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## DIVORCE

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Divorce law provides the framework that governs the circumstances under which a marriage may be brought to an end and spouses are free to remarry. Divorce law also governs a number of distributional questions that arise on dissolution. Legal doctrines address four distributional questions, in divorce proceedings:

- (1) How should a couple's existing stock of wealth be divided? (Marital property law);
- (2) What ongoing claims should each spouse have on the future earnings of the other spouse? (Alimony or spousal support law);
- (3) What ongoing claims should a child have for a share of the earnings or wealth of each parent? (Child support law); and
- (4) How should the responsibilities and opportunities of child rearing be divided between the parents in the future? (Child custody and visitation law). (See Mnookin and Kornhauser 1979: 959)

This essay describes the revolutionary changes in this legal framework and exposes a variety of questions that Law and Economics scholarship has raised about the behavioral incentives and distributional consequences of divorce law.

### I. THE DIVORCE REVOLUTION

Remarkable changes have occurred in the social and legal framework of divorce over the past several decades. Between 1969 and 1985, a "no-fault" revolution transformed most legal systems (a) by changing the standards and procedures for securing a divorce; (b) by stripping away presumptions based on gender; and (c) by encouraging divorcing couples to resolve their own disputes rather than expecting courts to regulate close rather than engaging in the regulation of the family life of post-divorce families. (see Maccoby and Mnookin 1992: 5).

***From fault to no-fault divorce.*** Before the revolution, divorce was both less common and much more difficult to secure. The Anglo-American legal tradition treated marriage as a permanent status that the spouses themselves lacked the legal power to dissolve. Indeed until 1857 a divorce in England required a separate act of Parliament; civil courts lacked the power to dissolve a marriage. Although in America some states authorized their courts to grant divorce long before England did so, a divorce could be granted only after an official inquiry by a judge, who had to determine whether "appropriate grounds," narrowly defined in terms of "marital offenses," existed. Until 1969, fault -- the notion that either husband or wife had engaged in serious misbehavior -- provided the only basis for divorce in any American state. To justify divorce, the "innocent" spouse had to demonstrate to the satisfaction of the court that the "guilty" spouse had committed some marital offense. Under state law, these offenses typically included adultery, desertion, physical or mental abuse,

drunkenness, imprisonment, drug addiction, or insanity. (See Maccoby and Mnookin 1992: 6). Over a 16-year period, between 1969 and 1985, each of the 50 American states changed its divorce law to accept “the concept that marriage failure is itself an adequate reason for marital dissolution” (see Kay 1990: 6). Long before the no-fault revolution, as a matter of popular ideology, many came to accept the notion that the emotional ties between spouses (rather than legal or religiously-based social constraints) should provide the essential glue to hold successful marriages together. (See Stone 1977 and Shorter 1975). If that glue was missing, reformers questioned whether the state should require a demonstration of a marital offense. No-fault divorce acknowledged that if either spouse found the marriage emotionally unsatisfying, he or she should be free to exit the marriage. (See Maccoby and Mnookin 1992: 6).

While the no-fault changes surely reduced the stigma (and reputational costs) of divorce, the effects of legal change on the incidence of divorce is open to debate. While it is plain that divorce rates are in the 1990's far higher than they were before the changes in the law, it is also clear that divorce rates began to increase substantially long before the reforms. Thoughtful analysts suggest that these legal changes played a far less important role than underlying economic and demographic changes, such as smaller family size and the greater work-force participation of women. Legal reforms both reflected and reinforced already changing attitudes towards marriage and divorce. As divorce became more common - public attitudes softened, which in turn both reduced the stigma of divorce and weakened the constraints holding less successful marriages together (See Furstenberg and Cherlin 1991; Maccoby and Mnookin 1992: 6).

***The removal of gender stereotypes.*** In addition to the elimination of fault as the sole ground for securing divorce, a second set of fundamental changes involved a move away from gender-based stereotypes and toward formal gender neutrality (see Rhode 1989 and Fineman 1991). Before 1970, family law reflected and reinforced the ideology of the traditional allocation of responsibilities between husbands and wives: custody standards incorporated presumptions that explicitly favored mothers, while child support and alimony statutes incorporated the notion that fathers would be the primary wage earners. The husband was seen as having the obligation and responsibility of supporting, maintaining, and protecting the family, while child care and day-to-day household management were thought to be the wife's responsibilities. (See Maccoby and Mnookin 1992: 6-7).

