because he sexually abused his four-year-old daughter. The court found that not only had the child described sexual abuse to her teacher, but that she also exhibited behaviors which were consistent with sexual abuse (Tsarbopoulos, 2001, p. 1060).

Witnessing Domestic Violence

In 10 of the 12 cases (83%) that found grave risk, the court indicated that children had intervened in or witnessed violence between their parents. Three cases illustrate this finding. First, in Simcox v. Simcox (2007), the couple's oldest child, a daughter, testified that her father would grab her mother's jaw and "put his finger on her neck, pulling hair" (Simcox, 2007, p. 599). She also described how once while driving, her father "banged her mother's head

TABLE 5
Grave Risk and Presence of Factors *(Cases where grave risk was found are shaded)*

Case	*Defense Found*	*Total Factors*	*Witnessed DV*	*Expert Testimony*	*Child Maltreatment*	*Threats to Kill*	*PTSD*
Walsh	Yes	5	+	+	+	+	+
Elyashiv	Yes	5	+	+	+	+	+
Blondin	Yes	5	+	+	+	+	+
Rodriguez	Yes	5	+	+	+	+	+
Ostevoll	Yes	4	+	+	+		+
Simcox	Yes	4	+	+	+		+
Tsarbopoulos	Yes	4	+	+	+		+
Danaipour	Yes	4		+	+	+	+
Adan	No	3	+		+	+	
Van De Sande	Yes	3	+		+	+	
Frowein	Yes	3	+	+	+		
Jankakis	No	3	+	+			+
Aldinger	No	2	+			+	
Baran	Yes	2	+		+		
Whallon	No	2	+	+			
Dalmasso	No	2	+			+	
Tabachi	No	2	+	+			
Croll	No	1	+				
Ciotola	No	1		+			
Dallemagne	No	1				+	
Hasan	No	1	+				
Koc	No	1	+				
Panazatou	Yes	1		+			
Perez	No	1			+		
Prevot	No	1		+			
Silverman	No	1				+	
Wipranik	No	1			+		
Antunez	No	0					
Antonio	No	0					
Belay	No	0					
Currier	No	0					
Fabri	No	0					
Lynch	No	0					
Miller	No	0					

against the passenger window of the vehicle" and that she "often had to intervene by placing herself between them." In the same case, another child in the family testified that her father had "held her mother by the neck against a wall" and that her older sister had "tried to stop him but he hit her" (Simcox, 2007, p. 598).

Second, in Walsh v. Walsh (2000), one of the couple's children recounted seeing domestic violence in the home. The court noted that the child had told a social worker that "she had memories about her mother being abused... that her mother was hit and

hurt by her father, and that her father pushed her mother down stairs" (Walsh, 2000, p. 211). She also stated that "her father once became enraged at her... over dirty shoes, spitting in her face and calling her stupid . . . She said she was terrified of phone calls from her father" (Walsh, 2000, p. 52). Third, in Turner v. Frowein (2000), the court described a violent incident between a child's parents this way: "[T]he defendant began choking and kicking the [child's mother], inflicting a beating so severe that she subsequently required a hysterectomy. Like the previous violent incidents, the child witnessed this beating" (Turner, 2000, p. 324).

Expert Testimony

Based upon our study, expert testimony that described the harm children might suffer if they are returned to their habitual residence makes it more likely that a grave risk exception will be found by the court. Expert testimony was offered in 10 of the 12 successful grave risk claims (83%). For example, in Danaipour v. McLarey (2004), a child psychologist who was treating a young girl involved in the case gave expert testimony that the father had sexually abused the child. The court "credited the observations" made by the expert that returning the child to Sweden, where her father resided, would amount to returning her "to the place of trauma [and the] location of her victimization" and could "have profoundly disturbing effects on the Child" (Danaipour, 2004, p. 296).

In Panazatou v. Panazatos (1997), a child psychiatrist testified that "separation of the [three-year-old] child from the mother's care would cause grave risk of psychological harm to the child, both short and long term" (Panazatou, 1997, p. 4). Similarly, in Turner v. Frowein (2000), a court-appointed psychologist who examined both the child and the father stated that the father "had a tendency toward aggressive behavior" (Turner, 2000, p. 328). During the trial court proceedings which included allegations of both domestic violence and child sexual abuse, the psychologist testified that the "child was anxious and very afraid of [his father] . . . and that the child likely would suffer substantial psychological harm if forced to return to his father's care" (Turner, 2000, p. 328).

Post-Traumatic Stress Disorder (PTSD)

Post-Traumatic Stress Disorder may occur in people who have been exposed to a traumatic stressor such as the threat of death or injury (American Psychiatric Association, 2000). Persons suffering from this disorder typically experience a constellation of symptoms including intrusive re-experiencing of the trauma, avoidance of things associated with the trauma, and higher levels of arousal (such as difficulty sleeping or concentrating). Children were found to have a diagnosis of PTSD in eight of the 12 cases (67%) in which a grave risk defense was successful.

Threats to Kill

In six of the 12 cases (50%) in which grave risk was found, the batterer threatened to kill the mother, a child, or himself. Oftentimes these threats were explicit, as in Elyashiv v. Elyashiv (2005). Here the court explained that when the children's mother asked her husband for a divorce, he "refused and threatened that, if forced to do so, he would kill

[her]" (Elyashiv, 2005, p. 399). Similarly, the couple's child once reported to a teacher that her father was physically abusing her. Upon learning of the report, the father "threatened to kill [the child]" (Elyashiv, 2005, p. 400). In Blondin v. Dubois (2001), a dispute involving more than three years of appeals, the Court of Appeals for the Second Circuit cited the child's testimony and denied the father's Hague petition. The court wrote that one of the couple's children "described various instances of abuse and its effects on her, including her father's spitting on and hitting her mother, at least once with a belt buckle; [and] his putting something around [her sister's] neck and threatening to kill her . . ." (Blondin, 2001, p. 167).

Implicit threats of harm also helped justify a grave risk exception. For example, in Baran v. Beaty (2007), a mother left her husband in Australia and returned to her parents' home in the U.S. During the relationship, the petitioning father stated his son "should have been aborted, that [the child] would die if he 'became an American' and that [the mother] could not blame him if something happened' to the child" (Baran, 2007, p. 1257).

Multiple Factors and Grave Risk

Our content analysis indicates that the courts in our sample addressed five distinct factors when determining whether grave risk could be used as a defense to a Hague petition. These factors frequently overlap in the same case. In fact, as Table 5 shows, grave risk was found in all cases in which four or five factors were present, but very infrequently in cases in which three or fewer factors were found. This pattern suggests that multiple factors have a cumulative effect which increases the likelihood that the court will find grave risk.

It is also important to note that no matter how violently a batterer may treat his wife or partner, this violence is not in and of itself automatically considered harm to children in the absence of the five factors. Two cases illustrate this finding. First, in Robles Antonio v. Barrios Bello (2004), a mother testified that she had been physically abused during her marriage.

