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ARTICLES

SPOUSAL SUPPORT IN THE 21ST CENTURY

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INTRODUCTION	1
I. THE STORY OF ALIMONY	4
II. THE INEXORABLE DECLINE OF ALIMONY	9
CONCLUSION.....	17

INTRODUCTION

Spousal support – or alimony – originated as a remedy available when married people separated from each other.¹ Although they could not divorce, the award of alimony ensured that the dependent wife would have financial support even though she was no longer providing wifely services to her husband.² When divorce became a realistic possibility for ordinary folk, the possibility of alimony was transplanted into the divorce model, despite the fact that it was philosophically inconsistent with the idea that spouses could divorce and then go their separate ways to build new lives and form new relationships.³ Perhaps it is this incipient theoretical inconsistency that explains the fact that alimony has never been something that every woman could count on. Indeed, in the past several decades, post-divorce spousal support has been awarded in fewer cases, in lesser amounts and for shorter periods of time.

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1. Mary Kay Kisthardt, *Re-Thinking Alimony: The AAML's Considerations for Calculating Alimony, Spousal Support or Maintenance*, 21 J. AMER. ACAD. MATRIMONIAL LAW. 61, 65-66 (2008).

2. *Id.* at 66.

3. *See id.* at 66-68.

Alimony is traditionally awarded in long-term marriages where one spouse has financial need, the other spouse is deemed to have the ability to pay some support, and the payment is considered fair under all of the circumstances.⁴ Although discussions of alimony and alimony reform tend to talk about alimony “awards” (a term implying a judicial decision), in fact only a tiny percentage of divorce cases go to trial.⁵ For the most part, then, the paucity of alimony awards cannot be blamed only on the failure of courts to award alimony because of certain legal theories or perhaps some prejudices. Judges *are not making most of these determinations*: the litigants and their lawyers (if they even have lawyers) are deciding not to go for alimony, not to hold out for it, or not to agree to it. Why?

A number of theories have been traditionally offered as explanations for the declining rate of alimony awards, and indeed some or all of these phenomena are likely factors.⁶ One possibility is that property division is substituting for spousal maintenance awards.⁷ Another possibility is the perception that women have sufficient job opportunities to become self-supporting immediately after divorce.⁸ A third factor is that, due to custody law reforms in the late 20th century, physical placement after a divorce is likely to be equal or nearly equal between the parties, so there is no reason to pay the woman to stay home with minor children, even if she was the primary caretaker *before* the divorce.⁹ It is also possible that women who elected to stay home with the kids during marriage may, facing the economic insecurities of a divorce, have feelings of guilt that prevent them from asking for or successfully negotiating for alimony as part of a divorce settlement (an “I should have known better” effect).¹⁰ Further complicating the picture is research on gender differences in negotiating behavior, which suggests that women are likely to settle for less than they need in situations where alimony is disputed.¹¹

It is the contention of this essay that legal developments and changes in social expectations about marriage, child-rearing and gender roles over the past

4. See, e.g., *In re Marriage of LaRocque*, 406 N.W.2d 736, 740 (Wis. 1987). “Long-term” marriage, “need,” “ability to pay,” and “fairness” are all notably subjective standards, and results are notoriously unpredictable.

5. Penelope E. Bryan, *Women’s Freedom to Contract at Divorce: A Mask for Contextual Coercion*, 47 BUFF. L. REV. 1153, 1155-56 (1999) (stating that 90-95 percent of divorce cases are resolved by default or settlement).

6. I discussed these theories in some detail in an earlier article, and mention them only briefly here. See Judith G. McMullen, *Alimony: What Social Science and Popular Culture Tell Us About Women, Guilt, and Spousal Support After Divorce*, 19 DUKE J. GENDER L. & POL’Y 41, 45, 54-55 (2011).

7. Kisthardt, *supra* note 1, at 67.

8. See *id.* at 67-68.

9. McMullen, *supra* note 6, at 55.

10. *Id.* at 58.

11. *Id.* at 70-72. This tendency to negotiate ineffectively (or really in a way that values relationships over outcomes) is likely exacerbated by the explosion in *pro se* divorce litigation, since self-represented women will not have an opportunity to have a lawyer clarify their legal options or negotiate more strenuously on their behalf for more favorable outcomes.

several years have altered the social consensus about what is fair to divorcing partners at the point of divorce such that many Americans no longer consider alimony awards (especially long-term or permanent awards) to be fair in most cases.¹² This paper argues that the complex and long-term social forces that have already reduced the frequency and amount of alimony awards will, probably sooner rather than later, lead to a continuing decline of alimony, to the point that post-divorce spousal support will be reserved for only hardship cases, cases where it was agreed to in a pre-nuptial or post-nuptial agreement, or cases where extreme wealth makes it a preferred option in lieu of transferring property from one spouse to another. Since this abandonment of alimony is continuing despite the fact that significant numbers of parents (still usually female) continue to reduce or forsake paid employment for significant periods of time in able to care for children, spouses and aging relatives¹³, the paper argues that these caretakers need to become aware of the personal and economic risks inherent in their traditional choices. Although either men or women may assume the caretaking role, the plight of women who have assumed the caretaking role remains especially problematic for at least two reasons: first, women are still the vast majority of alimony recipients and second, changing expectations about gender roles in marriage, parenting and the job market are driving much of the anti-alimony movement.

Part II of this essay will briefly summarize the trajectory of spousal support up to the present time, and will discuss recent developments in the law of some states. Part III will discuss theories as to why alimony has declined so much over the past several decades, will describe current social and legal trends contributing to the further demise of alimony and will examine arguments in favor of abolishing long-term or permanent alimony. Part IV will offer some concluding observations about the seemingly inevitable demise of long-term alimony, the continuing vulnerability of caretaking spouses, and how we might address that vulnerability in light of these developments in divorce law and society.

It is important to note at the outset that the gender politics of this issue are complex. For one thing, alimony may be paid by either a man or a woman, to either a man or a woman.¹⁴ Perhaps more importantly, alimony, especially

12. See, e.g., Ira Mark Ellman & Sanford L. Braver, *Lay Intuitions About Family Obligations: The Case of Alimony*, 28 (unpublished working paper) (on file with the Social Science Research Network), available at <http://ssrn.com/abstract=1737146>.