Legal rules concerning divorce and its aftermath reflected these traditional notions. Throughout most of the present century, following divorce the mother was presumed to be the preferred custodian of the children, particularly favored if the children were young, unless the father somehow showed that the mother was unfit. The father's support obligation toward the children, in theory at least, continued after the divorce, and the law on the books further provided that the wife - particularly if she was the "innocent spouse" - would receive other economic subsidies through alimony and the distribution of property. (See Maccoby and Mnookin 1992: 7).

The rebuttable presumption that the custody of a young child should normally go to the mother has now largely disappeared. States now characteristically provide that custody disputes between

parents must be resolved by a case-by-case determination of the child's best interests, with no preference given to either parent simply by reason of gender. In the last 10 years, a number of states have taken the additional step of authorizing and even encouraging joint custody -- an arrangement under which the parents share responsibility for the children following divorce (see Folberg 1984, 1991; Scott and Derdeyn 1984: 456; Singer and Reynolds 1988: 497-498). This represents a radical departure from the traditional notion that one parent would be the child's custodian and the other parent would simply have visiting rights. There are two types of joint custody: legal and physical. With joint *legal* custody, even though the child may reside with one parent, both mother and father have equal rights to make decisions about the child's medical care, religion, and education. Joint *physical* custody empowers both parents to share day-to-day responsibility for the child's care, and carries with it the idea that after divorce the father and mother should have roughly equivalent roles (see Mnookin 1975: 226-293; Maccoby and Mnookin 1992: 7).

Alimony and marital property rules have also changed in ways that reflect greater gender equality. In *Orr v. Orr*, 268, the United States Supreme Court declared unconstitutional a state's provision that upon divorce only a husband might be required to pay support to his wife, but not vice versa. In some state, property distribution rules were also changed. New laws reduced judicial discretion, which in the past had sometimes been exercised to protect custodial mothers through disproportionate awards. Instead, rules were adopted, often premised upon the notion that marriage is a partnership between equals, such that marital property should be divided equally upon divorce (see Maccoby and Mnookin 1992: 7-8).

These legal changes took place in a social context in which gender roles within marriage were changing. In the 1950s, for most married couples with children, the father was the sole wage earner and the mother was a full-time homemaker; only about one out of four married women with children under 16 worked outside the home in 1950. Today, as married women with children have surged into the workplace, mothers as well as fathers are typically breadwinners (see Maccoby and Mnookin 1992: 8). By 1986, more than half (54 percent) of women with children under 6 had a paid job, with the proportion even higher (68 percent) for those with children between 6 and 16. Indeed, Victor Fuchs (1988: 1) noted that by the late 1980s, "one out of two new mothers returns to a paid job before her baby's first birthday -- four times as many as in 1960" (1988: 1). About two-thirds of married, working mothers are working full time, that is, 35 hours or more per week. Yet despite these changes, differences in gender roles persist. Married mothers are much more likely to work part time than fathers; mothers earn less per hour; and they typically do much more of the child care and housework within the home (see Maccoby and Mnookin 1992: 8). (See Hochschild 1989: 277-282 for a discussion of the research on who does child care and housework.)

***From Regulation to "Private ordering."*** Before the no-fault revolution, the legal system implicitly reflected the notion that courts should tightly regulate whether a divorce should be granted and the distributional consequences of dissolution. Contemporary divorce law now increasingly recognizes the legitimacy of "private ordering" - the notion that divorcing parents should have broad latitude to negotiate their own financial and custodial arrangements. This does

not mean that law is irrelevant; to the contrary, such negotiations, in which one or both parents may be represented by counsel, occur in the shadow of state laws concerning custody, visitation, child support, and marital property. The judiciary functions primarily not to regulate the lives of divorcing families, but instead to resolve those legal disputes that divorcing parents themselves cannot work out. To facilitate this dispute resolution, some states have also adopted new procedures, such as mediation, to help parents resolve divorce disputes without the pain, expense, and delay that were thought to characterize the traditional adversarial court-room approach. (See Maccoby and Mnookin 1992: 8).