However, the court wrote that "she made no claim and submitted no evidence that petitioner had ever harmed" their son (Robles Antonio v. Barrios Bello, 2004, p. 3). Because her child had not been directly harmed, the court held that the grave risk exception was not applicable.

Second, in Dallemagne v. Dallemagne the father had previously punched the children's mother until she was unconscious and had tried to run her over with a car. Nevertheless, the court did not find grave risk because "there was no credible evidence that the petitioner has ever physically harmed the children" (Dallemagne v. Dallemagne, 2006, p. 1299).

DISCUSSION

This study tells us three important things about Hague litigation in U.S. courts involving

allegations of domestic violence. First, early assumptions about which parent would remove children and seek their return through Hague petitions do not reflect the reality of cases involving domestic violence today. Second, the courts in our sample rarely considered domestic violence in conjunction with habitual residence determinations.

Third, when the courts accepted a grave risk defense, our content analysis suggests that five factors are particularly important to their decisions. Taken together, our findings have important policy and legal practice implications for women who flee domestic violence with their children and cross international boundaries.

Parties in Hague Convention Disputes

Our descriptive analysis indicates that the men in our sample who batter their wives and partners are typically the individuals who bring Hague petitions. These petitions are brought against women who have fled one country with their children and entered the U.S. This finding contradicts early assumptions that helped to shape the Convention, specifically, that fathers would primarily be the "taking" parent and that left-behind mothers would seek redress using the Convention (Weiner, 2000).

Domestic Violence and Habitual Residence

One of the first steps in resolving a Hague petition is determining a child's habitual residence. Despite its significance, the Convention does not define habitual residence and as a result, U.S. courts have stated that decisions about it "remain fluid and fact based, without becoming rigid" (Levesque v. Levesque, 1993, p. 666; Prevot v. Prevot, 1994, p. 560). Given this ambiguity, U.S. courts have taken conflicting and "extreme positions in resolving the argument" over the term's meaning (Weiner, 2000, p. 641). Our research found that courts rarely considered the presence or severity of domestic violence when determining habitual residence. In fact, in only three of the 47 cases (6%) we examined did the court find that domestic violence had a significant bearing on a habitual residence determination.

We recognize that current law does not require courts to attend to or address domestic violence when determining habitual residence. We believe this gap in law falls short of accounting for the actual, lived experience of battered women and their children. Inherent in domestic violence is a pattern of coercion that may prevent a woman from participating in decisions about where she and her children live (Stark, 2007). Similarly, controlling behavior is a common characteristic of abusive partners, and this control encompasses family decision making (Barnish, 2004) and household finances (Alvi & Selbee, 1997). The failure of the Hague Convention and its U.S. implementation to recognize these dynamics creates an additional barrier to safety for women seeking to protect themselves from a violent partner. Barnish's (2004) summary of prior research on battered women who emigrate to a new country is helpful when considering the Hague Convention and the habitual residence question. Barnish has explained that batterers ensure that women remain silent about their abuse by misleading them about their rights in the new country, preventing them from accessing language classes, destroying their passports and visas, threatening them with deportation, and restricting their contact with friends and family in their home country (Barnish, 2004).

Under these circumstances—which are analogous to the cases we studied—battered women and their children are, in essence, confined to their homes through violence, coercion, and control.

Our research suggests that a more expansive legal process for determining habitual residence is needed. Such a process would specifically ask whether a mother has decided where she and her children live under threat of violence. If courts were to directly address domestic violence when determining habitual residence, their decisions would more accurately account for the real-world lives of battered women. Such decisions would also better contribute to the safety of battered women and their children.

Grave Risk Factors

Because of its particular relevance to domestic violence cases, we were especially interested in how the courts in our sample applied the grave risk defense. It is unsurprising that the defense had a low rate of success given that U.S. courts have consistently stated that all of the defenses should be narrowly interpreted. To do otherwise, they hold, would undermine the Convention's policy goal of returning children who are wrongfully removed from their habitual residences (Friedrich v. Friedrich, 1996; Simcox v. Simcox, 2007).

The courts in our sample were relatively explicit in their reluctance to use the defense. For example, in Whallon v. Lynn (2000) the court held that the harm necessary to prove the exception must be "a great deal more than minimal," and must exceed that which would "normally" be expected to result from a transfer of custody (Whallon, 2000, p. 92). Similarly, the court in Friedrich v. Friedrich (1986) stated that the exception applies only when the evidence shows that children would be placed in an "intolerable situation."

The reluctance of most courts in our sample to link domestic violence with a grave risk of harm to children runs counter to the weight of social science research. Research tells us that as many as 40% of children of abused mothers are, themselves, also abused (Appel & Holden, 1998; Edleson, 1999). Treating domestic violence as separate and apart from other forms of family violence also runs counter to recommended family law practice. For example, the National Council of Juvenile and Family Court Judges (NCJFCJ) has observed that "judges are now almost universally under a statutory obligation to consider domestic violence as a factor when determining the best interests of children" (Dalton et al., 2006, p. 9). The Council's Model Code on Domestic and Family Violence presumes that it is in the children's best interests to reside with their non-violent parent in a location of that parent's choice, within or outside the state where the family lives (NCJFCJ, 1994).

Although courts in our study generally avoid linking domestic violence with grave risk, this trend is not universal. For example, in Ostevoll v. Ostevoll (2000), the children's father was physically abusive to their mother, he rarely permitted her to leave the family residence, and when she did leave, he accompanied her. She was permitted to take the

children outside the residence only when she went to church. In accepting the grave risk defense, the Ostevoll court wrote that while other courts may focus only on whether children have been physically abused, such a view is "myopic" and that grave risk determinations should involve considering whether children witnessed domestic abuse (Ostevoll, 2000, p. 52-53). Unlike other cases we studied, Ostevoll relied upon social science literature. We found only two other instances where courts looked to social science literature for support in accepting a grave risk defense (Tsarbopoulos v. Tsarbopoulos, 2001; Walsh v. Walsh, 2000).

Evidentiary standards further limit use of the grave risk exception. Most exceptions in the Convention (consent, child maturity, and whether a child is settled in the new environment) must be proved by a preponderance of evidence—the usual standard in American civil proceedings, including family law disputes. However, the grave risk and human rights defenses must be proved by clear and convincing evidence—a significantly greater burden than the preponderance standard. Because of these differing standards, abused women arguing grave risk face a more difficult path to retaining custody of their children than do women arguing another exception. The Convention does not dictate the use of these differing burdens of proof.

CONCLUSION

This research contributes to our understanding of how U.S. courts have interpreted the Hague Convention. By showing that this interpretation frequently leads to court decisions against the interests of even severely battered women and their children, our research also adds to the body of legal and social welfare scholarship revealing structural biases against battered women in a variety of official settings (Buel, 2003; Czapanskiy, 1993; Kohn, 2007; Lindhorst & Padgett, 2005). Such scholarship includes studies showing that prosecutors' heavy caseloads are associated with lower numbers of guilty verdicts against batterers (Belknap et al., 2000); that family violence was accepted only relatively recently as a legitimate factor in determining custody (Cahn, 1991); that battered women may be arrested for engaging in defensive tactics following an attack by their intimate partner (Henning & Feder, 2004); and that welfare workers do not properly implement procedures for domestic violence victims (Lindhorst, Meyers, & Casey, 2008).