13. "Roughly 60% of two-parent households with children under age 18 have two working parents." Pew Research Center, *Modern Parenthood: Roles of Moms and Dads Converge as They Balance Work and Family*, Pew Research Center Report, 4 (Mar. 2013) available at http://www.pewsocialtrends.org/files/2013/03/FINAL_modern_parenthood_03-2013.pdf. Of course, this means that 40% of families with children under 18 have at least one parent who stays home – a significant minority. In those households studied by Pew, fathers averaged more time in paid employment while mothers spent on average more time on childcare and household chores.

14. See, e.g., Liza Mundy, *The De-Gendering of Divorce: Wives Pay Ex-Husbands Alimony Too*, TIME IDEAS (May 16, 2013). Same-sex marriage will no doubt present some new aspects of the issue.

long-term or permanent alimony, is often vehemently opposed by the subsequent partners of payers.¹⁵ So called “Second-wives clubs” have pitted women against women, thus blurring claims of gender-based need for alimony.¹⁶ Ultimately the alimony debate is about how we view the obligations of marriage, and whether any of those obligations between former partners continue after a marriage ends. The debate is also about how our society protects – or refuses to protect – spouses who have made family-centered decisions during a marriage that later ends in divorce.

I. THE STORY OF ALIMONY

Alimony arose at a time when actual divorce was virtually unheard of, and the only viable option for spouses in broken marriages was to have a type of legal separation known as “divorce from bed and board,” in which the court ordered the husband to continue the financial support of the wife even though the spouses were living apart and some other parts of the marital “contract” were not being fulfilled.¹⁷ In the context of a divorceless society a continuing financial tie between the spouses seemed logical, but the concept of alimony never fit neatly into the context of divorce, where the objective is a clean break between the former spouses.¹⁸

Ideas about marriage and divorce evolved constantly throughout the twentieth and early twenty-first centuries, and ideas about when alimony might be appropriate evolved as well.¹⁹ At least since the 1970s, alimony has been viewed as an award that might be appropriate in certain divorces in order to ensure a fair allocation of resources between the parties. It might be awarded where one party needs financial help in order to become self-supporting.²⁰ It could also be awarded where one party may have contributed significantly to the increased earning power of the other spouse, but has not been appropriately recompensed.²¹ In the words of one court, alimony may be awarded after a court has examined such factors which “reflect and are designed to further two distinct but related objectives in the award of maintenance: to support the recipient spouse in accordance with the needs and earning capacities of the parties (the support objective) and to ensure a fair and equitable financial arrangement between the parties in each individual case (the fairness objective).”²² Awards may be temporary (lasting for a stated term of months or years) or permanent (lasting until the death or remarriage of a party); sometimes alimony may be a lump sum, paid at one time or in installments.

15. See, e.g., Belinda Luscombe, *The End of Alimony*, TIME IDEAS, May 27, 2013 at 45, 49.

16. *Id.* at 45.

17. Kisthardt, *supra* note 1, at 65-66.

18. See, e.g., JOHN E. B. MYERS, EXPERIENCING FAMILY LAW, 502, 504 (West Academic Publishing 2013).

19. Cynthia Lee Starnes, *Alimony Theory*, 45 FAM. L.Q. 271, 273-75 (2011).

20. Kisthardt, *supra* note 1, at 68.

21. See, e.g., In re Marriage of LaRocque, *supra* note 4, at 739-40.

22. *Id.* at 740.

Permanent alimony has always been inconsistent in theory with the goal of the ex-partners achieving a clean break and going on to live separate lives with the possibility of happy remarriages. This is a relatively easy adjustment to make where the subsequent remarriage was by the alimony *recipient* (usually the ex-wife) since alimony normally ends at the remarriage of the recipient. However, the situation of a remarried alimony *payer* (usually the husband) presents problems. The ex-wife might have continuing financial need, but now the ex-husband has two families to support, and he may have neither the means nor the desire to carry the double burden.²³ Hence the law is under pressure to craft alimony awards in a way that makes remarriage of payers a viable option.

Resistance to permanent alimony is partly addressed by the use of rehabilitation or restitution as bases for alimony awards, since these justifications logically lead to only temporary awards in many circumstances. Rehabilitative alimony is awarded for the purpose of helping the recipient spouse to become self-supporting at a standard of living reasonably comparable to that enjoyed by the couple during the latter years of the marriage.²⁴ The expectation is that the recipient will seek employment to become self-supporting as soon as is feasible, and in many cases the alimony will finance education that will re-tool the spouse to re-enter the paid labor force.²⁵ Normally a time limit for the transition is imposed at the outset, although there is the theoretical possibility of petitioning a court for a later modification.

Reimbursement (or restitution) alimony may be ordered where one spouse has made large economic sacrifices that cannot be repaid with property division, and which have not yielded rewards within the marriage itself.²⁶ The stereotypical case of reimbursement alimony is where a wife works at a low-paying job while her husband completes medical school and residency, with the understanding that after he establishes himself, it will be her turn to go back to school. If the husband then leaves the wife immediately after his residency ends, she will not have received any economic benefits of his education and enhanced earning power. Although this situation could be seen as unfair to the cast-aside wife, some courts have resisted the notion that a wife should be reimbursed at all, since the presumption is that economic support and in-kind-services are an intrinsic part of marriage.²⁷ Nonetheless, when there are not yet any assets to divide and the couple leaves a marriage in similarly unequal

23. See, e.g., Luscombe, *supra* note 15, at 46.

24. Kisthardt, *supra* note 1, at 68-69.

25. *Id.*

26. See, e.g., Starnes, *supra* note 19, at 286-287.

27. “. . . [O]rdinary marital benefits are not properly recoverable under a restitution model since they are usually conferred with donative intent and thus do not unjustly enrich the other spouse. Only extraordinary benefits that suggest nondonative intent are reimbursable. Determining whether a spouse’s contributions were ordinary or extraordinary invites value judgments that depend on the judge’s personal view of marital roles.” *Id.* at 287.

circumstances, a court may adjust the equities with some amount of reimbursement alimony.²⁸

At any rate, it does not appear that alimony of any kind was ever awarded in the majority of divorces. In the years 1887-1906 approximately 9.3% of divorces included provisions for permanent alimony.²⁹ From the early 20th century through the 1960s, approximately 25% of divorces involved alimony awards of any kind.³⁰ The few empirical studies that have been done since the mid twentieth century show that alimony awards in the United States have fallen over time in frequency, amount and duration, at least in the states that were studied. As recently as 1978 (prior to divorce reform), Professor Marsha Garrison studied three sample counties in New York and found that approximately 21% of the divorces involved alimony.³¹ Four out of five of those awards were for permanent alimony.³² However, by 1984, Garrison found that the proportion of cases having alimony awards in those same counties had declined 43%, and the majority of the awards were of limited duration.³³ The decline in alimony awards was even more pronounced two decades later when a study of 2005 Wisconsin divorces by McMullen and Oswald found that 8.6% of the sample cases had alimony awards with an additional 2.6% having “family support” awards (which is a hybrid of spousal and child support); 17% of these were awards of permanent alimony (about 1.5% of the sample overall).³⁴