## **II. THE ECONOMIC CHALLENGE OF DIVORCE**

While the economic impact of divorce varies greatly from one family to another, for most families a divorce creates a difficult reorganization of the family economy. Two households must be created where there was only one before. For divorcing couples, the formation of two households typically poses an economic challenge for three reasons: the loss of economies of scale; the gender-based division of labor that characterizes many households; and the existence of joint consumption. (See Maccoby and Mnookin 1992: 21).

First consider the extra costs imposed by the formation of a second household. One household is typically more efficient in economic terms than are two because of economies of scale. The establishment of a second household necessarily imposes additional costs -- for housing, furniture, housewares, etc., in the short run. Over time, adjustments can be made in either or both households by spending more on housing and less on other items, or by a combination of strategies. Whatever the adjustments, however, the loss of the economies of scale means that there is an economic loss that must be borne by someone. Although housing represents the most conspicuous example, economies of scale may also arise with respect to medical and automobile insurance, and the use of various durable goods such as washing machines or freezers that come in sizes larger than a single user needs. (See Maccoby and Mnookin 1992: 21-22).

Second, the gender-based division of labor which characterizes many households also causes economic strain in divorce. Husbands and wives in many households traditionally exchange specialized services, with men contributing higher income to the household while women to a greater degree specialize in providing child care, nurturing, cooking, and housekeeping services. To some degree the traditional marriage -- with a strict division of labor and completely distinct roles -- is breaking down. Married mothers and fathers are often both in the labor market today, and some parents do share domestic responsibilities. But a substantial body of research shows that a significant amount of division of labor within the family still exists (see Hochschild 1989; Thompson and Walker 1989). (e.g. Maccoby and Mnookin 1992: 22). (For an introduction to the scholarly debate concerning the reasons for the gender division of labor, see Barrett 1982 and Becker 1991 and 1985.)

When spouses stop living together, the terms of the ongoing exchange that prevailed during marriage must necessarily be redrawn. As part of the process of divorce, the exchange of many

services simply comes to an end. After the divorce a woman does not characteristically prepare meals or clean house for her ex-husband on a regular basis. A man will not typically mow the lawn or fix the car for his ex-wife. In the roles as parents, a division of labor may or may not be maintained after divorce. If the mother provides the bulk of the child-care services after separation, it is possible for the father to compensate her for these services through providing support. But from the father's perspective, he no longer receives the same bundle of services, and indeed no longer has the same access to the child. Before, he could see the child every day, and on an ongoing basis enjoy the child's company and experience the rewards of parenthood. If by reason of separation he only sees the child during visitation, this is hardly the same. In any event, the creation of two separate households means that the terms of the previous informal exchanges of money and services are substantially modified. (See Goode 1986; Maccoby and Mnookin 1992: 22-23).

A third reason for the difficulty of the economic divorce concerns joint consumption: the custodial spouse and the children must essentially share the same standard of living, because they consume together. It is not practical or efficient to provide high-quality housing or a certain social milieu for a child without also providing it for the custodial spouse. Joint consumption creates a dilemma concerning how the financial burdens imposed by divorce should be shared. Our legal and cultural norms reflect the notion that children should not bear the economic costs of divorce, and that, other things being equal, the two spouses should bear the loss equally. Joint consumption makes this impossible for all but the most prosperous families: either the children must bear some part of the economic loss, or the non-custodial parent must bear much more of the extra financial burden imposed by divorce than the custodial spouse (see Maccoby and Mnookin 1992: 23).

### **III. Allocating The Economic Burdens: The Special Challenge Posed by Human Capital**

If by reason of divorce the size of the economic pie is often shrinking, then critical distributional questions necessarily arise: To what extent and how should each spouse bear the economic costs of divorce? How should the burdens and benefits be distributed? How should the couple's existing stock of property be divided? What economic claims, if any, should one spouse have over the future earnings of the other spouse?