As the weight of social science evidence and U.S. public policy brings about expanded understanding of the well-being of children, court rulings in Hague Convention cases may change over time as well. Judicial recognition that exposure to adult domestic violence poses a grave risk and intolerable situation to children may grow. For now, however, there is little logic to the arguments made in the cases we studied that exposure to domestic violence in the home does not, in and of itself, constitute a grave risk to children.

Our findings also suggest the need for specialized continuing legal education for judges and lawyers that is focused on international abduction cases involving domestic violence. The development of a National Bench Guide that incorporates ours and other research findings could address domestic violence and its implications for decisions in Hague

Convention cases. Just as important, our results suggest the need for continued research on child abduction and its relationship to domestic violence.

We have little systematic information on the parents who have abducted their children into the United States from other countries and almost no understanding of their motives, experiences, or the outcomes of their cases apart from official published decisions. The research described in this article focused on parents who brought their children into the U.S.; it did not address those parents who flee the U.S. and go to other countries after being victims of domestic violence here. Further research is needed on both types of "taking" parents and their children to identify key barriers and facilitators to a safe resolution of their disputes.

Finally, although it would be difficult to amend the Hague Convention and secure worldwide ratification, this research can contribute to clarifying its proper application where domestic violence is present. Our findings can also contribute to a new Convention protocol or a revision of ICARA. Taken together, these actions can help ensure that the Hague Convention does not pose an additional barrier to women as they seek to protect themselves and their children from violence.

Battered Mothers Seeking Safety Across International Borders: Examining Hague Convention Cases involving Domestic Violence

Jeffrey Edleson, PhD
Professor, University of Minnesota School of Social Work
Taryn Lindhorst, PhD, LCSW
Associate Professor, University of Washington School of Social Work

Transnational relationships have become more common in the past 30 years, and negotiating the dissolution of these relationships is increasingly complicated. Women whose husbands are abusive often turn to family members for assistance in coping with the abuse and repairing their lives. Mothers who flee with their children may have few other options to ensure their safety and that of their children in the face of their partner's violence, yet they remain vulnerable to being legally treated as an "abducting" parent when returning to family means leaving one nation for another. Our study, funded by the U.S. National Institute of Justice, focused on the situations of women who experienced intimate partner abuse in another country.

They came to the United States in an effort to protect themselves and their children, but then faced U. S. court actions under the Hague Convention on the Civil Aspects of International Child Abduction.

Our research goal was to obtain perspectives from battered mothers, attorneys, judges and others involved in Hague petition cases heard in U.S. courts. In this article, we report a selection of the information we obtained from in-depth interviews with 22 battered women who had come to the U.S. with their children and subsequently had a Hague petition filed against them by a leftbehind father. We also interviewed 14 of the

mothers' attorneys, nine attorneys who had represented left-behind fathers, five other specialists such as expert witnesses and reviewed 47 published decisions issued by American judges. For full details on the complete study, please see our final report available at http://www.haguedv.org.

Description of Families Studied
The parents in this study were generally in their late 30's, most mothers were white, one was African American and six were Latina. Over half of the women had a college degree and almost all of the left-behind fathers were highly educated. Parents had been in a relationship with each other for, on average, over 10 years. All but one of the women was legally married to the father of their children, however, six (27.3%) of the women were legally divorced from the men at the time their ex-husbands filed a Hague petition. Forty-five children were involved in the Hague petitions, of which almost two-thirds (63.2%) were boys. The children tended to be young, with an average age of 6.42 years and ranged from one to 15 years old. Mothers in the study came to the U.S. primarily from countries on the northern and eastern coasts of the Mediterranean (n=11; 49.9%), from Northern European countries (n=6; (27.24%) and Latin America (n=5; 22.7%). Five women (22.7%) were immigrants to the United States, while 17 (77.3%) were U.S. citizens. The majority of the men were not U.S. citizens.

Mother and Child Exposure to Violence
The women in the study reported a variety of severe abusive experiences towards themselves, and sometimes towards their children. These experiences included emotional terrorizing, physical assault, threats to life, intentional isolation, economic control such as withholding finances, immigration threats (i.e., destroying passports) and rape. In the following excerpt, one of the mothers recalls a situation that exemplified the kind of emotional terrorzing and threat to life that many of the women experienced. "One night, he put a weapon to my head. I saw it on my right temple. I saw from the corner of my eye, how he was pulling the trigger. When he put it to my head, I asked him to not to play around like that, please. I tried not to move an inch because I thought that if I moved, he would shoot me. I closed my eyes and heard the 'click.' Then he took the weapon away from my temple and laughed. He said, 'You're so dumb. You're an ass. It's not even loaded.' I went up to my room crying, and for days after that I kept thinking what if the weapon would have had only one bullet?"

Violence in these families was not limited to the women, although all of the women experienced some combination of the types of abuse described above. In eight families, the children were themselves the intentional targets of their father's violence, or were harmed during a physical attack on their mother. The mother's story below illustrates the kinds of physical abuse experienced by the children in these families.

It must have been Christmas day, or just after Christmas. My older son did something to my daughter's doll and it got [my husband] into such a tirade that he went to go beat [my son] with that doll. I got in between him and [my son], and kept trying to push [my husband] away from [my son], and [my husband], then, beat me, beat [my son].

Regardless of whether they were the intended victims of their fathers' abuse, many children in these families experienced significant levels of fear, even long after they were physically separated from their fathers. Even those children who were not directly victimized by their fathers had ongoing emotional difficulties and fearfulness. The mothers attributed these reactions to their children's witnessing of the violence and of the mother's emotional response to the abuse.

Coercion, Violence and Habitual Residence

The purpose of the Hague Convention is to return children to their "habitual residence" as quickly as possible since the priority is to have courts in the country where the child has usually resided make decisions about issues of custody and visitation upon the dissolution of a marriage/partnership. An underlying assumption of the habitual residence concept is that both parents voluntarily agree to reside in another country with their children. U.S. courts are divided on whether to evaluate the shared intent between parents to reside in a certain place as indicative of habitual residence (Vivatvaraphol, 2009). Many judges have suggested that habitual residence must demonstrate some element of voluntary agreement between parents. However, forty percent of the U.S. citizens in this study were coerced in some manner to either return to their husband's country, or to stay there once the family had relocated. For example, one mother described her relocation to the other country as follows:

"I moved with my husband and my two children to [his country] […] and the day after we arrived there, I realized that I had made a mistake. Our marriage had been falling apart, and literally the day after we arrived, I told him that I had made a mistake and I wanted to go home, and I wanted a divorce. What I didn't know was that before we had moved, he had set it up so that I couldn't go home. […] He had set up, with his family, a meeting with an attorney, which he did immediately, got a restraining order against me, and I could not leave the country. I was trapped." A few months later this mother and her children travelled to the U.S. on what was to be a vacation but what she secretly planned as a permanent return to the U.S. After a

Hague petition was filed, the U.S. court ordered the children returned to the other country. The question of the child's habitual residence is far more complex than a simple calculus of time or a child's attachment to social institutions. Children may have spent several years in another country. However, these actions may be rooted in efforts of the father to entrap the mother and children in the other country. As a result, the issue of habitual residence in these families should be carefully explored. To determine the child's habitual residence without acknowledging the dynamics of abuse may further perpetuate harm to the women and children.