Recent developments in other states seem to portend that even fewer alimony awards will be made in the future, and that those awarded will be for lesser amounts and shorter terms. The goal of the legal system in some states has become to avoid or greatly limit grants of alimony whenever possible, and to reserve awards for extreme circumstances. These reductions have been formalized in some states through statutes such as the one in Texas, which limits who can seek spousal maintenance after divorce.³⁵ The Texas statute only allows a court to award alimony in marriages of 10 years or more and only

28. See, e.g., *Moss v. Moss*, 264 N.W.2d 97, 98-99 (1978) (Michigan Court of Appeals upheld trial court award of \$15,000 lump sum alimony to a wife despite the fact that at the time of divorce, she earned more than her husband did. Throughout their 7-year-long marriage, the wife had worked to support the household while her husband completed medical school and did a surgical residency. The court adjusted the payments so that most would be payable after the residency was complete, but noted that this represented a fair recompense to the wife for her contributions to the husband’s future enhanced earnings.)

29. Marsha Garrison, *Good Intentions Gone Awry: The Impact of New York’s Equitable Distribution Law on Divorce Outcomes*, 57 BROOK. L. REV. 621, 629 (1991).

30. *Id.* The few studies that have been done show a fairly wide range of alimony payout rates at various times: for example, around 1950 a survey of 13 states showed a range of alimony awards from 7.2% in Florida to 48.4% in Kansas.

31. *Id.* at 699.

32. *Id.* at 697.

33. *Id.* at 697-698.

34. Judith G. McMullen & Debra Oswald, *Why Do We Need a Lawyer?: An Empirical Study of Divorce Cases*, 12 J.L. & FAM. STUD. 57, 75 (2010). “Family support” is a hybrid of alimony and child support that is available under Wisconsin law.

35. McMullen, *supra* note 6, at 79.

if the spouse requesting the support does not have sufficient property to provide for her reasonable needs and is unable to earn sufficient income because of “an incapacitating physical or mental disability.”³⁶

In 2012, a new law aimed at greatly limiting alimony awards went into effect in Massachusetts.³⁷ Under the new rules, the duration of alimony awarded in marriages that lasted 20 years or less is limited to a percentage of the length of the marriage.³⁸ For marriages that endured longer than 20 years, a court may order alimony for an indefinite length of time, except that alimony payments will be suspended, reduced or terminated when the recipient spouse has maintained a common household with another person for at least 3 months.³⁹ More importantly, general term alimony payments terminate when the paying spouse reaches full retirement age, although the court has discretion to set a different termination date upon showing of good cause documented in written findings entered by the court justifying the deviation.⁴⁰

Prior to the enactment of the Massachusetts reforms, courts there had broad power to order permanent alimony when marriages ended.⁴¹ How often this occurred depends upon whom you believe: advocates for reform argued that “[a]ll alimony was for life. Payers did not have the right to retire;”⁴² while critics of the reform argued that lifetime alimony was “rare,” happening “so infrequently and in such unusual cases – where the dependent ex-spouse is financially desperate and unable to work – that it doesn’t merit the restructuring of all alimony laws for all purposes.”⁴³ One Massachusetts divorce lawyer stated that she had seen judges award lifetime alimony only a few times over the course of her 16-year career.⁴⁴

Some other states have statutes limiting alimony awards, and several other states have burgeoning reform movements aiming for limits. For example, Utah limits alimony payments to a time period no greater than the length of the marriage.⁴⁵ Recent legislation passed in Florida, but subsequently vetoed by the governor, would have eliminated most permanent alimony, capped alimony awards, and made it easier for ex-spouses to lower or end alimony payments

36. TEX. FAM. CODE ANN. § 8.051 (West 2011).

37. Steven Hitner, *New law stops injustice of paying alimony forever*, SPECIAL TO CNN, (Mar. 11, 2012), <http://www.cnn.com/2012/03/09/opinion/hitner-alimony-overhaul-pro/index.html?iref=allsearch>.

38. MASS. ANN. LAWS ch. 208, § 49 (b) (LexisNexis 2013).

39. MASS. ANN. LAWS ch. 208, § 49 (c), (d) (LexisNexis 2013).

40. MASS. ANN. LAWS ch. 208, § 49 (f)(1) (LexisNexis 2013).

41. Hitner, *supra* note 38.

42. *Id.*

43. Wendy Murphy, *New alimony law is bad for women*, SPECIAL TO CNN, (Mar. 9, 2012), <http://www.cnn.com/2012/03/09/opinion/murphy-alimony-overhaul-con/index.html?iref=allsearch>.

44. *Id.*

45. UTAH COD ANN. §30-3-5 (8)(j) (LexisNexis 2013).

when the payer retires.⁴⁶ Reform efforts to limit alimony payments are pending in several other states, including New Jersey, Colorado and South Carolina.⁴⁷

Courts in still other states have imposed similar *de facto* requirements, limiting alimony to long-term marriages or cases where there is extreme hardship, such as a medical condition limiting self-support, and applying very restrictive definitions of hardship or medical need.⁴⁸ For example, in a recent New York case the court denied alimony to an ex-wife, and imputed a \$40,000 annual income to her, despite the fact that she had worked for pay for only three years out of a 30-year-long marriage.⁴⁹ There, the court noted that the wife had a similar educational background as her husband, but that she had not worked up to her potential; possible hardship in the form of delay or difficulty in finding employment after such a long hiatus from the paid work force was not mentioned.⁵⁰ Similarly, in an Illinois case, the court awarded alimony after a 30-year marriage, but refused to later increase the amount despite claims that the ex-wife's worsening health problems were making employment difficult, thereby limiting the amount of financial help even a sickly ex-spouse could obtain from her ex-husband.⁵¹

Alimony rules have been notoriously inconsistent between states, although the paucity of data as to the percentage of cases getting awards makes detailed comparisons impossible. In fact, despite the current level of controversy over proposed changes in alimony law, it is difficult to determine exactly how many individuals will be personally affected. In one article discussing alimony law in New Jersey, it was reported that 25,000 individuals out of 280,000 divorced spouses paid alimony in that state in 2009.⁵² The article went on to say that these individuals, 97% of whom were men, paid an average of \$21,406 in annual alimony.⁵³ Of course, even if legislation limits mandatory alimony awards, individuals remain free to bargain for alimony, and high-earning couples or couples with significant assets may continue to do so in some cases.