Where there are minor children, a divorce decree typically requires the non-custodial parent to pay child support to the custodial parent. Under child support guidelines now commonly employed in various states, the amount of the transfer typically depends on the number of children, the relative earnings of each parent, and sometimes the amount of time the children are spending in each household.

When a divorcing couple has accumulated various assets during the course of the marriage -- perhaps a family home, automobiles, bank accounts, stocks, etc. -- marital property rules now typically give each spouse half the value, with exceptions often made for property acquired

before the marriage or by gift or inheritance.

The most troublesome legal issues relate human capital, and the question of what claims, if any, one spouse should have with respect to the future earnings of the other spouse. These issues are particularly acute when the earning potential (and human capital) of one spouse substantially increased during the marriage, arguably by reason of contributions of the other spouse whose earning potential may have decreased. An admittedly extreme hypothetical can illustrate the problem. Suppose a wife devotes the first four years of a marriage working as a nurse to send her husband through law school. Thereafter, the couple has two children; the husband works full-time in a law firm, while she is a homemaker and devotes herself to raising the children and helping her lawyer husband further his career. After 10 years of marriage, at a time when the husband has just become a partner in his lawyer firm, he asks for a divorce.

During this marriage, the value of the husband's human capital has obviously increased while the wage earning potential of the wife (whose nursing license has now lapsed) has diminished. Human capital has been defined as "the capitalized value of the increased stream of earnings that will flow to an individual who has been the recipient of an investment in skills or knowledge." (See Parkman 1987: 440). According to Becker (1975: 9), investments in human capital "include schooling, on-the-job training, medical care, migration, and searching for information about prices and incomes." Following the divorce, what claims should the wife have to the future earnings of her former husband? If divorce law does not compensate for the contribution of household-related services, spouses have a decreased incentive to make that investment, and an increased incentive to invest their human capital outside the home (Bolin 1994: 494-495).

Some commenators have argued that changes in the value of human capital during marriage should be computed and allocated upon divorce (see Combs 1979: 340-354), courts have generally show little willingness to treat human capital like other marital property because of the difficulties of valuation and uncertainty concerning future earnings. Courts have, at times, ordered one spouse to reimburse the other for the cost of a professional education. These issues are most commonly dealt with through awards of spousal support, where the amount awarded is typically said to depend on the relative earning capacity of each spouse and the duration of the marriage.

Posner suggests three economic purposes of spousal support (1992: 147-148): (1) damages for breach of the marital contract; (2) repayment to the wife for her share of the marital partnership assets; and (3) severance pay or unemployment benefits (to allow the wife time to re-enter the labor market for paid employment or the marriage market with the object of finding another husband.)

Spousal support legislation in some states is quite explicitly seen as transitional, where the goal is to encourage a spouse to become self-supporting as soon as possible after divorce. For example California legislation provides that when a court is determining the question of spousal support, it should look to: "[t]he marketable skills of the supported spouse; the job market for those skills; the time and expenses required for the supported spouse to acquire the appropriate education or

training to develop those skills; and the possible need for retraining or education to acquire other, more marketable skills or employment” (California Family Code § 4801 (1) (B). In establishing spousal support, the California legislation also specifically requires consideration of “[t]he extent to which the supported spouse contributed to the attainment of an education, training, a career position, or a licence by the other spouse” (California Family Code § 4801 (2).

### **III. The Incentive Effects of Divorce**

The prism of law and economics suggests that divorce law can affect behavior and create incentives at a number of different stages:

- (1) The decision to marry;
- (2) Behavior during marriage;
- (3) The decision to divorce;
- (4) Bargaining at the time of divorce; and
- (5) Post-divorce economic behavior.

#### **(1) The Decision to Marry: The Marriage Market**

Becker, one of the most influential commentators in this area, suggests that people enter the marriage market and search for information about prospective spouses in order to determine future compatibility. People marry when the utility expected from marriage exceeds the utility expected from staying single (see Becker 1991: 325). Dissolution of marriages will occur early, primarily due to imperfect information in marriage markets and also due to the accumulation of better information during the marriage (see Becker 1991: 328).

