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Courting American Families:

The Enforcement of Marital Financial Duties and

the Creation of Courts of Domestic Relations, 1880-1930

A dissertation presented by

Elizabeth D. Katz

to

the Department of History

in partial fulfillment of the requirements

for the degree of

Doctor of Philosophy

in the subject of

History

Harvard University

Cambridge, Massachusetts

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Dissertation Advisor: Nancy F. Cott Elizabeth D. Katz

Courting American Families:

The Enforcement of Marital Financial Duties and

the Creation of Courts of Domestic Relations, 1880-1930

Abstract

This dissertation examines how judges, legislators, charity reformers, probation officers, litigants, journalists, and other stakeholders shaped laws and institutions governing the enforcement of family support obligations from the 1880s through the 1930s. In contrast to scholars' frequent contention that courts were unwilling to intervene in ongoing or "intact" marriages in this period, this manuscript argues that judges and legislators routinely regulated spousal finances and implemented myriad reforms in furtherance of this effort. Faced with major economic and social transformations, including industrialization and the movement for women's rights, lawmakers sought to calibrate the interests of wives, husbands, creditors, and taxpayers to facilitate economic exchange and reinforce marriage as a gendered system of dependency.

Over the course of this half century, courts and legislatures introduced or modernized common law, equity, civil statutes, quasi-criminal poor laws, and criminal statutes in an effort to weave a net through which no male breadwinner could slip. Husbands and fathers attempted to avoid enforcement through legal and extralegal strategies, most of which lawmakers were competent to address. The major weakness that undermined support laws by the late nineteenth century was men's ability to flee across state lines, beyond the effective reach of civil or quasi-criminal laws. In order to extradite these men, legislatures enacted criminal nonsupport statutes. After criminalization,

courts tasked newly minted probation officers with investigating and supervising offenders. The nascent probation profession became deeply invested in handling nonsupport, and probation officers were among the most vocal proponents of specialized "courts of domestic relations" that cities first opened to handle these matters in the 1910s. Probation advocates later pressed for the expansion of these tribunals' jurisdiction, creating "family courts." Probation-backed family courts profoundly enhanced the state's ability to police family-related conduct but also came with procedural and other drawbacks. From the 1930s through 1950s, legislatures strategically relabeled family courts and support laws as "civil," yet retained coercive powers developed in the criminal context. While states had long attempted to use law to coerce gendered family support obligations, it was criminalization that introduced much of the machinery that undergirds family court operation today.

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Introduction

In 1904, Alice (Cotton) De Brauwere found herself in predicament. Her husband of several decades, Louis, had abandoned their New York City home. Louis had held a variety of working-class jobs, including as a conductor and as a salesman in a dry goods store. Alice ran the household, which included three minor sons. When the couple lived together, Alice likely performed the family's shopping with cash Louis gave her or by purchasing items from local merchants on credit. Under the longstanding common law doctrine of necessaries, Louis would have been obligated to pay bills incurred by Alice for the family's food, clothing, housing, and household goods appropriate to their station in life. But if a husband seemed uncreditworthy, or if a couple lived apart, shopkeepers might not sell to the wife on credit because they worried that risky and expensive litigation would be required to obtain payment. Alice tried a different method to force Louis to contribute to the family's budget; she initiated a quasi-criminal action against him for nonsupport. After the judge ordered him to contribute $6 per week, Louis absconded to New Jersey—beyond the reach of New York's quasi-criminal law.

Over the coming years, Alice supported herself and their children by working as a janitor and seamstress. She was also helped by a small inheritance from her great aunt. Her methods of covering the family's expenses might have continued indefinitely, but in 1909, Louis's aunt died. Expecting Louis to inherit nearly $2,000 from his aunt's estate, Alice hired a lawyer and tried a novel litigation strategy. She sued her husband for reimbursement of the $3,840 she had expended on herself and their children since he abandoned them. Because a husband had a duty to support his

wife and children, her lawyer argued, Louis should be liable to his wife for the bills she paid in his absence. Three levels of New York courts agreed.[1]

An interspousal suit for reimbursement would have been unthinkable under the traditional common law doctrine of coverture. Pursuant to coverture's marital unity regime, a husband and wife were understood as one legal person. A wife typically could not own separate property or file a lawsuit in her own name. But in the mid-nineteenth century, Married Women's Property Acts (MWPA) began to unsettle longstanding marital rules, just as industrialization was rapidly changing labor, consumerism, the treatment of debt, and the allocation of family budgets.

Courts and legislatures across the country furthered and reacted to social and economic changes by modifying and introducing options to secure family financial support. They expanded the doctrine of necessaries to apply to more purchases and cover more creditors. Most notably, courts held that a person who lent money to a wife could sue the husband for reimbursement. For married couples who lived apart, most states permitted the wife to obtain a court order for regular payments of "separate maintenance," and many allowed divorce with alimony if the husband were at fault. For destitute wives, legislatures revised the centuries-old poor law, originally imported by American colonies from England, to encompass marital relationships. By the mid-1910s, all states also enacted criminal nonsupport laws to punish and coerce delinquent breadwinners. These criminal statutes commonly applied regardless of whether the couple lived together, and they allowed extradition of offenders who crossed state lines. But New York's legal scene had been more conservative than the

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[1] On the aunt's 1909 death and Louis De Brauwere's expected inheritance, see "C.B. Coates Gone; Debrauwere Heirs Claim $24,000 Due," *Brooklyn Daily Eagle*, Feb. 1, 1913, 1. The couple's employment, immigration, marriage, and children were ascertained from numerous documents available on Ancestry.com. See Bibliography for full details.

norm, leaving women like Alice with fewer options. Facing Alice's novel legal argument, New York's judges seized the opportunity to address their laws' shortcomings.[2]

In opinions praised by newspapers and law journals published across the country, New York's judges enthusiastically declared that a wife could sue her husband for reimbursement for family expenses. The trial judge recognized that Alice's "situation is a common one," but that her suit was unprecedented because most women in such a plight could not afford "the best class of counsel." (It is unclear how Alice did so.) The court described ways in which the doctrine of necessaries had recently been reformed and decided it could go one step further, allowing the wife to recover because she "is entitled to the same remedies as any other creditor." Emphasizing women's economic vulnerability, the court further proclaimed in language widely quoted by newspapers: "Must a wife abandoned among strangers be ruined, or starve, or work herself to the bone, without hope of repayment from the husband whose legal and moral duty it is to support her?" No, she mustn't, the court concluded. She could instead make appropriate purchases and seek to recover from her husband.[3]

Law review coverage and lay press cast the trial court decision as offering a wise and appropriate adjustment to the necessaries doctrine. A contributor to the *Harvard Law Review* concluded that the case "is based on established legal principles and accords with sound public policy, and it is only the tardiness of the law in coming to such a conclusion that calls for comment." Journalists described the holding as a "logical extension" of the necessaries doctrine and touted its "progressive character." Further reflecting widespread interest in efforts to protect wives' financial

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[2] On coverture, see Nancy F. Cott, *Public Vows: A History of Marriage and the Nation* (Cambridge, MA: Harvard University Press, 2000), 11-12. On interspousal litigation, see Elizabeth Katz, "How Automobile Accidents Stalled the Development of Interspousal Liability," *Virginia Law Review* 94, no. 5 (Sept. 2008): 1220-29.

[3] To afford lawyers' fees and court costs, Alice De Brauwere may have used money from her inheritance or entered a contingency agreement. De Brauwere v. De Brauwere, 126 N.Y.S. 221, 222-23 (N.Y. Sup. Ct. 1910).

security in these years, the Washington State newspaper *Yakima Herald* ran a column on *De Brauwere* adjacent to coverage of California's recently revised criminal nonsupport law, which authorized putting convicted husbands to work on the public roads and paying $1.50 per day to their dependents.[4]

Both levels of New York's appellate courts agreed that Alice should be able to recover, with the New York Court of Appeals emphasizing developments in women's legal rights. "The plainest principles of justice require that a wife should have some adequate legal redress upon such a state of facts," the court proclaimed, "and the beneficial character of our legislation removing the former disabilities of married women [to own property and sue] could not be evidenced more forcibly than it is in its application to the present case." The holding was embraced by other states' highest courts in the coming years.[5]

Alice De Brauwere's legal moves demonstrate only a portion of the intersecting challenges and innovations in the enforcement of marital support duties in the decades around the turn of the twentieth century. The shift from an agrarian to an industrial economy and the passage of MWPA dramatically altered how families earned, spent, and shared money. Across the country, the allures of

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[4] Note, "Husband's Duty to Reimburse Wife for Expenditures for Necessaries," *Harvard Law Review* 24, no. 4 (Feb. 1911): 306. For the Washington newspaper coverage, see "Improved Status of Wives" and "Rap at Lazy Husbands," *Yakima (WA) Herald*, Apr. 12, 1911, 4. For representative newspaper coverage, which spread through the Associated Press, see "Wife's Right to Recover," *New York Times*, Nov. 30, 1910, 2; "Husband Held Liable," *Topeka State Journal*, Nov. 30, 1910, 9; "May Sue Recreant Man for Expense," *Akron Beacon Journal*, Dec. 1, 1910, 6. The case was later praised by *Bench and Bar*, leading to another round of newspaper coverage. For examples, see "A Wife's Support," *Cincinnati Enquirer*, Apr. 15, 1911, 9; "Rights of the Wife," *Western North Carolina Times* (Hendersonville), May 5, 1911, 3; "Rights of the Wife," *Anaconda (MT) Standard*, May 7, 1911, 6.

[5] De Brauwere v. De Brauwere, 129 N.Y.S. 587 (Sup. Ct. App. Div. 1911); De Brauwere v. De Brauwere, 96 N.E. 722 (N.Y. 1911). For sample newspaper coverage, see "Wife Kept Family; Husband Must Pay," *St. Louis Post-Dispatch*, Mar. 31, 1912, 39. For coverage of the intermediate appellate decision, see "A Recent Decision of Interest to Women," *Women Lawyers' Journal* 1, no. 2 (Aug. 1911): 9. For law review coverage noting the different rationales employed in the trial court versus the Court of Appeals, see "Husband and Wife—Rights of Wife Against Husband and in His Separate Property—Right to Be Reimbursed for Necessaries," *Harvard Law Review* 25, no. 5 (Mar. 1912): 473. For cases relying on *De Brauwere*, see Desch v. Desch, 132 P. 50 (Colo. 1913); Sodowsky v. Sodowsky, 152 P. 390 (Okla. 1915); Vickers v. Vickers, 109 S.E. 234 (W.Va. 1921). *De Brauwere* is discussed further in Chapter One.

a growing array of consumer goods caused purchases to become a source of tension for spouses of all classes. Meanwhile, urbanization, immigration, and improvements to transportation seemed to render men increasingly mobile and potentially able to escape their family obligations. States varied in their marital dissolution laws, incentivizing litigation tourism that produced decrees of contested validity. The movement for women's rights raised quandaries about spouses' relative duties, as well as courts' place in accelerating or stalling what seemed to be radical modifications in gender roles.

Lawmakers, social reformers, and other stakeholders understood that these developments left holes in traditional methods of ensuring that men supported their wives and children. They attempted to address the laws' omissions for several overlapping though sometimes conflicting reasons. These included a desire to bolster marriage and retain it as an attractive option for women who were increasingly able to live independently, to reinforce gendered expectations for spousal conduct, and to avoid dependents becoming public charges. They also wished to honor the financial expectations of merchants and other creditors, while at the same time shielding indebted families from unscrupulous or devastating market behaviors. In short, they sought to balance the interests of wives, husbands, creditors, and taxpayers for what they viewed as the overall benefit of American society. A significant component of their response was to introduce, reform, and expand methods of enforcing family support duties.[6]

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This dissertation examines efforts to shape legal doctrine and institutions to secure men's family support obligations, directly challenging common conceptions held by historians and family law scholars. The project fills a lacuna in existing accounts of family law history by centering on the 1880s through 1930s, formative decades in family law's development. Over the course of this half

[6] On acceptable "wifely" and "husbandly" conduct in this period, see Ariela R. Dubler, "Wifely Behavior: A Legal History of Acting Married," *Columbia Law Review* 100, no. 4 (May 2000): 957-1021.

century, lawmakers blended and modernized common law, civil statutes, equity, and (quasi-criminal) poor law in a deliberate and creative effort to weave a net through which no male breadwinner could slip. Men attempted to avoid enforcement through legal and extralegal strategies, most of which lawmakers were competent to address. The major weakness that undermined support laws by the late nineteenth century was men's ability to flee across states' borders, beyond the effective reach of civil or quasi-criminal law.

Lawmakers' efforts to reach delinquent husbands who crossed state lines prompted a series of reforms that dramatically altered the state's ability to intervene in family-related conduct. Realizing that men's increasing mobility circumvented existing support laws and social pressures, legislatures enacted criminal laws to gain access to extradition. Though extradition was their primary motive, criminalization also opened opportunities for deeper state regulation of family finances and other domestic conduct. Once nonsupport cases were tried in criminal courts, judges tasked newly minted probation officers with investigating and supervising men and their families. As probation was in its formative years, officers' participation in these cases helped shape their nascent profession. Probation officers and their organizations, in turn, were among the most vocal proponents of specialized courts of domestic relations that cities first opened in 1910 to handle nonsupport cases. They also advocated for the expansion of these tribunals into "family courts" with broader jurisdiction. Probation-backed family courts facilitated a profound shift in how courts regulated family conduct, which was retained even as family laws and courts receded from the criminal sphere from the 1930s through 1950s. Thus, while states had a longstanding goal of enforcing gendered family support obligations in their courts, it was criminalization that introduced much of the machinery that undergirds family court operation today.

Instead of recognizing a dynamic legal world in which lawmakers struggled valiantly to preserve marital obligations amidst dramatic economic and social changes, scholars have portrayed a

laissez faire and unchanging approach to family support by fixating on a single Nebraska case from 1953, *McGuire v. McGuire*. In *McGuire*, a wife sought a court order forcing her husband to improve the couple's living standards. The lower court decreed that the wife could use her husband's credit to make the desired purchases and ordered him to give her a monthly allowance. The Nebraska Supreme Court reversed, finding that "the parties must be separated or living apart from each other" for such relief and that family living standards are "not for the courts to determine."[7]

Family law scholars and historians have treated *McGuire* as representative across jurisdictions and time. In scholarship and nearly every family law casebook, the decision has come to stand for the proposition that courts historically have been unwilling to intervene in "intact" marriages because of privacy considerations.[8] To be sure, leaders in the field of family law have persuasively argued for a more capacious understanding of the "family law canon." This broadened conception of family law problematizes the notion that marital conduct has been impervious to state regulation by identifying how fields traditionally treated as distinct—such as criminal law, immigration, and

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[7] McGuire v. McGuire, 59 N.W.2d 336, 342 (Neb. 1953).

[8] Brian Bix provides a succinct account of the prevailing "family privacy" understanding, which he enshrines as a "general principle" in his family law hornbook. Bix writes that family privacy "is the notion that the state should not attempt to regulate certain matters internal to family affairs, like the relation… between spouses in an intact marriage…. A standard case exemplifying the idea of family privacy is *McGuire v. McGuire*." *Oxford Introductions to U.S. Law: Family Law* (Cary, NC: Oxford University Press, 2013), 16-17. For a representative historical treatment, see Joanna L. Grossman and Lawrence M. Friedman, *Inside the Castle: Law and the Family in 20th Century America* (Princeton: Princeton University Press, 2011), 2, 62, 193. Claiming coverage of only "middle-class family law," the authors cite *McGuire* to support the claims: "Courts were also reluctant, in the name of marital or family privacy, to delve into the intimate heart of a marriage," and "Husbands were supposed to support their wives, but the doctrine of marital privacy usually made this duty all but unenforceable." On the canonical status of *McGuire* in legal scholarship, see Melissa Murray, "Strange Bedfellows: Criminal Law, Family Law, and the Legal Construction of Intimate Life," *Iowa Law Review* 94, no. 4 (May 2009): 1266n48 ("*McGuire v. McGuire* is generally used to illustrate [the] principle" that "family privacy traditionally has marked the interior of family life as impervious to state intrusion and regulation."); Kerry Abrams, "Immigration Law and the Regulation of Marriage," *Minnesota Law Review* 91, no. 6 (June 2007): 1679 ("Most family law students read the famous case of *McGuire v. McGuire*. … *McGuire* has therefore come to stand for the idea that courts should not intervene in intact marriages, an idea known as the doctrine of marital privacy."); Gregg Strauss, "The Positive Right to Marry," *Virginia Law Review* 102, no. 7 (Nov. 2016): 1691, 1754 ("The most famous, or infamous, American case about the intact marriage rule is the 1953 case of *McGuire v. McGuire*."). Mary Anne Case argues that broad reliance on *McGuire* overlooks how courts have been willing to enforce certain marital contracts. Mary Anne Case, "Enforcing Bargains in an Ongoing Marriage," *Washington University Journal of Law & Policy* 35 (Winter 2011): 225, 230.

welfare—in fact intersect with family law and thereby influence spousal behaviors.[9] Even after these contributions, however, scholars have continued to cite *McGuire* to suggest that in most circumstances intact marriages have received privacy-based deference, or at least to support the narrower but still central claim that the state has been unwilling to regulate marital financial decisions.[10]

Yet *McGuire* obscures more than it reveals. This single case, which was not particularly noteworthy when it was decided, is just one court's mid-century reaction to litigation that arose in an unusual posture. While it is accurate to cite *McGuire* as evidence that at least one court was reluctant to permit interspousal support litigation while a couple lived together, it is unclear whether any wife had ever sought relief in that manner before. The traditional and commonplace way a wife bought items was on her husband's credit, even when her husband expressly forbade her from doing so. Indeed, this is essentially what the lower court instructed Mrs. McGuire to do. That wives did not typically attempt to enforce their right to support through interspousal litigation was not a reflection

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[9] Jill Elaine Hasday, "The Canon of Family Law," *Stanford Law Review* 57, no. 3 (Dec. 2004): 825-900; Kerry Abrams, "Family History: Inside and Out," review of *Inside the Castle: Law and the Family in 20th Century America*, by Joanna L. Grossman and Lawrence M. Friedman, Michigan *Law Review* 111, no. 6 (Apr. 2013): 1001-20; Martha Minow, "'Forming Underneath Everything that Grows:' Toward a History of Family Law," *Wisconsin Law Review* 1985, no. 4 (July-Aug. 1985): 819-98. Though historians have studied the criminalization of nonsupport, these accounts have not been incorporated into the family law history corpus, perhaps because the treatments end in the 1930s and do not draw clear connections to other family laws. Notable contributions include Michael Willrich, "Home Slackers: Men, the State, and Welfare in Modern America," *Journal of American History* 87, no. 2 (Sept. 2000): 460-89 and Anna R. Igra, *Wives Without Husbands: Marriage, Desertion, & Welfare in New York, 1900-1935* (Chapel Hill: University of North Carolina Press, 2007).

[10] This dissertation joins Janet Halley and Kerry Rittich in challenging what they have termed "Family Law Exceptionalism," by which they mean how law has rendered the family special or separate from other areas of law. A key aspect of their endeavor, joined by likeminded colleagues, has been recovering the "Economic Family" by looking beyond the traditional confines of "family law" or "domestic relations law." This project is motivated by similar impulses but finds that even within the space typically designated as "family law," there has not been the neat division between family and market that scholars have perceived. Janet Halley and Kerry Rittich, "Critical Directions in Comparative Family Law: Genealogies and Contemporary Studies in Family Law Exceptionalism," *American Journal of Comparative Law* 58, no. 4 (Fall 2010): 777; Janet Halley, "What Is Family Law? A Genealogy, Part I," *Yale Journal of Law and the Humanities* 23, no. 1 (Winter 2011): 1-109; Janet Halley, "What Is Family Law? A Genealogy, Part II," *Yale Journal of Law and the Humanities* 23, no. 2 (Summer 2011): 189-293. This scholarship is part of a longer conversation seeking to unsettle the seeming divide between families and the market. For an earlier contribution, see Frances E. Olsen, "The Family and the Market: A Study of Ideology and Legal Reform," *Harvard Law Review* 96, no. 7 (May 1983): 1497-578.

of judges' privacy concerns, but rather a holdover from the pre-MWPA period, when a wife could not sue her husband for any reason because they were regarded as one legal person. Instead, many necessaries cases involved a wife's friend or relative standing in for her to seek reimbursement from the husband, as scholars have noted.[11] Moreover, Mrs. McGuire had other options for relief if she had been willing to live apart from her husband. The focus on this case has caused scholars to overlook extensive state regulation of family finances.[12]

The supposed distinction between courts' treatment of "intact" and "non-intact" marriages, which scholars use *McGuire* to exemplify, is unhelpful for understanding the decades surrounding the turn of the twentieth century. The language of "intact" marriage would not have resonated with judges, legislators, reformers, and spouses in that period.[13] It was commonly known, and indeed hoped, that many separations were temporary. It was unsurprising that Alice and Louis De Brauwere were apparently living together again in Manhattan in 1915, yet by 1920 Louis was in a boarding house and Alice soon traveled to Miami to live out her final days with her youngest son, daughter-in-law, and namesake granddaughter. Neither spouse seems to have ever sought a divorce.[14] It was normal for spouses not only to informally separate but also to come back together, time and again. Consequently, judges and legislators did not attempt to distinguish between families whose degree of

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[11] Hendrik Hartog, *Man and Wife in America: A History* (Cambridge, MA: Harvard University Press, 2000), 157-58.

[12] Notably, *McGuire* makes no reference to privacy and does not use the language of "intact" marriage. And to whatever extent the case could be read as embracing or even introducing those concepts, this dissertation will show that the case is not representative of earlier times or other places.

[13] The terminology of "intact marriage" seems to have been introduced by scholars in the 1960s. The earliest examples identified are Alvin L. Schorr, "The Family Cycle and Income Development," *Social Security Bulletin* 29, no. 2 (Feb. 1966): 14 and Leo Levy and Harold Visotsky, "The Quality of Urban Life: An Analysis from the Perspective of Mental Health," in *Urban America: Goals and Problems*, compiled by the Subcommittee on Urban Affairs of the Joint Economic Committee, Congress of the United States (Washington, DC: Government Printing Office, 1967), 101. The first case available through Westlaw or HeinOnline to use this language is Carroll v. Carroll, 322 So.2d 53 (Dist. Ct. App. Fl. 1975), *aff'd* 341 So.2d 771 (Fl. 1977).

[14] For details on the De Brauwere family, see section in Bibliography on sources from Ancestry.com.

togetherness warranted privacy and those that did not; the availability of legal remedies turned on other considerations.