46. Kathleen Haughney & Donna Gehrke-White, *Scott vetoes bill to change alimony law*, SUN-SENTINEL 1A, (May 2, 2013), <http://www.sun-sentinel.com/fl-alimony-bill-20130501,0,6137113.story>. The law also created a presumption of equal child custody upon divorce. *Id.*

47. Luscombe, *supra* note 15, at 46.

48. *See, e.g.*, Carr-Harris v. Carr-Harris, 949 N.Y.S.2d 707, 709, 711 (A.D.2. Dept. 2012) (Court denied alimony to wife, imputing \$40,000 in annual income to her because of her educational level, but despite the fact she had only worked for 3 years during a 30 year marriage); *In re the Marriage of Reynard*, 883 N.E.2d 535, 536-38, 540-42 (Ill.App. 4 Dist. 2008) (Court refused to increase payments of maintenance to an ex-wife after a 33 year marriage, even though her fibromyalgia made continued employment difficult, and the ex-husband's income had increased while his expenses decreased. She had been awarded \$1600 per month for 10 years.); *Quarty v. Quarty*, 948 N.Y.S.2d 130, 132-33 (A.D. 3. Dept. 2012) (Award of \$1100 per month for 30 months to legally blind stay-at-home dad).

49. Carr-Harris v. Carr-Harris, *supra* note 48, at 709, 711.

50. *Id.* at 710-11.

51. Reynard, *supra* note 48, at 536-37, 544.

52. Colleen O'Dea, *For Better or Worse, NJ Looks at Divorce and Alimony*, NJ SPOTLIGHT, <http://www.njspotlight.com/stories/12/0608/0042/>.

53. *Id.*

However, the decreasing likelihood of alimony being imposed by a court removes incentives for parties to agree to pay it unless there are significant concessions in return.

Despite the current societal resistance to alimony, it does appear that there are still significant numbers of married mothers (and in some cases fathers) who make the economically risky choice to reduce or eliminate paid employment in order to care for children in the home, and who might in the not-too-distant-past have relied upon alimony if the marriage were to end in divorce.⁵⁴ The trends in alimony law do not favor such spouses, and the next section will discuss how and why this has come to pass.

II. THE INEXORABLE DECLINE OF ALIMONY

Alimony is no longer a reliable safety net for displaced spouses – those who have left the paid workforce (or greatly reduced their participation therein) in order to care for their partners, children or elderly relatives at home. Indeed, it is the contention of this essay that alimony is an unlikely luxury for the vast majority of divorcing spouses because requiring one ex-spouse to provide a continuous stream of income to support a former spouse conflicts with current widely-held beliefs about gender equity and fairness.

Current social attitudes seem to hold that women and men have equal opportunities to become self-supporting in the paid work-force and equal obligations with respect to home and family care. It scarcely matters how paid work and family duties were apportioned during the marriage: there is now an expectation that at the point of divorce, the partners are back in an equal position and must now support themselves independently of each other.⁵⁵ This expectation persists even in the face of data showing that divorced women, particularly divorced women with children, on average experience a significant drop in standard of living after a divorce.⁵⁶ Moreover, there is less sympathy for a spouse who expects a certain standard of living to continue even if she is not capable of earning it.⁵⁷

As discussed in the previous section, under traditional alimony theory, a spouse might be eligible for income support if, at the time of divorce, she lacks the income, property or employment prospects that would be necessary in order to maintain a standard of living reasonably similar to that enjoyed by the couple during the latter years of the marriage.⁵⁸ Ideally, the support would be limited in time and purpose to get her to the point of financial independence, but if a woman who has stayed home to raise the children is, at the point of divorce, too old, sick or uneducated to ever attain the marital standard of living then, in

54. A significant minority of couples elect to have one spouse remain at home with minor children at some point in the marriage. *Modern Parenthood*, *supra* note 13, at p. 45.

55. *See* Kisthardt, *supra* note 1, at 69-71.

56. “In a worst-case scenario, divorce exposes the undignified reality that a primary caretaker is ‘just a man away from poverty.’” Starnes, *supra* note 20, at 275.

57. *See* Ellman & Braver, *supra* note 12, at 28.

58. *See supra* note 1, at 68; *supra* note 4, at 739-40.

theory, alimony could be permanent. If a woman received rehabilitative alimony but was not able to rehabilitate herself in the agreed upon time period, she might be able to successfully petition a court to extend her award.

Permanent or extended awards of this type have galvanized advocates of divorce reform, who frequently cite horror stories of awards to spouses who allegedly could have become self-supporting but lacked any incentive to do so. For example, Steven Hitner, an alimony reform advocate from Massachusetts, divorced in 1995 after a 23-year-long marriage.⁵⁹ He was ordered to pay \$865 per week in permanent alimony and was unsuccessful in his attempts to have this award modified downward despite business setbacks, bankruptcy and a second marriage.⁶⁰ Mr. Hitner's second wife ended up taking a second job to help with the alimony payments and other expenses.⁶¹ Another critic of the pre-reform alimony law in Massachusetts, Paul Taylor, was ordered to pay \$400 per week in alimony to his ex-wife, who had petitioned the court more than 20 years after the divorce claiming she had no job, no health insurance, and no savings.⁶² At the time of the order, Mr. Taylor was 68 years old and remarried; the two decades he had been divorced was longer than the 17 years he had been married to his ex-wife.⁶³

In the face of such alleged outrages, public opinion has turned against the notion that most ex-wives "need" long-term or permanent alimony.⁶⁴ Yet it is unquestionably the case that re-entering the job market is difficult after a long absence, and income prospects are likely much lower than they would have been with continuous employment.⁶⁵ There are horror stories on the other side as well. For example, TIME magazine reporter Belinda Luscombe describes the case of the Policastro – a Florida couple who have been divorced for 20 years.⁶⁶ Mr. Policastro and his second wife are outraged that out of his \$2,250 per month pension and Social Security, he has been court-ordered to pay \$650 a month in alimony, and an additional \$105 per month for a life insurance policy benefiting his ex-wife.⁶⁷ However, his ex-wife's lawyer says that Mr.

