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SHIFTING SEXUAL DIVISIONS OF LABOR

CHELSEA L. GRIMMIUS

The primary step toward creating a more equitable divorce environment for men and women does not lie in changing the divorce laws themselves, but rather in adjusting the existing divisions of labor between the sexes in individual marriages.

The division of labor within marriage is often divided starkly between men and women, with the husband as the primary worker and the wife as the primary caretaker. When a couple chooses to divorce, the sexual division of labor usually leaves the primary caretaker at a great economic disadvantage. Jana Singer, in her article “Husbands, Wives, and Human Capital: Why the Shoe Won’t Fit,” discusses how divorce laws have evolved in recent years to compensate for this but have yet to produce an equitable way to divide financial assets after divorce.¹ Singer offers suggestions for offsetting this discrepancy, such as income pooling and limited no-fault divorce laws, but neglects to address how a rearrangement of the domestic and professional roles of parents could play a key part in making current divorce laws work. If the primary objective of lawmakers is to make divorce laws more equitable and reduce the negative financial impact of divorce on women, then their focus should be making individual marriages more equitable before the issue of divorce ever arises.

The most common form of the sexual division of labor begins when one spouse, usually the wife, chooses to forego a career or an education to take on the role of a primary caretaker. Most often she continues this role after the marriage dissolves, but without the financial benefits from the primary worker. In contrast, the primary worker

maintains many of the benefits of parenthood but remains relatively unaffected financially. In her article "Is Coverture Dead? Beyond a New Theory of Alimony," Joan Williams illustrates why this is so: "The ideal worker is typically away from home nine to twelve hours a day. Consequently, an ideal worker-parent will see his young children for only a few hours each day."² After a divorce, men who share custodial rights with their ex-wives spend about the same amount of time with their children as they had before. In this way, "The resulting post-divorce custody arrangements reproduce precisely the dominant pattern during marriage, but without the corresponding financial sharing that such an allocation of parental rights and responsibilities assumes."³

Singer notes that "the structure and pressures of market work generally preclude a primary breadwinner from assuming equal caretaking responsibilities, either before or after divorce."⁴ She uses this structure to illustrate why divorce laws should financially compensate primary caretakers after divorce. According to Singer, "advocates of more equitable divorce outcomes for supporting spouses might insist on income sharing rules that would require divorcing parents to continue to pool their joint incomes for a significant time period after divorce."⁵ Singer's suggestions are feasible, but the very need for them is a short-sighted resignation to the inequality that exists; her suggestions preserve the very relationships they are seeking to compensate for. The question of why the structure of market work precludes a primary breadwinner from assuming equal caretaking responsibilities deserves principal consideration.

The nature of a capitalist market encourages and requires competition to achieve success. If an enterprise seeks to be profitable, it must employ people who are willing to sacrifice and work hard for the company. For employees seeking to meet the demands of their employers, this can often mean long hours and extra work outside the office. For a married man with children, the need for a primary caretaker is essential if he is to be successful. The primary worker's salary therefore "reflects the work of two adults: the ideal-worker's market labor and the marginalized-caregiver's unpaid labor."⁶ If more effort was focused on finding ways for families to thrive economically without requiring such a distinct sexual division of labor, the need for continually updated divorce laws would decrease. If men and women were equally economically

independent and equally capable of rearing children, there would not be a need for such programs as income pooling after divorce.⁷ In order to foster economic equality as a preventative measure, there are several changes that could be made to allow a husband and wife to both work outside the home *and* be active contributors to domestic responsibilities.

Current examples of how businesses have changed their policies to accommodate for the shifting division of labor within marriages include job-sharing programs and paternity leave. A law firm in New Jersey has started a job-sharing program that allows workers the benefits of a full-time job, while only working part-time.⁸ Two of the women currently participating in this program are able to each work two and a half days a week, crossing over on Wednesdays to go over their joint caseloads. They share an office, a secretary, and phone mail so that they function, in essence, as one employee. The firm benefits by retaining experienced employees and the women benefit by having the opportunity to have a family life and a fulfilling career.

Paternity leave is another program designed to allow employees the benefits of a career and a family life. *The National Law Journal* conducted a survey recently to find out some of the latest job perks at law firms around the country. They discovered that over half of the firms surveyed offer paternity leave for their attorneys. At a Washington D.C. firm this includes six weeks of full pay.⁹ Other firms around the nation are offering up to six months of leave time with partial pay.¹⁰

If the majority of corporations were to offer similar programs to both men and women, husbands and wives could choose to share domestic responsibilities and pursue career goals at the same time. There are obvious drawbacks to offering and participating in these programs. Most businesses, for example, depend on the commitment of their employees to ensure the success of their companies, and promotions to high positions of responsibility are unlikely if the employee only works part time. However, the sacrifices that couples may make in choosing to have both a fulfilling career and a successful family life will be balanced by the benefits. In addition, as more couples begin to choose these options, more businesses will find it in their best interest to provide them as incentives to their employees. Highly qualified professionals will accept positions with companies that can offer them the benefits they seek, and if a company intends to retain valuable employees, it is in

their best interest to offer incentives that accommodate for different lifestyles. Roger Frankel is a managing partner at the law firm of Swidler & Berlin Chartered, where they offer six months maternity and paternity leave, as well as flextime partnership tracks. In Frankel's view, the cost of the employment perks are worth it: "If you lose just one associate that you didn't want to lose, that's too many."¹¹