Relationship of Domestic Violence to the Hague Decision

The majority of mothers we interviewed had their children returned to the other country (n= 12; 54.5%). In seven of these cases, the return to the other country meant return to the father. In three remaining cases, the judge permitted the children to remain with their mothers on return to the other country; in two cases, it was unclear who had physical custody of the child after the return.

We compared whether a child was ordered returned to the left-behind parent's country or allowed to stay in the U.S. based on categorizing the violence experienced in the household into four groups: (1) mother and child both physically harmed (8 families), (2) mother physically harmed and child exposed to the violence (7 families), (3) mother physically harmed, child not exposed to the violence (3 families), and (4) emotional terrorizing with no or minimal violence (3 families). One other family's pattern was unclear. By grouping families in this way, a distinct pattern was seen in these cases. Families where women and children were both physically harmed were the most likely to be allowed to remain in the U.S. (6 of 8 had return denied).

Judges were most likely to return the children to the other country (usually to the father) when serious domestic violence had occurred and the child was exposed to it, but the physical abuse was only directed towards the mother (6 of 8 had children returned). Judges were also less likely to allow the children to remain in the U.S. with their mother when emotional terrorizing in the absence of physical violence occurred, and when the abuse situation was unclear.

Finally, in four cases where children were returned to the country of the left-behind father, undertakings agreed to by the father outlined steps for protecting the children and their mothers upon their return. Mothers reported that none of these undertakings were implemented. This is consistent with Reunite International's (2003) finding that in cases decided in the United Kingdom, none of the undertakings protecting children on return were implemented.

DISCUSSION

Women and children in this study usually faced severe and sustained exposure to domestic violence prior to the mothers' decision to flee the other country. For the majority of the women, this violence included serious physical assaults against them, coupled with a degree of threatening behavior that led the women to believe that their lives and/or those of their children were in danger. They were usually isolated from family members and friends, prevented by their husbands from having independent access to financial resources and/or exposed to threats based on their immigrant status. These patterns are consistent with the larger literature on the experience of woman battering and coercive control (see Stark, 2007).

Sometimes, children saw fathers assault mothers in ways that could have resulted in the mother's serious injury or death. Based on current definitions of children's exposure to domestic violence, 86.4% of the children in this sample were exposed to domestic violence. In most cases a child's exposure to domestic violence was not a sufficient reason to prevent their return to the other country, and the father. Despite the severity of abuse happening in these families, most

U.S. judges in these Hague cases did not acknowledge that exposure to this violence could constitute a grave risk of physical and especially psychological harm to the children, providing an exception to their return.

The majority of the women in this study had their children returned to the other country, and most of the time this meant return to the abusive husband. A sizable minority of mothers we interviewed indicated they were tricked into relocating, immediately prevented from returning when they arrived in the other country, or forced by potentially life-endangering threats to accompany their husband to the other country. Although the Hague Convention is clearly understood to deal with the jurisdictional issue of which court should hear cases regarding the child, and not as a child custody case, the fact that returned children are usually given to fathers in the other country means that these decisions act as de facto custody rulings. Fathers in the other country often used the fact that children were returned by a U.S. judge as proof that the mother was an unfit parent who had acted illegally in fleeing with the children.

Over the past two decades, numerous studies have indicated that children who are exposed to adult domestic violence – even when this exposure consists of witnessing or being aware of the violence, but not direct physical harm – can show similar levels of psychological problems as children who are the victims of direct physical abuse (Bogat et al., 2006; Kitzmann et al., 2003; Wolfe et al., 2003). The original framers of the Hague Convention provided for exceptions to the child's return based on a grave risk of physical or psychological harm to the child, return represents an intolerable situation for the child or a violation of the child's human rights, among others. Many judges appeared to take a narrow view of these exceptions despite two decades of mounting social science evidence regarding the grave psychological risks created for children exposed to domestic violence.

Battered women's flight across national borders raises two paradoxical issues. First, women are traditionally castigated for staying with battering husbands. Since the earliest writing on battered women many have asked, "Why does she stay?" For mothers who finally flee the batterer, but end up crossing an international border to do so, the ironic focus becomes the exact opposite: "Why did she leave?" Second, under the current policies and procedures emanating from the Hague Convention, the law indicates that women should stay in the country where they are residing with their children, even in the face of serious abuse, under the assumption that services and resources are available to assist her in the other country (services which were not available to the majority of women in this study). Ultimately, the implication of the Hague Convention is that women can either choose to save themselves and leave their children behind if they need to escape the violence, or stay in the other country and risk trauma, injury and potentially death at the hands of their abuser in order to seek custody of their children back in the country of habitual residence. As U.S. Supreme Court Justice Stephen Breyer asked in the recent Abbott v. Abbott hearing: "She has to choose between her life and her child -- is that what this convention is aimed at?"

As seen in the analysis presented above, women with young children as well as elderly, long-time homemakers are particularly vulnerable to the discriminatory norms within family courts. From an inter-sectional perspective, the situation for migratory women's is complicated due to the fact that their visa and/or work permit status is dependent upon the "legal" *breadwinning*

spouse. Another group which is highly exposed to abuses of power by judicial actors are victims of domestic violence—at times with fatal consequences. Discrimination, negligence, and/or "judicial error" by judicial actors has a profound effect on the lives of these women and their children. By examining the situation these women are thrown into when involved in transnational divorces, the *de facto* discrimination by the courts, and thereby governments, is particularly exposed.

Due to the afore mentioned, it is important that expatriated women be given a collective voice on the various debates surrounding the issues. These women are in a situation of *power* in that they can, not only negotiate and formulate corporate policies on work-life balance, but they can also be instrumental in implementing these policies. Collectively, the *trailing spouses* of expatriated employees are in a position that their cooperation is vital in advancing the economic interests of corporations, as well as governments. Therefore, collectively these wives and mothers have the power to advance their interests within their countries of origin, as well as host countries (as well as within the corporate structures themselves). The fact that these families live, work, and at time separate within a global, trans-border context provides the opportunity of this civil society (*trailing spouses*) to defend and promote interests of women within courts around the world. However, in order to develop a platform that will incorporate a substantive approach to gender-equality for women globally, actors from family law, international human rights law, labor law, and women's rights groups, in conjunctions with victims and victims' rights advocates must come together and start examining the various issues from a holistic, inter-sectional approach—one which integrates homemaker's rights into the family law norms and jurisprudence.