59. Stephen Hitner, *supra* note 37.

60. *Id.*

61. *Id.*

62. Jennifer Levitz, *The New Art of Alimony*, THE WALL STREET JOURNAL, (Oct. 31, 2009), <http://online.wsj.com/article/SB10001424052748703399204574505700448957522.html>.

63. *Id.* To add to Mr. Taylor's outrage, Mrs. Taylor had received the family home in the divorce, and both parties had waived alimony.

64. *See, e.g.*, Ellman & Braver *supra* note 12, at 14. The study surveyed individuals as to whether they would award alimony (and if so, how much and for how long) to couples described in a series of hypotheticals. Even where traditional homemakers still had minor children in the home, only 58% of people surveyed favored alimony awards, that percentage went down to 48% where the children were already grown. *See also*, Luscombe, *supra* note 15, at 46.

65. *See, e.g.*, LESLIE BENNETTS, THE FEMININE MISTAKE: ARE WE GIVING UP TOO MUCH?, 72, 75-78 (Hyperion 2007).

66. Luscombe, *supra* note 15, at 46.

67. *Id.*

Policastro has not actually paid any alimony since July, 2012, and that the first Mrs. Policastro, unable to get a job after many years away from the paid workforce, is relying on food stamps and loans from her retirement account.⁶⁸ In fact, many spouses like her who have left the paid workforce for any period of time experience difficulty re-entering the job market and may encounter pay disadvantages that last for years.⁶⁹

So what justifies the somewhat harsh conclusion that divorcing women just have to support themselves without any financial help from their ex-husbands? Advocates of drastic alimony reform make several arguments, including that property division is sufficient to enable women to become economically independent,⁷⁰ that women's education and job prospects are better than ever before,⁷¹ and that failure to self-support after divorce is due to a lack of incentive.⁷² They also argue that men are not necessarily economically better off than women and may face more risks in the future,⁷³ and that men's more active role in childcare removes any moral argument for supporting women who have engaged primarily in childcare.⁷⁴ Moreover, with more married mothers in the paid workforce, the majority of society no longer views paid employment as inconsistent with good mothering (and the presumption was always that good fathers would have paid employment).⁷⁵ Finally, it is argued that alimony awards are unfair because any gender inequity in pursuit of

68. *Id.*

69. Bennetts, *supra* note 65, at 78-79.

70. See, e.g., Suzanne Reynolds, *The Relationship of Property Division and Alimony: The Division of Property to Address Need*, 56 *FORDHAM L. REV.* 827, 840-841 (1988) (Arguing that reforms like the Uniform Marriage and Divorce Act assumed that "property division should perform a support function and is superior to alimony for this task.")

71. See, e.g., Allie Grasgreen, *The Rise of Women*, *INSIDE HIGHER ED*, <http://www.insidehighered.com/news/2013/02/21/new-book-explains-why-women-outpace-men-education> (noting that women outnumber men in college enrollment 1.4 to 1, and that women hold "almost half of all jobs in America," but admitting that women still tend to be in lower paying fields, only earning 82% of what men earned in 2011.)

72. See, e.g., Luscombe, *supra* note 15, at 46-47 (noting that many second wives believe that their husband's ex-wives should have been able to support themselves after temporary rehabilitative alimony, but that instead many of those first wives "are just sitting around doing nothing.")

73. See, e.g., *Single Women Earning More Money, degrees*, *SUNSENTINEL*, (June 25, 2012), http://articles.sun-sentinel.com/2012-06-25/business/fl-single-women-20120614_1_single-women-single-men-male-counterparts, (noting the benefits of women's higher college enrollment rates, and the risks of men's involvement in volatile industries like construction).

74. See McMullen, *supra* note 6, at 73-75 (noting that men feel less guilt about divorce or about resisting alimony payments because they actively participate in home and child care during marriage, and because fathers can count on awards of significant physical placement time with their minor children after a divorce and thus need not feel that they are abandoning their children).

75. See Stephanie Coontz, *The Triumph of the Working Mother*, *THE NEW YORK TIMES*, *SUNDAY REVIEW*, 11, (June 2, 2013), http://www.nytimes.com/2013/06/02/opinion/sunday/coontz-the-triumph-of-the-working-mother.html?_r=0&pagewanted=print.

work-life balance is not caused by the ex-husband, and he should not have to pay the price for it.⁷⁶ In addition, alimony is unfair to the subsequent spouses of alimony payers.⁷⁷ Let's examine each of these claims in turn.

First, there is the argument that divorced spouses already received shares in the marital property and can use that as a cushion as they re-enter the paid work-force.⁷⁸ Professor Marsha Garrison has noted that drafters of equitable distribution statutes assumed that spouses (usually wives) "would get more property to make up for less alimony."⁷⁹ Her study, published in 1991, showed that alimony rates and amounts went down in the counties studied as equitable property division came into play, but that the modest decreases were somewhat arbitrary in nature – with many needy ex-wives receiving little or no alimony even though other similarly situated ex-wives received long-term alimony.⁸⁰ More troubling is the fact that the decrease in alimony was correlated with only an insignificant increase in property distributed to the unemployed wives.⁸¹ Since Garrison's study, the theory of equitable division has evolved so that any marital property of divorcing couples is divided between them, with an equal division of the marital assets as the usual presumptive starting point.⁸² At least in theory, a greater share of the assets may be awarded to a spouse who has less income or less income-producing ability.⁸³ Property division is appealing because it provides an immediate solution, and allows both parties to have a clean financial break and go on with their lives. Moreover, with property division the property changes hands relatively promptly after the divorce, with no need for periodic enforcement. The notion that income disparity between spouses can be addressed while allowing a clean financial break at divorce is an attractive one, making it likely that property division is replacing spousal support in many divorce settlements, creating at least the illusion of eliminating the "need" that must be demonstrated by a spouse seeking alimony.⁸⁴

Advocates of limiting alimony also point to statistics showing that two-earner married couples are now the norm⁸⁵ and, in terms of education and jobs, women's prospects have been improving even as men's fortunes are in some ways diminished.⁸⁶ Women have been pursuing college educations at greater

76. See McMullen, *supra* note 6, at 54-57.

77. See, e.g., Luscombe, *supra* note 15 (describing various situations where second wives felt unfairly burdened by their husband's alimony payments to first wives).

78. Of course, this does not address the situation where there is no significant property to divide.

79. Garrison, *supra* note 29, at 730.

80. *Id.* at 706-709.

81. *Id.* at 689-696.

