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Lauren F. Redman

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DOMESTICITY AND THE TEXAS COMMUNITY PROPERTY SYSTEM

BY LAUREN F. REDMAN

Forty percent of American women live in poverty after divorce.¹ One explanation for this sobering statistic is that women, as the primary caregivers in American society, are not adequately compensated at the time of divorce for their non-economic contributions to the family.² These contributions directly enhance the earning capacity of the other spouse. This paper will examine the issue as it is framed by Joan Williams in her book *Unbending Gender*, and consider the issue in the context of the Texas community property system. Specifically, this paper will address whether the Texas community property system, which was designed to be in direct opposition to the common law coverture system, insulates women from the problems Williams claims are inherent in domesticity. To answer this question, Part I will define domesticity and summarize Williams' argument. Part II will provide an overview of the history of the community property system in Texas. Finally, Part III will examine statutes and cases in three areas of Texas family law that are used by divorce courts to divide a couple's property and settle their future financial obligations to one another. I will show through the statutes and cases that domesticity is alive and well in Texas. This is an idea that has not been addressed to date by any journal articles or surveys, and this paper stands as a call for future inquiry into this area.

¹ JOAN WILLIAMS, *UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT* 3 (2000). Compare CARMEN DENARAS et al., *INCOME, POVERTY, and HEALTH INSURANCE COVERAGE in the UNITED STATES* (2006) (indicating an overall United States poverty rate of 12.6%), <http://www.census.gov/prod/2006pubs/p60-231.pdf>.

² The terms "carework" and "caregiving" refer to non-economic contributions of a spouse made for the benefit of the family.

I. JOAN WILLIAMS AND DOMESTICITY

In *Unbending Gender*, Joan Williams issues a call to action in three areas.³ This paper will analyze Williams' second call to action for elimination of the ideal worker norm in family entitlements⁴ in the context of the Texas community property system. Williams' argument is that the family entitlement system perpetuates the coverture system.⁵ The doctrine of coverture was historically part of the common law, and defined all family property as belonging to the husband.⁶ Williams argues that coverture, though long dead in principle, is still at present in American common law courts, since divorce courts treat the "ideal-worker's wage as his sole personal property."⁷

According to Williams, an "ideal-worker" is one that "works full time and overtime and takes little or no time off for childbearing or childrearing."⁸ Williams gives a name to the phenomenon of an ideal-worker's wage as his own property—domesticity. According to Williams, domesticity has two defining characteristics. "The first is its organization of market work around the ideal-worker."⁹ This system effectively shuts caregivers out of social roles that "offer responsibility and authority."¹⁰ The second characteristic is the marginalization of caregivers, who are primarily women.¹¹ Caregivers are marginalized in this system because by providing carework to their families, they enable their spouses to function as ideal-workers, increasing the ideal-workers'

³ WILLIAMS, *supra* note 1, at 4. Williams calls for eliminating the norm of the ideal-worker in the marketplace and in family entitlements, and changing the manners in which gender is discussed. *Id.*

⁴ "Family entitlements" refers to who is entitled to the income of the ideal worker.

⁵ WILLIAMS, *supra* note 1, at 115.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* See also Joan C. Williams, *Beyond the Glass Ceiling: The Maternal Wall as a Barrier to Gender Equality*, 26 T. JEFFERSON L. REV. 1 (2003) (contending that women perform 70% to 80% of the carework in the United States).

earning capacity, while at the same time sacrificing their own earning capacity. Under the current system, property and alimony are viewed as charity instead of compensation for valuable work one spouse has contributed to the other spouse's ability to earn money.¹² Williams believes this system unfair, and envisions a system where family entitlements upon divorce consider and compensate a spouse for her past and continuing contribution to her husband's status as an "ideal-worker".¹³ Williams' ideal serves as my yardstick for measuring whether the Texas community property system, through property division, maintenance and child support obligations, continues to marginalize women's non-economic contributions to the family.

II. A SHORT HISTORY OF THE TEXAS COMMUNITY PROPERTY SYSTEM

Community property systems historically rejected the doctrine of coverture. Community property is a system by which whatever is earned during the marriage by the husband or the wife is jointly owned by both of them. The theory behind the system is that both spouses are contributing to the "community" effort of providing for a family.¹⁴ It is based on the separate identity of spouses, which is in stark contrast to the "legal unity" theory under coverture.¹⁵ Texas has expressly embraced the community property system.¹⁶

The history of the community property system in Texas is a useful starting point in evaluating whether the system adequately protects the interest of non-ideal workers post divorce. Texas has been praised for having a property system that emphasizes the equality of men and women; however, that same equality is a

¹² WILLIAMS, *supra* note 1, at 120-22.