Empowering Women to Empower Themselves

Not only do *trailing spouses* globally have a collective political voice and platform in advancing gender equality, but they also have a collective economic power in their aggregate consumer-spending—translating into tens of trillions of dollars in consumer-spending, globally.

(See Global Expats Business Plan)

> ### *World Bank Female Entrepreneur Resource Point 2013*
> *Female-run enterprises are steadily growing all over the world, contributing to household incomes and growth of national economies. However, women face time, human, physical, and social constraints that limit their ability to grow their businesses.*
>
> *Understanding the challenges and critical needs of female entrepreneurs during project identification and preparation is important when designing a gender-informed operation...*
>
> *Part 1: Entrepreneurship – Why Gender Matters*
>
> *Female entrepreneurs make significant contributions to economic growth and to poverty reduction. In the United States, for example, women-owned firms are growing at more than double the rate of all other firms, contribute nearly $3 trillion to the U.S. economy and are directly responsible for 23 million jobs. In developing countries, female entrepreneurship is also increasing – there are about 8 to 10 million formal SMEs with at least one woman owner. While the number of women operating their own business is increasing globally, research shows that different factors are driving this trend. In*

developed countries, opportunity is the driving factor. In developing countries, however, entrepreneurship comes about largely due to necessity. In the absence of other viable alternatives to provide for or supplement household incomes, entrepreneurship or self-employment is the only viable option. Further, female owned businesses are characterized by low capital requirements, low barriers to entry, low income and largely concentrated in the service sector (see table 1).

Table 1: General entrepreneurship and gender-specific constraints[3]

Area	General entrepreneurship constraints	Gender-specific constraints
Human capital	• Lack of technical and business skills • Occupational segregation	• Lack of a combination of education, work experience, vocational and technical skills • Differences in endowments, preferences and barriers to entry and exit
Selection of Sector	• Lack of information and capital • Barriers to entry and exit including costs and capital requirements • Limited access to finance and capital	• Overrepresentation in traditional sectors that have low start-up costs and limited barriers to entry • Female entrepreneurs, especially those in informal enterprises, operate home-based businesses
Access to Information	• Use of cheap technology resulting in high production costs and lack of competition • Limited market opportunities which leads to lower profits	• Lack or limited access to technology due to affordability, lack of knowledge, and/or social norms • Women more likely to start enterprise in sectors with low effective demand leading to lower profits
Access to Finance	• Limited access to finance due to absence of financial markets, high collateral requirements and interest rates, and additional bank charges • Financial institutions reluctant to lend to MSMEs that are just starting due to high risk involved given their lack of financial record • Lack of financial products and services for MSMEs	• Less favorable profile with investors since women own small businesses and do not have adequate collateral • Financial institutions may require higher collateral from female entrepreneurs. Some banks may also require women to have a male co-signer in order to open accounts • Low financial market participation • Preference for own savings to finance enterprises instead of credit from financial institutions

Area	General entrepreneurship constraints	Gender-specific constraints
Institutional Factors	• Operating informal businesses • Lack of business training leads to low productivity	• Informality and home-based enterprises are mainly the result of a need to combine work and family responsibilities • Limited vocational and technical skills may be caused by women's lower educational attainment or social norms that limit their physical mobility
Policy/Legal	• Excessive bureaucracy and regulations create additional costs and elongate length of time to register and start a business • Men usually defined as head of household and are legal owners of matrimonial property	• Limited knowledge of government legislation and less experience on starting a business than men and compliance thus discouraged. • Women more vulnerable to corrupt officials • Denial or limited ability to own assets and inheritance due to laws
Social/Cultural norms	• Low profits and growth • Lack of mobility	• Competing demands between market and household work for time due to family responsibilities • Limited female labor market participation • Mobility constraints • Need for a male co-signer in financial documents.

Female entrepreneurs are more likely to operate in the informal sector or in traditional female sectors

Worldwide, at least 30 percent of women in the non-agricultural labor force are selfemployed in the informal sector; in Africa, this figure is 63 percent. Women-owned businesses tend to be informal, home-based and concentrated in the areas of small-scale entrepreneurship and traditional sectors, which primarily includes retail and service. Operating from the home allows women to satisfy competing demands for their time caused by the disproportionate share of housework and childcare responsibilities. While working in a traditional sector requires less experience and lower start-up capital, the downside is that these sectors also offer lower returns.

Social norms are also an important factor accounting for the high number of women entrepreneurs who operate in the informal sector. A qualitative study on gender and economic choice in the 2012 World Development Report on Gender and Development found that, in all 19 countries studied, social norms are the most frequently reported constraint to physical mobility, followed by public safety.

Networks play an important role in helping entrepreneurs gain advice, form partnerships, secure financing, and access qualified management and employees. Recent research suggests that the networks used by women entrepreneurs tend to be smaller. The Global Entrepreneurship Monitor suggests that female entrepreneurs in middle and high-income countries are substantially less likely than male entrepreneurs to know an entrepreneur. Similarly, Mexican female entrepreneurs cited difficulties in breaking into men's networks as one of the most important constraints to business growth.

Gender gaps are still present in the critical skills needed to run a successful enterprise

Gender gaps are still present in the critical skills needed to run a successful enterprise While women are making major strides in terms of educational attainment at primary and secondary levels, they often lack the combination of education, vocational and technical skills and work experience needed to support the development of highly productive businesses. Male entrepreneurs, for example, are more likely than female entrepreneurs to have been employed in the wage sector prior to starting a business. Female entrepreneurs who were surveyed as part of the Global Entrepreneurship Monitor reported being less confident in having sufficient skills to run a business and were more likely to state that fear of failure prevented them from starting a business.

Information and Communications Technology (ICT) is increasingly providing new opportunities for entrepreneurs to access market information, communicate with customers and provide a new channel for buying and selling products. In particular, the global explosion in mobile technologies in many developing countries has led to increased and more affordable access to ICTs.

However, the lower socioeconomic status of women has meant that they are less likely to afford or access ICTs, resulting in fewer benefits from using ICTs to support their entrepreneurial activities. Furthermore, access to public internet points, provided through business centers, libraries and internet cafes, are not always women-friendly in terms of hours of operation, or offering an environment where women would feel comfortable to use such facilities.

Confidence in using ICT is less widespread among women business owners; a reflection of their limited access...

Lack of finance is a major constraint to the growth of female-owned enterprises

Access to finance is often cited as a main constraint to the growth of female-owned enterprises. The Gallup World Poll shows significant differences in access to financial services for women- and men-owned businesses in developing countries. ; however, there is mixed evidence supporting the causes in the differences. A study of Sub-Saharan African firms shows no evidence of gender gaps in external financing for firms in the formal sector, but rather low financial market participation of women due to their focus on overcoming other non-financial barriers to entrepreneurship.