In addition to the lived reality of marital fluidity, there are conceptual weaknesses in relying on the "intact" categorization. There was only reason for court involvement when a marriage was in some way no longer "intact"; the meaning of "intact" can easily mutate to accommodate and shield courts' motivations. Moreover, even a court's seeming choice to withhold an intervention, for reasons of "intactness" or otherwise, is itself a form of marital regulation.[15]

To the limited extent legal scholars have acknowledged direct regulation of family finances, they have emphasized a "dual system" in which poor families were (and are) subject to harsher surveillance and control than others.[16] This project challenges the notion that there has been a neat binary between the law of the rich and the law of the poor. Lawmakers did not consider the civil, equitable, quasi-criminal, or criminal laws as distinct paths. Statutory enactments and judicial opinions show that they blended and borrowed between areas of law and considered how the laws worked together.[17] As a practical matter, it makes sense that poor men would more frequently come

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[15] As Frances Olsen argues, the idea of "intervention" or "nonintervention" in the family is incoherent "because the state constantly defines and redefines the family and adjusts and readjusts family roles," by actively responding to behaviors or deliberately selecting to not. Thus, Olsen casts *McGuire* not as an example of a court's unwillingness to intervene in an ongoing marriage but rather as a policy choice that shapes marital rules. Frances E. Olsen, "The Myth of State Intervention in the Family," *University of Michigan Journal of Law Reform* 18, no. 4 (Summer 1985): 836, 842 n.15. For a critique of how this casting "leaves the impression that there are no qualitative distinctions to be made between situations typically labeled as instances of state intervention and those deemed nonintervention," see Martha Albertson Fineman, *The Neutered Mother, the Sexual Family, and Other Twentieth Century Tragedies* (New York: Routledge, 1995), 179.

[16] The classic account, still cited today, is Jacobus tenBroek, "California's Dual System of Family Law: Its Origin, Development, and Present Status: Part I," *Stanford Law Review* 16, no. 2 (Mar. 1964): 257-317. Similarly, scholarship on the history of welfare argues that the state has subjected poor women to surveillance and regulations not applied to other families. Prominent examples include Linda Gordon, *Pitied But Not Entitled: Single Mothers and the History of Welfare* (New York: Free Press, 1994); Gwendolyn Mink, *The Wages of Motherhood: Inequality in the Welfare State, 1917-1942* (Ithaca: Cornell University Press, 1995); Theda Skocpol, *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States* (Cambridge, MA: Harvard University Press, 1992). Michael Willrich has challenged the argument that there was a dual track welfare system that only subjected women to invasive regulation by countering that masculinity was regulated through criminal nonsupport laws. Willrich, "Home Slackers."

[17] Similarly, Deborah Dinner challenges the common claim "that the private and public law systems operate in parallel" by identifying their "intertwined historical trajectories" in the divorce context. Deborah Dinner, "The Divorce Bargain: The Fathers' Rights Movement and Family Inequalities," *Virginia Law Review* 102, no. 1 (Mar. 2016): 79, 83. Other

before judges for nonpayment offenses. However, primary sources document that these husbands' wealthier neighbors were charged under the same criminal laws or were forced to supply support through civil means that would have been ineffective when used against men whose only assets were weekly wages. Like Alice De Brauwere, wives frequently pursued all available options, sometimes trying civil and criminal approaches in succession as circumstances or strategies changed.

How differently might the history of family law appear if *De Brauwere* received the attention that has been devoted to *McGuire*?

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To unsettle the stagnant depiction of family law cast by *McGuire*'s shadow, this project expands temporally, geographically, topically, and methodologically from existing historical studies. Two works dominate the field of family law history in periods overlapping with this project: Michael Grossberg's *Governing the Hearth: Law and the Family in Nineteenth-Century America* and Hendrik Hartog's *Man and Wife in America: A History*. While both offer contributions that inform this dissertation, their time periods, sources, and arguments markedly differ from the interventions offered here. More generally, this manuscript diverges from previous scholarship by embracing lessons from law and society literature, identifying regional patterns overlooked because of reliance on treatises or attentiveness to single locations, emphasizing relationships between areas of family law that historians have studied separately, and contextualizing family-related litigation within broader substantive, procedural, and institutional frameworks.

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scholars have accepted the "dual systems" historical framing but argued that these paths merged in the child support context in the 1960s or later. Leslie Joan Harris, "The Basis for Legal Parentage and the Clash between Custody and Child Support," *Indiana Law Review* 42, no. 3 (Summer 2009): 612-13; Daniel L. Hatcher, "Child Support Harming Children: Subordinating the Best Interests of Children to the Fiscal Interests of the State," *Wake Forest Law Review* 42, no. 4 (Winter 2007): 1043-44; Tonya L. Brito, "The Welfarization of Family Law," *University of Kansas Law Review* 48, no. 2 (Jan. 2000): 229-30.

In *Governing the Hearth*, Grossberg relies on treatises, legislation, and appellate cases to identify the development of a "judicial patriarchy" that regulated certain family conduct by the end of the nineteenth century. Grossberg organizes the book's chapters around topics he casts as aspects of "family formation": courtship, weddings, the right to marry, abortion, bastardy, and child custody. He argues that over the course of the nineteenth century, appellate judges seized control over domestic affairs, greatly expanding the state's ability to "govern the home." Judges' power to enact this charge was facilitated by American society's aversion to government regulation of intimate life, Grossberg claims. Judicial intervention was more refined than legislative and did not seem to disrupt the preference for local control of family relations. Thus, judges came to serve as the "buffer and referee between the family and the state." While judges' involvement in family disputes provided protections to wives, Grossberg emphasizes that judicial patriarchy "helped perpetuate, albeit in altered form, patriarchal authority within republican society."[18]

While the judicial patriarchy concept somewhat aligns with this project, this dissertation's extension into later decades, coverage of other areas of family law, and use of a broader array of sources complicate Grossberg's findings. Most obviously, *Governing the Hearth* concludes only partway through this manuscript's coverage and focuses on family formation rather than marital support duties. The differences also run deeper, largely because of Grossberg's reliance on treatises and appellate cases. While this project also considers those sources, it triangulates them with materials that better capture the day-to-day operation of family litigation. Through analysis of newspaper articles, popular culture materials, and trial court opinions, this project demonstrates that appellate judges were just one category of actor, working with or against trial judges, legislators,

[18] Michael Grossberg, *Governing the Hearth: Law and the Family in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1985), x-xii, 290, 295, 300.

reformers, and everyday litigants. Moreover, the sources used herein identify notable geographic trends that are missed in Grossberg's treatment.

In *Man and Wife in America*, Hartog looks to the muddied stages of marital dissolution to excavate new insights regarding how the law regulated marriage, primarily in the nineteenth century. By focusing on how spouses navigated marital separations short of divorce, he aims to challenge his reading of feminist scholars as casting coverture as an unmitigated harm for women. Even while arguing that the consequences of coverture were more mixed than scholars have realized, Hartog joins the view that judges did not intervene in intact marriages. He suggests that coverture's "marital unity" was "usually a synonym for marital privacy," and "[w]ithin a private sphere, within an ongoing marriage, a husband had much discretion." Framing the book with *McGuire*, he suggests most marital conduct was insulated from state intervention for more than a century. "Where a husband and wife lived together, courts never substituted their judgement as to the needs of the wife for that of her husband," he claims. "*McGuire v. McGuire* would have been good law at any time during the nineteenth century (or before)."[19]

Close readers of *Man and Wife in America* appreciated Hartog's knack for storytelling and provocative claims, but they pushed back against central aspects of the book. Several reviewers with expertise in women and gender history expressed skepticism or at least curiosity regarding how changing conceptions of gender might have influenced the law's development in ways Hartog does not address, and they thought Hartog was overly generous in his assessment of coverture's benefits for wives. These commenters were also unpersuaded by Hartog's treatment of marriage as a private institution, even as they joined him in accepting that state officials typically treated individual marriages as private. For instance, historian Stephanie McCurry adopted Hartog's private sphere

[19] Hartog, *Man and Wife in America*, 9-10, 23-24, 108-9, 157-60.

language but recast its significance by emphasizing how this very privacy reflected state interests. She explained, "[t]he private character of marriage was thus a matter of public interest, constituted by the public power of men." Reviewers were seemingly most convinced by Hartog's observation that "[j]udges were rarely the producers of a coherent system of normative values or beliefs." One of the major lessons of Hartog's book, they understood, was "the untidy and indeterminate nature of American marriage law."[20]

This dissertation builds on but departs from *Man and Wife in America* in significant respects. It follows Hartog in finding marital dissolution to be a ubiquitous circumstance, and therefore a productive space for analysis, and in seeing coverture as a complex institution. But rather than finding state regulation of marital duties to be unchanging yet incoherent, this project argues that the actions of judges, legislators, litigants, and others caused pertinent laws to gradually evolve in a reciprocal relationship with social and economic transformations, such as the movement for women's rights and industrialization.[21] While legal changes were not always uniform and did not necessarily meet stated objectives, sources nevertheless indicate that lawmakers sought to calibrate the interests of wives, husbands, and creditors to facilitate economic exchange and reinforce marriage as a gendered system of family dependency.[22]

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[20] Hartog, *Man and Wife in America*, 4. The book reviews summary blends Lori Ginzberg, review of *Man and Wife in America: A History*, by Hendrik Hartog, *Journal of the History of Sexuality* 10, no. 2 (Apr. 2001): 330; Norma Basch, "When One and One Make Two," review of *Man and Wife in America: A History*, by Hendrik Hartog, *Reviews in American History* 29, no. 1 (Mar. 2001): 72, and Stephanie McCurry, "Book Review," review of *Man and Wife in America: A History*, by Hendrik Hartog, and four other books, *Signs* 30, no. 2 (Winter 2005): 1659. On marriage as a public institution, see especially Cott, *Public Vows*.

[21] One of the reasons this project differs from *Man and Wife in America* is rooted in the sources. As Hartog describes in his note on sources, he primarily considered published New York appellate cases up to 1870. This project finds that New York's judiciary was unusually conservative, that there were important actors other than judges and litigants, and that trial judges had distinct responses to marital dissolution. Hartog, *Man and Wife in America*, 315, 353-55 notes 57-75.

[22] On family as a site of privatized dependency historically, see especially Ariela R. Dubler, *In the Shadow of Marriage: Widows, Common Law Wives, and the Legal Construction of Marriage* (diss., Yale University, 2003); Ariela R. Dubler, "Governing Through Contract: Common Law Marriage in the Nineteenth Century," *Yale Law Journal* 107, no. 6 (Apr. 1998): 1885-920. A common touchstone on this issue in the modern context is Fineman, *The Neutered Mother*, 177-93.

Other family law histories connect to more limited components of this project or its conceptualization. This account begins with MWPA, about which there has been a meticulous and thoughtful literature available for decades.[23] This project also benefits from vibrant scholarship on divorce and especially scholars' attentiveness to how fears about the divorce rate prompted legal reform efforts.[24] Another pertinent pool of scholarship focuses on or at least includes discussion of family law in the nineteenth-century South.[25] Other scholarship is less directly relevant but provides crucial context or thematic insights. These works include books on marriage history and marital

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[23] See especially Elizabeth Bowles Warbasse, *The Changing Legal Rights of Married Women, 1800-1861* (New York: Garland Publishing, 1987); Norma Basch, *In the Eyes of the Law: Women, Marriage, and Property in Nineteenth Century New York* (Ithaca: Cornell University Press, 1982); Richard H. Chused, "Married Women's Property Law: 1800-1850," *Georgetown Law Journal* 71, no. 5 (June 1983): 1359-425; Reva B. Siegel, "The Modernization of Marital Status Law: Adjudicating Wives' Rights to Earnings, 1860-1930," *Georgetown Law Journal* 82, no. 7 (Sept. 1994): 2130.

[24] As discussed in Chapter Two, the treatment of divorce apart from other methods of marital dissolution has led to misconceptions. Nevertheless, this literature offers many important contributions. Commonly cited works include Nelson Manfred Blake, *The Road to Reno: A History of Divorce in the United States* (New York: Macmillan, 1962); J. Herbie DiFonzo, *Beneath the Fault Line: The Popular and Legal Culture of Divorce in Twentieth-Century America* (Charlottesville: University Press of Virginia, 1997); Glenda Riley, *Divorce: An American Tradition* (New York: Oxford University Press, 1991); Norma Basch, *Framing American Divorce: From the Revolutionary Generation to the Victorians* (Berkeley: University of California Press, 1999). Another hotspot for legal histories of the family has been domestic violence. The author has discussed and challenged this literature in Elizabeth Katz, "Judicial Patriarchy and Domestic Violence: A Challenge to the Conventional Family Privacy Narrative," *William & Mary Journal of Women and the Law* 21, no. 2 (Winter 2015): 379-471.

[25] The book most directly focused on Southern family law is Peter W. Bardaglio, *Reconstructing the Household: Families, Sex, and the Law in the Nineteenth Century South* (Chapel Hill: University of North Carolina Press, 1995), xvii. Bardaglio uses statutes, appellate opinions, and other legal sources to understand family law concepts not directly relevant in the present study: incest, miscegenation, rape, child custody, and adoption. Other treatments that meaningfully incorporate discussion of family law as part of broader arguments, and that are more germane to the issues discussed herein, include Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation* (New York: Cambridge University Press, 1998) and Laura F. Edwards, *Gendered Strife and Confusion: The Political Culture of Reconstruction* (Urbana: University of Illinois Press, 1997).

counseling;[26] federal-focused studies at the intersection of law, gender, and family formation;[27] and recent contributions to family law history that begin in the 1960s or later.[28]

While recognizing significant variation in the family law scholarship just described, this project intervenes by drawing from a broader range of sources, an approach that aligns with lessons drawn from law and society scholarship. Whereas much family law scholarship relies on appellate cases and treatises, this project turns to those sources only for select purposes and instead embraces trial court documents, popular culture materials, newspaper articles, and archival collections. As law and society luminaries have long established, law on the books does not necessarily match law in action. Moreover, law does not change or apply solely in a top-down manner; it evolves in tandem with social influences. The extent and pathways for this reciprocity cannot be fully appreciated through traditional legal sources alone.[29]

The wider array of sources utilized in this dissertation also makes it possible to identify geographic patterns typically absent from family law scholarship. Though historians have productively devoted significant energy to studying the reasons for and consequences of variation in

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[26] Rebecca L. Davis, *More Perfect Unions: The American Search for Marital Bliss* (Cambridge, MA: Harvard University Press, 2010); Kristin Celello, *Making Marriage Work: A History of Marriage and Divorce in the Twentieth-Century United States* (Chapel Hill: University of North Carolina Press, 2009); William Kuby, *Conjugal Misconduct: Defying Marriage Law in the Twentieth-Century United States* (New York: Cambridge University Press, 2018).

[27] Margot Canaday, "Heterosexuality as a Legal Regime," in *Cambridge History of Law in America*, ed. Michael Grossberg and Christopher Tomlins (Cambridge: Cambridge University Press, 2008), 442-71; Alice Kessler-Harris, *In Pursuit of Equity: Women, Men, and the Quest for Economic Citizenship in 20th-Century America* (New York: Oxford University Press, 2001).

[28] Alison Lefkowitz, *Strange Bedfellows: Marriage in the Age of Women's Liberation* (Philadelphia: University of Pennsylvania Press, 2018); Serena Mayeri, "Foundling Fathers: (Non-)Marriage and Parental Rights in the Age of Equality," *Yale Law Journal* 125, no. 8 (June 2016): 2330.

[29] On the relationship between law and society specifically in the context of marriage, see Cott, *Public Vows*, 8 ("Law and society stand in a circular relation: social demands put pressure on legal practices, while at the same time the law's public authority frames what people can envision for themselves and can conceivably demand."). For classics in the field, see Robert W. Gordon, "Critical Legal Histories," *Stanford Law Review* 36, no. 1/2 (Jan. 1984): 57-125; Hendrik Hartog, "Pigs and Positivism," *Wisconsin Law Review* 1985, no. 4 (July 1985): 899-935.

states' divorce laws, there has not been similarly sensitive attention to geographic patterns for other topics. This project finds that for nearly every facet of family support law, there were notable variations by state or region. New York serves as the paradigmatic conservative jurisdiction, a foil for and even a target against which other states reacted. Though New York is often an outlier, it is also a crucial jurisdiction because its laws received nationwide coverage, New York City served as the home of powerful charity reform groups and the National Probation Association (NPA), and the state's judiciary produced a disproportionate share of opinions that ultimately reached the U.S. Supreme Court. Yet the pervasive influence of New York's leaders and laws should not crowd out meaningful attention to other places. Every chapter of this dissertation finds that Midwestern or Southern states took distinct approaches, some of which have been hardly noticed by scholars. Midwestern states tended to be more progressive, creative, and protective of wives' interests than the Northeastern jurisdictions that have occupied more of historians' time. Southern courts and legislatures occasionally led but other times were slow adopters of nationwide trends. In both circumstances, Southern law was more connected to other regions' approaches than has sometimes been apparent in studies focused on the South.

This project makes another move that is uncommon in family law histories by studying a spectrum of interrelated laws and placing them within the wider context of changes not obviously related to families, gender, or women's rights. A grounding principle of this study is that distinct types of family litigation cannot be studied in isolation, and indeed must be contextualized by developments external to family law. When an unhappy spouse considered turning to law for relief, she or he considered a menu of options. The availability and attractiveness of one shifted the relative appeal of another. That several possibilities existed also mattered for bargaining outside of litigation.

And family-focused laws could be influenced by other substantive categories or procedural and jurisdictional rules.[30]

The most important legal changes external to family law for this project involve debtor-creditor laws and the relationship between debt, labor, slavery, and incarceration. The narrative begins with the passage of MWPA, the first of which were designed as debtor protection measures. By shielding a wife's property, legislators sought to protect a family's financial security. They soon realized that they had inadvertently introduced the possibility of spousal collusion, in which a husband transferred his property to his wife to evade creditors. Thus, further refinements were needed. The same market conditions and impulses that inspired MWPA prompted the gradual abolition of debtors' prisons. Once it became unlawful or at least morally suspect to incarcerate men for debt, questions arose about whether a man could still be subject to civil contempt incarceration for nonpayment of family support duties and, if so, whether this meant he could be jailed for refusing to work. The passage of a bankruptcy act in 1898 likewise raised questions about whether family support arrears should be treated like debts owed to regular creditors. Judges' and legislators' reactions to these uncertainties were partly informed by the rhetoric and reality of slavery, emancipation, free labor, and "involuntary servitude." Legal and political aspects of these concepts bled into the acceptability of incarcerating convicted non-supporters at hard labor. Recognizing the contingency, urgency, and seriousness of these intersecting issues is crucial for grasping lawmakers' efforts to craft workable family support laws. Judges and legislators were constrained by broader legal rules with profound political salience; they could not create family laws against a blank slate

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[30] This point draws inspiration from legal historians' recovering of intersections between gender, family, and tort law in this period. See especially Barbara Young Welke, *Recasting American Liberty: Gender, Race, and the Railroad Revolution, 1865-1920* (New York: Cambridge University Press, 2001); John Fabian Witt, "From Loss of Services to Loss of Support: The Wrongful Death Statutes, the Origins of Modern Tort Law, and the Making of the Nineteenth-Century Family," *Law and Social Inquiry* 25, no. 3 (July 2000): 717-55.

that might have allowed more imaginative or effective approaches. Indeed, within this larger narrative, it becomes apparent that lawmakers sometimes developed novel theories to justify treating wives more favorably than other types of creditors.[31]

Other rules pivotal in the development of family support enforcement relate to laws' ability (or inability) to effectively reach across state lines. Geography is a major factor in this project. The critical problem presented to enforcement of family support orders (as well as other types of debts) derived from people's, and especially men's, mobility. Spouses traveled to faraway jurisdictions, usually westward, to escape the conservative divorce laws of their home jurisdictions, a phenomenon known as "migratory divorce." Many of these divorces were collusive. For instance, in 1913, Louis De Brauwere's own lawyer, Lucius Gilbert, chose not to contest the divorce his wife Jennie Gilbert sought in Reno, Nevada. Jennie easily obtained a divorce decree to terminate their seven-year marriage by alleging that Lucius had deserted her. She then returned to New York. The Gilberts had likely agreed to a private settlement beforehand and colluded in order to evade New York's stricter divorce law. More commonly, a man sought a foreign divorce without his wife present, at least in part to avoid an alimony decree. Other times a husband or ex-husband traveled after a support order was in place, rendering the woman's recovery difficult.[32]

Movement injected significant complexity into the validity and enforceability of family support orders for financial, logistical, and legal reasons. The U.S. Supreme Court struggled for decades to interpret the U.S. Constitution's Full Faith and Credit Clause in a manner that would

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[31] This discussion benefits from intellectual histories that connect marriage, emancipation, and labor. It departs from those accounts in its emphasis on the practical difficulties posed by the overlay of legal rules attached to each concept. See especially Stanley, *From Bondage to Contract*.

[32] Lucius Gilbert "responded to the summons [for divorce] by making merely a formal appearance, without contesting the suit." "Divorce for Mrs. Gilbert: Wife of New York Lawyer Gets Reno Decree for Desertion," *New York Times*, Nov. 20, 1913, 12. Migratory divorce is detailed in Chapter Two, and the Supreme Court's struggle over jurisdictional rules is in Chapter Three. For an account of how mobility prompted an explosion in bigamy in this period, see Lawrence Friedman, "Crimes of Mobility," *Stanford Law Review* 43, no. 3 (Feb. 1991): 637-58.

allow appropriate treatment of family support decrees across state lines, without problematizing how the same clause would apply in other settings. In the meantime, reformers considered the possibility of ratifying a constitutional amendment that would permit Congress to pass federal family laws, including a nonsupport bill. When this proved unfeasible, state legislatures criminalized nonsupport, so prosecutors could extradite offenders. In the criminalization effort, the main dispute was whether a misdemeanor or felony was the better route, a question rooted in a wider debate about application of the U.S. Constitution's Extradition Clause. Ultimately, extradition proved to be more expensive and disruptive than seemed worthwhile. Beginning in the 1940s, these jurisdictional challenges led to one of the most remarkable family-support-related innovations; states passed civil reciprocal enforcement statutes that allowed them to cooperate in enforcing family support orders when a provider and his dependents lived in different states. Studies focused narrowly on family laws or individual locations, as is true of a significant portion of the literature, cannot appreciate how lawmakers were forced to navigate these overarching structures.