¹³ *Id.* at 125-26.

¹⁴ WILLIAM A. REPPY, JR. & CYNTHIA A. SAMUEL, COMMUNITY PROPERTY IN THE UNITED STATES 4 (6th ed. 2004).

¹⁵ *Id.* at 6. The legal unity theory treats a husband and wife as one person for legal purposes. Legally, the husband is that one person.

¹⁶ TEX. CONST. art. XVI, § 15.

byproduct of a system that did not view women as equals.¹⁷ The origin of the community property system in Texas is the Spanish Civil Law system in which women were categorized with infants and idiots as persons in need of special protection.¹⁸ The purpose of the community property system was to protect a woman's separate property from her husband's creditor, not to create community property for the benefit of a dependant spouse.¹⁹ I will look at three parts of the Texas Family Code to analyze whether the community property system in Texas is working in regard to eliminating the effects of domesticity post divorce. I have chosen these areas because they are the primary provisions of the family code that work together to impact the financial status of women after divorce.

III. THE TEXAS COMMUNITY PROPERTY SYSTEM IN ACTION

A. PROPERTY DIVISION

1. THE CODE

Under the Texas Property Code, community property is defined as any property, not separate property, obtained by either spouse during the marriage.²⁰ During the marriage, spouses jointly own all community property in equal shares. Separate property is defined as property owned by a spouse before marriage; property acquired during the marriage by gift, devise, or descent; or personal injury recovery (except recovery for lost wages).²¹ Upon divorce, a judge must divide the community property between the spouses in a "just and right" manner, having due regard for the rights of each party and any children of the marriage.²² Just and right division does not necessarily mean a 50/50 split, and the case

¹⁷ See Bea Ann Smith, *The Partnership Theory of Marriage: A Borrowed Solution Fails*, 68 TEX. L. REV. 689, 699 (1990).

¹⁸ *Id.*

¹⁹ *Id.* at 701-02.

²⁰ TEX. FAM. CODE ANN. § 3.002 (Vernon 2005).

²¹ *Id.* at § 3.001.

²² *Id.* at § 7.001.

law shows that property awards are often unequal.²³ Community debts are also subject to just and right division.

2. THE CASES

Texas cases provide guidance as to whether courts in practice diverge from an equal split of community property and community debt, and if so, what factors courts use to make a determination as to property division. *Goren v. Goren*²⁴ is a case that illustrates a fairly common unequal distribution. In *Goren*, the husband was a medical doctor and the wife a dental hygienist. The Gorens had one child, and Mrs. Goren worked part time after the child's birth. The court divided the assets somewhat equally, while obligating the husband to pay back all of the debts, holding that the husband was in a better position to pay back the debts. It is unusual but not unheard of to see property divisions awarding one spouse over 70% of the community property.²⁵ What is clear, however, is that to make such a disproportionate award, the court must state in its decision grounds it relied on in making the award.²⁶

Many factors must be considered in order to make a just and right division. The leading case on factors a court may use to determine what constitutes a just and right division is *Murff v. Murff*.²⁷ They are as follows (note that most are related to the parties' relative economic status):

1. Spouses' capacities and abilities
2. Benefits which the party not at fault would have derived from continuation of the marriage (note that circuits are split, and the Texas Supreme

²³ See *infra* § III.A.2.

²⁴ 531 S.W.2d 897 (1975).

²⁵ See, e.g., *Wright v. Wright*, 65 S.W.3d 715 (Tex. Ct. App. 2001); *Faram v. Gervitz-Faram*, 895 S.W.2d 839 (Tex. Ct. App. 1995); *Golias v. Golias*, 861 S.W.2d 401 (Tex. Ct. App. 1993).

²⁶ See *Osorno v. Osorno*, 76 S.W.3d 509 (Tex. Ct. App. 2002).

²⁷ 615 S.W.2d 696 (Tex. 1981).