Women have less access to basic banking services such as checking and saving accounts... many female entrepreneurs rely on their own savings, loans from family and friends, or micro loans to finance their business needs. However, the small size and short-term nature of micro-loans do not allow women borrowers to make long-term investments in their businesses. Disproportionately high legal and regulatory barriers can also have a profound effect on women's ability to run stronger, more viable businesses. Only 38 out of 141 economies covered in the Women, Business and the Law database set out equal legal rights for women and men in key areas such as opening a bank account, getting a job without permission from their spouse, and owning and managing property [and] women feel more vulnerable to corrupt officials and report difficulties in understanding rules and regulations that govern the registration of businesses.

Legal constraints in the area of family law and inheritance can determine a women's ability to own property and access collateral for financing

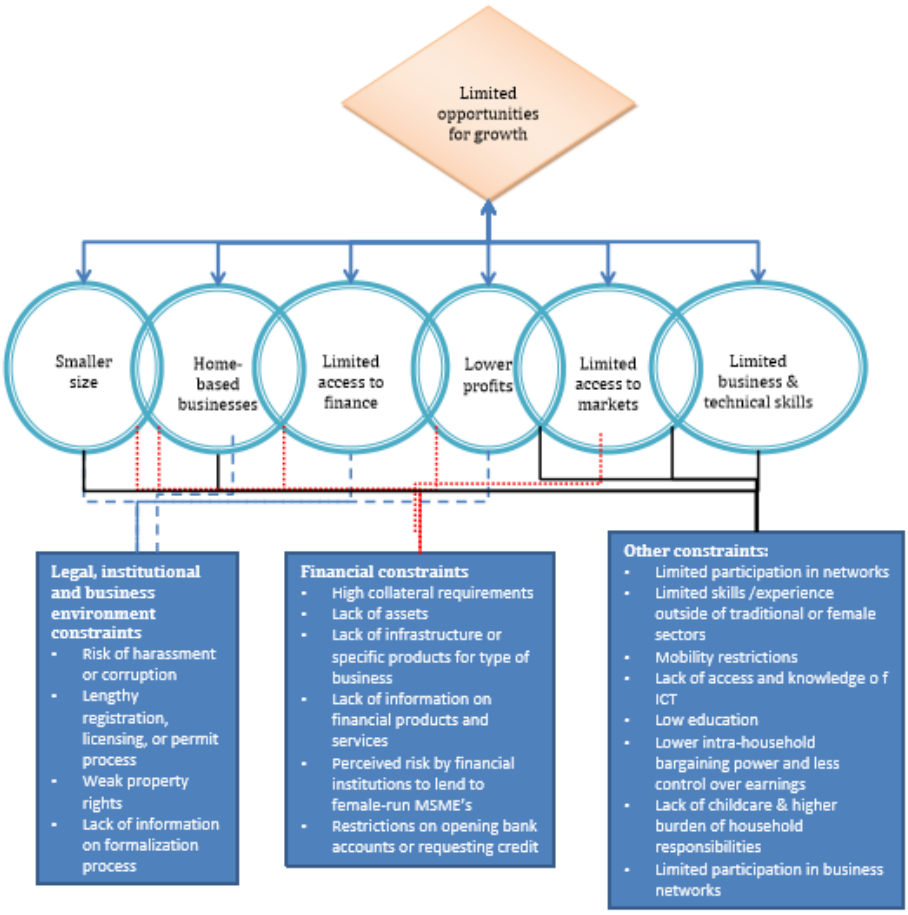
The institutional and legal environment is critical to the growth of female-owned enterprises. Laws regulating the private sphere specifically those regarding marriage, inheritance and land can hinder women's access to assets, which can be used as collateral when securing a loan. According to the Women's Legal and Economic Empowerment Database for Africa (LEED), only eight countries include provisions to give women the right to own property. While gender gaps in education tend to close with development, the same is not true of gender gaps in legal rights – middle-income countries are as likely as lowincome countries to define men as the head of the household, to give the husband the right to choose the matrimonial home or to deny women the ability to own assets in their own name.

Part 2: Recommendations for Project Design and Preparation The program identification and design stages offer a number of opportunities for gender issues to be taken into consideration.

Figure 1 provides a guide for the analysis of female entrepreneurship constraints and identification of responses. During program identification, the focus should be on establishing what information is available on female entrepreneurship and identifying specific constraints. During program design, the focus should be on integrating gender in entrepreneurship program, identifying beneficiaries and establishing communication channels to reach them.

Starting with the main issue – limited opportunities for growth – project teams should first develop a profile of female entrepreneurs. The main characteristics of female entrepreneurs are presented as concentric circles in Figure 1, highlighting how inter-related these are. Once the profile of female entrepreneurs is developed, the next step will be to identify constraints and specific issues that will need to be addressed in the program.

Figure 1: Identifying gender-specific issues and constraints



Key recommendations for integrating gender in this stage include:

- *Use gender-disaggregated data to analyze the business environment. Data that is gender-disaggregated enables the creation of a typology of male and female entrepreneurs, the sectors they operate in, the key characteristics of their enterprises and their access to finance and support services.*
- *Identify gender-specific differences in access and control of resources and assets: Gender differences with regards to access and control of resources and economic assets such as tangible assets, land and property, access to finance, education and literacy levels, access and use of ICTs, business and technical skills and information and training can affect entry, operation and growth of female-led enterprises. Besides legal, institutional and financial constraints, other constraints such as mobility, lack of appropriate infrastructure to operate and grow their enterprises, and social norms and attitudes regarding women's role in the household and society can limit female entrepreneurship. The lack of, or limited participation in, social and business networks should also be including in the assessment of constraints. Documents to review at this stage include gender assessments, business climate assessments, program documents and laws and regulations such as those governing property rights, business registration, access*

to credit, business taxation, family and inheritance. Particular attention should also be paid to mobility restrictions and women's time use.

- *Carry out preparatory assessments with a focus on defining the program beneficiaries (i.e., micro, small or medium enterprises, start-up enterprises, unemployed women, etc.) and the program's objectives (i.e., increase business skills, address collateral requirements or other collateral constraints, increase productive capacity, etc.), and identify actions that address gender-specific constraints. Market studies, feasibility assessments and institutional assessments can be very useful in the design of interventions that address constraints to female entrepreneurship....*
- *Consult with stakeholders: Women's groups and relevant business associations, female entrepreneurs, and NGOs and organizations working implementing related programs should be involved early on in the identification and design of the program. Consultations with women's groups and networks provide an important opportunity to begin to identify the specific group of female entrepreneurs who should be targeted by the intervention as well as the rationale of the intervention and its goals. These discussions will also yield information on the specific needs of female entrepreneurs and their willingness to participate in the planned intervention. Consultations with local organizations provide another opportunity to understand who is working with female entrepreneurs in the country and their area of focus.*
- *Learn from successes and failures: Analyze the integration of gender in previous entrepreneurship programs, placing particular attention on the results of these interventions.*
- *Identify gender-specific data needs for M&E and IE purposes and develop M&E and IE plans: Gender sensitive M&E frameworks help to improve project performance. During project preparation the inclusion of gender helps teams set specific targets and design activities to reach desired impact for female and male entrepreneurs. During project implementation, gender-sensitive M&E frameworks facilitate mid-term adjustments, and during project evaluation, this framework supports a gender disaggregated analysis of impact which can have repercussions in terms of the sustainability and scale-up of interventions. Gender-sensitive M&E frameworks also support the design of impact evaluations.*
- *Identify communication channels to reach intended program beneficiaries: The type of entrepreneur, size of the business, and sector to be targeted can have a large impact on the provisions and outreach that are required to ensure participation of women within your project's target population. Background studies and consultations aid the identification of project beneficiaries. For gender, this step should be accompanied by the development of a communication strategy to ensure that the women entrepreneurs that are eligible to benefit from the project's activities receive information about the project.*