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A separate category of literature important to this project explores Progressive Era court reform. There is a substantial body of scholarship examining how Progressive Era politicians and charity leaders helped found specialized courts to improve judiciaries' efficiency and expertise. These works largely focus on juvenile courts.[33] Despite the longstanding and ongoing significance of family courts, there is not a similarly expansive pool of scholarship on their growth and impact. Michael Willrich and Anna Igra have contributed the best treatments, describing how these tribunals were born from a desire to better handle criminal nonsupport cases. Though Willrich's and Igra's scholarship is deeply illuminating, their accounts differ from the interventions here in two main

[33] For a helpful historiography of juvenile court scholarship, see Miroslava Chavez-Garcia, "In Retrospect: Anthony M. Platt's *The Child Savers: The Invention of Delinquency*," *Reviews in American History* 35, no. 3 (Sept. 2007): 464-81.

ways. They do not seek to engage with family law scholarship, and they focus on single cities and so cannot account for the spread of or variation in family tribunals.[34] Legal scholars interested in family courts for their procedural practices have contributed helpful but brief historical accounts that do not engage with family law scholarship.[35] Perhaps because of how historical treatments of family courts have been mostly separate from scholarship on doctrinal aspects of family law, some family law scholars condemn early domestic relations courts based on the erroneous claim that these tribunals decriminalized domestic violence.[36]

This project builds on specialized court histories by identifying and connecting doctrinal and institutional changes. A significant facet of this effort focuses on how criminalization of nonsupport intersected with the simultaneous introduction, spread, and professionalization of probation. While some Progressive Era court scholarship acknowledges the involvement of probation officers, these works do not consider the contingent nature of probation in this period. Rather, they treat probation officers as an obvious and unchanging member of court staff, devoid of distinct motives or approaches that influenced court development. This project instead finds that the operation and

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[34] Michael Willrich, *City of Courts: Socializing Justice in Progressive Era Chicago* (New York: Cambridge University Press, 2003), 128-171; Igra, *Wives Without Husbands*. The differences are discussed at greater length in Chapters Four and Five. DiFonzo, *Beneath the Fault Line*, allots two chapters to court reform in the 1950s and 1960s and casts family courts as an unsuccessful stop on the road to no-fault divorce. An unpublished dissertation completed in 1950 also includes some historical background for the courts in existence at that time. Theodore Fadlo Boushy, "The Historical Development of the Domestic Relations Court" (PhD diss., University of Oklahoma, 1950).

[35] See Amy J. Cohen, "The Family, the Market, and ADR," *Journal of Dispute Resolution* 2011, no. 1 (2011): 100-3 (describing family courts from the 1910s to the 1930s in the context of the development of alternative dispute resolution); Elizabeth L. MacDowell, "Reimagining Access to Justice in the Poor People's Courts," *Georgetown Journal on Poverty Law & Policy* 22, no. 3 (Spring 2015): 478-79, 488-94 (using family court as example of a "quintessential poor people's court" and examining the negative implications of a long history of "informality and interventionism"). See also Jane Spinak, "Romancing the Court," *Family Court Review* 46, no. 2 (Apr. 2008): 258-74 (using family court history to question promise of modern problem-solving courts).

[36] For a recent example of scholarship relying on this claim, see Jane K. Stoever, "Enjoining Abuse: The Case for Indefinite Domestic Violence Protection Orders," *Vanderbilt Law Review* 67, no. 4 (May 2014): 1015, 1040 (citing earlier works including Elizabeth Pleck, *Domestic Tyranny: The Making of American Social Policy against Family Violence from Colonial Times to the Present* (New York: Oxford University Press, 1987)).

expansion of family courts cannot be understood absent attention to the probation officers who were essential members of their teams.[37]

In foregrounding probation officers in domestic relations courts, this project challenges the canonical treatment of probation in this period, David J. Rothman's *Conscience and Convenience: The Asylum and Its Alternatives in Progressive America*. Rothman claims that cities absorbed the costs of probation during the Progressive Era, despite near-immediate awareness of probation's shortcomings, because the availability of probation facilitated plea bargaining. This dissertation finds that because Rothman's account is not attentive to the categories of cases placed on probation, it overlooks another important reason that cities embraced this penal experiment: its perceived successes in family nonsupport matters. In probation's formative years, one of its most common and least controversial uses was for criminal nonsupport. Judges tasked probation officers with attempting to reconcile couples prior to formal court proceedings. If this failed, the officers observed litigants' home lives, provided reports and recommendations to judges, and monitored compliance with court orders. Because nonsupport offenders were so routinely placed on probation, probation officers had a deep interest in how these cases proceeded and became vocal proponents of creating and spreading specialized domestic relations courts. In this symbiotic relationship, the success of probation as a profession was dependent upon the scope and resources of the domestic relations courts, while the effectiveness of the courts and power of the judges turned on the availability and abilities of probation officers.[38]

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[37] For notable exceptions to this characterization, see Anne Meis Knupfer, "Professionalizing Probation Work in Chicago, 1900-1935," *Social Service Review* 73, no. 4 (Dec. 1999): 478-95; Willrich, *City of Courts*, 89-95.

[38] David J. Rothman, *Conscience and Convenience: The Asylum and Its Alternatives in Progressive America* (Boston: Little, Brown, 1980). For an example of recent scholarship relying on this book for historical background, see Philip Goodman, Joshua Page, and Michelle Phelps, *Breaking the Pendulum: The Long Struggle over Criminal Justice* (Oxford: Oxford University Press, 2017), 55-56. George Fisher offers a similar argument regarding an earlier period, but he uses a broader understanding of what constitutes probation that does not involve supervision by a probation officer. George Fisher, *Plea Bargaining's Triumph: A History of Plea Bargaining in America* (Stanford: Stanford University Press, 2003).

The probation work conducted in family courts was starkly gendered. Societal stereotypes and expectations prompted judges to hire and assign female officers to perform intake and reconciliation work akin to modern marital counseling. Male officers served as role models to husbands and were more involved in oversight of support payments. Because the legal profession, and especially court spaces, remained a masculine domain in this period, women's work as probation officers provided a starting point for the development of women's authority and professionalization in the legal field. Pointing to the successful work of female probation officers, women lawyers and other women's rights advocates began to suggest that women might be uniquely helpful as judges in family-related courts. Thus, many of the seeds for modern family court operation, including its focus on family support enforcement and the dominance of women professionals, were planted in these early years.[39]

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A major reason this project departs from earlier scholarship is methodological. Studying family-related litigation poses significant research challenges because of state variation. Historians have provided excellent models for handling this difficulty in studies that have tracked issues that rose to states' highest courts. In those accounts, reliance on appellate cases and treatises has permitted scholars to track nationwide trends and regional variation.[40] When focusing on trial-level family law (or other types of litigation at the trial level), historians have turned to court records. Such documents can illuminate the daily workings of a court, reveal striking patterns in claims and

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[39] On gender and the legal profession, see Virginia G. Drachman, *Sisters in Law: Women Lawyers in Modern American History* (Cambridge: Harvard University Press, 2001); Michael Grossberg, "Institutionalizing Masculinity: The Law as a Masculine Profession," in *Meanings for Manhood: Constructions of Masculinity in Victorian America*, ed. Mark C. Carnes and Clyde Griffen, (Chicago: University of Chicago Press, 1990), 133-51.

[40] For example, see Marylynn Salmon, *Women and the Law of Property in Early America* (Chapel Hill: University of North Carolina Press, 1986).

outcomes, and recover a community's legal culture.[41] Using a single court's or court system's records also has drawbacks. Court documents may obscure out-of-court negotiations or normalize formulaic evidence and testimony. Moreover, the time-intensive nature of this research renders it difficult for historians to compare jurisdictions or to assess representativeness. These obstacles help explain why many works of family law history have considered a limited number of locations or have provided a nationwide account that conceals important regional variation.[42]

This project addresses the challenge of studying trial-court litigation in jurisdictions across the United States through significant utilization of newspapers and periodicals. Research for this manuscript included review of thousands of articles published by newspapers ranging from big-city institutions such as the *New York Times*, the *Chicago Tribune*, and the *St. Louis Post-Dispatch* to tiny papers like the *Sedalia (MO) Weekly Bazoo* and the *Watchman and Southron* (Sumter, SC). Special attention was also directed to African American newspapers, such as the *Huntsville (AL) Gazette*, the *Freeman* (Indianapolis), and the *State Ledger* (Topeka). Rounding out these materials are magazines and other periodicals, including *Life*, the *Ladies' Home Journal*, and *Good Housekeeping*, as well as less obviously relevant publications, such as the *Catholic World* and *Massachusetts Ploughman and New England Journal of Agriculture*. In total, the dissertation cites nearly 200 newspapers and periodicals, just a small fraction of the publications consulted.[43]

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[41] For example, see Cornelia Hughes Dayton, *Women before the Bar: Gender, Law, and Society in Connecticut, 1639-1789* (Chapel Hill: University of North Carolina Press, 1995).

[42] An important exception, which served as a model for thinking about this project, is Peggy Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America* (New York: Oxford University Press, 2009). Pascoe uses judicial opinions, legislative materials, newspapers, and other sources recover the creation, enforcement, and elimination of anti-miscegenation laws.

[43] Relevant articles were identified through searches of keywords, litigant names, and court officials' titles or names. The searches were conducted in Newspapers.com, ProQuest, America's Historical Newspapers (Readex), and Chronicling America: Historic American Newspapers (Library of Congress). These databases include African American newspapers, and additional searches were run on subparts of the databases that only include such papers.

Newspapers are essential to this project's findings because they capture many aspects of family litigation that would otherwise be unrecoverable. Most family litigation never made it beyond the trial level. In some places, court records were not created for these matters, and in others they were sparse or not preserved. The founders of many domestic relations courts regarded it as strategic to avoid creating transcripts and other detailed documents because informality seemed conducive to marital reconciliation. Probation departments prided themselves on how their intake procedures could avert formal filing of a sizable portion of potential cases. Consequently, perhaps the only way to get a sense of what was happening in everyday trial-level family litigation is through newspaper coverage.

Newspaper evidence takes a wide array of forms. A regular component of many papers was a long list of court business that included single-sentence summaries of individual domestic relations cases. On the other end of the spectrum, journalists wrote detailed exposés of marital litigation that contained unusual facts or notable people. Often such coverage included litigant backstories and the reasons they raised certain claims. Editors also ran detailed descriptions and lengthy quotations from judicial opinions from local trial courts up through the U.S. Supreme Court. Yiddish newspapers printed photos of men accused of deserting their families in order to locate and shame them and deter others. Newspapers also served a legal function, as one way a spouse could fulfill the requirement to provide notice of a pending divorce hearing was to post the time and date.

Papers taught readers about legal rules apart from coverage of specific cases, too. Editors routinely filled whole pages with the text of proposed or enacted statutes. Editorials and letters to the editor discussed how laws should be changed. One common topic was whether various classes of family litigation should be conducted privately, so newspapers could not continue to print the lurid details. Commenters worried these descriptions might scandalize readers or induce them to begin litigation of their own, yet discussants also feared that "secret" proceedings facilitated spousal

collusion and perjury. Articles profiled judges and probation officers, covering their backgrounds, roles, and words of wisdom. Columnists provided legal advice or suggestions for how to maintain marital harmony. Magazine-style coverage led readers with step-by-step instructions on how to initiate quasi-criminal nonsupport proceedings. Jokes and cartoons poked fun at family discord, while illustrations captured family court scenes from the mundane to the tragic. The classified section included advertisements for lawyers that sometimes mentioned divorce expertise, as well as notices by husbands to warn merchants not to sell to their wives on credit.

While each individual article is not necessarily a reliable depiction, the volume of consistent coverage and the frequency with which the reporting matches across papers and by cross-referencing other sources (such as trial court records, treatises, law reviews, and statutory compilations) indicate a high level of accuracy. Journalists were not oblivious to courtroom shenanigans. They realized that trial testimony was often perjured and evidence manufactured, and they indicated this through direct commentary or sarcastic recounting of supposed facts. Indeed, litigants likely learned successful tropes and extralegal strategies from news coverage. Many articles also described how some marital conflicts were resolved out of court or with certain aspects decided in anticipation of a hearing, during which a seemingly unaware judge gave the court's imprimatur to a collusive spousal agreement. Such accounts likely influenced negotiations as well. To the extent newspaper articles might be skewed or otherwise misleading, those inaccuracies are nevertheless revealing because they provide insight into what people expected would happen if they pursued their complaints in court.[44]

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[44] These descriptions are drawn from sources cited throughout the manuscript. The information about the Yiddish press comes from Igra, *Wives without Husbands*, 24-26. On how expected litigation outcomes influence out-of-court negotiations, see Robert H. Mnookin and Lewis Kornhauser, "Bargaining in the Shadow of the Law: The Case of Divorce," *Yale Law Journal* 88, no. 5 (Apr. 1979): 950-97.

Newspapers are also essential for identifying how legal ideas spread. Papers across the country, large and small, carried stories about legal developments and specific cases from far-flung jurisdictions on a regular basis. They also covered laws and institutions that did not work well. This helped reformers and everyday people learn about options they wanted to introduce or refine in their home legal systems. Newspapers record the fact that certain proposals, such as the idea to open a domestic relations court, were discussed seriously and repeatedly, even in jurisdictions that did not manage to adopt them for decades.

That newspapers provide such a rich and exhaustive basis for studying family litigation in this period is largely the result of many of the same developments that simultaneously shaped family law. Indeed, newspaper history shares many points of intersection with this dissertation. The consumer economy that sparked much family discord also led marketers to invest increasingly large sums of money in newspaper advertisements. Once editors could rely on advertising funds to enhance and stabilize their budgets, they were less beholden to political parties or reliant on muckraking to remain profitable. Instead, they could employ growing staffs of professional journalists to write nonpartisan and thoroughly researched articles that readers learned to trust. The money from advertising, in conjunction with technological advancements, meant that newspapers could print more and longer issues, even while keeping the cost affordable for consumers. These changes coincided with a significant rise in literacy to render newspapers a central forum for the spread of information.

With the shift to relying on advertising dollars, it became possible and indeed desirable for newspapers to cultivate a broad readership. To attract laborers, immigrants, and women, editors instituted changes to newspapers' format and content. These included large headlines with simple language comprehensible to those with limited English reading proficiency, illustrations and comic strips, and feature sections and other curated components. Although mainstream newspapers made

almost no effort to court black readers through coverage of their communities, black readers nevertheless purchased these papers, too. Thus, by the turn of the twentieth century, more Americans were reading the same publications than ever before. The newspaper became, in the words of historian Julia Guarneri, "a kind of new public sphere: more commercial, to be sure, but also more colorful and more inclusive."[45]

By the late nineteenth century, big-city newspapers also sought to expand their readership radius. Beginning in the 1880s, editors collaborated with the post office to ensure that papers could be delivered quickly enough to serve as a provider of news for the surrounding region. News created by well-resourced papers also spread through smaller rags, first through copying in violation of copyrights law and later through formal channels. The largest city papers began selling individual articles and then entire sections to smaller papers. Entrepreneurial editors formed syndicates and chains to sell and share articles nationwide. By the 1910s, most articles that Americans read came from a national pool of news created by large corporations, supplemented selectively with articles written by local journalists. Because Americans were reading about the same celebrities, trends, and other topics, newspapers enhanced a sense of shared national culture.[46]

In pursuit of advertising funds, editors were particularly proactive in seeking women readers. Advertising executives knew that women performed most of the household shopping, so they wanted to ensure that their ads ran in the papers women read. Beginning in the 1880s and expanding in the following decades, newspapers introduced "women's pages." As historian Julia Golia explains, these sections included "experimental and participatory features" and sought to create a "separate sphere" for women in the daily paper. Content included articles on housekeeping, marriage, divorce,

[45] Julia Guarneri, *Newsprint Metropolis: City Papers and the Making of Modern Americans* (Chicago: University of Chicago Press, 2017), 4-11, 13-16, 19, 26-30, 46, 54, 108, 103, 131.

[46] Guarneri, *Newsprint Metropolis*, 9-10, 147-48, 175, 194-95, 198, 205, 212.

family wellbeing, and sympathetic accounts of crime victims. Similar impulses led to the invention of advice columns. Newspapers also hired freshmen women journalists to produce content geared toward women as part of this same effort.[47] Material produced by and for women constitutes a crucial source base for this project.

Because mainstream papers rarely covered black communities, research for this project also included deliberate consideration of African American newspapers. Beginning in the 1870s, there was an explosion in the number of newspapers produced by black editors. Though the vast majority were short, weekly papers that quickly folded, several dailies established in the 1880s became lasting institutions during the following decades.[48] Content on family litigation and related topics in black newspapers is mostly indistinguishable from mainstream press. Black newspapers ran the same sorts of stories, ranging from one-line case summaries to detailed accounts of legal reform to columns offering marital and legal advice.[49] Indeed, an unknown but seemingly significant portion of black newspaper content was reprinted from mainstream newspapers.[50] In material that seems to be original to black papers, it is often unclear whether the people described in marital dramas and resultant litigation are black or white. This seems to indicate that black and white couples used

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[47] Julia A. Golia, "Courting Women, Courting Advertisers: The Woman's Page and the Transformation of the American Newspaper, 1895-1935," *Journal of American History* 103, no. 3 (Dec. 2016): 606-11, 618-19; Guarneri, *Newsprint Metropolis*, 25-26, 41-42, 99; Carolyn Kitch, "Women in Journalism," in *American Journalism: History, Principles, Practices*, ed. W. David Sloan and Lisa Mullikin Parcell (Jefferson, NC: McFarland & Company, Inc., 2002), 90-91.

[48] Though some, such as the *Chicago Defender*, produced race-focused content, black newspapers generally did not seek to capitalize on racial issues to attract readership around the turn of the twentieth century. Fred Carroll, *Race News: Black Journalists and the Fight for Racial Justice in the Twentieth Century* (Urbana: University of Illinois Press, 2017), 16, 18, 21-22, 29-30; Guarneri, *Newsprint Metropolis*, 10, 82, 103, 131; Emma Lou Thornbrough, "American Negro Newspapers, 1880-1914," *Business History Review* 40, no. 4 (Jan. 1966): 467-90.

[49] This conclusion is drawn from detailed research in newspaper databases that include African American newspapers. Specific articles are cited throughout this manuscript.

[50] For an example of a black newspaper reprinting a column from the *New York Times*, see Thomas Fenton Taylor, "Secret Divorces: They Benefit the Guilty, They Do Not Shield the Innocent," *Afro-American* (Baltimore), Jan. 8, 1910, 6.

family litigation in much the same manner.[51] It is certainly possible that black journalists or editors intentionally portrayed their community's domestic conflicts to match the norm or strategically omitted coverage they thought would be unseemly. It is also worth noting that black newspapers did not operate as fully in locations where racial differences in domestic cases might have been most pronounced. More research focused on black family law in case records or other sources would be enormously helpful. A contribution already available from historian Dylan Penningroth analyzes court documents to suggest that at least some black family litigation, in Virginia and D.C., was similar to white family litigation.[52]

As this story of family support enforcement is largely about movement—of people, money, and legal ideas—newspapers are the closest thing to the perfect medium. Like Guarneri's book, this project "treats newspapers not just as historical records but also as historical actors, not just as repositories of information but also as instruments of change."[53] Even as each state and sometimes each city created unique approaches to regulating marital finances, they joined together in crafting nationwide strategies and attitudes toward family conduct and the law's role in regulating it. Despite variations, an overarching assumption and goal united the states: an unquestioning acceptance that

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[51] An important exception to black newspaper coverage of family law being nearly indistinguishable from mainstream papers regards interracial marriage. Contributors to black publications were more attentive to, and indeed outraged by, anti-miscegenation laws and their application. For examples, see "Negroes Can't Have White Wives!," *Topeka Plaindealer*, Oct. 6, 1905, 4 (describing Mississippi white woman sentenced to ten years in prison for marrying a black man and condemning the double standard that permitted "a white man to live illegally with concubines"); "More Color Line Schemes," *Afro-American* (Baltimore), Apr. 30, 1910, 6 (critiquing anti-miscegenation law proposed in New York as a "freak bill" that "seeks by law to regulate human nature").

[52] Based on close review of hundreds of court records in D.C. and a few counties in Virginia, Penningroth finds that "African Americans got divorced roughly in proportion to their share of the population." The African American experience was in some ways unique. For instance, Penningroth notes that a higher percentage of the divorce suits between black couples were initiated by men as compared to the divorce suits between white couples. He also suggests that black litigants may have framed their stories in ways inflected by race-related assumptions and concerns. Dylan C. Penningroth, "African American Divorce in Virginia and Washington, D.C., 1865-1930," *Journal of Family History* 33, no. 1 (Jan. 2008): 21-35.

[53] Guarneri, *Newsprint Metropolis*, 4.

men should be compelled to support their families and the need to find ways to refine the law to achieve that end. Movement also interfered with their objectives, stymying the effectiveness of the legal machinery they labored to produce over many decades.

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This dissertation contains six chapters organized around legal approaches to family support enforcement. Each examines how industrialization, advancements in women's rights, and other social, legal, or financial developments raised new complications or needs within family laws and courts tasked with support-related litigation. The chapters overlap chronologically, but also progress over time. The first three chapters focus on courts' and legislatures' doctrinal advancements in common law, equity, and civil statutes to enforce men's breadwinner duties. These chapters focus on the crucial decades from 1880 into the early 1900s, with some discussion of earlier developments that set changes in motion. The later chapters turn to how the shortcomings of these laws, especially their inability to effectively reach across state lines, prompted the passage of criminal nonsupport statutes around the turn of the century. Criminalization profoundly altered courts' ability to regulate family relationships and especially finances.

Chapter One finds that simultaneous enactment of MWPA and industrialization in the mid-nineteenth century unsettled longstanding norms about how families earned and spent money. The resultant uncertainties manifested in public discussions about marital sharing and prompted modernization of the necessaries doctrine through litigation and statutory amendments. Chapter Two examines how judges ensured marital financial support for wives and children after four types of marital dissolution: separation agreements, separate maintenance orders, partial divorce, and absolute divorce. It argues that judges were more generous toward wives than historians have recognized, paradoxically because lawmakers perceived that ensuring financial support during separations could bolster marriage and reinforce gender norms. (The project does not consider

litigation regarding what today is called “child support” because, during the studied period, the vast majority of court-ordered aid for children was encompassed within marital support decrees.) Chapter Three focuses on men’s three strategies for avoiding enforcement of court-ordered financial support: refusing to pay while remaining local, declaring bankruptcy, and fleeing the jurisdiction. It finds that the abolishment of debtors’ prisons beginning in the 1830s and passage of a federal bankruptcy act in 1898 threatened to undermine the methods and rationales courts use to coerce compliance with support orders, yet judges avoided that outcome by developing the idea that alimony and like payments were not “debts” because they were “duties.” Men’s truly effective strategy to evade payment was to leave the jurisdiction, a complication courts struggled to address through application of the U.S. Constitution’s Full Faith and Credit Clause.

Chapter Four centers on the nationwide criminalization of nonsupport, which peaked in the 1890s through 1910s. To contextualize that development, the chapter traces earlier statutory changes that undergirded criminalization: revision of the poor law in the Northeast, strengthening of vagrancy statutes in the postbellum South, and passage of misdemeanors in the Midwest. Though men raised numerous challenges to the constitutionality and application of statutes they perceived as using criminal law to enforce private, civil duties, nearly every court upheld these statutes. Chapter Five focuses on criminalization’s consequences in the first decades of the twentieth century. Criminal nonsupport laws permitted the introduction of probation surveillance to regulate family conduct and sparked the creation of specialized courts of domestic relations. Together these institutional innovations permitted courts to regulate family finances and other behaviors in a deeper manner than ever before. The courts’ role in instructing and reforming litigants to fit middle-class gender expectations was both subverted and underlined by the sex-based division of labor within probation departments. The final chapter traces the superficial conversion of criminal family courts

and laws to "civil" and begins to connect these doctrinal and institutional changes to modern family courts and support litigation.