Court has not considered whether fault can be considered in a no-fault divorce)²⁸

3. Business opportunities of both spouses
4. Education of the spouses
5. Relative physical condition of both spouses
6. Relative financial condition and obligations of both spouses
7. Disparity of Ages
8. Size of separate estates
9. Nature of the community property to be divided

Several other factors can be considered, such as the support needs of an adult disabled child.²⁹ In addition, a recent statutory change allows the court to consider the tax attributes of property when making a just and right division.³⁰

Texas follows the majority approach of American states in specifying that occupational licenses and professional degrees are not property divisible upon divorce. The rationale behind this rule is that their value is inextricably intertwined with a person's skills or learning capabilities.³¹ The leading Texas case is *Nail v. Nail*.³² In this case, the goodwill value of the husband's medical practice was not subject to division, despite the fact that a businessperson is entitled to sell his or her business goodwill under Texas law.³³

²⁸ See *Eikenhorst v. Eikenhorst*, 746 S.W.2d 882 (Tex. Ct. App. 1988) (holding fault could be considered in a no-fault divorce where the husband made over \$250,000 per year, while the wife made \$10 per hour as a nurse and the husband was at fault for the breakup of the marriage). But see *Phillips v. Phillips*, 75 S.W.3d 564 (Tex. Ct. App. 2002) (holding fault could not be considered in a no-fault divorce when dividing property). Until the Texas Supreme Court resolves this issue, it is important that a divorce attorney plead both fault and no fault grounds.

²⁹ *Young v. Young*, 609 S.W.2d 758 (1980) (upholding a trial court award of 70% of the community property to a mother caring for the couple's adult disabled child).

³⁰ TEX. FAM. CODE ANN. § 7.008 (Vernon 2005).

³¹ See N.Y.D.R.L. § 236(5)(d)(6) (2003) (providing for contributions to a spouse's career or career potential).

³² 486 S.W.2d 761 (1972).

³³ *Id.* at 763.

There were no liquid assets of the community estate,³⁴ and Dr. Nail was at fault in causing the breakup of the marriage.³⁵

3. WHAT IS WORKING AND WHAT IS NOT

At first glance, it might seem that the Texas community property system protects the interests of women after divorce by recognizing that efforts of the non-ideal worker during the marriage are a contribution to the community. The willingness of courts to depart from a 50/50 split of community property supports the idea that the community property system benefits women post-divorce. Factors for the court to consider when making a just and right division, such as disparity in income or earning capacities, different business opportunities, different educational achievements and children suggest that courts are cognizant of the plight of spouses who have not been ideal workers. However, this system provides very little help in situations where all the couple has is the family home (usually heavily mortgaged) and community obligations, and the court refuses to divide the only real asset—future earnings of the ideal worker spouse. This is the reality for many Texas families. When equity in the home is the only asset to be divided, the house may have to be sold so that both parties can get their share of the just and right division. According to Joan Williams, the mother and children must often move out of the home and into a house or apartment in “cheaper neighborhoods.”³⁶ This increases the chance that children will be moved to a worse school district and will leave established networks of friends during a time when they are at their most vulnerable.³⁷ In today’s world in which the only real asset in a marriage being the ideal worker’s ability to earn an income, property division that refuses to divide future earnings is not adequately acknowledging the non-ideal worker’s plight.

³⁴ *Id.* at 762.

³⁵ *Id.* at 761.

³⁶ WILLIAMS, *supra* note 1, at 121.

³⁷ *Id.* at 121.

B. ALIMONY TEXAS STYLE—LIMITED SPOUSAL MAINTENANCE

1. THE CODE

Historically, the Texas legislature refused to implement a system of alimony reasoning that it would be inconsistent with the community property system. The rationale for this rule was that one of the purposes of the community system is to protect separate property. Future earnings are considered to be separate property. Alimony is the award of future earnings from one spouse to another. Since Texas courts were forbidden from dividing separate property, they could not order alimony. For years Texas was the only state in the country without some form of alimony.³⁸ In 1995, the Texas legislature passed a restricted form of alimony—limited spousal maintenance.³⁹ This new legislation came on the heels of welfare reform sweeping the country. The limited spousal maintenance law was enacted in Texas to prevent newly divorced spouses from resorting to government welfare. However, the statutes were enacted to operate very narrowly.

Two classes of people can receive limited spousal maintenance. First, family violence victims are eligible.⁴⁰ Second, persons who cannot support themselves and have been married for at least ten years are eligible. There are three acceptable reasons for inability to support oneself: incapacitating physical or mental disability, custodial status of child of the marriage of any age that has a physical or mental disability that keeps the custodial parent from being able to work outside the home, or inability to earn enough to meet his or her basic needs in the labor market. The maintenance is allowed for the shortest time necessary to facilitate

³⁸ There were three exceptions to the “no alimony” rule: temporary support *See* TEX. FAM. CODE ANN. § 6.502(2) (Vernon 2005), contractual alimony and *in rem* periodic payments.