Becker posits that, in an efficient marriage market positive assortative mating exists, i.e., “high-quality men are matched with high-quality women and low-quality men with low-quality women”. Negative assortative mating occurs too, although less frequently (see Becker 1991: 108). High quality women marry high quality men because of complementary characteristics which increase the productivity of superior beings. Further, a marriage between likes is optimal, and a marriage between unlikes is optimal. This is because superior beings will reinforce each other’s similarities and complement each other’s differences (see Becker 1991: 114).

Posner describes the marriage market as a place where an elaborate search takes place “by which individuals seek marital partners with whom to form productive households” (see Posner

1992:142). He assumes that the market behaves rationally; people undertake this sorting process with parenting in mind they seek a compatible mate for child production and rearing; and selecting a compatible mate reduces conflict in the household, and therefore, transaction costs (see Posner 1992: 142-143).

How does divorce law affect this process? The greater the cost of divorce, the more likely the parties are to be careful in the initial selection process, thus reducing the chance of making a "mistake" (see Posner 1992: 144). The difficulty of securing a divorce and its cost can affect the decision to marry: if exit is easy and cheap, there is less of an incentive to be careful about entry. Conversely, if exit is impossible, (for example if marriage was considered indissoluble), it is expected that people would be more cautious about the decision to marry. Also, if it is difficult for people to divorce, they are more likely to try to work through their problems (see Posner 1992: 144).

## **(2) Behavior during marriage**

The rules surrounding divorce can also affect decisions made during marriage. During marriage there are a variety of informal exchanges and the two spouses may specialize in different types of activities. As the discussion in the preceding section suggests, to the extent divorce rules do not adequately protect a spouse who specializes in household production and child-rearing services, a spouse may have an incentive to focus more energy on market-related activities.

## **(3) The decision to divorce**

As noted above, the rules surrounding divorce can affect the distribution of the costs and benefits of divorce between the two spouses. Becker suggests that spouses will separate if the utility expected from staying married falls below the utility expected from both a divorce and possible remarriage for either spouse (see Becker, Landes and Michael 1977: 1142). During the course of a marriage a spouse might learn information about him or herself and about his or her spouse which influences the decision to divorce. Under no-fault divorce, since either spouse can unilaterally end a marriage, this means either spouse can exit when the utility from remaining married is exceeded by the utility of not being in the marriage.

Legal rules concerning support and property can affect the cost of divorce, and hence have an influence in the calculation over whether or not to divorce. For example, an unhappy husband may stay in the marriage if he knows most of his property and much of his future income will go to the wife. But if the wife can make no claim on his future earnings, and if there is less property to divide, then it is less costly for him to initiate a divorce.

## **(4) Bargaining at the time of divorce**

The legal rules relating to divorce create bargaining endowments that plainly have an effect on



the negotiations between spouses (and their lawyers) concerning the distributional consequences of the dissolution. Mnookin and Kornhauser (1979) have emphasized that divorcing couples “bargain in the shadow of the law” and suggest that the legal system has a profound effect on the out-of-court settlements. The evidence shows that the overwhelming majority of divorcing couples resolve the distributional questions through negotiation in the shadow of the law, not through adjudication.

The reexamination of legal doctrine from the perspective of spouses who are negotiating their own settlements suggest to Mnookin and Kornhauser three important conclusions. First, marital property, alimony, and child-support issues are all essentially problems of money, and the distinctions among them can become blurred. Although there are differences among the three with respect to termination and enforcement risks, the value of different bundles of the three elements can be compared. Second, custodial arrangements can often be divided in a wide variety of ways. Third, money and custody issues are inextricably linked. (See Mnookin and Kornhauser 1979: 953). They also suggest five factors that might influence, but not necessarily control, bargaining outcomes: preferences of divorcing parents; the bargaining endowments created by law; uncertainty of the law and the associated risks preferences of the parties; transaction costs and the ability to pay them; and strategic behaviour (see Mnookin and Kornhauser 1979: 956-957).

#### **(5) Post divorce economic behaviour**

Divorce laws and the operation of the legal system can create incentive that may also affect post-divorce behaviour along a number of dimensions. For example, support laws can affect re-marriage rates. A woman with substantial support, which ends upon remarriage might be reluctant to remarry. Conversely, a woman who has custody of minor children, but insufficient support, has a powerful incentive to find another spouse who could provide financial support. Similar incentives can operate in relation to men: a man with heavy monetary burdens from one marriage is less able to support a new spouse and children.