Chapter One
"What's yours is mine; what's mine is my own":
Marital Financial Duties in the New Consumer Economy

As industrialization dramatically altered how Americans earned and spent money over the course of the nineteenth century, a husband's longstanding legal and moral duty to support his wife and children persisted. Existing scholarship has emphasized this continuity, even while casting doubt on the real-world usefulness of enforcement methods. This chapter finds that social and economic changes, as well as interrelated passage of Married Women's Property Acts (MWPA), fed a dynamic and contested evolution in lay and legal understandings of spouses' financial rights and duties. Recognizing that the rise of wage labor and growth of a consumer culture shifted purchasing patterns, lawmakers sought to balance the interests of wives, husbands, and creditors in order to facilitate smooth economic exchange and to retain gendered family duties.

As historians and legal scholars have richly detailed, mid-nineteenth century passage of MWPA granted married women technical ownership and later control over their property and earnings. State legislatures originally passed these statutes beginning in the 1830s as a debtor protection measure. Shielding a wife's separate property from her husband's creditors helped safeguard the family's financial wellbeing. By the second half of the nineteenth century, MWPA intersected with the movement for women's rights, which broadened the legislations' goals and scope. Later waves of MWPA permitted wives to control their separate assets and afforded them the rights to contract, sue in their own names, and more.[1]

[1] Elizabeth Bowles Warbasse, *The Changing Legal Rights of Married Women, 1800-1861* (New York: Garland Publishing, 1987); Norma Basch, *In the Eyes of the Law: Women, Marriage, and Property in Nineteenth Century New York* (Ithaca: Cornell University Press, 1982); Richard H. Chused, "Married Women's Property Law: 1800-1850," *Georgetown Law Journal* 71, no. 5 (June 1983): 1359-425; Reva B. Siegel, "The Modernization of Marital Status Law: Adjudicating Wives' Rights to Earnings, 1860-1930," *Georgetown Law Journal* 82, no. 7 (Sept. 1994): 2127-211.

This chapter builds on MWPA scholarship in two major respects. First, it makes novel use of newspaper articles and popular culture materials to trace how ideas about women's right to hold separate property intersected with consumer culture to complicate spouses' control over family finances. This component of the chapter draws from sociologist Viviana Zelizer's insights in *The Social Meaning of Money*. Zelizer describes how the rise of wage labor and a market economy prompted intra-familial conflict over spending. This tension became especially fraught as wives, an increasing number of whom had worked for wages while single, found it unappealing and even humiliating to no longer earn discretionary income. While Zelizer's treatment claims coverage of the 1870s through 1930s, her primary sources are heavily weighted to the twentieth century and are mostly drawn from women's magazine articles. By using a broader array of sources, this chapter finds that a key contestation over spousal finances that Zelizer dates to the 1920s—whether wives should receive an "allowance"—began decades earlier. This reperiodization is important because it helps connect the debate over marital finances to the period when MWPA unsettled longstanding marital norms and lawmakers responded with crucial reforms.[2]

The chapter's next contribution is to analyze how industrialization and MWPA put new pressures on the doctrine of necessaries. The necessaries doctrine was the common law method that a wife used to purchase items appropriate to her family's class, by pledging her husband's credit. The merchant later sent a bill to the husband for payment. If the husband refused to pay for whatever reason, the merchant's recourse was to sue.

In contrast to the nuanced scholarship on MWPA, there has been minimal attention to the historical evolution of the doctrine of necessaries. One of the most thorough and oft-cited considerations, a Note in the *Michigan Law Review*, suggests that the doctrine "seems never to have

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[2] Viviana A. Zelizer, *The Social Meaning of Money* (Princeton: Princeton University Press, 1997), 42, 53-56.

been an effective support mechanism" because it starkly limited husbands' liability. Moreover, the Note claims, the creditor would need to prove several facts at trial and so "it was very difficult to know, before going to court, whether the doctrine of necessaries would apply. Consequently, few merchants offered credit on this basis." More recently, careful and insightful scholarship has likewise concluded that the doctrine had a "tremendous flaw" because it relied on merchants who had "little incentive" to sell on this basis.[3] In *Man and Wife in America: A History*, Hendrik Hartog goes further than other scholars in acknowledging that necessaries litigation occurred, but he casts this area of law as unchanging and claims necessaries cases "almost always" arose when spouses lived apart. "Where a husband and wife lived together," he observes based on analysis of New York opinions from the 1820s through 1850s, "courts never substituted their judgement as to the needs of the wife for that of her husband."[4]

Through a more robust review of primary sources, extending to later decades and including jurisdictions across the country, this chapter demonstrates that the doctrine of necessaries was in fact a commonplace and effective method for many wives to make purchases. Scholars' focus on

[3] "The Unnecessary Doctrine of Necessaries," *Michigan Law Review* 82, no. 7 (June 1984): 1772-74; Jill Elaine Hasday, "The Canon of Family Law," *Stanford Law Review* 57, no. 3 (Dec. 2004): 847. Both articles rely on Graves v. Graves, 36 Iowa 310 (1873). In the case, the court cast doubt on the usefulness of the necessaries doctrine in order to justify an equitable decree granting a wife alimony, without divorce, after her husband committed adultery and sought an arguably fraudulent divorce in another jurisdiction. The case is not persuasive on the uselessness of the necessaries doctrine for two main reasons. First, the judges were attempting to justify a novel remedy, so their characterization of the doctrine may have been exaggerated for this purpose. Second, Iowa had been the first state to adopt a Family Expense Statute, explained below, which was in direct response to perceived shortcomings of the necessaries doctrine. Thus, it was easy for judges in that state to condemn the necessaries doctrine, legitimating the legislature's novel statutory approach to marital debt. The case stands more for the proposition that judges were seeking new avenues to grant wives meaningful support than as evidence that the necessaries doctrine never worked. Hasday casts use of the doctrine as somewhat more promising in a brief description in her book, though still holds that "third parties had little incentive to cooperate if they suspected that collecting payment would require resort to often unpredictable litigation in which the third parties bore the burden of proof." Jill Elaine Hasday, *Family Law Reimagined* (Cambridge, MA: Harvard University Press, 2014), 111.

[4] The cases Hartog cites are not representative because New York's judiciary was unusually conservative, and this source base overlooks how the necessaries doctrine worked outside of litigation. Hendrik Hartog, *Man and Wife in America: A History* (Cambridge, MA: Harvard University Press, 2000), 9-10, 23-24, 157-60, 353-55nn57-75. For a similar conclusion, see Joanna L. Grossman and Lawrence M. Friedman, *Inside the Castle: Law and the Family in 20th Century America* (Princeton: Princeton University Press, 2011), 193 ("Husbands were supposed to support their wives, but the doctrine of marital privacy usually made this duty all but unenforceable.").

appellate necessaries opinions has drawn attention to the outlier cases in which necessaries purchases did not proceed smoothly. It was actually routine for women and men to buy items on credit throughout the nineteenth century. When wives made purchases pursuant to the necessaries doctrine, husbands nearly always paid without incident; few uses of the doctrine culminated in litigation. In a sense, the state outsourced enforcement of marital financial duties to merchants, who could expect payments so long as they sold items appropriate to the family's class. Though it was the sellers who initiated court intervention in the rare instances in which there was a conflict over a bill, courts' routine backing of necessaries purchases had a pervasive influence on spousal behaviors and bargaining power. Though somewhat indirect, the necessaries doctrine created a regime in which wives had significant purchasing power.

It was only as the rise of wage labor, consumerism, mobility, and urban anonymity dramatically altered the relationship between merchants, wives, and husbands that the necessaries doctrine fell short. When merchants knew less about would-be buyers and realized payers might be transient, the risk of selling on credit rose. While this was true for all types of sales on credit, there were additional complications under the necessaries doctrine. Crucially, the doctrine did not allow recovery if a merchant sold to a wife who had separated from her husband under certain circumstances. Because separations seemed to be increasing and urbanization meant sellers in many locations were less likely to know about the personal life of shoppers, this exception left merchants in a precarious position. Women's increasing ownership of assets via MWPA also added uncertainty about the continuing assignment of liability to husbands.[5]

[5] The best treatment to date on the intersection of MWPA and necessaries is the historical background section in Marie T. Reilly, "In Good Times and in Debt: The Evolution of Marital Agency and the Meaning of Marriage," *Nebraska Law Review* 87, no. 2 (Fall 2008): 373, 376-97. Reilly discusses how the intersection of husbands' liability for necessaries and passage of MWPA raised new complications about how to balance the interests of wives and creditors, but she does not address how the doctrine of necessaries was itself in transition.

Recognizing how the doctrine failed to meet changing circumstances, judges and legislators attempted—with some success—to modernize it. By the late nineteenth century, most states permitted wives to borrow money as necessaries, rendering the doctrine more useful and just a tiny step from wives securing money directly from their husbands. Going still further, beginning in 1910, a few jurisdictions allowed wives who had spent their own money on necessaries to sue their husbands for reimbursement, a development that scholars have entirely overlooked. While not all wives were able to use the doctrine effectively, especially if their husbands were uncreditworthy or mobile, that reality reflected the nature of purchasing on credit, not something particular about laws governing the marital relationship.

To the extent there was pushback against application of the necessaries doctrine, it was motivated by concerns about how its enforcement interrelated with MWPA. The fact that wives gained control over their assets led some commenters and lawmakers to question whether it remained fair to place the full burden of family support on husbands. Though the reality was that women remained economically dependent on men for a host of reasons, the legal framework lost its earlier semblance of unity and balance. Still, the dominant approach remained to keep primary liability on husbands. In the words of a prominent St. Louis lawyer in 1880, that men were liable for necessaries, even after MWPA had "thoroughly exploded" marital unity, meant a wife could "say to her husband, 'What's yours is mine; what's mine is my own.'"[6]

Industrialization and Marital Conflicts over Labor and Cash

Over the course of the nineteenth century, America's progression from an agrarian to industrial economy dramatically altered labor and consumption. Many of these developments were

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[6] Henry Hitchcock, "Modern Legislation Touching Marital Property Rights," *Journal of Social Science* 13 (Mar. 1881): 12, 34-38 (reproducing paper presented before American Social Science Association Convention in 1880).

negotiated at the level of the household, where family members vied for control over employment and purchasing decisions. In tandem with these new earning and spending patterns, social norms and legal regulations gradually evolved to facilitate economic exchange.

While the exact timing and extent of change varied by region, several patterns emerged nationwide. Before the Civil War, many white American men were independent landowners or at least controlled farmland, and their wives and children also worked on the farms. Wives made foodstuffs and clothing at home and bartered for items they could not produce. By the 1820s in select urban areas and expanding elsewhere by the 1860s, men began to earn weekly wages by working in factories or other industries they did not own. Unmarried women and children likewise contributed to the family economy through wage work. When women married, they often brought in money by lodging boarders or performing piecework—tasks they could perform while maintaining the household. (The extent to which low-income married women worked inside and outside the home varied by race and ethnicity.) These trends heightened by the 1880s.

Industrialization had profound consequences for how husbands and wives organized everyday household operation. Instead of the family seeking self-sufficiency on a farm, the husband was expected to earn cash and the wife to purchase an increasing array of attractive consumer goods, newly promoted by sophisticated advertising schemes. Whereas in previous generations only the upper classes had money to purchase discretionary goods, people at nearly every income level began to buy food, clothing, and other items at stores. Indeed, the allure of consumer goods was one factor that drew people to occupations that paid wages or salaries. As an early twentieth-century writer succinctly explained: "The women of this country spend 90 ¾ per cent of the money. … Marriage is a contract by which the man becomes the producer and the woman the dispenser."[7]

[7] William Leach, *Land of Desire: Merchants, Power, and the Rise of a New American Culture* (New York: Pantheon Books, 1993), 5-8; William Leach, "Transformations in a Culture of Consumption: Women and Department Stores, 1890-1925," *Journal of American History* 71, no. 2 (Sept. 1984): 319, 326-34. For an account of these changes in the South, see Edward

The dynamics of family budgeting varied by class and region. In middle- and upper-class families, the common arrangement was that the husband retained control over the family purse, even as the wife was responsible for making routine purchases. This meant she often purchased on her husband's credit. Alternatively, she might obtain cash from him as a regular "allowance," by asking him for money for individual purchases as needed, or even by padding bills to recoup the difference for other expenditures.[8] In the poor, immigrant families that settled in East Coast cities, family members typically pooled their wages in a family purse, controlled by the wife. The wife gave a portion of the money to her husband and children for carfare, lunch, and perhaps some discretionary spending. She used the remainder to run the household, a challenging prospect as many families lived in poverty. Conflict arose when the husband refused to hand over his pay envelope or if family members disagreed about how to spend their limited resources.[9] Historians have devoted less attention to understanding working class family budgeting in the South and other regions. The existing treatments find that the blossoming of Southern stores brought marital tensions similar to those in other locations, though Southern marital conflict may have arisen more

L. Ayers, *Southern Crossing: A History of the American South, 1877-1906* (Oxford: Oxford University Press, 1996), 5-15, 46-58. European immigrants to America's East Coast cities experienced a similar transition from producing materials in the household to working for wages to make purchases. For accounts focused on these families, see Elizabeth Ewin, *Immigrant Women in the Land of Dollars: Life and Culture on the Lower East Side, 1890-1925* (New York: Monthly Review Press, 1985), 101-3; Judith E. Smith, *Family Connections: A History of Italian and Jewish Immigrant Lives in Providence, Rhode Island, 1900-1944* (Albany: State University of New York Press, 1985), 44, 48. The quotation is from Julian Heath, "Work of the Housewives League," *Annals of the American Academy of Political and Social Science* 48, no. 1 (July 1913): 121.

[8] Zelizer has identified three main ways in which this transfer was understood: payment, entitlement (right to share), and gift. Zelizer, *Social Meaning of Money*, 30-33, 38-42, 44-47. See also Meg Jacobs, *Pocketbook Politics: Economic Citizenship in Twentieth-Century America* (Princeton: Princeton University Press, 2007), 3.

[9] Ewin, *Immigrant Women in the Land,* 101-3, 121-25, 154; Kathy Peiss, *Cheap Amusements: Working Women and Leisure in Turn-of-the-Century New York* (Philadelphia: Temple University Press, 1986), 11-12; Steven Mintz and Susan Kellogg, *Domestic Revolutions: A Social History of American Family Life* (New York: Free Press, 1988), 88-89; Zelizer, *Social Meaning of Money,* 56-61; Alice Kessler-Harris, *Out to Work: A History of Wage-Earning Women in the United States* (Oxford: Oxford University Press, 1982), 120-26. For a similar account of working-class marital finances in London, see Ellen Ross, *Love and Toil: Motherhood in Outcast London, 1870-1918* (New York: Oxford University Press, 1993), 73-76.

often from a wife making unauthorized purchases on her husband's credit rather than fighting over cash.[10]

Common Law Coverture and the Married Women's Property Acts

Industrialization and changes to family purchasing placed pressures on the longstanding legal framework for marital property ownership, common law coverture. Under coverture, a husband and wife were one legal person, and each had sex-specific rights and duties. The husband, as head of the household, was obligated to support his wife and their children. The wife, in turn, pledged to obey her husband and serve him with her labor. At marriage, a wife's property effectively became her husband's, as did her future earnings. A married woman typically could not enter contracts, own property, or sue in her own name.[11] The husband had the right to choose the family's domicile and, because spouses were expected to live together, this meant the wife was required to follow her husband to a new home unless his wrongful conduct justified her in living apart.[12]

In part because of the new risks and dynamics of the industrializing economy, state legislatures gradually reduced wives' legal disabilities through passage of MWPA beginning in the late 1830s. In passing these statutes, lawmakers first sought to shield a wife's property from her husband's creditors, especially during difficult economic times. Legislators did not aim to modify the balance of power in marital finances or enhance women's rights. The first MWPA, passed in Mississippi in 1839, *permitted* a wife to own real or personal property separately from her husband if

[10] Ted Ownby, *American Dreams in Mississippi: Consumers, Poverty, & Culture, 1830-1998* (Chapel Hill: University of North Carolina Press, 1999), 19-20, 25-27.

[11] Nancy F. Cott, *Public Vows: A History of Marriage and the Nation* (Cambridge, MA: Harvard University Press, 2000), 11-13. For a more detailed explanation of the common law treatment of women's real property upon marriage, see Mary Ann Glendon, "Matrimonial Property: A Comparative Study of Law and Social Change," *Tulane Law Review* 49, no. 1 (Nov. 1974): 21, 26.

[12] James Schouler, *A Treatise on the Law of Domestic Relations* (Boston: Little, Brown and Company, 1895), 64-65, 67.

she acquired it in any manner other than from her husband after marriage. The statute also *required* that slaves she owned or later acquired separately remain her property (though the husband could still control them and profit from their labor). The second, passed in Maryland in 1841, provided that a wife's real property could not be seized to satisfy her husband's debts during her life. Many states followed in the remainder of the 1840s and into the 1850s. Some copied earlier states' models, while others went in new directions, varying in the types of property covered and how it was treated. Under these laws the husband generally still retained control over the property his wife brought to their marriage, even as she technically owned it.[13]

When crafting MWPA, legislators turned to existing legal approaches for models. The longstanding practice of using courts' equity powers to protect wealthy wives' separate estates provided one such example.[14] In part inspired by a movement for codification happening in the same period, lawmakers recognized they could standardize this approach and render it available for women in other classes.[15] State legislators may have also drawn inspiration from a trend that emerged beginning in the 1820s to grant deserted wives *feme sole* status for their economic

[13] Basch, *In the Eyes*, 27-28, 39-41, 114-36; Chused, "Married Women's Property Law," 1361, 1398, 1400-4; Susan Prager, "The Persistence of Separate Property Concepts in California's Community Property System, 1849-1975," *UCLA Law Review* 24, no. 1 (Oct. 1976): 1, 4-5; Linda Speth, "The Married Women's Property Acts, 1839-1856: Reform, Reaction, or Revolution?," in *Women and the Law: The Social Historical Perspective* (Cambridge, MA: Schenkman Publishing Company, Inc, 1982), 69-91 (especially helpful on early slave-focused MWPA). Though the 1839 Mississippi Act is typically identified as first, some scholarship suggests otherwise. For instance, Chused, "Married Women's Property Law," 1361n3, identifies an Arkansas act passed in 1835. Schouler argues that Maine passed the first MWPA in 1821, with a statute that permitted a deserted wife to sue, contract, and convey real estate as if unmarried. Schouler, *Treatise on the Law*, 182. In 1877, Virginia became the final state to adopt an MWPA. One scholar has argued that Virginia's late adoption reflects its strong economy, which made the protection of wives' property less urgent. Joseph A. Ranney, "Anglicans, Merchants, and Feminists: A Comparative Study of the Evolution of Married Women's Rights in Virginia, New York, and Wisconsin," *William & Mary Journal of Women and the Law* 6, no. 3 (Spring 2000): 493, 517-18.

[14] Basch, *In the Eyes*, 158, finds equitable estates to be relevant in New York's MWPA. On variation in states courts' development of separate equitable estates for wealthy women from 1750 through 1830, see Marylynn Salmon, *Women and the Law of Property in Early America* (Chapel Hill: University of North Carolina Press, 1986).

[15] On the influence of the movement for codification, see Basch, *In the Eyes*, 116, 126-34.

protection.[16] Another important source was the French and Spanish civil law's community property regime, which six American states retained from their colonial origins and two adopted in the decades overlapping with MWPA.[17]

Though the primary goal of early MWPA was to refine and regulate the relationship between husbands, wives, and creditors, one initial consequence was to add confusion to debtor-creditor rules. It was not always clear which property was "separate" or how a wife's property could be accessed. For instance, New York's first MWPA, passed in 1848, granted married women the right to hold property as if single but did not give them the right to contract.[18] Some lawmakers and commenters also feared that allowing wives to own property facilitated spousal collusion, in which a husband could transfer property to his wife to avoid seizure by creditors. As the Supreme Court of Pennsylvania explained in 1862, courts attempted to construe the statutes to "effectuate the intention of the legislature, without making the sacred relation of husband and wife a cloak for all manner of frauds."[19] Legislators passed piecemeal changes in an effort to balance the interests of families and creditors.[20]

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[16] Chused, "Married Women's Property Law," 1406.

[17] For discussion of how New York legislators were influenced by civil law, see Basch, *In the Eyes*, 145. Tellingly, the first state to pass a MWPA was Mississippi (1839), which is adjacent to Louisiana, the state that retained the most truly civil-derived marital regime. On Louisiana's influence on Mississippi, see Judith T. Younger, "Marital Regimes: A Story of Compromise and Demoralization, Together with Criticism and Suggestions for Reform," *Cornell Law Review* 67, no. 1 (Nov. 1981): 61. See also Norvie L. Lay, "Community Property: Its Origin and Importance to the Common Law Attorney," *Journal of Family Law* 5, no. 1 (Spring 1965): 51, 54, 57 (reaching similar conclusions and providing detail on Idaho and Washington's adoptions of civil law).

[18] Basch, *In the Eyes*, 159, 161.

[19] Wieman v. Anderson, 42 Pa. 311, 320 (1862).

[20] "Courts vacillating between protection of family assets and protection of creditor interests developed a conflict-riddled law of capacity destined for collapse." Siegel, "Modernization of Marital Status Law," 2130, 2141-42. For primary source discussion, see Isidor Loeb, *The Legal Property Relations of Married Parties: A Study in Comparative Legislation* (New York: Columbia University Press, 1900), 13. Loeb observes that "the matrimonial property systems became characterized by gross inequalities and inconsistencies." On piecemeal MWPA changes, see Schouler, *Treatise on the Law,* 184.

Beginning in the 1850s, expansions to MWPA increasingly reflected the influence of the women's movement.[21] As legal scholar Reva Siegel has detailed, prominent women's rights advocates, especially in New York, sought to modify spousal claims to family assets. They first advocated for a joint property regime modeled on Louisiana's civil law. If this proposal had been adopted, the wife's labor would have been rewarded with shared title to and some control over family assets, rather than the husband retaining sole ownership and command. For political and strategic reasons, this approach did not prevail.[22]

Instead, Massachusetts (1855), Maine (1857), and New York (1860) passed "earnings statutes." New York's went furthest, providing that "the earnings of any married woman, from her trade, business, labor or services, shall be her sole and separate property." These statutes, which did not provide joint ownership of marital assets, spread to other states after the Civil War. Courts construed the statutes narrowly, attempting to avoid a potentially radical shift in the gendered division of labor. Over time, the distinction courts often drew was that a wife owned her "separate" or "personal" labor, but she was not entitled to economic recovery for work she performed in the household for her family. Since most wives did not work outside the home into the twentieth century, the statute did little to change their economic position.[23]

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[21] Basch finds that the "woman question" emerged "from time to time" in the 1830s and 1840s. For instance, concern over widows' ability to survive, as women's traditional work lost value in the changing economy, led New York legislators to consider a change to inheritance laws in 1840. However, in Basch's account, women's advocacy made little impact on New York's MWPA until the version passed in 1860. Basch, *In the Eyes*, 120-26, 162-66. See also Chused, "Married Women's Property Law," 1398. On related debates during state constitutional conventions, see Hartog, *Man and Wife*, 110-14.