³⁹ TEX. FAM. CODE ANN. §§ 8.051-8.057 (Vernon 2005). Note the Texas legislature does not call it alimony.

⁴⁰ The perpetrator of family violence must have been convicted of or received deferred adjudication for an act of family violence under Title 4 within two years before filing for divorce. *See id.* at § 8.051(1). Note that persons eligible under this section are not subject to the same limitations that apply to the second category of potential limited spousal maintenance recipients.

- (5) the ability of the spouse from whom maintenance is requested to meet that spouse's personal needs and to provide periodic child support payments, if applicable, while meeting the personal needs of the spouse seeking maintenance;
- (6) acts by either spouse resulting in excessive or abnormal expenditures or other property held in common;
- (7) the comparative financial resources of the spouses, including medical, retirement, insurance, or other benefits, and the separate property of each spouse;
- (8) the contribution by one spouse to the education, training, or increased earning power of the other spouse;
- (9) the property brought to the marriage by either spouse;
- (10) the contribution of a spouse as homemaker;
- (11) marital misconduct of the spouse seeking maintenance; and
- (12) the efforts of the spouse seeking maintenance to pursue available employment counseling as provided by Chapter 304, Labor Code.

2. THE CASES

In general, courts have been strict in applying the criteria for eligibility to receive temporary spousal maintenance. For example, in *Butler v. Butler*,⁴³ the court was clear that an award of future earnings of a spouse was not allowed, holding that the wife was not entitled to half of her husband's future earnings as a psychological counselor. Exceptions have also been construed very narrowly. In *Carlin v. Carlin*,⁴⁴ a woman with extensive

⁴³ 975 S.W.2d 765 (1998) (holding that future earnings are separate property). See also *Eggemeyer v. Eggemeyer*, 554 S.W.2d 137, 142 (holding that the court does not have the power to divest separate property of one spouse and award it to the other).

⁴⁴ 92 S.W.3d 902 (2002).

the spouse seeking maintenance to find a job or get the education necessary to support himself or herself, but in no event longer than three years.⁴¹ The amount of maintenance is an additional limitation. The statutory maximum is the lesser of \$2500 per month or 20% of the obligor spouse's average monthly gross income.⁴² Finally, there is a presumption that maintenance is not warranted unless the spouse seeking maintenance has exercised due diligence in seeking suitable employment or developing skills to become self-sufficient. The Family Code lists factors to be used in determining the amount and duration of maintenance. This list is extensive, but important in the context of the community property system and domesticity:

- (1) the financial resources of the spouse seeking maintenance, including the community and separate property and liabilities apportioned to that spouse in the dissolution proceeding, and that spouse's ability to meet the spouse's needs independently;
- (2) the education and employment skills of the spouses, the time necessary to acquire sufficient education or training to enable the spouse seeking maintenance to find appropriate employment, the availability of that education or training, and the feasibility of that education or training;
- (3) the duration of the marriage;
- (4) the age, employment history, earning ability, and physical and emotional condition of the spouse seeking maintenance;

⁴¹ *Id.* at § 8.054. There are two exceptions to the absolute three-year bar. The first exception can be invoked if a spouse is unable to support him or herself because he or she has an incapacitating physical or mental disability. The second can be used if a child of the marriage of any age has a physical or mental disability that requires the spouse to care for that child instead of working. In both of these circumstances, support can continue only for as long as the disability continues to prevent the spouse seeking maintenance from working. Courts have strictly interpreted this requirement.

⁴² *Id.* at § 8.055. Note that disability income, social security payments and workman's compensation payments cannot be used to calculate the average monthly gross income of the obligor spouse.

medical problems that inhibited her ability to work was denied indefinite maintenance. Courts have, however, been more generous in awarding temporary spousal maintenance in one particular area--cases where the requesting party was desirous of furthering his or her education. A survey of Texas appellate decisions revealed appellate courts upholding awards of temporary spousal maintenance in all challenged cases where the award was for the purpose of education.⁴⁵ This is in line with the legislative purpose behind limited spousal maintenance.⁴⁶ For example, in *Alexander v. Alexander*,⁴⁷ the court awarded maintenance to a woman who, by agreement with her spouse, stayed home with her children instead of pursuing her education. As a result, she was only able to find jobs paying the minimum wage. In *In re Hale*,⁴⁸ the court held that an award of maintenance was appropriate where the wife had married at fifteen, did not graduate from high school, and was hindered by her husband in her efforts to get an education during the marriage. The court also held that the fact that the wife was able to get a minimum wage job would not hinder her from receiving maintenance. The court held that there is no