Module 2: Integrating Gender in BDS, Access to Finance and ICT Programs

This module focuses on project implementation and includes practical solutions and recommendations to guide the design and implementation of gender-informed programs. The module currently includes training and technical assistance programs (Part 1), as

well as programs that facilitate or provide access to finance (Part 2), and ICT to women entrepreneurs (Part 3). Part 4 includes recommendations to support the integration of gender in technical assistance, access to finance and ICT programs. The cases included in this module have been taken from programs implemented by the World Bank and other organizations. All together, these cases show that:

- ***Business development services** and technical assistance can allow women entrepreneurs to tap into new and more profitable markets.*
- ***Improved access to finance** can support the growth of women-owned businesses.*
- ***Better access to, knowledge and use of ICT** can provide new business opportunities...*

Table 2: Business needs and types of Business Development Services[18]

Business needs	Focus of BDS programs
1. *Product development & access to markets (research and development, value-chains, and access to technology)*	Access to markets and targeted market research; product design and innovation; technology transfer and value integration in the supply-chain; equipment upgrade; and market information on input supplies, pricing, and sources; and ICT services.
2. *Training and mentoring of entrepreneurs*	Development of relevant business and management skills; business planning; pairing with mentors; support to networks; technical training related to production of goods or service delivery; legal and taxation counseling; bookkeeping and inventory management advice
3. *Integrated entrepreneurship support*	Feasibility studies and industry-specific business strategic planning; coaching and business counseling, networking; and grouped export and/or bulk purchase; access to ICT; linking businesses to banks, micro-finance institutions and other non-banking financial institutions serving SMEs (leasing and factoring companies, export credit agencies, etc.); providing information on credit schemes; and assist in the preparation of business plans for loan applications.
4. *Distribution, logistics, and communications*	Storage and warehousing; cold-chains; transport and delivery; custom clearance; ICT services.
5. *Policy advocacy and industry representation*	Industry platforms; representation of industry interests in public-private dialogue for policy reform (e.g. on business regulations and licensing; inspections for quality standards and labor issues; and red tape simplification for trade).

The case studies included in this section respond to three main business needs – product development, training and mentoring, and integrated entrepreneurship support. These programs look to foster concentrated business innovation and venture creation by using a number of training approaches that include the creation of value chains, clusters and incubators.

Technical assistance programs that are based in local industry value chains can help entrepreneurs integrate into the business ecosystem of their particular industry or identify a niche within the overall value chain. These programs include support for product improvements along with access to market and market information. For women,

in particular, these interventions can help incorporate their business in the value chain and address the specific constraints that limit the growth of their businesses.

Cluster development programs can help encourage and foster innovation within a concentrated area by supporting a large number of businesses that can then build on each other's innovations. The cluster environment creates an equilibrium point between cooperation and competition, which results in higher productivity due to increased access to inputs, information, technology, and institutions, along with increased innovation and venture creation. Clusters, therefore, gain an advantage through industry specialization, labor pooling, bulk purchase of raw materials, joint lobbying to local authorities, or joint access to finance. Clusters can also benefit from shared market linkages, technology transfer, shared equipment boosting productivity and returns. For women entrepreneurs, being part of a cluster can help to increase the speed at which the businesses grow and can help combat the social and cultural norms that can limit women's participation in income earning opportunities or constrain the growth of women-owned businesses.

Incubators are spaces that provide training, technical assistance, business counseling, mentoring and a number of other services including premises and financing. Typically, start-ups and growth-oriented firms find in incubators much needed technology facilities and information to develop business ideas, foster partnership and joint ventures. Incubators are often organized on a horizontal level, through peer-to-peer mentorship rather than formal training. Incubators can address educational and empowerment barriers faced by female entrepreneurs through the curriculum and coaching sessions provided. In addition to the skills offered, these types of programs can help to encourage entrepreneurs because of the "we're in it together" approach to the market. As such, these programs help to reduce the risk that entrepreneurs associate with the process of starting their own business. For women in particular, this reduction in risk may be important in outweighing societal and cultural norms that they must challenge in order to become entrepreneurs...

Part 2: Access to Finance Programs

In the context of private sector development, access to finance relates to the provision of capital for enterprises through two main mechanisms—equity and debt financing. The latter case—often addressed in private sector development interventions—includes a wide range of financial products and services, such as loans, leases, savings, payments, insurance, overdraft facilities, factoring, letters of credit, and other forms of trade finance. Inadequate access to finance hinders the growth of private enterprises. Numerous enterprise surveys identify access to finance as one of the most common challenges faced by entrepreneurs, and this is especially true for women.

The constraints on access to finance listed above may pose specific challenges to women owned enterprises. Examples of barriers faced by female entrepreneurs include:

- *Norm/rule-based barriers: Legal obstacles, such as lack of personal identification documents held by women; lack of collateral, as property is often registered under the husband's name; need to obtain husband's permission/counter-*

signature; other socio-cultural barriers and negative pressures that may jeopardize women's attempt to strengthen their financial independence.

- *Gaps and bias in the financial sector capacity and attitude: Higher default risk perceived by banks due to limited information about performance of women entrepreneurs, lack of confidence by loan officers (often male) in women entrepreneurs, etc.*

Microfinance – a solution to women's access to finance? Microfinance, combined with informal sources of funding such as communal banks, selfhelp groups and savings associations are important sources of financing for female entrepreneurs. However, the small size and terms of micro-loans makes this source of financing more useful for providing working capital and addressing liquidity constraints, but unsuitable to support longer-term investments.

The case studies included in this section are of programs that fall under the following two categories:

- *Reform of financial policies and regulatory frameworks: Initiatives that focus on reforming financial policies and regulatory frameworks can facilitate access to finance by women entrepreneurs by removing collateral constraints and simplifying business registry processes.*
- *Development of new financial products for female entrepreneurs: Initiatives focus on the development of financial products that cater to the needs of female entrepreneurs and improving delivery mechanisms.*

Part 3: Access to ICT

ICT (Information and Communications Technology) is an umbrella term referring to a range of communication systems, devices, applications or services that includes television, radio, wired and wireless communication devices (landlines and mobile phones), computer hardware and software, and the various services and applications associated with these technologies. The term reflects the increased convergence of these technologies, where access can be achieved through numerous and varied means.