82. Kisthardt, *supra* note 1, at 63-64.

83. *Id.* at 67.

84. *Id.*

85. Both parents worked in 59% of two-parent households as of 2011. Wendy Wang, et. al., *Breadwinner Moms*, PEW RESEARCH CENTER, available at http://www.pewsocialtrends.org/files/2013/05/Breadwinner_moms_final.pdf.

86. In theory, this bolsters the argument for more men receiving alimony, and to some extent this may be true. According to one source, approximately two percent of 448,000

rates than men: one study in 2010 showed higher rates of college attendance and undergraduate degree attainment among 35 year-old women as compared to men of the same age.⁸⁷ In recent decades, earnings of men have declined while women's have increased.⁸⁸ Growing numbers of women are now the primary breadwinner in their families: forty percent of breadwinners are women according to a recent Pew Research report.⁸⁹ Sixty-seven percent of these women are single mothers, while thirty-seven percent of them are married mothers earning more than their husbands.⁹⁰ Men suffered more setbacks on average during the economic downturn that began in 2009,⁹¹ and this may have further dismantled the social expectation of the male breadwinner. One writer characterized the movement to abolish permanent alimony as a result of the triumph of the "dual-earner marriage," (where both partners engage in income-earning and child-nurturing) over the "separate-spheres marriage," (where the husband was the provider and the wife was the nurturer who, by taking care of home and children, enhanced her husband's earning potential.)⁹²

Related to the norm of the two-earner couple is the perception that women have equal opportunities in the workplace, and any woman who really wants to can become fully self-supporting if she just tries hard enough. In fact, there is still a wage gap between men and women in the United States, with women earning eighty-one cents to every dollar earned by men.⁹³ As I have noted elsewhere, this wage gap is probably the result of several factors, including gender discrimination, choice of lower-paying (but more flexible) jobs, or working fewer hours per week on average compared to men.⁹⁴ In a recent and controversial book, Facebook executive Sheryl Sandberg argues that women largely *hold themselves back* in the workplace by caring too much about being liked, by trying to have it all, and by making a series of small decisions to hold

American alimony recipients were men in 2000; that percentage quadrupled over the following nine years. Hilary Stout, *The Controversial Rise in Manimony*, Marie-Claire, June 21, 2011.

87. Binyamin Appelbaum, *Study of Men's Falling Income Cites Single Parents*, THE NEW YORK TIMES, (Mar. 20, 2013), http://www.nytimes.com/2013/03/21/business/economy/as-men-lose-economic-ground-clues-in-the-family.html?pagewanted=all&_r=0.

88. *Id.*

89. Wang, et. Al., *supra* note 85, at 1.

90. *Id.*

91. Rakesh Kochhar, *Two Years of Economic Recovery: Women Lose Jobs, Men Find Them*, PEW RESEARCH CENTER, SOCIAL & DEMOGRAPHIC TRENDS, (July 6, 2011), http://www.pewsocialtrends.org/files/2011/07/Employment-by-Gender_FINAL_7-6-11.pdf. Women lost 2.1 million jobs in the Great Recession, while men lost 5.4 million jobs, leading to nearly equal employment levels for men and women by July 2011. *Id.* at 13. However the trend reversed itself later, with men gaining 768,000 jobs from June, 2009 to May, 2011, while women lost 218,000 jobs during the same period. *Id.*

92. Mundy, *supra* note 14.

93. *See also*, Laura Fitzpatrick, *Why Do Women Still Earn Less Than Men?*, TIME, Apr. 20, 2010 (claiming that women earn seventy-seven cents to every dollar earned by men).

94. McMullen, *supra* note 6, at 56.

back so that they will be able to manage families sometime in the future.⁹⁵ Sandberg's theories dovetail with those of alimony reformers who claim that women need to be socialized to become fully self-supporting after divorce and that income support only encourages economic dependence.⁹⁶

A number of changes in how couples approach child-rearing and housework during marriage also contribute to the notion that a continuing stream of support after divorce is unnecessary. There is arguably less justification for spousal maintenance nowadays because men spend more time fathering their children during marriage. Indeed, men have significantly increased the amount of time that they spend doing housework and engaging in childcare over the past several decades.⁹⁷ (A less-cited fact is that women have increased the time they spend in childcare during the same period – even mothers who work outside the home spend more time caring for their children than did mothers in the 1960s.)⁹⁸ Except for some Mommy Wars stalwarts, mothers working outside of the home are accepted as good mothers, and they have become the norm.⁹⁹ “Women make up almost half (47%) of the U.S. labor force today, and the employment rate of married mothers with children has increased from 37% in 1968 to 65% in 2011.”¹⁰⁰ Therefore, it stands to reason that – even if a parent stayed at home during the marriage – it is not necessary for the well-being of the minor children that a parent continue to stay home full-time after a divorce, and that parent now has the time to fully engage in paid labor.

Despite this increase in shared parenting, a significant minority of couples choose to have one parent stay at home to be the primary caretaker of the home and children.¹⁰¹ Women are far more likely to be the stay-at-home parent than men: out of people married to or living with a partner, 30% of mothers but only 6% of fathers stay at home to care for children.¹⁰² It is these stay-at-home parents who face the greatest financial risks in the event of divorce, especially in the current environment that is so hostile to alimony. So the question is: why do parents take this risk?

In my previous work,¹⁰³ I suggested that social attitudes towards women have become more harsh and unforgiving, and that women themselves expect perfection in their marriages and with their parenting.¹⁰⁴ Faced with a conflict

95. Sheryl Sandberg, *LEAN IN*, Alfred A. Knopf, New York (2013).

96. See, Herma Hill Kay, *Equality and Difference: A Perspective on No-Fault Divorce and Its Aftermath*, 56 U. Cin. L. Rev. 1, 84-85 (1987).

97. Modern Parenthood, *supra* note 13, at 33.

98. See Stephanie Coontz, *supra* note 75.

99. A large majority of Americans (79%) reject the notion that women should return to traditional roles, even though survey respondents are more likely to favor a caretaker mother in the home over a caretaker father in the home. Wang, et. al., *supra* note 86, at 3.