⁴⁵ See, e.g., *In Re Marriage of McFarland*, 176 S.W. 3d 650 (2005) (wife awarded limited spousal maintenance and needed money to go back to school); *Alagheband v. Abolbaghaei*, 2003 WL 1986777 (2003) (granting an Iranian wife maintenance despite the fact she had an accounting degree from a foreign country. Maintenance was granted to allow her to obtain a marketing degree and English language skills); *Trueheart v. Trueheart*, 2003 WL 22176626 (2003) (upholding an award of limited spousal maintenance where housewife of 21 years had no job skills and needed at least three years of job training to support herself); *Matter of the Marriage of Goodfellow*, 2002 WL 31769028 (2002) (upholding an award of limited spousal maintenance for two years to allow wife to develop her education; *Morris v. Morris*, 2001 WL 257809 (2001) (granting an award of spousal maintenance where a wife desired to take coding classes over a two-year period to become a medical coding specialist); *Alexander v. Alexander*, 982 S.W.2d 116 (1998) (discussed below); *Hale v. Hale*, 975 S.W.2d 116 (1998) (discussed below).

⁴⁶ *O'Carolan v. Hopper*, 71 S.W.3d 529, 533 (2002) (stating that the "legislative purpose in enacting provisions for spousal maintenance was to provide temporary and rehabilitative support for a spouse whose ability for self-support was lacking or has deteriorated over time while engaged in homemaking activities").

⁴⁷ 982 S.W.2d 116 (1998).

⁴⁸ 975 S.W.2d 694 (1998).

presumption that the minimum wage is sufficient to meet a party's minimum reasonable needs. The court also articulated the factors from § 8.052 to be used in determining maintenance.

3. WHAT IS WORKING AND WHAT IS NOT

The move from no alimony to limited spousal maintenance is a move in the right direction. However, there are two fundamental problems with this system. First, it excludes far too many people with its strict statutory eligibility requirements. For example, in the absence of a showing of recent family violence, the parties must have been married for ten years. This leaves out scores of women who have become marginalized for the greater good of the family, only to find themselves empty-handed and alone after a failed marriage. The strict durational limit may not adequately compensate a woman for the permanent loss of productivity, which her marginalization has cost her.⁴⁹ An additional problem with the system of limited spousal maintenance is that it is a system based on need rather than entitlement.⁵⁰ Maintenance requirements, like alimony payments, are designed to minimize intrusion into the husband's lifestyle.⁵¹

B. CHILD SUPPORT IN THE COMMUNITY PROPERTY SYSTEM

4. THE CODE

At first glance, it would seem that the child support system in Texas has nothing to do with community property. Yet, the long shadow cast by the principle of not awarding separate property in the form of future earnings reaches the support of children. Texas child support guidelines impose a payment that is a percentage of the non-custodial parent's disposable income up to the first \$6000.⁵² Above that amount, the party seeking support must prove

⁴⁹ WILLIAMS, *supra* note 1, at 127 (estimating that a woman loses 1.5% of earning power for every year she is out of the labor market).

⁵⁰ *Id.* at 122 (indicating that this is a problem with all alimony systems).

⁵¹ *Id.*

⁵² TEX. FAM. CODE § 154.125 (Vernon 2005).

that the child needs additional support.⁵³ The statute reads, “(i)n no event may the obligor be required to pay more child support than the greater of the presumptive amount or the amount equal to 100 percent of the proven needs of the child.”⁵⁴ The rationale behind this rule is that transfers above the child’s minimum needs amount to a payment to the custodial parent, not the child, which would amount to alimony.⁵⁵ Refusing to view maintenance as an entitlement neglects the recognition that domesticity has increased the ideal worker’s ability to earn money.

5. THE CASES

*Scott v. Younts*⁵⁶ is a case that illustrates Texas courts’ reluctance to award child support in excess of the proven needs of children. The trial court had awarded the custodial parent child support in the amount of \$2500. The father claimed that the trial court had abused its discretion in awarding this much support, despite the fact that his monthly income was over \$25,000 and the mother had lost her job and could only find low-paying temporary work. The mother made two lists: one containing items she was currently spending to meet her child’s needs, and the other enumerating items she could not afford but felt her daughter needed. The court held that the law required an award of support above the presumptive award to be based only on the unmet needs of the child.⁵⁷ However, the needs of the child are not limited to bare necessities of life.⁵⁸ In this case, the court found that the award of \$2500 per month was not an abuse of discretion because it was less than 100% of the proven needs of the child.⁵⁹ Included in the determination of the child’s proven needs were current

⁵³ *Id.* at § 154.126.