[22] Reva B. Siegel, "Home as Work: The First Woman's Rights Claims Concerning Wives' Household Labor, 1850-1880," *Yale Law Journal* 103, no. 5 (Mar. 1994): 1073.

[23] Siegel, "Home as Work," 1142-43 (quoting statute), 1180-81, 1185-89; Siegel, "Modernization of Marital Status Law," 2150, 2158, 2169.

Though earnings statutes did not directly enhance many wives' economic power, the statutes had symbolic value and often included other valuable rights. For instance, New York's 1860 law allowed married women to enter contracts, bring actions in their own names for damages and personal injury, and serve as joint guardians of their children.[24] Some MWPA permitted spouses to testify against each other for the first time, at least in certain types of cases.[25] Once a wife could sue in her own name and testify against her spouse, courts faced the question of whether she could sue *her husband* over property, contracts, and torts. Judges construed the statutes conservatively in this context as well, drawing fine distinctions between different types of interspousal suits to comply with legislation without severely undermining marital expectations.[26] Meanwhile, legislatures continued to refine and enhance MWPA provisions into the twentieth century.[27]

Marital Financial Sharing and the "Allowance"

The broadening of MWPA to permit wives to control their wages coincided with new opportunities for women to join and advance in the labor force. These occupational changes, in turn, meant that more women had experience earning and spending their own incomes prior to marriage. Together these developments altered women's expectations regarding control over marital assets. Observers recognized that social and legal methods of ensuring marital sharing could influence women's choices and conduct in ways that had broader societal ramifications.

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[24] Basch, *In the Eyes*, 28-29, 161, 164; Siegel, "Home as Work," 1073.

[25] Benet Kearney, "Challenges to Marital Unity: Spousal Testimony and Married Women's Property Acts in Nineteenth-Century New York," *Georgetown Journal of Gender & Law* 10, no. 3 (Fall 2009): 957.

[26] Elizabeth Katz, "How Automobile Accidents Stalled the Development of Interspousal Liability," *Virginia Law Review* 94, no. 5 (Sept. 2008): 1213.

[27] For instance, Siegel lists nine times the N.Y. legislature revised its MWPA, spanning 1848 to 1902. Siegel, "Modernization of Marital Status Law," 2149.

Trends in women's employment prompted serious public concern. Most women in the paid labor force were poor and single, lived away from parents and guardians, and had access to new types of purchases and leisure activities. Commenters feared these changes could make women less likely to marry and tempt them into prostitution and vice. As opportunities for women to hold positions such as clerks, stenographers, and saleswomen grew, middle-class and married women were also enticed to work outside the home. That middle-class women might choose this path and neglect their duty to become wives and mothers blended with fears about sexual misconduct and eugenics concerns about the birthrate. Social commentary and laws (such as protective labor legislation) encouraged women to return to their roles at home. Yet even when women chose to marry and leave the labor force, their knowledge of what it meant to earn wages shaped expectations for their relationships. The "New Woman" threatened to undermine American morality and gender norms.[28]

The deep social anxieties surrounding these developments were recorded, spread, and inflamed by newspapers and magazines. Just as industrialization and consumerism were shaping family conflict, in part by converting wives into shoppers, newspapers and other publications were reaping advertising money by promising marketers that ads would be seen by these same women. In order to attract women readers, they invented "women's pages" and related content that discussed housekeeping and family matters.[29]

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[28] Mintz and Kellogg, *Domestic Revolutions,* 110-13, 126; Kessler-Harris, *Out to Work,* 90, 97-109, 112-13, 142-43; Brian Donovan, *Respectability on Trial: Sex Crimes in New York City, 1900-1918* (Albany: State University of New York Press, 2016), 21-30; Thomas Leonard, "Protecting Family and Race: The Progressive Case for Regulating Women's Work," *American Journal of Economics and Sociology* 64, no. 3 (July 2005): 757; Mimi Abramovitz, *Regulating the Lives of Women: Social Welfare Policy from Colonial Times to the Present* (Boston: South End Press, 1988), 184-89.

[29] On "women's pages" and related developments, see especially Julia A. Golia, "Courting Women, Courting Advertisers: The Woman's Page and the Transformation of the American Newspaper, 1895-1935," *Journal of American History* 103, no. 3 (Dec. 2016): 606-11, 618-19; Julia Guarneri, *Newsprint Metropolis: City Papers and the Making of Modern Americans* (Chicago: University of Chicago Press, 2017), 25-26, 41-42, 99.

Publications' efforts to secure women readers produced a platform to host discussion about women's access to cash and related concerns. Countless articles in magazines and newspapers explained that wives found it humiliating and distasteful to ask their husbands for money for household bills, small personal purchases, gift giving (which was primarily the wife's role) and, as they strategically emphasized, charity. This scenario was a recipe for family discord or could incentivize wives to return to the paid labor force, undermining men's role as breadwinner.[30] Applying rhetoric with deep resonance at the time, writers analogized wives' circumstances to that of beggars or slaves.[31] While seemingly reflecting a real public discourse, the frequent coverage of this topic may have been a self-interested move by editors. Popularizing the idea that wives should have discretionary cash could make it easier for women to purchase periodicals.

Writers maintained that husbands should give wives enough cash to keep them satisfied at home. How exactly this should work, and even what such cash should be called, provoked discussion that reveals the charged and evolving understanding of gendered contributions to family economies. As early as 1865, one publication, probably not coincidentally from a state with an MWPA earnings statute, suggested it was a husband's "duty" to give his wife "her sufficient allowance."[32]

By the 1870s, publications provided advice to instruct couples on how to navigate financial tensions. For example, the *Massachusetts Ploughman* in 1874 embedded marital instructions in a short story. The narrative begins when a schoolteacher, who was accustomed to controlling her own

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[30] Zelizer has made similar observations about wives' reactions, though focusing on a later period. Zelizer, *Social Meaning of Money*, 44-63. On women as the primary gift givers and how that fed tensions, see *id.*, 86-87, 90.

[31] On the power of this language, see especially Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation* (New York: Cambridge University Press, 1998).

[32] "Miscellaneous: Wives," *Maine Farmer* (Augusta), May 25, 1865, 4.

money, left her position to marry a wealthy banker and so no longer earned a salary. Though the marriage placed the wife in a wealthy home with servants and other luxuries, she found herself without any cash. Her husband said he would give her money when she needed it for sensible reasons, but she was reluctant to ask and resented lacking even small change to contribute to charity. She soon hatched a plan; she decided to sell wild strawberries. When she arrived at her husband's workplace with her wares, she "saucily" explained: "I earned my own living before I saw you, and I can again." The husband was "uneasy," as his subordinates saw his wife in this role. He offered to buy the fruit at "any price," so he could take her home. That evening he "agreed to make his wife a regular allowance of so much per week, to be paid down every Monday morning at the breakfast table," on the condition that she stop selling strawberries. "All I wanted was a little money of my own," she agreed. The story concluded that the husband "respected his wife all the more because she had conquered him in a fair battle."[33] The lesson for readers: an allowance could keep a wife satisfied in her proper role at home.

The same publication published a short story the following decade that demonstrates evolution in the wife's claim to money. This time the wife cast her demand as one for "wages," arguing that she "gave up a good trade" when she married her husband. Even their kitchen girl had money to buy Christmas presents, the wife pointed out, yet she did not even have money to give to charity. She even envied factory girls. Moreover, if she did not run the household, the husband would need to pay others to perform her work. Though the husband was initially reluctant, he came to recognize that his wife had nothing to show for the last fifteen years. Her uncompensated labor made her akin to a slave. "Nay, he felt that her chains were far more binding than any which had

[33] "How a Wife Got an Allowance," *Massachusetts Ploughman and New England Journal of Agriculture*, Nov. 7, 1874, 4. That a wife turning to a paid job to avoid begging from her husband could prompt him to provide her with money reappeared in other short stories in the following decades. For example, see M. A. Thurston, "Charity Begins at Home," *Arthur's Home Magazine* 61 (Feb. 1891): 151.

ever held the negro, and that his obligations to her were so much the greater." After he agreed to give her a regular sum, "there was a brighter light in [her] eyes, for at last she had something of her own, nor has she regretted that she 'applied for wages.'"[34]

An article in *Harper's Bazaar* in 1879 connected these themes to the unfairness of existing laws. "There are few ways in which wives are made more uncomfortable than on the question of their personal expenditures, and few in which they have to suffer more humiliation," the writer began. Having to ask for money to purchase something as minor as a ribbon turned wives into "shabby-genteel beggars" because they did not want to ask "for their right and due." Instead, some wives resorted to going through their husbands' pockets, making false entries in their housekeeping accounts, and doing small side projects for cash. This was unacceptable, as a middle-class wife was "usually a worker in the family as much as her husband is outside of it." The writer recognized the role of the law in this unacceptable framework:

> But for whom is she working and earning? For herself? If she is, where are the proceeds? No, the law says otherwise: the proceeds are the husband's; she depends on him for any of them; she can do nothing with them during his life, and on his death, she surviving, but a small portion is allotted her by this law, which, generous as it has grown in comparison to its old favor, still stops short of any point like equal rights. If then, she is not working for herself, but for another, she is entitled to some wages, and some other wages than love and kindness.

The writer concluded that the wife should be paid for her labor, as otherwise it would cost the husband far more to hire a servant, cook, seamstress, nurse, and more. The husband should consider his "wife's wages" and not leave her "a slave and a beggar."[35]

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[34] "Her Wages as Wife," *Massachusetts Ploughman and New England Journal of Agriculture*, May 16, 1885, 4. For another short story example, see MRPH, "Putting Himself in Her Place," *London Reader*, Mar. 20, 1880, 500.

[35] "The Allowance," *Harper's Bazaar*, Jan. 4, 1879, 2.

More than a decade later, *Harper's* again referenced legal concepts to argue for "a fairer division of the power and responsibility in relation to money." That writer reasoned: "If marriage is a sacrament, as some hold, and by a great mystery the two become one, certainly she is as much the one as he, and has the same rights." On the other hand, if marriage "is a civil contract, as others hold, then her rights are equal to his own under the contract, and he is defrauding her of them in not allowing her free and equal access to the family funds."[36]

In another piece that contextualized marital financial conflicts by reference to law, the author argued that passage of MWPA provided evidence that marital finances should be arranged fairly. Under this new marital property regime, he suggested, women should be educated to handle money just as men were. "For I hold, as the wise legislators of the Married Women's Property Act must have held, that every woman who has any money at all, either earned or inherited, ought to keep it in her own hands, and learn to manage it exactly as a man does." With regard to marital wealth, MWPA had gradually undercut the "old notion" that a woman's legal identity was absorbed into her husband. Instead, marriage had become "financially, a partnership with limited liability." Therefore, when the woman was sensible and trustworthy with money, the man should entrust her not only with her own money but with his, as such a woman would spend money "far more wisely and economically than he will."[37]

In the following years, a wide range of publications ran stories advocating that husbands provide regular sums or access to cash to reflect wives' contributions or at least for the sake of marital harmony. One of the ways the different justifications appeared most starkly was in the terminology. While the suggestion that a husband provide an "allowance" to his wife was common,

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[36] "Money in the Pocket," *Harper's Bazaar* 24 (Sept. 12, 1891): 690; "The Wife and Her Money," *Ladies' Home Journal* 18 (Mar. 1901): 16.

[37] "About Money," *Contemporary Review*, July 1, 1886, 364.

many commenters objected to what the word implied.[38] A series of letters submitted to *Good Housekeeping* in 1886 helps capture this angle. In the first, a husband wrote: "I resent the idea that my wife is a mere pensioner on my bounty. … I thank the Lord that I am man enough to recognize the fact that my wife, *as* my wife and the mother of my children, has rights, money-spending rights, that I have no business interfering with." When they wed, he explained, they became "equal partners" in a lifelong "firm." Though their own practice was to share access to a money drawer, he concluded his letter by noting that "this simple question of a wife's *allowance* has wrecked the happiness of many a household."[39] A letter writer identified as a resident of Charleston, Massachusetts, agreed but took issue with the "allowance" language. "Children should have an 'allowance,' a wife should have her 'share,'" the writer argued. "It is not what she is *allowed*, it is what *belongs* to her."[40]

An exchange published in the *Christian Union* in 1889 further developed the "allowance" versus "partnership" framing. Referring to "what seems to be the constant refrain of all women, apparently, and, for aught I know, all men, and that is, wives should have an allowance," a writer expressed skepticism of the "allowance" approach to family sharing. "I certainly think this is a great advance over nothing, or the occasional twenty-five cents often given by a loving husband when his wife asks for a little money, the writer explained, but "[i]t makes me 'warm under the collar' to read article after article why a woman should have an allowance. An 'allowance' forsooth!" Marriage "is a real partnership between husband and wife," and so there should be a common pocketbook for

[38] For example, a lengthy article that drew from interviews with the wives of the U.S. president and several senators reported that all but one (a Southerner) agreed wives should receive an allowance. Miss Grundy, Jr., "Do You Give Wife Money? Mrs. Harrison Says that You Ought To," *Boston Daily Globe*, Nov. 30, 1890, 2.

[39] Zenas Dane, "A Woman's Allowance," *Good Housekeeping* 3 (Aug. 7, 1886): 174 (emphasis added).

[40] Miss ---, "Disciplining Children" and "A Wife's Allowance," *Good Housekeeping* 3 (Sept. 18, 1886): 247 (emphasis in original). A third letter writer drove home the importance of such money transfer by admitting she turned to stealing small sums from her husband's pockets at night to buy little things for their child. E. W. Perry, "A Woman's Allowance," *Good Housekeeping* 3 (Oct. 2, 1886): 271.

"partnership money." The *Christian Union* editor responded by embracing the business partnership concept but casting doubt on the idea of equal sharing. Even in a business, a specific sum might be delegated to a member of the firm for purchases, he reasoned. "The wisest arrangement between a husband and a wife for the management of money is that of giving the wife a given sum which is absolutely her own to use as if in her judgment she thinks best for the benefit of the firm."[41]

In the following decades, the business partnership concept of marriage persisted, though it never became the majority view. Proponents emphasized that a wife's work had value, and that by saving money through economical purchases she was contributing directly to the family's finances.[42] "A penny saved is a penny earned," one writer argued, after describing marriage as a "co-operative association."[43] One women who saw marriage as an "equal partnership" condemned those who pushed for a regular allowance instead of their fair share. The "emancipated women who shriek most loudly for an independent income are really placing the wife in the light of a salaried employee, instead of an equal partner," she claimed.[44] In the most extreme proposals, this conceptualization led to the argument that wives should "receive half the profits of the business."[45]

Many who proposed that husbands give wives a regular sum were motivated by practical concerns more than spousal equality. An allowance or similar would help ensure the smooth and efficient functioning of the household and avoid a scenario in which the wife felt drawn to the paid

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[41] "A Day's Mail" (letter from C.T. Willard and response), *Christian Union* 42 (Nov. 1890): 712.

[42] Elisabeth Robinson Scovil, "A Wife's Household Allowance," *Ladies' Home Journal* 9 (Jan. 1892): 18; "The Wife's Pocketbook," *Austin Statesman*, Sept. 24, 1903, 5.

[43] Ruth Evans, "The Allowance Question," *American Farmer* 61 (Sept. 1, 1894): 6.

[44] "How Large Should Her Allowance Be?" *Los Angeles Times*, Aug. 2, 1903, C10.

[45] "A Woman's Pocket Money," *Detroit Free Press*, Oct. 20, 1900, 2. For similar proposals, see "For Feminine Readers," *Indianapolis Journal*, Jan. 14, 1900, 16.

labor force. "When domestic unhappiness exists in a family it generally happens that the case may be traced to money matters and to the unequal division of the common funds," one expert on home life observed. Most women had to ask their husbands every time they needed five cents. "For a proud-spirited, naturally independent woman to have to beg, bargain and haggle for a few dollars from her husband is one of the most degrading misfortunes that can befall her." Like many others, this commenter suggested that husbands imagine how they would feel if they had to ask for money every time they wished to buy the slightest indulgence. She advised that a young wife begin marriage by demanding "a weekly or monthly allowance of money—which shall be proportionate to her husband's income," in order to "sav[e] herself from a lifetime of misery."[46]

African-American newspapers published remarkably similar discussions and advice, indicating that while the "allowance" issue likely resonated most with certain classes, it was not the narrow purview of a tiny elite. In one of the earliest examples, in 1881, Alabama's *Huntsville Gazette* advised its male readers: "Be the cashier and make your wife business manager of the home. … Do not humiliate your wife by making her feel her dependence." An article published a few years later in the *New York Freeman* advised that "the greatest cause of heartburning and misunderstandings among refined, well educated, married people, of the middle and upper classes, grows out of a misconception of the right use of the family pocket-book." It was difficult for partners who were accustomed to earning and spending separately to downsize and share the husband's salary, the

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[46] "Plea for Deserving Wives," *Sun* (Baltimore), Feb. 3, 1885, 6 (reprinted from *Louisville Courier-Journal*). See also "Husbands and Wives," *Sun* (Baltimore), Feb. 16, 1885, 5 (letter commenting on earlier article and noting it "seems to have attracted a good deal of attention"). For similar arguments, see Ella Wheeler Wilcox, "Husbands and Wives," *Washington Post*, Dec. 9, 1888, 10; "Mean Treatment," *Arizona Republic* (Phoenix), May 1, 1889, 2; "Pocket Money for Wives," *Ladies' Home Journal* 5 (Dec. 1887): 4. The centrality of finances to marital bliss was also demonstrated by a list of "Ten Commandments for the Husband and Wife," published in *Good Housekeeping* in 1891. The first commandment for husbands read: "I am the source of many an unhappy marriage, 'says the mighty dollar,' therefore, shalt thou make mutually satisfactory arrangements with thy wife concerning her pecuniary allowance, immediately upon entering the matrimonial ranks." The final commandment for the wife included: "Thou shalt not covet luxuries, which may bring they husband to financial difficulties or, perhaps ruin." "Ten Commandments for the Husband and Wife," *Good Housekeeping* 13 (Oct. 1891): 186.

writer explained. Wives became embittered when "they work like slaves," yet "never have a cent they can call their own." Detroit's *Plaindealer* reprinted an allowance joke from the *Somerville Journal* (which was not an African-American paper): "Before a girl becomes a wife she cannot help planning sometimes how she may spend her allowance… afterward she often spends a good deal of time planning how she may get an allowance to spend."[47]

Other advice directed at husbands appealed to their self-interest. If men did not provide "pocket money" to wives, some articles warned, women would be hesitant to marry, would demand to work outside the home after marriage, and might even pursue a divorce.[48] Given that there had been "an almost universal cry" by wives for "pocket-money," one writer observed, "[i]t is no wonder that many a nice bright girl, who has become self-supporting and knows the comfort of freedom in the matter of spending money, hesitates, and needs a very strong attraction before she is drawn into marrying any one." Men who did not provide their wives with discretionary funding, the writer continued, did not have any business getting married.[49] Thus, these articles indicated, it was in men's best interest to comply with women's demands for cash.

By the early twentieth century, with varying degrees of patience and exasperation, writers attempted to help husbands understand that wives found it humiliating to ask for money, especially

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[47] As noted in the Introduction, it is often unclear which content is original versus reprinted in African American newspapers (just as is true in other non-major papers). Regardless of the origin, the decision to print this material seems noteworthy. "Advice to Husbands," *Huntsville (AL) Gazette*, Oct. 8, 1881, 4; Mrs. N.F. Mossill (ed.), "Our Woman's Department," *New York Freeman*, Sept. 11, 1886, 2; "Spending an Allowance," *Plaindealer* (Detroit), Apr. 24, 1891, 7.

[48] For an example of a divorce attributed to marital financial disagreements, see "Claimed Her Husband Was a Miser," *Chicago Daily Tribune*, Nov. 1, 1889, 5. And for discussion of this possibility, see "Should a Wife Be Given an Allowance?" *St. Louis Republican*, Dec. 20, 1903, 38. For a study of divorce that found disagreements over spending to be a contributing cause in this period, see Elaine Tyler May, *Great Expectations: Marriage and Divorce in Post-Victorian America* (Chicago: University of Chicago Press, 1980), 137.

[49] "Money in the Pocket," 690.

if they had earned money before marriage.[50] When a wife gives up a "lucrative" position to marry, her husband should recognize her value and give her an allowance, one writer argued.[51] "Many [women] were self-supporting before marriage, and many more might have been so if they chose," another explained. "To them the exchange of financial freedom for absolute dependence is not attractive. They had the control of money before marriage; they reasonably desire the control of it at least a little after marriage."[52] Husbands could avoid these consequences by simply giving their wives regular sums, the articles indicated.

Figure 1: Image depicting arrangement in which husband and wife share the family's money[53]

Popular culture also reflected the pervasive nature of discourse on family finances. For instance, a film produced in 1903, titled "How a Wife Gets Her Pocket Money," featured a wife examining her husband's pockets while he slept after an evening out. She took both the contents and the pants, so that her husband had to stay home. "The picture is funny, amusing and lifelike, but is not objectionable in the least" a synopsis ran.[54]

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50 "The Wife and Her Money," 16.

51 "Extravagant Economy," *New-York Tribune*, Feb. 18, 1906, B4.

52 "The Wife's Allowance," *Youth's Companion* 78, no. 3 (Jan. 21, 1904): 34. For similar arguments, see Beatrix, "Marriage Is Partnership," *Detroit Free Press*, Feb. 21, 1907, 7; Christine Herrick, "Money for Use by the Wife," *Los Angeles Times*, Sept. 3, 1903, A3.

53 Nixola Greeley-Smith, "What Is the Wife's Share?," *Evening World* (New York), Sept. 5, 1912, 3.

54 "How a Wife Gets Her Pocket Money," *American Film Institute Catalog* (June 1903), ProQuest AFI Catalog (1746369193).