Support standards can affect incentives relating to labor force participation. To the extent support is generous, a recipient may have less of an incentive to enter the labor force; to the extent it is inadequate, it provides more of a goad to secure employment. To the extent child support or spousal support is made to fluctuate over time with the earnings of the payor, then support rules operate like a tax on the earnings of the person paying support, with similar incentive effects.

A number of studies have also suggested that the system for the collection and enforcement of support obligations, and the severity of sanctions for non-compliance can have important incentive effects support payments. There is a great deal of empirical research suggesting that many fathers-- some suggest nearly half -- fail to fully meet their support. (See Maccoby and Mnookin 1992: 263). Why do some fathers not pay? A strong correlation has been found between the level of contact a father has with his children and his compliance rate with child support obligations: fathers with no

regular contact with their children were found to be less likely to pay than those with regular contact. The most important indicator of compliance found was a father's employment status: unemployment was found to decrease the percentage of child support paid by almost twenty-five percentage points. Further, a college education increased the compliance rate by almost eleven percentage points. The amount of the father's earnings had no significant effect on compliance, independent of education and employment status (see Maccoby and Mnookin 1992: 249-265; Chambers 1979: 161-2).

A study done by Chambers (1979: 9) found that in a system where men who did not meet their support obligations were jailed and subject to an efficient enforcement procedure, that "substantial" amounts of money were paid both by the men in jail and by those out of jail, i.e., that a higher level of compliance was shown where a state had an effective enforcement mechanism and was willing to jail fathers for non-payment. (Chambers 1979: 9.) While Chambers finds psychological reasons to explain his findings, Mnookin (1981: 355-357) shows that a simple theory based on deterrence and economic analysis can also explain the findings. Such a theory suggests that a father may rationally calculate whether to pay the advantages and disadvantages of alternative courses of action. A father's decision would depend upon his preferences, income, attitudes toward risk, and expectations about the consequences of different courses of action.

By paying support, a father receives whatever satisfaction he derives from an increase in the standard of living and consumption level of the child and the custodial mother. Payment leaves the father with less disposable income, however, therefore depriving him of the satisfaction he would have received from alternative uses of his money. Such fathers would pay child support voluntarily, and for them there is no need for an enforcement mechanism. Other fathers will make no payments without some system of sanctions that makes them view the probable consequences of nonpayment as less attractive than the satisfaction they would get from spending their money in another fashion. By choosing not to pay, a father increases the amount of money available for his own consumption, but also eliminates any satisfaction he might derive from increasing the child's consumption level; he also incurs whatever risks and costs are imposed by the child support enforcement process.

Economic theory points to an explanation for another phenomenon as well. Chambers suggests that once a father gets out of the habit of paying, it takes considerable effort to make him change his ways (1979: 358). People usually lower consumption more slowly when income falls than they increase consumption when income rises. By not paying child support, a father can increase his disposable income. Over a period of time his consumption patterns will accommodate to this higher level of income. Resuming support payments would lower the father's consumption, so consumption theory would indicate that fathers would resist this effect and thus try to avoid paying (see Mnookin 1981: 358).

## **CONCLUSION**

Traditionally the legal structure was thought to affect behavior in areas of commercial activity, but have less impact on the intimate decisions affecting family formation and dissolution. As we have seen, remarkable changes have occurred in the legal rules governing divorce and its consequences over the past 30 years. By examining the incentive effects of alternative legal rules, and exploring how law and legal institutions might affect the behavior of rational, self-interest actors, Law and Economics scholarship has provided important insights with respect to these changes in divorce law..

## **BIBLIOGRAPHY**

### **Statute List**

California Family Code § 4801 (West 1994)

### **Case List**

*In re Marriage of Brown* 15 Cal. 3d 838, 544 P2d 561, 126 Cal. Rptr 633 (1976)

*Orr v. Orr*, 440 US 268 (1979)

### **Literature**

Barrett, N.S. 1982. Obstacles to economic parity for women. *American Economics Review* 72: 160-165.