Ongoing research to measure the impact of access and use of ICTs has pointed to the need to incorporate ICTs into mainstream programs in health, education and economic development. The argument is no longer whether to introduce ICTs in programs, but rather how to ensure that ICTs are used effectively, by both men and women, to support social and economic activities. ICTs are not gender-neutral and women are still less likely to use or benefit from them than men. Specific interventions are therefore required to ensure that this gender digital divide is addressed and closed over time. Hafkin and Huyer25 refer to the need to grow "cyberellas," women who are comfortable with the use of technology, who can work virtually, who are active creators and disseminators of information and knowledge, and who can design and develop information and knowledge systems to improve all aspects of their lives.

There are a number of reasons why business support programs as well as ICT programs, or programs using ICTs as enablers, should be engendered.26

ICTs have the potential to benefit women no matter what their occupation or business ICTs are needed to function in a world where digital is becoming the norm...

> *Case Study 34: eHomemakers*
>
> *Established in 1998, eHomemakers is a social enterprise community network based in Malaysia which promotes teleworking, working from home and operating Small Office, Home Office (SOHO) businesses through the use of ICTs. It has a particular focus on single mothers, disadvantaged women and disabled people and aims to promote socio-economic self-reliance and entrepreneurship development for women who wish to balance work and home life. A key focus area has been the Eco-baskets initiative in which baskets handwoven from used magazines by low-income mothers are sold online to provide an income that can support their families while they work from their own homes. In 2010, it had about 17,000 members, 70 percent of which were women. eHomemakers has also trained women in the use of ICTs to allow them to set up tele-trading sites from home.*

Part 4: Recommendations

From a gender perspective, it is important to understand the specific constraints and incentives that impact women and their businesses with respect to the type of program that you are designing and implementing to ensure their effective participation. The background studies and consultations conducted at the identification stage should help and inform the design of your program.

What follows in this section are some recommendations to ensure that women entrepreneurs are able to benefit from program activities.

Recommendations for all programs

- *Design programs that are tailored to the size and type of enterprise as well as the capacity and needs of the entrepreneur.*
- *Employ different communication channels to reach women entrepreneurs.*
- *Provide gender training for program staff.*
- *Consult with women's groups and relevant stakeholders as part of the design of specific products for female entrepreneurs or the selection of gender-specific program targets.*

...Many rel-life enterpreneurs differ from the mythic creatures described in most articles and books on the topic for their sins of omission as well their sins of commission. Not only do many entrepreneurs take actions that make their new businesses less successful, but they also don't do many of the things that studies have shown make start-ups more successful. For instance:

- *Many entrepreneurs don't emphasize marketing, even though new companies that start marketing sooner, and that emphasize the implementation of marketing plans, perform better than other start-ups.*

- *Many entrepreneurs don't stress the importance of financial controls and don't put careful financial controls in place in their new businesses, even though this emphasis makes new businesses more likely to survive and grow.*
- *Many entrepreneurs compete on price, even though this strategy hinders the performance of new ventures, which are better off competing on service, quality, or some other dimension.*
- *Many entrepreneurs fail to focus their activities on a single product or market when they first start out, even though new businesses that focus their activities perform better than those that do not.*
- *Many entrepreneurs don't organize their new business in an orderly manner—starting with the identification of the idea; proceeding to business planning, the evaluation of the idea, the acquisition of resources, and the development of a product or service; and ending with the marketing of the new product or service—even though the order in which firm founders undertake start-up activities affects the performance of new businesses.*

Overall, the message is pretty straightforward. The choices that you don't make will have an effect on the performance of your new business just like the decisions that you do make will. Because several careful studies have identified a variety of things that you can do to enhance your business's odds of success, you should learn what these things are and her ready to implement them.

Conclusion

The Illusions of Entrepreneurship: The Costly Myths That Entrepreneurs, Investors, and Policy Makers Live by Scott A. Shane

How Do Entrepreneurs Evaluate Business Ideas?

Once entrepreneurs come up with their ideas for a new business, how do they evaluate them? Our myth is that entrepreneurs carefully consider a variety of business ideas, choosing the one that appears most promising. We have an image of an entrepreneur who spends some time conducting research or talking to people about the viability of his idea before deciding whether to invest further time or money.

In truth, many entrepreneurs don't conduct feasibility studies or engage in any systematic evaluation, and many of them do not compare multiple ideas in the hope of finding the best one. Data from the Panel Study of Entrepreneurial Dynamics indicate that 27.8 percent of business founders never consider any opportunities other than they eventually pursue.

Perhaps more surprising is the small number of entrepreneurs who even have an idea of what they will do at the time that they start new businesses. Data from the Panel Study of Entrepreneurial Dynamics indicate that 42 percent of new business founders decide to start a company before they have identified a business idea; while 37 percent first identify the business idea before starting a company (21 percent reported doing the two things at the time) In other words, 4 or 10 entrepreneurs start a company before they

have a business idea. That is, they invest some of their money, set up a new legal entity, scope out of a location, and so on before they know what opportunity the business will pursue.

Moreover, it isn't clear that most entrepreneurs think about starting their new businesses before initiating action. Data from the Panel Study of Entrepreneurial Dynamics Survey indicate that only about half (52 percent) of new business founders "spent a lot of time thinking about the business" before they took an action to start it, for example, investing money, defining market opportunities, or purchasing equipment. That is, every other entrepreneur acts to start a business without thinking about it first. That doesn't suggest that the typical entrepreneur spends much time evaluating his business idea.

Francis Fukuyama explains in State-Building: Governance and World Order in the 21st Century

While privatization involves a reduction in the scope of state functions, it requires functioning markets and a high degree of state capacity to implement... This new recognition of the priority of strength over scope is reflected in a comment made by Milton Friedman, dean of orthodox free market economists, in 2001. He noted that a decade earlier he would have had three words for countries making the transition from socialism: "privatize, privatize, privatize." "But I was wrong," he continued. "It turns out that the rule of law is probably more basic than privatization" (interview with Milton Friedman, Gwartney and Lawson 2002).

From the standpoint of economic efficiency, is it more important to reduce state scope or increase state strength? ...strength of state institutions is more important in a broad sense than the scope of state functions...

...within the development policy community, whose mantra since at least 1997 has been the dictum that "institutions matter" (World Bank 1997, World Bank 2001). The concern over state strength, which goes under a variety of headings including "governance," "state capacity," or "institutional quality," has always been around under different titles in development economics. I was highlighted in Hernando de Soto's book The Other Path *(1989), which reminded the development community of the importance of formal property rights and, more broadly, of* ***the consequences of well-functioning legal institutions for efficiency.***

...The post-Cold War era began under the intellectual dominance of economists, who pushed strongly for liberalization and a smaller state. Ten years later, many economists have concluded that some of the most important variables affecting development weren't economic at all but were concerned with institutions and politics. There was an entire missing dimension of stateness that needed to be explored—that of state-building—an aspect of development that had been ignored in the single-minded focus on state scope.

It is now conventional wisdom to say that institutions are the critical variable in development, and over the past few years a whole host of studies have provided empirical documentation that is so...