The contribution to popular culture that received the most attention was *The Ballingtons*, a novel published by Frances Squire Potter in 1905.[55] Potter was an assistant professor of English at the University of Minnesota on leave to study in Cambridge, England. She had previously separated from her husband and was raising four children on her own.[56] She published the book under her maiden name and dedicated it to a college classmate and close friend, suffragist Mary Gray Peck. The book focused on two families. In the loving family, the wife had discretion over the finances. In the other, the husband had control and refused to give a single dollar to his wife, who was accustomed to earning her own living prior to their wedding.[57] Publications across the country praised how the book handled the tragedy that ensued after the wife "demands the rights which should belong to her as a matrimonial partner who is not a wedded slave."[58] The *New York Times* reviewer crooned, "We have rarely seen a picture more accurate in detail, more logical in consequences, more true in all its coloring, more subtle in every 'nuance' than this of the wedded life of Ferdinand and Agnes Ballington."[59] A prominent male lawyer and author from Virginia similarly reflected in private correspondence: "This is a powerful and infinitely pathetic picture of life; and it is this because it is genuine in its delineation of character and in its narrative of life and its events."[60] Indeed, the realism was one of the few reasons some reviewers did not recommend the book. One

[55] Frances Squire, *The Ballingtons* (Boston: Little, Brown and Company, 1905).

[56] On Squire's background, see "The Lounger," *The Critic and Literary World* 48, no. 1 (Jan. 1906): 11; "Suffragists to Hear Mrs. Potter," *Detroit Free Press*, Jan. 21, 1910, 3. See also Potter, Frances Squire, 1867-1914, Schlesinger Library Finding Aid.

[57] For representative coverage see "New Literature," *Boston Daily Globe*, Oct. 24, 1905, 7.

[58] "Literature," *Massachusetts Ploughman and New England Journal of Agriculture*, Feb. 10, 1906, 2.

[59] "The Ballingtons," *New York Times*, Oct. 14, 1905, BR672.

[60] Letter from Armistead C. Gordon to Mrs. E.G. Harrison, Dec. 3, 1905, 1441-81-M120, Folder 22, Frances Boardman Squire Potter Papers, 1879-1923, Schlesinger Library, Radcliffe Institute, Harvard University, Cambridge, MA.

female writer observed: "The book is undoubtedly a true picture of conditions that unfortunately prevail in many American homes to-day; yet it is a book that we cannot find it in our heart to recommend, as it does not solve the problem and the general effect upon the reader's mind is decidedly depressing."[61] Another thought the book itself might hold the solution. "'The Ballingtons will do the most good if read widely by husbands," that reviewer claimed.[62]

While public discussion focused on the transfer of cash from husband to wife, minor references acknowledged that much of the family's essential purchasing continued to occur on credit. Under this method, the bills went to the husband to audit and pay.[63] Discussants deemed this approach undesirable for a number of reasons. Some authors advised that buying on credit had a tendency to cause "distress and unhappiness in families" because it meant the husband faced "startlingly large" bills every six months or year, rather than more manageable regular payments.[64] Other sources emphasized that wives found it inadequate to merely be permitted to charge their clothing purchases at stores because they still lacked "the innocent pleasure of indulging in a book or magazine, a bit of chinaware, a useless odd or end that will wear its welcome out maybe, but that is so tempting to buy."[65] Moreover, it was routinely reported that the system of buying on credit led wives to the dishonest practice of overcharging for items and pocketing the difference for their discretionary purchases. According to a speaker before the State Federation of Woman's Clubs in

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[61] Amy C. Rich, "The Ballingtons," *Arena* 35, no. 197 (Apr. 1906): 447.

[62] "The Wife's Allowance," *Brooklyn Life*, Nov. 11, 1905, 10. A few years later, Potter was elected corresponding secretary of the National American Woman Suffrage Association. "Woman Suffragists Place Prof. Potter at the Front," *Christian Science Monitor*, Aug. 5, 1909, 6.

[63] Herrick, "Money for Use," A3.

[64] "A Partner or a Toy: Which?" *Christian Union* 42 (Oct. 16, 1890): 499; Scovil, "A Wife's Household," 18.

[65] "Plea for Deserving," 6. See also "Husbands and Wives," 5 (letter commenting on earlier article and noting it "seems to have attracted a good deal of attention").

1905, "many of the larger stores have regular arrangements for such connivance with their women patrons."[66] While to some this state of affairs indicated that credit purchases were to be avoided, other stakeholders instead focused on refining the methods by which wives could purchase on their husbands' accounts.

Consumerism and Contestation under the Doctrine of Necessaries

Because common law coverture did not allow a wife to contract or own her own property, a married woman traditionally made purchases pursuant to the doctrine of necessaries. Under a simple application of the doctrine, a wife had implied authority as her husband's agent to buy items from a merchant, who later recovered the cost from her husband. "Necessaries" included food, clothing, housing, and household items "such as would be proper for the station, tastes, standing, and financial ability of the husband and wife."[67] When the couple lived together, it was "presumed that the husband sanctions or authorizes the purchase by the wife of proper necessaries." Even where a wife had separate wealth far exceeding her husband's, he was nevertheless liable for her necessaries. The necessaries doctrine benefitted children indirectly, as a mother's purchases could include items for the couple's children.[68]

Treatise writers explained that the necessaries doctrine made sense because "it is not to be supposed that a husband will go in person to buy every little article of dress or household provision which may be needful for his family."[69] According to one, it was a "well-known fact that in modern

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[66] "An Allowance for the Wife," *Chicago Daily Tribune*, Oct. 23, 1905, 8.

[67] William C. Rodgers, *A Treatise on the Law of Domestic Relations* (Chicago: T.H. Flood & Co, 1899), 183; Schouler, *Treatise on the Law*, 99.

[68] Rodgers, *Treatise on the Law*, 184, 189.

[69] Schouler, *Treatise on the Law*, 102.

society, almost universally, the wife, as the manager of the household, is clothed with authority… to pledge her husband's credit for articles of ordinary household use."[70] So long as the husband and wife agreed on appropriate purchases, the doctrine facilitated the household division of labor and worked smoothly without court involvement.

But the new consumer economy rendered some aspects of this common law method uncertain and contested. Indeed, as purchasing patterns changed in the 1880s, newspapers ran articles on seemingly elementary concepts that had become unsettled, such as "What Are Necessaries."[71] The answers were a moving target, as judges and legislators modernized the doctrine to work effectively. As with MWPA, lawmakers sought to balance the interests of husbands, wives, and creditors. Though not as explicit, a larger goal seems to have been to make the doctrine function generously for many of the same reasons that "allowance" gained traction—in the interests of fairness and efficiency, as well as to mollify wives and minimize disruptions to gender norms.

There were two main ways in which the doctrine could result in discord: when spouses disagreed with each other about purchases and when, sometimes as a result of spousal disagreements but also for other reasons, a husband did not pay the merchant. Typically a husband could not prevent his wife from purchasing items appropriate to their station in life. According to a woman lawyer practicing in Boston in 1891, "necessaries" was "broad" and "elastic," so "many things being properly regarded as necessaries to the wife of a wealthy man … would be luxuries to the wife of a poor man." For example, the wife of a rich man who provided her with only "calico dresses" could

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[70] Joseph Long, *A Treatise on the Law of Domestic Relations* (St. Paul: Keefe-Davidson Company, 1905), 210. See also Rodgers, *Treatise on the Law*, 185 ("The matter of looking after the household and family necessities naturally falls chiefly upon the wife, and unless the husband furnishes her these necessaries in a manner in keeping with his ability and surroundings, the wife may buy them on the credit of the husband, and the tradesman or other person thus dealing with the wife will have a right of action at law against the husband for the necessaries then furnished.").

[71] "What Are Necessaries," *Courier-Journal* (Louisville), Jan. 18, 1880, 5 (reprinted from *New York Sun*).

purchase clothing appropriate to their class, and the husband would be obligated to pay, even if he had forbidden dressmakers to deal with her.[72] In this way, a treatise writer observed, "the law [took] a circuitous course" to enforce marital obligations, allowing a wife to "secure herself from want against a cruel and miserly husband, of ample means to support her."[73]

In order to protect himself from his wife's unauthorized purchases, a husband could give notice to merchants not to sell to her, so long as he already provided her with sufficient necessaries, an adequate allowance, or credit at a particular store. As the New York Court of Appeals explained in 1868, a husband was ordinarily "presumed to assent to her making such purchases as, in the conduct of the domestic concerns, are proper for her management and supervision," but he could "destroy such presumption, by an express prohibition." A merchant with notice of this prohibition could not recover from the husband, unless the wife truly lacked necessaries appropriate to her station. However, the burden was on the husband to prove the purchases were contrary to his express consent.[74]

Husbands sometimes attempted to notify merchants to stop selling to their wives by posting notice in newspapers, but commenters differed on whether this move constituted a valid legal shield.[75] In 1883, a *Chicago Daily Tribune* journalist observed that newspaper readers could "frequently

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[72] Lelia Robinson Sawtelle, "What Support A Wife May Claim from Her Husband," *Chautauquan Weekly Newsmagazine* 13, no. 4 (July 1891): 517.

[73] Schouler, *Treatise on the Law*, 97-99 ("Thus a large milliner's bill might not be deemed necessaries for the wife of a laborer, while a wealthy merchant would be bound to pay it.").

[74] Keller v. Phillips, 39 N.Y. 351 (1868). See also Rodgers, *Treatise on the Law*, 188; Schouler, *Treatise on the Law*, 113; "Husband and Wife, Liability of Husband, Debts Contracted by Wife," *Yale Law Journal* 21, no. 6 (Apr. 1912): 522 ("Held, that a husband who had by due notice forbidden certain tradesmen to trust his wife was not liable on her contracts with them if he had previously made arrangements for the supplying of her with necessaries.").

[75] For sample notices from the surrounding decades, see Appendix. For sample notices from the eighteenth century, see Elisabeth Dexter Williams, *Colonial Women of Affairs: Women in Business and the Professions in America Before 1776* (Boston: Houghton Mifflin, 1931), 186-88.

see personal notices" warning that a husband would refuse to pay any new debts accrued by a wife who had wrongfully deserted him. Yet according to a lawyer consulted by the reporter, these notices "are worth but very little." A husband seeking to avoid liability would need to prove the shopkeeper had seen the notice and that his wife had left him voluntarily despite his adequate provision for her. In response to the journalist's question about how such a legally meaningless tactic came to be "in vogue," the lawyer speculated it was derived from an English custom of posting notice to merchants to not sell to runaway apprentices.[76] Another possibility is that confusion arose because states applied different rules. The Boston lawyer advised that a husband who "has notified certain tradespeople *or the public in general* not to give credit to his wife on his account" was generally protected (so long as he was actually providing her with necessaries).[77]

Posting notice risked reputational harm, so in practice it seems a husband rarely turned to this method unless he was using it as a strategic ploy during a separation or leading up to a divorce.[78] In one telling anecdote, when a prominent and successful man living in Evanston, Illinois, posted public notice to merchants not to sell to his wife, his friends were "surprised," even though they "knew he had been living apart" from her. One friend informed a journalist that the husband "had taken the step after he had been unable to make a settlement with his wife on a basis of divorce"

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[76] "'Bed and Board': Newspaper Warnings to Tradesmen Not to Give Wives Credit of Little Use," *Chicago Daily Tribune*, July 25, 1883, 8.

[77] Sawtelle, "What Support A Wife," 517.

[78] E.g., "Will Not Pay Wife's Bills," *San Francisco Chronicle*, Feb. 3, 1901, 11 (discussing notice posted in local paper by husband living in France who gave wife $500 per month in allowance); Winifield Thompson, "Hired Woman to Trail Wife," *Boston Daily Globe*, May 13, 1916, 1 (in recounting divorce action, noting that husband had earlier posted notice to Boston merchants to not sell to his wife); "John B. Hedyt and Wife Living Apart in Home: Husband Warns Public in Advertisement Against Extending Credit to Woman," *St. Louis Post-Dispatch*, June 18, 1916, A1. Allen v. Reider (Pa. 1910) (Where husband had already filed for divorce, published notice about his credit in press, and was giving his wife a substantial amount of money, merchant could not recover for selling her a fur coat.).

because she had demanded more money.[79] The fact that divorce grounds existed, or even that divorce proceedings were pending, was insufficient to insulate a husband's assets from his wife's purchases.[80]

Wives did not react submissively when husbands posted notice. One of the most common responses recorded by newspapers was that wives rushed to purchase items on their husbands' credit before it was too late.[81] A smaller number sought to challenge their husbands' claims or even seek revenge. An intriguing example comes from Idaho in 1890, where a husband and wife posted dueling newspaper notices to disclaim liability for each other's purchases (Figure 2). Idahoan wives were not liable at that time for purchases made by their husbands, unless they clearly pledged or conveyed their property for such purpose, so this wife's notice does not seem to have served a legal function. Rather, it was her clever way to ensure her husband did not get the final word in a public forum on who was to blame for their separation.[82]

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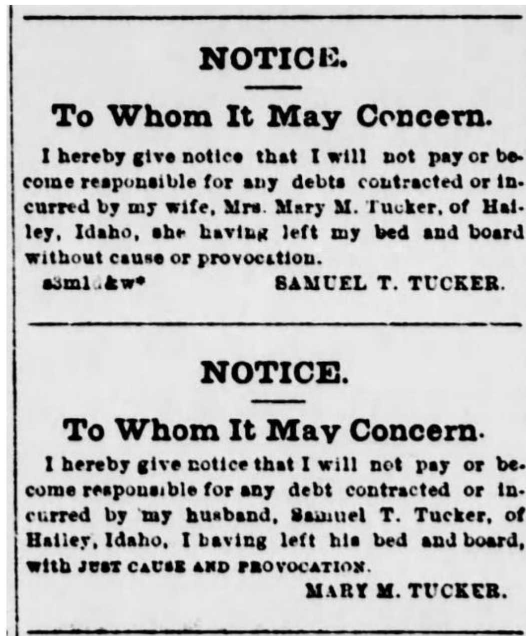
[79] "John A. Farwell Cuts Off Wife's Credit by Notice," *Chicago Daily Tribune*, Jan. 16, 1916, 8. See also "All Extend Credit to Croker's Wife," *New York Times*, Oct. 10, 1908, 20 (after chief of N.Y. Fire Department posted notice and sent individual letters to merchants, the locals sided with his much-liked wife, with tradesmen telling her "they will extend her unlimited credit").

[80] Rodgers, *Treatise on the Law*, 186; Long, *Treatise on the Law*, 256.

[81] "Mr. Dobbins Must Pay the Bills," *St. Louis Post-Dispatch*, Sept. 11, 1892, 17 (expecting her husband to file notice to merchants and then seek divorce, wife rushed to buy as much as possible that morning); "Two Gould Cases Keep Court Busy," *New York Times*, Sept. 22, 1908, 5 (reporting on wife who pledged her husband's credit for $150,000 of purchases in the six weeks after they separated, in anticipation of divorce).

[82] "Notice," *Wood River Times* (Hailey, ID), Oct. 13, 1890, 2. For Idaho law at this time, see Dernham v. Rowley, 44 P. 643 (Idaho, 1896) ("debts contracted by her husband for his own benefit, or for the use and benefit of the family of which he is the head, cannot expose the separate property of the wife to levy and sale, although the wife may voluntarily become a surety therefore").



NOTICE.

To Whom It May Concern.

I hereby give notice that I will not pay or become responsible for any debts contracted or incurred by my wife, Mrs. Mary M. Tucker, of Hailey, Idaho, she having left my bed and board without cause or provocation.

a3ml..&w* SAMUEL T. TUCKER.

NOTICE.

To Whom It May Concern.

I hereby give notice that I will not pay or become responsible for any debt contracted or incurred by my husband, Samuel T. Tucker, of Hailey, Idaho, I having left his bed and board, with JUST CAUSE AND PROVOCATION.

MARY M. TUCKER.

Figure 2: Dueling notices posted by a husband and wife in Iowa

One particularly sensational incident involved a rich couple living in Pittsburgh in 1910. The drama began when the husband posted notice that he would not be responsible for his wife's bills, accusing her of extravagance far exceeding his own generosity.[83] This move, according to an article reprinted in papers beyond Pittsburgh, "caused much comment in social and financial circles." After the wife read the notice, she accused her husband of lying to deflect from his own lavish spending. Society women visited the wife to give their sympathy and offer financial support. The wife then swore to retaliate; "I promise now all the trouble [my husband] seems to desire so far as money is concerned," she told a journalist.[84] In the following months, the wife hired a detective, whose work culminated in the husband and his mistress being hauled to jail early one morning, he in his

[83] "Objects to $1,400 Gowns," *New York Times*, Aug. 29, 1910, 1.

[84] "Denies She's Extravagant," *New York Times*, Aug. 30, 1910, 3.

underwear and she in garb "insufficient for a canary."[85] The wife then filed for divorce and alimony, claiming her husband had been a spendthrift but miserly and cruel toward her, refusing to buy her even a piano.[86] Meanwhile, the couple continued living in the same home, each occupying half.[87] Perhaps as part of an overall litigation strategy, the wife participated in a criminal case against her husband for disorderly conduct and lodged a claim against the mistress for alienation of her husband's affections.[88] The husband pled *nolo contendere* and was shocked when, in addition to a $500 fine, the judge sentenced him to six months in jail.[89] After that point, their marital disputes disappeared from newspapers. Given the prominent earlier coverage, this likely indicates that they reached a private agreement.[90] Though an unusual set of events, the detailed and far-reaching news coverage devoted to this couple—as well as to many other wealthy or otherwise noteworthy couples—helped spread information about legal remedies for marital discord.

Some husbands pursued a more discrete and legally sound method of disavowing their wives' bills by contacting merchants directly. The men who chose this approach seem to have been in amicable relationships with wives who purchased beyond the husbands' means.[91] The secretary of the Cleveland Retail Credit Men's Company, in a speech reprinted by the trade journal *Women's*

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[85] "Her Garb: Insufficient for a Canary," *Cincinnati Enquirer*, Dec. 20, 1910, 1; "Husband Is Nabbed by Wife," *Pittsburgh Daily Post*, Dec. 19, 1910, 16.

[86] "Mrs. John Werner Sues Husband for a Divorce," *Pittsburgh Press*, Jan. 6, 1911, 3; "Kept a Prisoner by Her Husband, Says Mrs. Werner," *Buffalo Times*, Jan. 7, 1911, 4.

[87] "Homestead Divided Between Couple," *Cincinnati Enquirer*, Jan. 9, 1911, 3.

[88] "Mrs. Werner Wins First Round in Divorce Battle," *Pittsburgh Press*, Jan. 9, 1911, 1. The mistress forfeited her bail and disappeared. "Mr. and Mrs. John Werner Wait in Criminal Court," *Pittsburgh Press*, Feb. 8, 1911, 2.

[89] "John Werner Sent to Jail for 60 Days," *Pittsburgh Press*, Feb. 16, 1911, 1.

[90] A final tantalizing detail is that the husband declared bankruptcy the next year. "Public Sale," *Pittsburgh Post-Gazette*, June 10, 1912, 12.

[91] For example, see "Stops Credit of Family," *Chicago Daily Tribune*, Mar. 2, 1907, 3.

Wear, sympathized with husbands in this predicament. The enticement of bargain offers in combination with unlimited credit extended to the wife was, he suggested, the "present day white man's burden." The secretary's description of how he came to learn of this dilemma is revealing. "The husbands, unable to place any check upon these expenditures by argument or cajolery, *fearful of the publicity which would attach to the public notice to tradesmen*, appealed to the credit association in person," he reported, "asking that their women folk be refused further credit." He claimed that "husbands by the score" had taken this path. Blaming merchants rather than wives, he continued: "To tempt or persuade a customer by advertisements to buy beyond his means is unethical and no act of a business gentleman."[92]

When a husband refused to pay for his wife's purchases, the merchant's legal recourse was to sue him. Presumably merchants pursued this path in a vanishingly small percentage of disputes because of litigation's risks and costs, especially in comparison to the price of everyday necessaries purchases. Moreover, many lawsuits were likely averted because husbands had reputational incentives to pay if they anticipated a lawsuit, even if they expected to win in court. Nevertheless, newspaper articles and appellate opinions document that countless necessaries disputes proceeded to trial.

The merchant traditionally bore the burden of proving three elements to a judge or jury to prevail. The three-part analysis left merchants in a precarious position, bearing the risk of ascertaining fact-specific information that might not have been publicly available. This was especially true when the merchant dealt with a wife for the first time or in an urban setting with significant anonymity.

[92] "Retail Notes," *Women's Wear* 9 (Sept. 10, 1914): 12.

The threshold question was whether the purchased items qualified as necessaries, considering "the station, surroundings and ability of the husband."[93] Treatise writers warned that application of this element was so difficult and variable that it was not even clear or consistent whether it was a question of law for a judge or fact for a jury.[94] As one explained, "no set rule which will apply to and govern all cases can be formulated, nor has this ever been attempted."[95] Still, merchants were not predetermined to lose on this ground. For instance, in one case a merchant recovered on a wife's bill for upkeep of a horse and buggy, even though the husband had no knowledge of the expense and kept his own horses at a livery stable. According to a newspaper article's coverage of the litigation, the wife had a "right" to this amenity given the "social and financial condition of the parties."[96]

The second issue was whether the husband had already provided the wife with sufficient necessaries or had given her funds to buy them. If she nevertheless purchased extra goods from the merchant on credit, the husband was not obligated to pay.[97] In one commonly cited case, a wife who lived with her husband and received $1,500 of his $2,000 salary to spend on household items and clothing nevertheless purchased additional items appropriate to their class on credit from a merchant. Overturning a lower court, the New York Court of Appeals held against the seller. The court characterized its position as giving husbands "some financial protection against the seductive

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[93] Rodgers, *Treatise on the Law*, 187.

[94] Schouler, *Treatise on the Law*, 99; Long, *Treatise on the Law*, 243.

[95] Rodgers, *Treatise on the Law*, 187.

[96] "Wife's Right: To Pledge Her Husband's Credit for Necessaries Sustained in a Lawsuit," *Cincinnati Enquirer*, Dec. 19, 1899, 5.

[97] There was inconsistency about whether a husband bore the burden of proof regarding whether the wife already had sufficient necessaries. Schouler, *Treatise on the Law*, 103-4.

wiles exerted by tradesmen to induce extravagant wives to purchase that which they really do not need." Unlike the lower court, this court did not fear that such a holding would force merchants to ask indelicate questions because "[t]he anxiety of tradesmen to sell will be sufficient to protect [wives] from any improper 'inquisitorial examination.'" A wife could easily continue purchasing necessaries from a merchant she knew. "But when she goes to a stranger, with whom she has never traded before… it is but reasonable and proper that she disclose to the merchant her authority therefor, or for the merchant to request such disclosure."[98] The details of such decisions spread through popular publications.[99]

Finally, the couple's marital status was relevant to the analysis. The presumption that a wife had purchasing authority for her husband dissolved if the couple lived apart.[100] Though case law was sometimes inconsistent or drew fine distinctions, treatise writers identified several general principles or patterns. If a couple separated by mutual consent or because of the husband's fault, the husband remained liable for necessaries. But if they separated at the wife's fault, the husband did not. An at-fault wife could not "with good grace expect" continuing financial support from her husband if they lived apart, a treatise writer explained.[101] Courts held against merchants even when the sellers did not know the wife was at fault for the separation.[102] (Some cases indicated a slight exception to this rule.