100. *Id.*

101. Modern Parenthood, *supra* note 13, at 45.

102. *Id.*

103. McMullen, *supra* note 6.

104. See, e.g., Susan J. Douglas & Meredith W. Michaels, THE MOMMY MYTH: THE IDEALIZATION OF MOTHERHOOD AND HOW IT HAS UNDERMINED ALL

between work and parenting, women will often cut back on work or leave the paid workforce altogether¹⁰⁵. In fact, as Sheryl Sandberg notes, women may choose lower paid positions in order to set themselves up for family life before they even have children.¹⁰⁶ These decisions may be difficult to reverse later if a woman decides to return to a full-time career.¹⁰⁷ However, there is another important part of this picture: the family-unfriendly workplace policies faced by many couples. Even childless couples may face career conflicts when employers demand moves to new locations in order to obtain promotions or even retain employment. Lack of family-friendly policies in workplaces may lead many couples to opt for apportionment of family duties in a traditionally gendered way.¹⁰⁸ Social attitudes likely lead more women than men to take whatever workplace leave is available,¹⁰⁹ which disadvantages those women in the workplace later, and disadvantages them in later divorce settlements where their wage sacrifices are not remedied. At the point of divorce, both parties may feel cheated and angry, and agreement on alimony is unlikely.

In an article in *The New York Times*,¹¹⁰ social historian Stephanie Coontz discusses studies showing that a majority of people surveyed favor equal sharing of earning, childcare and homecare roles in marriage.¹¹¹ Coontz suggests that couples cannot live up to these aspirations in the face of workplace policies that are not family-friendly.¹¹² Partly because women still

WOMEN (2004); and Elisabeth Badinter, *THE CONFLICT* (2011) for examples of critiques of the impossibly perfect standards of motherhood that are imposed on modern women.

105. Sandberg, *supra* note 95, at 137-139.

106. *Id.* at 128-131.

107. “These expectations yield predictable results: among professional women who take time off for family, only 40% return to work full time.” Sheryl Sandberg, *Why I Want Women To Lean In*, *TIME* (Mar. 7, 2013). See also, Ann Crittendon, *The Price of Motherhood: Why the Most Important Job In the World Is Still the Least Valued*, (1st ed. 2001) for tales of economic hardship and difficulties becoming re-employed experienced by women who have left the paid workforce (or significantly reduced their paid hours) in order to raise children.

108. Coontz, *Why Gender Equity Stalled*, *NEW YORK TIMES*, (Feb. 21, 2013), <http://www.nytimes.com/2013/02/17/opinion/sunday/why-gender-equality-stalled.html?pagewanted=all>.

109. Catherine Rampell, *Incentives for Men, to Help Women to Work*, *ECONOMIX*, (April 2, 2013), <http://economix.blogs.nytimes.com/>.

110. Coontz, *supra* note 108.

111. *Id.* Coontz discusses interviews conducted by sociologist Kathleen Gerson for her 2010 book *THE UNFINISHED REVOLUTION: COMING OF AGE IN A NEW ERA OF GENDER, WORK, AND FAMILY*. According to Coontz, “[e]ighty percent of the women and 70 percent of the men Ms. Gerson interviewed said they wanted an egalitarian relationship that allowed them to share breadwinning and family care.” Coontz, “Why Gender Equity Stalled,” *supra* note 108. Coontz also cites a 2010 Pew poll in which 72 percent of men and women between the ages of 18 and 29 “agreed that the best marriage is one in which husband and wife both work and both take care of the house.” *Id.*

112. “When family and work obligations collide, mothers remain much more likely than fathers to cut back or drop out of work. But unlike the situation in the 1960s, this is not because most people believe this is the preferable order of things. Rather, it is often a

earn less than men for comparable work,¹¹³ and partly because the leave necessitated by childbirth is short and typically unpaid,¹¹⁴ couples may fall back into traditional gender rules simply to get by. In Coontz's view, couples act as they do because they have little choice, and she argues that workplace supports would make a difference during the marriage, enabling couples to live up to their ideals of gender equity in the family.¹¹⁵

Coontz cites the work of psychologists Philip and Carolyn Cowan for the proposition "that tensions increase when a couple backslide into more traditional roles than they originally desired. The woman resents that she is not getting the shared child care she expected and envies her husband's social networks outside the home. The husband feels hurt that his wife isn't more grateful for the sacrifices he is making by working more hours so she can stay home."¹¹⁶ Coontz goes on to say that couples will typically rationalize this coerced choice after the fact, creating a type of "family myth" in which it is all for the best and the two "are still equal in their hearts."¹¹⁷

Coontz does *not* directly address the issue of divorce and its aftermath in this piece, but if we extrapolate her ideas into that context, the current alimony trends make sense. As Coontz describes it, couples who face economic realities (such as the fact that his job pays more or is more upwardly mobile than hers) may abandon their ideas of shared childcare in favor of a more traditional allocation of family roles.¹¹⁸ While the marriage continues, they may be able to put a good face on this, but the feeling of being forced to live differently than they had hoped might result in simmering resentments that add to whatever other problems are present in the relationship. If they divorce, each spouse may feel that the decision to undertake traditional gender roles was not a free choice, and each spouse may feel that the other partner received greater advantages from the arrangement. This probably does not predispose the wage-earning spouse to voluntarily undertake ongoing financial support for his ex-wife, and even a resentful ex-wife may need to acknowledge that her hiatus from the paid work-force reduced the family resources available for division or support payments.

When we get to the issue of whether alimony might be imposed by a court, we face what appears to be a social consensus that the husband should

reasonable response to the fact that our political and economic institutions lag way behind our personal ideals." Coontz, *supra* note 108.

113. *Id.* For example, the U. S. Department of Labor website states that women currently earn 81 cents on the dollar compared to men. *See generally*, *Equal Pay*, United States Department of Labor website, <http://www.dol.gov/equalpay/>.

114. Coontz points out that the Family and Medical Leave Act of 1993 guarantees only 12 months of *unpaid* leave after the birth or adoption of a child – far less than what is offered in other first world countries. Coontz, *supra* note 109. *See generally*, the United States Department of Labor summary of Family and Medical Leave Act provisions, <http://www.dol.gov/whd/fmla/>.

115. Coontz, *supra* note 108.

116. *Id.*

117. *Id.*

118. *See, e.g.*, Kisthardt, *supra* note 1, at 69-72.

not have to bear the costs of the workplace realities that led to gender-based role divisions in the first place. In many ways, the husband has suffered disadvantages too, because he has had to give up equal sharing of responsibility for wage-earning and for home and child care. Partners entering marriage are equally stymied by workplace policies, and alimony cannot fairly remedy the problems that each spouse faces at the point of divorce. Rationales for alimony, such as need or rehabilitation, are simply limited exceptions to the expectation that women should jump back into the workforce where they left off, even if they left off a very long time ago and no one wants to hire them. The employment problems of re-entry are caused by deficiencies in the workplace – not by individual ex-husbands, and it does not seem fair to make the ex-husbands pay indefinitely.