⁵⁴ *Id.* at § 154.126(b).

⁵⁵ *Rodriguez v. Rodriguez*, 834 S.W.2d 369, 372 (Tex. App. 1992) *rev’d on other grounds*, 860 S.W.2d 414 (Tex. 1993). *See also*, Kathleen A. Hogan, *The Big Case: Issues in High Income/High Asset Cases*, 17 J. AM. ACAD. MATRIM. LAW 349, 354 (2001).

⁵⁶ 926 S.W.2d 415 (Tex. App. 1996).

⁵⁷ *Id.* at 420 (citing *Rodriguez v. Rodriguez*, 860 S.W.2d 414, 417 (Tex. 1993)).

⁵⁸ *Id.* (citing *Thomas v. Thomas*, 895 S.W.2d 895, 896 (Tex. App. 1995)).

⁵⁹ *Id.* at 422.

expenses the mother was paying, private school tuition to prepare the child for college, counseling, books, summer camp to raise the child's self esteem, extracurricular lessons and a maid; not included were savings for college and a special pet.⁶⁰ In *Panozzo v. Panozzo*,⁶¹ the court held that the trial court's award of child support over the guidelines was a breach of discretion. This is a difficult case, however, because the husband was very wealthy, yet refused to obey the trial court's order to produce documentation of his income.⁶² In the absence of documentation, the trial court imposed a large support award. The court of appeals stated that the "Code provides that when there is an absence of sufficient evidence to determine the wages and salary income of the obligor, it shall be presumed that the obligor has wages equal to the prevailing federal minimum wage for a forty hour week."⁶³ The court acknowledged that it would be unfair to reward the father for his uncooperativeness and remanded for a new trial.⁶⁴

6. WHAT IS WORKING AND WHAT IS NOT

Because approximately 50% of American children will at some point in their childhoods be eligible to receive child support, child support laws take on a vital role in making sure children have what they need.⁶⁵ Child support guidelines need to be reevaluated to focus less on giving the non-custodial parent a "clean break" and more on protecting children from falling into poverty after a divorce. Because mothers are the primary caretakers approximately 90% of the time following divorce,⁶⁶ fathers

⁶⁰ *Id.*

⁶¹ 904 S.W.2d (Tex. App. Corpus Christi 1995, no writ).

⁶² *Id.*

⁶³ *Id.* at 785. See also, TEX. FAM. CODE ANN. §154.068 (Vernon 2005).

⁶⁴ See 904 S.W.2d at 787.

⁶⁵ See Marsha Garrison, *An Evaluation of Two Models of Parental Obligation*, 86 CAL. L. REV. 4, 42 (1998). This number varies by ethnicity. See also ROBERT HAVEMAN & BARBARA WOLFE, *SUCCEEDING GENERATIONS: ON THE EFFECTS OF INVESTMENTS IN CHILDREN* 19, note 2 (1994) (stating that almost 90% of African American children will live in a single parent household at some point in their childhood).

⁶⁶ WILLIAMS, *supra* note 1, at 123.

continue to benefit from their ex-wives care-giving work, enabling fathers to be ideal workers. The problem with this scenario is that the women are no longer benefiting from the ideal workers' salaries. According to Williams,

The father in a family organized around the dominant family ecology does not want a "clean break" either. What he wants (and generally gets) is the ability to take with him the career benefits he received as a division of labor within the marriage. The "clean break" imagery is nothing more than a way to characterize rules that allow the husband to walk away with this income transfer from his former wife as the optimum in freedom for both parties.⁶⁷

I argue that the Texas courts' refusal to order child support that might be construed as alimony so as not to divide separate property is just as absurd.

III. CONCLUSION

Within the Texas community property system, the concepts of community property and just and right division do not in and of themselves promote domesticity. The shortfall of this system of property division is that most couples have no significant assets other than the ability to earn income. A radical shift in the way maintenance and child support are conceived is necessary. Both maintenance and child support must be thought of not as welfare, but rather entitlements that reflect the value of one spouse's past and continuing contribution to the ability of the other spouse's performance as an ideal worker.

⁶⁷ *Id.* at 127.