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[98] Wanamaker v. Wanamaker, 68 N.E. 135 (N.Y. 1903).

[99] For coverage of *Wanamaker*, see for example "Important to Husbands, Wives, and Trades People," *Christian Advocate*, Oct. 29, 1903, 1736.

[100] Long, *Treatise on the Law*, 247.

[101] Rodgers, *Treatise on the Law*, 190-91. See also Schouler, *Treatise on the Law*, 108-110; Constable v. Rosener, 81 N.Y.S. 376 (1903) (Court denied necessaries recovery to a merchant because the wife had voluntarily abandoned the husband without justification. "The obligations of marriage are reciprocal, and one cannot refuse to recognize them, and then force the other to respect them.").

[102] Steinfield v. Girrard, 68 A. 630 (Me. 1907) ("It was incumbent upon the plaintiff to establish the authority of the wife to bind the husband by the purchase of the goods.").

When a husband had long allowed his wife to purchase from a particular merchant, that merchant could still recover after the couple separated at the wife's fault if the husband had not given notice that he was withdrawing permission for her purchases.[103])

The rules about marital fault placed merchants in a difficult position, especially as separations seemed to be increasing. Tradesmen were "bound to inform themselves as to the cause and circumstances of the separation, or they give credit at their peril," one treatise writer warned.[104] But it was often far from clear who deserted whom, even if a merchant knew which spouse left a shared home. Under the doctrine of "constructive desertion," many courts held that "where either spouse, by misconduct or cruelty, drives the other away, the former, not the latter is guilty of desertion."[105] And another complication was that a man could still be liable for purchases his wife made for their children, regardless of which spouse was a fault for a separation.[106]

While these three elements continued to plague merchants, the passage of MWPA added another complication to their recovery.[107] Once a wife could enter contracts separately, it became

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[103] Long, *Treatise on the Law*, 252-53, 255-56.

[104] Long, *Treatise on the Law*, 212, 252; Schouler, *Treatise on the Law*, 114-115 ("While they cohabit it is usually for the husband to show a want of authority; when they cease to cohabit the seller must prove authority; that is to say, he must prove that the wife was in need of the goods, that the husband failed to supply her, and that the wife was not at fault. The burden is here upon the dealer, in short, to make a justifiable cause for supplying without actual authority from the husband."). But see Rodgers, *A Treatise on the Law*, 190 ("It seems that it is otherwise where the tradesman is ignorant of the facts and acts in good faith.").

[105] Summers v. Summers, 100 N.E. 71 (Ind. 1912) (citing cases from across the country, including Alabama, New York, Florida, and Oregon).

[106] The father's liability could be complicated because it was interrelated with the question of whether the mother properly had custody of the child, itself an evolving area of law. For discussion, see RPD, "Civil Liability of Fathers for Necessaries Furnished to Child Taken from Home by Mother," *American Law Reports* 32 (1924): 1466. Whether and to what extent a parent could be held liable for necessaries purchased directly by or for a child was a more difficult doctrinal question, but American judges developed case law that generally held a father liable for his children's necessaries. W. R. Vance, "The Parent's Liability for Necessaries Furnished His Minor Child," *Virginia Law Register* 6, no. 9 (Jan. 1901): 592-93. For primarily nineteenth-century developments on the development of "child support," see Note, Drew D. Hansen, "The American Invention of Child Support: Dependency and Punishment in Early American Child Support Law," *Yale Law Journal* 108, no. 5 (Mar. 1999): 1123.

[107] Though MWPA significantly increased wives' right to own and control their separate assets, husbands' common law support duties remained in place. Basch, *In the Eyes*, 218-19 ("Another restrictive factor was the static quality of the

unclear whether she was purchasing on her husband's credit or her own.[108] Some MWPA anticipated this issue. For instance, the Pennsylvania MWPA, enacted in 1848, included a provision that allowed a creditor to bring suit against the husband *and wife* for necessaries, but the creditor had to first pursue judgment against the husband and only after that failed could he execute against the wife's separate property. The legislation included a caveat that the judgment could not be entered against the wife "unless it shall have been proved that the debt sued for in such action was contracted by the wife, *or* incurred for articles necessary for the support of the family."[109] A case turning on this language first reached the Pennsylvania Supreme Court in 1876. In the interim, the court had proclaimed that the MWPA "was intended for [women's] protection, not for their injury," and so the court would not "adhere to a very literal interpretation" of the act but rather construe it "by its spirit and intention."[110] In the case involving the necessaries doctrine, the court read the "or" to mean "and," so that a seller of necessaries could only execute against a wife's separate property if she had been the one to contract for them.[111] While theoretically a clear (though arguably wrong) legal holding, in practice it was difficult to ascertain whether the conditions existed to hold a wife liable. Subsequent cases explained that the merchant had to persuade a jury that the wife was acting

husband's status. … the statutes did not relieve the husband of his duty of support."); R. E. La G., "Personal Liability of Married Woman for Domestic or Household Services," *American Law Reports* 36 (1925): 389 (MWPA "generally have no effect on the husband's common-law duty to furnish during coverture the household necessities").

[108] This was not an entirely new phenomenon, as women could make purchases from their separate equitable estates prior to MWPA. For example, see Warren v. Freeman, 3 S.W. 513 (Tenn. 1887) (discussing married women's longstanding ability to make contracts from separate equitable estates).

[109] George Stroud, *Purdon's Digest: A Digest of the Laws of Pennsylvania*, 7th ed. (Philadelphia: James Kay, Jun. & Brother, 1852), 1187.

[110] Mahon v. Gormley, 24 Pa. 80 (1854); Pettit v. Fretz's Executor, 33 Pa. 118 (1859).

[111] Murray v. Keyes, 35 Pa. 384, 391 (1860).

in her own right at the time of purchase, rather than as her husband's agent, as she was still permitted to do.[112]

In states without statutory guidance, one common approach was to assume the husband was liable unless the wife specified intent to bind her separate property at the time of purchase.[113] This rule was ripe for fact-intensive litigation. New York's experience demonstrates this problem, and newspapers' coverage of inconsistent holdings may have raised merchants' wariness about selling on credit there. For example, in 1899, the *New York Times* described irreconcilable cases brought in different divisions of New York City's courts. In one, a lawyer was required to pay a dressmaker for his wife's silk dress, despite his objection that his wife owed the debt herself because he already provided her with a weekly allowance and paid household expenses. An appellate court affirmed the husband's liability, explaining that the MWPA did not absolve the husband from purchases that are "suitable in quantity and quality to the station of the wife in life, the means of her husband, and the manner in which he permits her to live." Meanwhile, another judge dismissed a "similar" case against a husband on the basis that "the wife had the right to become individually responsible for the goods," even though she did not specify that she was purchasing on her own rather than her husband's credit.[114] The following year, a New York judge attempted to clarify the state's rules in a

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[112] Berger v. Clark, 79 Pa. 340, 345 (1876). See also Appeal of Sawtelle, 84 Pa. 306, 310-11 (1877) (wife not liable for husband's medical care, where husband employed the physician).

[113] Long, *Treatise on the Law*, 211; Rodgers, *Treatise on the Law*, 112, 186. See also "Married Woman—Liability for Family Necessaries," *Central Law Journal* 13, no. 16 (Sept. 30, 1881): 259 (quoting Flynn v. Messenger, 28 Minn. 208 (Minn. 1881) for proposition there could be "no doubt" under the state's statutes that a wife could bind herself for purchases, "but if the party dealing with her knows she is a married woman, living with her husband, and the order is of a character to indicate that it is intended for the benefit of the family, he is bound to presume that she is acting for her husband, and not on her own account").

[114] "Liability of Husband: A Lawyer Finds He Must Pay for Garment His Wife Wore Without His Protest," *New York Times*, July 30, 1899, 7. The appellate case is Graham v. Schleimer, 28 Misc. 535 (Sup. Ct. App. N.Y. 1899) (citing Ogden v. Prentice, 33 Barb. 160, 164 (1860), which held husband liable for wife's purchase of bonnets when he "knew his wife had them and saw her wear them, without expressing any disapprobation").

New York Times piece on "The Law of the Household": "Bills contracted with the grocer, the butcher, or baker become the debts of the husband, unless the wife has pledged her own credit for their payment."[115]

Law review commenters in other parts of the country condemned New York judges' handling of this issue. "The New York courts have evidently failed to appreciate the real significance of the [MWPA] in that state, and by their construction in favor of the wife have construed all the life out of it," suggested a contributor to the *Central Law Journal*. "The decisions, however, are in themselves anything but unanimous, except in the successful effort made in nearly every case … to avoid the real meaning and shield the wife's property." Moreover, he concluded, "[i]t would be very hard to tell just what the statute in New York really does mean from reading the decisions of its own courts."[116] With such inconsistencies and the fact-specific nature of litigation, merchants might think twice before selling on credit.

Modernization of the Necessaries Doctrine

Judges and legislators recognized that changing legal, social, and economic circumstances increased risks to merchants, thereby reducing the utility of the necessaries doctrine. To modernize this means of purchasing, they instituted three main changes: allowing a broader range of creditors to pursue reimbursement, expanding the scope of items that qualified as "necessaries," and clarifying when wives could be liable. The method and scope of modifications varied by jurisdiction. In some

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115 David McAdam (Justice of the Supreme Court), "The Law of the Household in New York," *New York Times*, Jan. 28, 1900, 23.

116 Note, "Scope and Extent of Statutes Making Wife Liable for Family Expenses," *Central Law Journal* 56, no. 22 (May 1903): 429. New York courts did sometimes allow merchants to collect against wives. Flurscheim v. Rosenthal, 112 N.Y.S. 1118 (N.Y. Sup. Ct. App. 1908).

places, judges gradually extended the doctrine through their case analyses. In the Midwest and West, legislators introduced "Family Expense Statutes" (FES).

Although the traditional doctrine of necessaries permitted only a merchant to sue for recovery, judges allowed a widening circle of those who aided deserted dependents to seek reimbursement from negligent husbands. One of the earliest extensions, adopted by some courts in the mid-nineteenth century, was to allow a father to recover for necessaries from his at-fault son-in-law when his adult daughter returned to his home in preparation to divorce the man. Courts had previously assumed the father's expenditures in such circumstances were gratuitous. Yet in the words of a treatise writer, by 1895, the situation of a father obtaining reimbursement after his adult daughter returned home was "unhappily, becoming far more common than formerly, and more readily encouraged by the courts."[117]

Another important expansion that judges developed was to allow recovery when a person lent money to a wife.[118] In the trendsetting case of *Kenyon v. Harris* (1880), the Connecticut Supreme Court held that when a woman lent money from her separate estate to a deserted wife, who in turn used the money to purchase necessaries, the lender could recover the money from the delinquent husband. The court reasoned that the burden to the husband was the same, and "the line of separation between necessaries and money loaned for the purposes of purchasing them may well be obliterated." The court explicitly intended its holding to increase the utility of the necessaries doctrine. "It is not certain that credit will, under all circumstances, supply necessaries to the wife,"

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[117] Schouler, *Treatise on the Law*, 118-19. For examples, see Hancock v. Merrick, 64 Mass. 41 (1852); Burkett v. Trowbridge, 61 Me. 241 (1871).

[118] Decades earlier the Pennsylvania Supreme Court had found that money cannot be lent as "necessaries," but money applied by a third party to pay a debt for necessaries a wife already purchased was recoverable. Walker v. Simpson, 42 Am. Dec. 216 (Pa. 1844). Commenters praised that result but condemned the reasoning as "a very unnecessary circumlocution." Irving Browne, *Humorous Phases of the Law* (San Francisco: S. Whitney, 1876), 36.

the court recognized, and "a friend may be able and willing to place money in her hands upon her husband's credit, who cannot personally attend to its disbursement."[119] Courts in other states followed similar reasoning to permit wives to borrow money from family and friends, recoverable as necessaries.[120] Since kin and friends were more inclined to bear the risk of non-recovery than merchants might be, this made the doctrine of necessaries more usable.

Massachusetts was the only notable jurisdiction to hold against permitting recovery to lenders. In *Skinner v. Tirrell* (1893), the Supreme Judicial Court of Massachusetts declined to follow *Kenyon*. The court explained that the common law doctrine of necessaries did not allow women to borrow money, and the doctrine of subrogation—which in some circumstances permitted the substitution of a third party for one with a right to pursue a debt or claim—did not apply to a "mere volunteer" who provided funding. The court's reasoning was seemingly eased by the fact that its state probate courts were already authorized by statute to enter support orders. "It is probable this statute should be taken as a declaration of the legislative sense that a married woman, living apart from her husband, should obtain money for necessaries through the aid of the probate court, and not by pledging his credit," the court concluded.[121] (Separate maintenance statutes are discussed in Chapter Two.)

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[119] Kenyon v. Farris, 47 Conn. 510 (1880); "Advancement of Money for Necessaries to Deserted Wife," *Albany Law Journal* 24, no. 2 (July 9, 1881): 31-32.

[120] Note, "Subrogation and Volunteers," *Harvard Law Review* 13, no. 4 (Dec. 1899): 297 ("[S]ubrogation is usually granted to a volunteer, who advances money to a wife living apart from her husband to be expended for necessaries."); Davis v. Fyfe, 290 P. 468 (Dist. Ct. App. 1 Cal., 1930) (citing *Kenyon* and other cases for proposition "it has been frequently held that money advanced under such circumstances and which has actually been applied [to purchase necessaries] can be recovered from the husband").

[121] Skinner v. Tirrell, 34 N.E. 692 (Mass. 1893). Provocatively, the Supreme Judicial Court of Massachusetts even held that a support order entered by its probate court did not automatically expire when a couple reconciled; only a court could modify it. McIlroy v. McIlroy, 94 N.E. 696 (1911).

Permitting family members and friends to recover money under the necessaries doctrine served as a step toward allowing wives to sue their husbands directly.[122] In 1910 and 1911, three levels of New York courts handled the most influential case to that effect, *De Brauwere v. De Brauwere*.[123] The wife first attempted to procure necessaries by pledging her husband's credit but was unable to do so. She then had him arrested for criminal abandonment, using laws that will be discussed in Chapter Four, and the criminal court ordered him to pay six dollars per week. After he absconded to New Jersey without payment, the wife sued to demand reimbursement for expenditures she had made from her separate estate to support herself and their children. The New York trial court noted that there was no precedent, "although the situation is a common one." Typically women in such situations could not afford "the best class of counsel" in order to raise such a novel argument.

Building on earlier expansions of the necessaries doctrine and broader legal principles about debt, the trial court held for the wife. The court observed that it was now generally accepted that if a person lent money to a deserted wife to purchase necessaries, the lender could sue the husband to recover. It should follow, the court reasoned, that the wife could also recover under the doctrine of subrogation because "a wife is entitled to the same remedies as any other creditor." Indeed, the wife's claim seemed stronger than that of a third party because "it is based upon an absolute right to support from her husband." Referencing advancements in women's legal rights through MWPA, the court demanded: "Must a wife abandoned among strangers be ruined, or starve, or work herself to

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[122] In what seems to have been the earliest case to consider this possibility, the wife lost. Decker v. Kedly, 148 F. 681 (9th Cir. 1906) (construing Alaska's MWPA as not allowing spousal suits).

[123] This case has been misinterpreted or overlooked in modern scholarship. Siegel characterizes this case as rejecting the necessaries doctrine. Siegel, "Modernization of Marital Status Law," 2165n155. In my reading, the court maintains the necessaries doctrine but allows the wife to sue directly under it for the first time. No legal scholar has cited this case in an article available through Westlaw since Siegel's use in 1994, and very few cited it prior. With this case outside the scope of scholars' awareness, legal historians have written that one of the central features of the doctrine of necessaries historically and today has been that spouses cannot use it to sue each other directly.

the bone, without hope of repayment from the husband whose legal and moral duty it is to support her, when one abandoned among friends can live upon the proceeds of loans which the husband is bound to repay?"[124] The intermediate appellate court agreed, though employing a more moderate tone.[125]

Law review coverage heralded the trial court's decision as a reasonable extension of the necessaries doctrine. The MWPA "enlarging the scope of a married woman's powers has not lessened the extent" of a husband's obligation to furnish necessaries, a *Harvard Law Review* Note explained. If a husband's credit "is worthless," the common law doctrine did not protect a wife's rights. When a wife paid for necessaries from her own money, she was clearly not a volunteer, "since it is only the instinct of self-preservation and not a desire to confer gratuitous benefits which leads her to perform *his* obligation." Thus, *De Brauwere* "accords with sound public policy, and it is only the tardiness of the law in coming to such a conclusion that calls for comment."[126]

De Brauwere also made newspaper headlines. In a widely published article titled "Rights of the Wife: An Important Decision Affecting Matrimonial Relations," the writer explained that the case permitted "an abandoned wife who has expended her own money for necessaries for herself and the children of the marriage" to sue the husband directly to recover. It is worth quoting the article's assessment of the decision at length, for it served as the most accessible update on the necessaries doctrine available to the public. According to the article, the case's holding was "only the logical extension of doctrines long recognized by the law—namely, that the wife has the irrevocable right to

[124] De Brauwere v. De Brauwere, 126 N.Y.S. 221 (N.Y. Sup. Ct. 1910). The court also provided procedural reasons for this holding: "At any rate, it would be unreasonable to require her, when her husband has departed from the state, to go to the expense of tracing him and serving him with the process by publication elsewhere." *Id.*

[125] De Brauwere v. De Brauwere, 129 N.Y.S. 587 (N.Y. Sup. Ct. App. Div. 1911).

[126] Note, "Husband's Duty to Reimburse Wife for Expenditures for Necessaries," *Harvard Law Review* 24, no. 4 (Feb. 1911): 306 (emphasis added). See also "A Recent Decision of Interest to Women," *Women Lawyers' Journal* 1, no. 2 (Aug. 1911): 9.

pledge her husband's credit for necessaries in case he fails to support her," and she could even borrow money from a lender who could then recover from the husband. The common law rules were "inadequate to meet the needs of the wife in many cases, because oftentimes the delinquent husband had no credit which she could pledge and, even if he had credit or she could procure assistance from friends she was forced in the position of supplicant for favor." *De Brauwere*, by contrast, "placed her in a position of independence, where she can draw from her own resources if she has such for necessaries or purchase them with her own earnings and compel the husband to reimburse her."[127]

New York's highest court agreed a wife should be able to obtain reimbursement, employing a rationale rooted more directly in women's rights than in general principles of lender subrogation. (Subrogation had recently "fallen into disrepute," according to a *Harvard Law Review* article.[128]) Holding that the husband's liability would have been enforceable by the wife at common law but for the fact that she could not sue her husband or own separate property, the court found that the MWPA removing these obstacles meant the wife could now enforce her "rights" against her husband directly. "The plainest principles of justice require that a wife should have some adequate legal redress upon such a state of facts," the court observed. "[T]he beneficial character of our legislation removing the former disabilities of married women could not be evidenced more forcibly than it is in its application to the present case."[129]

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127 For just a few examples of newspapers that ran identical articles, originally published in *Bench and Bar* as "Rights of the Wife," see *Asbury Park (NJ) Press*, May 5, 1911; *Coffeyville (KS) Daily Journal*, May 2, 1911; *Pittsburgh Press*, Aug. 25, 1911; *Washington Post*, Apr. 17, 1911.

128 In lieu of subrogation, some argued quasi-contract was a more legally sound approach to achieve the same result. Note, "Recovery of Money Loaned to Person Having No Legal Capacity to Contact," *Harvard Law Review* 25, no. 8 (June 1912): 725.

129 De Brauwere v. De Brauwere, 96 N.E. 722 (N.Y. 1911). For law review coverage, see "Husband and Wife—Rights of Wife Against Husband and in His Separate Property—Right to Be Reimbursed for Necessaries," *Harvard Law Review* 25, no. 5 (Mar. 1912): 473. *De Brauwere* has been cited in nearly 200 cases and was last cited as precedent in a published case in 1990, when a court required a husband to reimburse his wife for necessaries she purchased while pursuing a divorce

Though this type of extension of the necessaries doctrine does not seem to have been a frequent ground for litigation (likely because it would have been somewhat redundant in jurisdictions that permitted separate maintenance orders, discussed in Chapter Two), *De Brauwere* was followed by other states' courts.[130] Within a few decades, it appeared "well settled" that the intersection of the necessaries doctrine and MWPA permitted spousal reimbursement actions, so long as the wife was not at fault for the separation and brought the suit promptly.[131] This result held even where the wife had ample separate means. For instance, the West Virginia Supreme Court permitted a woman who was "a member of an old, aristocratic, wealthy, and influential family" to receive reimbursement of nearly $2,500 for sixteen months of necessaries she accrued while pursuing a divorce from her husband, a successful surgeon.[132]

The second route judges took to expand the usefulness of the necessaries doctrine was to allow a greater range of items to qualify as "necessaries." In the words of a treatise writer in 1895, "necessaries today are not what they were fifty years ago."[133] And they seemed to keep growing. For instance, in a 1912 Indiana case, the question was whether a jewelry firm could recover $275 from a husband for the sale of diamonds and other jewelry to his wife. The Indiana court began its legal analysis by noting that "in some respects the authorities are in conflict, and even in confusion." Yet

action. Schneider v. Schneider, 156 A.2d 439 (Sup. Ct. 2d Dept. NY, 1990). Although several decades have since passed, the case appears to remain good law in New York. Alan D. Scheinkman, *West's McKinney's Forms Matrimonial and Family Law* § 3:95 (Mar. 2017).

130 For examples, see Desch v. Desch, 132 P. 50 (Colo. 1913); Sodowsky v. Sodowsky, 152 P. 390 (Okla. 1915). The approach also spread to related scenarios, such as allowing a woman to recover post-divorce reimbursement for expenses incurred in supporting children prior to divorce. Rogers v. Rogers, 143 P. 410 (Kan. 1914).

131 AMS, "Liability of Husband, in Absence of Decree of Divorce or Separation, to Reimburse Wife or Her Estate for Money Expended by Her for Her Support after Separation," *American Law Reports* 117 (1938): 1181.