Becker, G. S. 1964. *Human Capital: A Theoretic and Empirical Analysis, With Special Reference to Education*. Chicago and London: Cambridge University Press; 3rd edn, 1993.

Becker, G.S. *A Treatise on the Family*. Cambridge, Massachusetts, London, England: Harvard University Press; enlarged edition, 1991.

Becker, G.S. 1985. Human capital, effort, and the sexual division of labor. *Journal of Labor Economics* 3: S33-S58.

Becker, G. and E. Landes and R. T. Michael. 1977. An economic analysis of marital instability. *Journal of Political Economy* 85: 1141-1187.

Bolin, K. 1994. The marriage contract and efficient rules for spousal support. *International Review of Law and Economics* 14: 493-502.

Chambers, D.L. 1979. *Making Fathers Pay: The Enforcement of Child Support*. Chicago and London: The University of Chicago Press.

Combs., E. R. 1979. The human capital concept as a basis for property settlement at divorce: Theory and Implementation. *Journal of Divorce* 2:329-356.

Ellman, I. M. 1989. The theory of alimony. *California Law Review* 77: 42-44.

Fineman, M. A. 1991. *The Illusion of Equality: The Rhetoric and Reality of Divorce Reform*. Chicago: The University of Chicago Press.

- Folberg, J. 1984. Joint custody law - the second wave. *Journal of Family Law* 23: 1-55.
- Folberg, J. (ed.) 1984. *Joint Custody and Shared Parenting*. New York: The Guilford Press; 2nd edn, 1991.
- Fuchs, V. 1988. *Women's Quest For Economic Equality*. Cambridge, Massachusetts: Harvard University Press.
- Furstenberg, F. F., Jr., and A.J. Cherlin. 1991. *Divided Families: What Happened to Children When Parents Part*. Cambridge, Massachusetts: Harvard University Press.
- Goode, W. 1986. *Women in Divorce*. New York: The Free Press.
- Hochschild, A. 1989. *The Second Shift*. New York: Viking.
- Kay, H. H. 1990. *Beyond No-Fault: New Directions in Divorce Reform*. In *Divorce Reform at the Crossroads*, S. Sugarman and H. H. Kay, (ed.). New Haven: Yale University Press.
- Krauskopf, J. M., 1980. Recompense for financing spouses's education: legal protection for the marital investor in human capital. *Kansas Law Review* 28: 379-417.
- Lax, D. A. and J. K. Sebenius. 1986. *The Manager as Negotiator*. The Free Press.
- Maccoby, E. E., R. H. Mnookin, et al 1992. *Dividing the Child: Social and Legal Dilemmas of Custody*. Cambridge, Massachusetts and London, England: Harvard University Press.
- Mnookin, R. H. 1975. Child custody adjudication: judicial functions in the face of indeterminacy. *Law and Contemporary Problems* 39: 226-293.
- Mnookin, R. H. 1981. Review: Using jail for child support enforcement. *University of Chicago Law Review* 48: 338-370.
- Mnookin, R. H. and L. Kornhauser. 1979. Bargaining in the shadow of the law. *Yale Law Journal* 88: 950-997.
- Parkman, A.M. 1987. The recognition of human capital as property in divorce settlements. *Arkansas Law Review* 40: 439-467.
- Posner, R. A. 1986. *Economic Analysis of the Law*. Boston: Little, Brown and Company; 4th edn, 1992.
- Rhode, D. L. 1989. *Justice and gender: sex discrimination and the law*. Cambridge, Massachusetts: Harvard University Press.
- Scott, E. and A. P. Derdeyn. 1984. Rethinking joint custody. *Ohio State Law Journal* 45: 455-498.

Singer, J.B. and W. L. Reynolds. 1988. A dissent on joint custody. *Maryland Law Review* 47: 497-523.

Shorter, E. 1975. *The Making of the Modern Family*. New York: Basic Books.

Stone, L. 1977. *The Family, Sex, and Marriage in England: 1500-1800*. New York: Harper and Row.

Thompson, L., and A. J. Walker. 1989. Gender in families: women and men in marriage, work and parenthood. *Journal of Marriage and the Family* 51: 873-893.