Contributing to the view that long-term alimony is unnecessary or unfair is modern custody law, which dictates that there will be shared physical placement of minor children in most circumstances, regardless of whether one parent stayed home during the marriage.¹¹⁹ Legal custody and physical placement are likely to be quite equal in the event of divorce.¹²⁰ Women are thus perceived as having even less need for post-divorce support partly because they are less likely to get primary custody of minor children, and thus have more time to go out and earn a living.

Perhaps the currently most popular argument against alimony is that alimony is unfair to other women – namely the subsequent wives of men who must pay alimony to their ex-wives.¹²¹ This places an economic burden on second families and makes second wives indirectly contribute to the support of their predecessors – a duty that many bitterly resent.¹²² Despite the equities of any particular situation, the possibility of alimony does make remarriage more difficult, and thus jeopardizes the clean break objective of modern divorce law.¹²³ In light of the foregoing, the demise of alimony seems all but certain.

CONCLUSION

At times I wonder why we are still debating these issues. Reformers writing in the 1960s and 70s saw a future where men and women would each have both career and home-care responsibilities, and where equal opportunities

119. See, e.g., WIS. STAT. § 767.41(2) (2011) (establishing joint legal custody is presumed); see also, WIS. STAT. § 767.41(4) (2011) (establishing that the court “shall set a placement schedule that allows the child to have regularly occurring meaningful periods of placement” and “maximizes the amount of time the child may spend with each parent”).

120. Some states have a presumption of joint physical custody, while other states presume that significant placement time with each parent is in the best interests of the child. Either way, the days are over when it was assumed that any mother who wanted it could have sole physical custody of children with only token visitation by the father. See McMullen, *supra* note 6, at 55.

121. Luscombe, *supra* note 15.

122. *Id.*

123. In the words of one second wife, “Essentially I’m her [the first wife’s] alimony. We could have just lived together. I was the idiot.” *Id.*

would make each of them economically self-sufficient.¹²⁴ The current reality, though, is that there are still many unemployed or under-employed spouses who find themselves at a huge economic disadvantage if they get divorced, but who also find themselves in a social and legal environment that is more unsympathetic than ever to their plight. Lost in this new view of fairness is the fact that at some point prior to the wife scaling back her paid employment, the husband and wife bargained implicitly or explicitly to arrive at an efficient, albeit traditionally gendered, distribution of labor. At the point of divorce, the displaced wife seems to be in an ever more vulnerable position that neither current divorce law nor proposed divorce reforms adequately remedies.

Why do married women continue to place themselves in such a vulnerable position? It has been suggested that diminishing alimony would lead young women to continue working for pay, or would at least motivate them to take steps to ease a possible reentry into the workforce at a later date.¹²⁵ Alimony eligibility thresholds and formulas provide something important that the law up until now has lacked: predictability that alimony will *not* be awarded. Unfortunately, this predictability does not seem to have yet generated more self-protective economic behavior by married women, particularly married women with children. A significant minority of women still leave the workforce to raise children, sometimes for long periods of time, and countless others reduce their hours or work in lower paid fields in order to get the flexibility they need to care for their families.

In an era of growing individualism, an embattled middle class, and insecure jobs, policy-makers or even ordinary citizens do not seem inclined to support any proposal that would make it easier for women to receive streams of income after divorce from their husbands. Nonetheless, in marriages where long-term unemployment or serious illness prevents a woman from becoming self-supporting at (or near) the marital standard of living, there is a need for a safety net. The imposition of alimony to mitigate the harsh impact of ill-health or unemployment would most likely be appropriate only in marriages of some minimum duration, and where one spouse has borne the brunt of childcare responsibility. In such circumstances, abandoning the alimony option altogether would allow exploitation of people who engage primarily in child-

124. See, e.g., Betty Friedan, *The Feminine Mystique* (2001). In a recent book, Barnard College president Debora Spar discusses how, beginning in the late 1960s, generations of girls and women were sold the myth that women could “have it all” in the form of a man, a career, children, and permanent good looks. Debora L Spar, *Wonder Women: Sex, Power and the Quest For Perfection*, 15-30 (2013). She also discusses the harsh reality for many of those women should they end up divorced in mid-life. *Id.* at 219-224.

125. Family law scholar Herma Hill Kay has argued that law and society should not “encourage future couples entering marriage to make choices that will be economically disabling for women, thereby perpetuating their traditional financial dependence upon men and contributing to their inequality with men at divorce.” Kay, *supra* note 96, at p. 80. Kay claims that family law support of the male breadwinner, female stay-at-home mom model only makes economic gender equity more unattainable. *Id.* See also, McMullen, *supra* note 6, at 76-77.

2014]

SPOUSAL SUPPORT IN THE 21ST CENTURY

19

rearing. This could in effect penalize them after the fact for not putting themselves first financially, thereby imposing the risks associated with reduced employment solely on the non-earner even if the earner participated actively in the decision and benefited from it.

What can be done to cushion the fall of spouses who are middle class or poor, and have ended up in gender-specific work and parenting roles at the end of a marriage? Perhaps, as Stephanie Coontz suggests, workplace supports such as paid leave or scheduling that allows more equal parenting (thus putting the risk of reduced employment on both parents instead of on one) would help.¹²⁶ Perhaps we should renew efforts to educate young women about the risks of forgoing job skills and experience to stay home, even though as I have noted elsewhere, no one ever seems to believe that divorce will happen to her.¹²⁷ Perhaps, as one commenter said on the New York Times website in reaction to Coontz's essay, there will be a problem as long as men are socialized to believe that paid work is necessary, while women are socialized to view it as optional.¹²⁸

Where does this leave us? In my opinion, it leaves us in a place where alimony is available only for the wealthy or for spouses who have severe health or age-related disabilities that make continuing full employment impossible. I think that the trends in law and society show that as a society, we view breaks from paid work as options available to the lucky few, and when their luck runs out, they are on their own. I do not see this changing any time soon.

126. Coontz, *supra* note 108.

127. McMullen, *supra* at note 6, at 64.

128. Comments to Coontz, *supra* note 108. A commenter identified as "robsjack" from Pearland, Texas stated, "[T]here is the failure to adequately prepare educated women for the demands of working. Men are raised to know that come hell or high water they must work. Women are raised to see it as an option, a choice." *Id.*