In addition to the administrative programs that could be introduced to promote a more equal distribution of labor within marriages, there are needed social changes. As mentioned before, the primary problem with division of financial assets after divorce stems from the huge economic discrepancy between the role of a mother and the role of a father. In order to decrease the negative financial impact of divorce on women, (and by extension, to prevent some of the reasons for divorce), we must start within individual marriages. In her book, *Kidding Ourselves: Breadwinning, Babies, and Bargaining Power*, Rhona Mahoney gives suggestions on how women can work within their own marriages to achieve economic equality.

Mahoney's main argument rests on the idea that all women should prepare themselves in some way for work outside the home. They should acquire skills and education that will allow them to support themselves. At the same time, men should also prepare themselves to be able to be caregivers. Such couples, as they choose to "[give] up these deeply held convictions that women should be primary caregivers to their children and that men should not or cannot, will bring an end to the sexual division of labor in the home. Ending the sexual division of labor in the home will end the link between one's sex and his or her work in the marketplace."¹² As this is accomplished, husbands and wives may choose to share home and market responsibilities, taking into account their own strengths, weaknesses, and capabilities. Once there are two marketable members of the relationship, economic equality becomes more attainable.

Today, many married women work outside the home and are often marketable. However, the higher participation of women in the work force has not diminished or eliminated their domestic responsibilities. By contrast, it has increased their workload and forced them into the problem of the "second shift." Mahoney defines the "second shift" as doing all or most of the housework and childcare in the home, in

addition to working jobs outside the home.¹³ In order for working mothers to achieve economic success, they must have partners who are capable of compensating for their part-time absence in the home by sharing in domestic responsibilities.

The primary steps toward this sharing of domestic and professional responsibilities must be taken as much by men as by women. Historically, resistance to the idea of sharing childcare responsibilities has been strong from both sexes. Mahoney explains why this phenomenon occurs even in the most egalitarian of marriages. Because a woman carries the child in her womb, she is conscious of its needs for many months before the man is capable of assuming the same level of consciousness. After the child is born, especially if the mother chooses to breast-feed, she develops further interest in the child's needs. If the father neglects to participate in this process, or is not encouraged to participate, he never spends time alone with the infant and does not develop as intimate a connection. When problems arise, the mother is more likely to intervene because of her vested interest and personal connections with the child. This cycle continues as the child develops, creating an increasingly deeper separation of parental roles.¹⁴ This separation of parental roles can only be prevented by individuals within a marriage. If we intend to create economic equality between men and women, we must begin on the level of individual couples, educating both as to how this can be achieved.

There are currently many different groups of professionals working on the issue of divorce. The law is only one of many avenues for change. In a sense, Singer's article is progressive; she asserts her own ideas for better divorce laws and acknowledges the positive results of recent changes in the system. But these changes cannot be truly effective without the help of a shift in the sexual division of labor within marriages. By encouraging men and women to share the professional and domestic duties more equally during marriage, the burden of trying to create an equal distribution of financial assets after divorce would be greatly minimized. Our primary goal as both lawmakers and citizens, who are concerned with the state of the family, should be to promote healthy and equal relationships between the sexes. If we neglect to do this, every other revision we make with respect to divorce law will, in the long term, be ineffective.

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Notes

¹ Jana B. Singer, "Husbands, Wives, and Human Capital: Why the Shoe Won't Fit," *Family Law Quarterly* 31 (spring 1997): 119–31.

² Joan Williams, "Is Coverture Dead? Beyond a New Theory of Alimony," *Georgetown Law Journal* 82 (1994): 2236.

³ Singer, "Husbands, Wives, and Human Capital," 127.

⁴ Singer, "Husbands, Wives, and Human Capital," 127.

⁵ Singer, "Husbands, Wives, and Human Capital," 130.

⁶ Williams, "Is Coverture Dead?" 2229.

⁷ Singer, "Husbands, Wives, and Human Capital," 130.

⁸ Shephard, "Job Share Lets Moms Litigate," *National Law Journal* 21:7 (1998): A16, col. 1.

⁹ Margaret Cronin Fisk, "Newest Perks Include Flextime, Paternity Leave," *National Law Journal*, 12 August 1991, S19, col.1.

¹⁰ Cynthia Cotts, "How Firms Keep Their Associates on the Job," *National Law Journal*, 8 June 1998, A01, col.1.

¹¹ Cotts, "How Firms Keep Their Associates," A01.

¹² Rhona Mahoney, "Kidding Ourselves: Breadwinning, Babies, and Bargaining Power," *Basic Books* (1996): 4.

¹³ Mahoney, "Kidding Ourselves," 106.

¹⁴ Mahoney, "Kidding Ourselves," *supra* note 1, 112–14.