132 Vickers v. Vickers, 109 S.E. 234 (W.Va. 1921).

133 Schouler, *Treatise on the Law*, 99.

quoting approvingly from an 1875 Michigan case, the court suggested that necessaries "includes many of the conveniences of refined society" and, from an 1891 Minnesota case, that necessaries "includes such articles of utility, or even ornament, as are suitable to maintain the wife according to the estate and rank of the husband." The Indiana court found it relevant that the standard of living was "so far advancing" in general and in Kokomo, Indiana, that necessaries could not be restricted to "what they might have included some years ago." It was common knowledge, "of which not even courts can be ignorant," that men poorer than the husband in the case bought similar jewelry for their wives. Such purchases "can certainly be said under modern conditions to be suitable to the station in life of persons of the financial and social standing" of the husband. Thus, the trial court was justified in finding for the jewelers.[134]

In a handful of upper Midwestern and Western states, legislators expanded the range of items covered—and simultaneously extended liability to wives' separate property—by enacting FES. Iowans innovated this approach in 1851. The Iowa legislature passed a statute that read:

> The expenses of the family, the education of the children, and such other obligations as come within the equity of this provision, are chargeable upon the property of both husband and wife or either of them, and in relation thereto they may be sued jointly, or the husband separately.[135]

[134] Cooper v. Haseltine, 98 N.E. 437 (Ind. App. 1912) (quoting Clark v. Cox, 32 Mich. 204 (1875) and Bergh v. Warner, 50 N.W. 77 (Minn. 1891)).

[135] *The Code of Iowa, Passed at the Session of the General Assembly of 1850-1, and Approved 5th February, 1851* (Iowa City: Palmer & Paul, 1851), 220.

The Iowa statute was adopted verbatim or nearly by the state or territorial legislatures of Illinois (1874),[136] Oregon (1878),[137] Washington (1881),[138] Colorado (1891),[139] and Utah (1907).[140] Passage of FES was interwoven with MWPA (and could appear as a provision within MWPA), though the statutes were often discussed as a distinct category.

Legislators deliberately crafted FES to fix the major problems with the necessaries doctrine but were only partly successful. The statutes covered a broader range of items than "necessaries," eliminated the question of marital fault, and reduced the risk of spousal collusion or confusion over which spouse was liable. In the words of one early court decision, the statute "applies to the expenses of the family without limitation or qualification as to kind or amount" and without regard to the "wealth, habits, and social position of a party." Thus, it avoided the necessaries doctrine's "intricate and uncertain maze" of fact-specific analyses. Under a FES, a court need only consider whether the expenditure was "incurred for, on account of, and to be used in the family."[141] The intended simplicity of FES was belied by the litigation that followed. Just because an object might reasonably have been expected to be used by a family did not ensure they actually used it.[142] Other litigation arose because of the requirement that the purchaser be living as part of a "family," which

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136 Hudson v. King Brothers, 233 Ill. App. 118 (1887) (noting that Illinois statute copied Iowa's and therefore extensively following Iowa case law); "An Important Decision Touching the Liabilities of a Married Woman," *Chicago Tribune*, Oct. 11, 1882, 12 (giving statute date as 1874).

137 Watkins v. Mason, 11 Or. 72 (1884).

138 Bush & Lane Piano v. Woodard, 175 P. 329 (1918) (explaining that statute was passed by the territorial legislature in 1881, alongside provisions similar to MPWA passed in other states).

139 Gilman v. Mathews, 77 P. 366 (Colo. App. 1904).

140 Berow v. Shields, 159 P. 538 (Utah 1916).

141 Smedley v. Felt, 41 Iowa 588 (1875).

142 D. H. Pingrey, "Liability of Wife for Family Expenses," *Central Law Journal* 33, no. 10 (Sept. 4, 1891): 186 (discussing litigation and noting variation by state).

in this context meant "a collective body of persons who live in one home, under one head or manager."[143] Marriage alone did not answer whether a couple "constituted a family."[144] On the other hand, living apart did not automatically mean a couple had ceased to be a family, absent evidence that they intended to sever the relationship.[145]

A primary goal of the statutes was to provide greater protection to creditors.[146] As a 1901 article in the *Central Law Journal* observed, in discussing the Illinois FES, "[t]he belief is growing that the creditor has some rights which ought to be respected and enforceable even against heads of family, and especially creditors who have provided the family with the necessaries of life."[147] Two years later, the same journal published a piece that intoned: "It is indeed strange that the people's sense of justice has not sooner recognized the superior right of the creditor in this class of cases." The common law approach and other methods of exempting debtors' property incentivized dishonesty and "blunt[ed] all sense of moral obligation" so, for instance, "an expectant debtor will transfer all his property to his wife."[148] Judges construing FES likewise recognized that legislators intended to protect merchants.[149]

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143 Neasham v. McNair, 72 N.W. 773 (Iowa 1897).

144 Gilman v. Mathews, 77 P. 366 (Colo. App. 1904).

145 Berow v. Shields, 159 P. 538 (Utah 1916).

146 FES supplemented and did not replace common law and MWPA options. Graves v. Graves, 36 Iowa 310 (1873) (acknowledging ongoing availability of necessaries doctrine to enforce husband's support duty, though doubting usefulness); Jones-Rosquist-Killen v. Nelson, 167 P. 1130 (Wash. 1917) (where item did not qualify as "family expense," creditor could still seek recovery from wife individually under MWPA).

147 "Husband and Wife—'Family Expense Statutes'—Lease," *Central Law Journal* 53, no. 12 (Sept. 20, 1901): 222.

148 "Scope and Extent," 429, 430.

149 Berow v. Shields, 159 P. 538 (Utah 1916) ("It is also clear that [the statute's] purpose is to protect" merchants and traders.).

One major difference between FES and the common law necessaries doctrine was how the former extended liability to wives' property. While this shift may have seemed like a nod to women's equality, observers recognized that in practice it preserved the right of the husband as head of the household. Under FES, the husband could incur debts chargeable on his wife's estate, even though she now technically owned much of her property separately pursuant to MWPA. "Our law is liberal in protecting the rights of the wife, in relation to her property real and personal," the Iowa Supreme Court proclaimed in 1867. "But it has not gone so far as to abolish the headship of the family, nor to take from the husband the right to exercise his best judgement and discretion in the management of his affairs." It was "right and proper" for the wife to share responsibility for supporting the family, and so the FES allowed the husband to spend the wife's money without the merchant needing her permission.[150] A newspaper article explaining the FES captured the blended interests of husbands and merchants: "To deprive the husband of the power of charging the wife's property for such goods would cripple him in the performance of his duty to his family and encourage fraudulent collusion between husband and wife."[151]

Some judges in FES states and commenters across the country condemned how FES gave a husband the ability to spend his wife's money, especially on items that far exceeded necessaries. For instance, an Oregon court that begrudgingly upheld a wife's liability for her husband's purchase of a buggy observed that, though it was beyond the court's role to evaluate whether the FES "was wise and its provisions beneficent, … in some instances, at least, it works a great hardship on the wife, subjecting her to a liability which she did not contract." "In fact," the court continued, "the articles

[150] Lawrence v. Simon, 24 Iowa 80 (1867).

[151] "An Important Decision Touching the Liabilities of a Married Woman," *Chicago Tribune*, Oct. 11, 1882, 12.

may have been entirely unnecessary, or such as the family ought to have dispensed with, or they may have been of no utility."[152]

Critiques of FES were particularly harsh in the Northeast, where discussants focused on FES holdings they viewed as outrageous. In one of the most discussed cases, the Iowa Supreme Court held a wife liable for her husband's purchase of a diamond shirt stud. The court reasoned that "clothing of every [family] member is a source of comfort and enjoyment to all." The court found it relevant that husbands were often liable for wives' jewelry under the necessaries doctrine, the diamond shirt stud served a purpose beyond ornamentation, and nobody would have questioned a wife's liability for an inexpensive pearl button. "Under our statute, there is no occasion for inquiry as to the cost or necessity" the court continued; "[t]he same rule must be applied to the diamond and the pearl, to the rich and the poor."[153]

Coverage in New York newspapers treated FES cases like these as examples of the oddity of gender norms in what was then cast as the "West." A telling *New York Tribune* headline read: "Husband and Wife in the West: She Must Pay for Her Husband's Diamond Shirt Studs—Liberality with a Vengeance." Also discussing cases in which a wife was held liable for overdue rent on a lease signed by her husband and where a wife had to pay for an organ, the writer suggested these holdings demonstrated "in a manner which is almost startling the great change which has taken place in the law applicable to husband and wife in this country, particularly in the Western States." Because of the combination of extending liability to the wife and covering more items than under the

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[152] Dodd v. St. John, 22 Or. 250 (1892).

[153] Neasham v. McNair, 72 N.W. 773 (Iowa 1897). For sample discussion, see "Liability of Wife for Diamond Stud Worn by Husband," *American Lawyer* 5, no. 12 (Dec. 1897): 564.

necessaries doctrine, the FES "holds the wife liable in a much greater degree than the husband was ever held" under the common law.[154]

Other coverage assessed how the wife's increased liability under FES might shift the decision-making dynamics of couples outside of court, clearly indicating that such rearrangements were undesirable. In 1901, the *New York Times* covered an Illinois case that held a wife liable for the $100 her husband charged at a "fashionable tailor." In addition to requiring "a violent stretch of the imagination to regard a suit of clothes of that grade as a necessary and proper family expense," one journalist wrote, the "ominous decision" would harm men's discretionary spending. As the writer somewhat facetiously suggested, husbands in Illinois would regret that they did not come together to pay the tailor's bill because the case established a wife's "right to cross-question [her husband] concerning his purchase and even to go with him when he makes the selection of cloth and trimmings."[155]

A few state legislatures, mostly in the South, attempted to find a middle ground between traditional necessaries and FES. They passed statutes that kept primary liability on husbands but also authorized creditors to reach wives' separate property under limited circumstances.[156] In Alabama and North Carolina, a creditor could reach a wife's separate estate to recover for necessaries, including items purchased by the husband. Mississippi joined this approach, but only with the wife's consent. In Missouri, a statute seemingly rendered a wife's separate property liable for execution on

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154 "Husband and Wife in the West," *New York Tribune*, June 17, 1900, A8.

155 "An Ominous Illinois Decision," *New York Times*, Nov. 1, 1901, 8. The next year, a New York court had to apply the same law to former Illinois residents living in New York, prompting further discussion. "Some Odd Points in the Law," *Buffalo Evening News*, Dec. 22, 1902, 11.

156 "Various State codes now render a wife's separate property expressly liable for family necessaries and articles for the support of the household as well as her own comfort, wherever at least the sale was made on the faith of such property or upon her credit; and the liability thus indicated is sometimes her own, though more naturally that of the husband or of both husband and wife; while in some States the wife stands like a surety for her husband." Schouler, *Treatise on the Law*, 225-26.

judgments to recover for her husband's necessaries purchases, though a court case muddled the application.[157] A Nebraska statute permitted a wife to provide surety for her husband's purchase of necessaries. This meant a creditor could reach a wife's separate property only after execution against the husband's property returned unsatisfied.[158] Contestations and refinements continued through the early years of the twentieth century.[159] Crafting a legal regime that balanced the interests of wives, husbands, and creditors was a complex task, especially as the social and economic contexts evolved.

Conclusion

Into the early decades of the twentieth century, legislators and judges worked to modify the doctrine of necessaries to balance the interests of wives, husbands, and merchants. As a result, the necessaries doctrine remained a viable path for many wives to make purchases. At the same time, the relative attractiveness of cash and the inability of the necessaries doctrine to wholly address the risks to merchants associated with mobility, urban anonymity, and marital separations somewhat undermined the doctrine's utility. Thus, although the doctrine of necessaries remained important for subgroups of wives for decades to come, lawmakers sought other methods to fill widening gaps. The core expectation cultivated under the necessaries doctrine—that a husband was liable to maintain his

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[157] For a summary of these laws, see Pingrey, "Liability of Wife for Family Expenses," 188-90; "Scope and Extent," 431. States developed these statutes through trial and error. For instance, Alabama passed relevant statutes in 1848 and 1850, with the latter adding the following italicized text: "that for all articles of family supply, or used in the family, *which are suitable to the estate and condition in life of the family of such husband and wife, and for which the husband would by the common law be liable*, the husband shall be severally, or the husband and wife jointly, liable and suable at law." The Supreme Court of Alabama held that the statutory change was intended to restrict the scope to common law necessaries. Durden v. McWilliams, 31 Ala. 438 (1858).

[158] George v. Edney, 54 N.W. 604 (Neb. 1893) (distinguishing Iowa FES).

[159] In the 1910s, wives' liability for necessaries became part of a broader discussion about the relationship between women's legal equality and suffrage. For example, see Helen Dare, "Sauce for the Gander Can be Tried on the Goose as Well: Here's a Sample of Equal Rights for Suffragettes to Nibble Cautiously," *San Francisco Chronicle*, May 13, 1911, 7.

wife according to their class status—infused judges' and legislators' thinking as they devised alternative methods of enforcing men's support obligations.

Chapter Two
"Alimony on the brain": The Financial Incentives of Marital Separations

During the nineteenth century and into the first decades of the twentieth, lawmakers sought to enforce men's breadwinner obligations when spouses separated, subject to certain caveats. Recognizing that the necessaries doctrine was unhelpful when spouses lived apart because of the increased risk to would-be sellers, judges and legislators deployed a mix of common law reasoning, equity powers, and statutory enactments to fill resultant gaps in the regulation of spousal support duties. By the end of the nineteenth century, lawmakers in most states adopted or refined some combination of four options: privately negotiated separation agreements enforced by courts, court orders for separate maintenance that required husbands to provide regular sums, partial divorce with alimony, and absolute divorce with alimony and property division. All could include provisions for the support of children.[1] While judges, politicians, and some litigants challenged the acceptability and application of these support methods, the overall trend was toward judges seizing or legislatures granting more discretion to courts to regulate marital finances.[2]

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[1] To finance an in-court option, a wife typically could obtain a court order requiring her husband to pay "suit money" (attorneys' fees and court costs) and alimony *pendente lite* (a temporary financial award to maintain her and their children for the duration of the litigation). In some scenarios a lawyer could pursue reimbursement of a wife's legal costs from a husband under the doctrine of necessaries. The rules governing these options varied by jurisdiction and were evolving. More research is warranted on these topics. For sample discussion, see "Divorce—Counsel Fees—Allowance to Wife," *Yale Law Journal* 15, no. 7 (May 1906): 376 ("It is a well established rule that the court will make allowance to the wife for the prosecution of a divorce suit, whether the bill be filed by or against her."); "Husband and Wife—Attorney's Fees—Husband's Liability," *Yale Law Journal* 19, no. 1 (Nov. 1909): 55 ("There is a conflict of opinion as to when legal services are to be considered as necessaries."); "Husband and Wife—Actions for Separate Maintenance—Allowance of Attorney's Fees," *Yale Law Journal* 21, no. 4 (Feb. 1912): 332 ("In England and most of the United States, the allowance of suit money and counsel fees to the wife in actions for separate maintenance is treated as a common-law right, where not granted by statute."). In some jurisdictions, an impoverished spouse could proceed in *forma pauperis* to be excused from court fees. This option is discussed further below.

[2] In his study of laws regulating "family formation," Michael Grossberg similarly found that a "judicial patriarchy" developed by the late nineteenth century. Male judges intervened in family disputes when domestic patriarchs failed to conform to expected behaviors. In this way, judges provided wives with new legal protections, even while reinforcing traditional gender roles. Michael Grossberg, *Governing the Hearth: Law and the Family in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1985), 289-307. A major distinction between *Governing the Hearth* and this project is that the former relies on appellate cases and treatises and, perhaps for that reason, concludes that legislatures

Existing historical treatments have overlooked the dynamic interplay and development of the four approaches to financial support during marital dissolution. The major reason for this oversight has been a too-narrow focus on divorce. The literature on divorce history richly documents and analyzes centuries of contestations over the social meaning of divorce and changes to its availability. This scholarship traces how waves of societal panic over the divorce rate inspired major reform efforts, especially beginning in the 1880s. More generally, the change over time in these accounts emphasizes how legislators and judges expanded or relaxed divorce grounds, culminating in the current regime of no-fault divorce.

This chapter builds on the strengths of existing scholarship, while addressing three substantial limitations. First, much of the divorce scholarship has a glaring omission, even for the limited purpose of understanding divorce itself: it provides almost no scrutiny of alimony and property division. Scholars have suggested, or implied through their limited attention to these topics, that alimony was rarely available and did not bear on reform efforts or spouses' divorce strategies. Alimony, it seems from this scholarship, was essentially a non-issue.[3] In the more limited pool of

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were deferential to courts. By analyzing legislative changes and public discourse, this chapter finds a reciprocal relationship between cases and statutes.

[3] Commonly cited works include J. Herbie DiFonzo, *Beneath the Fault Line: The Popular and Legal Culture of Divorce in Twentieth-Century America* (Charlottesville: University Press of Virginia, 1997), 44, 62-64, 107-11 (devoting fewer than ten pages to alimony and mostly focused on later years); Glenda Riley, *Divorce: An American Tradition* (New York: Oxford University Press, 1991), 90-91 (mentioning the existence of alimony in passing on around a dozen pages but with direct analysis of years prior to 1940s limited to two pages); Nelson Manfred Blake, *The Road to Reno: A History of Divorce in the United States* (New York: Macmillan, 1962), 184-85 (providing no information on post-divorce alimony other than brief discussion of the difficulty of enforcement in the 1940s); William L. O'Neill, *Divorce in the Progressive Era* (New York: New Viewpoints, 1973), 79-80 (discussing an alimony reform proposal on two pages); Lynne Carol Halem, *Divorce Reform: Changing Legal and Social Perspectives* (New York: Free Press, 1980), 149-53 (devoting a few pages to alimony, blending information from 1887 through the 1950s); Lawrence M. Friedman and Robert V. Percival, "Who Sues for Divorce? From Fault Through Fiction to Freedom," *Journal of Legal Studies* 5, no. 1 (Jan. 1976): 61-82 (discussing reasons for and rate of divorce with no mention of alimony). Similarly, broader scholarship on family law history relegates alimony to a minor component. Hendrik Hartog, *Man and Wife in America: A History* (Cambridge, MA: Harvard University Press, 2000), 21-22, 28, 71-72, 305 (devoting a few pages to post-divorce financial support that stops in the 1860s before jumping ahead to the 1980s); Joanna L. Grossman and Lawrence M. Friedman, *Inside the Castle: Law and the Family in 20th Century America* (Princeton: Princeton University Press, 2011), 195-96 (devoting only two pages to alimony prior to the 1970s, which mostly relies on primary sources from the 1930s). For a recent article that cites many of these sources and tries to make sense of post-1920s alimony vitriol despite the supposed rarity of alimony awards in the

scholarship that devotes substantive consideration to alimony between roughly the 1880s and 1910s, the focus has been to quantify the frequency and generosity of awards. Some of this scholarship has maintained that alimony was rarely sought and only sometimes awarded. The more heavily researched treatments have identified an upward trend in alimony requests and receipt by the end of the nineteenth century.[4] Yet because this work does not contextualize alimony within the array of financial options available to separating spouses, it does little to illuminate how alimony factored into spouses' decisions about which type of separation to pursue. It also does not connect alimony to societal understandings about marriage or concerns about the divorce rate.[5] Seemingly no historical literature addresses the contested development of alimony law itself.[6]

This chapter challenges existing accounts that are skeptical or shallow regarding the availability, social understandings, and legal technicalities of alimony. Alimony (or its denial) was not

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previous decades, see Brian L. Donovan, "Alimony Panic, Gold Diggers, and the Cultural Foundations of Early Twentieth-century Marriage Reform in the United States," *Journal of Family History* 42, no. 2 (Apr. 2017): 111, 113-14.

[4] Roderick Phillips found it "curious that permanent alimony was rarely sought," but noted that courts granted it in most cases in which the wife requested it. He suggested that the low rate of requests might indicate women's realistic assessment that their husbands were unlikely to comply, or could reflect that the women seeking divorce could support themselves. Roderick Phillips, *Putting Asunder: A History of Divorce in Western Society* (Cambridge: Cambridge University Press, 1988), 601. Elaine Tyler May analyzed 1,500 divorce cases (500 cases each from Los Angeles in the 1880s and 1920 and New Jersey from 1920) and found a marked increase in how often women requested and courts granted alimony. Elaine Tyler May, *Great Expectations: Marriage and Divorce in Post-Victorian America* (Chicago: University of Chicago Press, 1980), 150-55. David Peterson del Mar found an increase in the frequency of alimony awards in Oregon in the early 1900s. David Peterson del Mar, *What Trouble I Have Seen: A History of Violence against Wives* (Cambridge, MA: Harvard University Press, 1996), 92.

[5] The most notable scholarship that treats alimony as influential and probative of societal understanding of marital finances focuses on earlier periods. Norma Basch considers the gendered considerations and expectations involved in the pursuit of alimony, with some attention to the interplay between divorce and separation agreements. Norma Basch, *Framing American Divorce: From the Revolutionary Generation to the Victorians* (Berkeley: University of California Press, 1999); Norma Basch, "Relief in the Premises: Divorce as a Woman's Remedy in New York and Indiana, 1815-1870," *Law and History Review* 8, no. 1 (Spring 1990): 7-8. Nancy F. Cott, "Divorce and the Changing Status of Women in Eighteenth-Century Massachusetts," *William & Mary Quarterly* 33, no. 4 (Oct. 1976): 586-614, considers how alimony factored into the divorce calculations of wives of different classes and analyzes litigation over alimony to understand "how the marriage bond circumscribed the legal and economic individuality of women."

[6] The clearest treatment of alimony history in modern scholarship is a few pages in an article that is somewhat ironically about how alimony rules are incoherent. June Carbone, "The Futility of Coherence: The ALI's *Principles of the Law of Family Dissolution*, Compensatory Spousal Payments," *Journal of Law & Family Studies* 4, no. 1 (2002): 43, 47-51.

a uniform, unchanging background condition for divorce. In the late nineteenth through mid-twentieth centuries, lawmakers, judges, legal scholars, journalists, reformers, and litigants recognized that alimony was crucial for spouses considering whether to divorce and influenced the financial arrangements of couples who intended to remain married.[7] To provide just one colorful example, a Washington, D.C., husband speaking to a reporter in 1901, claimed his wife would not be seeking a divorce but for the "seductions" of alimony. "She has alimony on the brain," he contended, "and she says were she ever to bear a girl infant, she will have it christened Alamonia in commemoration of the triumphs of her beauty and magnetism."[8] Awareness that alimony availability influenced divorce litigation prompted discussion and reform of alimony law.

Second, divorce scholarship devotes insufficient attention to the existence of two types of divorce. Divorce *a mensa et thoro* (also called "divorce from bed and board" or "partial divorce") typically permitted alimony payments, with the amount subject to judicial discretion. It did not necessarily alter property ownership or inheritance rights. The rules for divorce *a vinculo matrimonii* (or "absolute divorce") were more variable but often allowed a judge to award a blend of alimony and property division and typically extinguished inheritance interests. Closer analysis of this duo reveals that lawmakers and reformers sought to refine the financial consequences of each to funnel spouses to the option particular stakeholders deemed best. Clergy and some politicians wished to maintain divorce *a mensa* as the more attractive option for moral or religious reasons or because they believed reconciliation was often possible. By the late nineteenth-century, many lawmakers, social welfare leaders, and feminists deemed absolute divorce the preferred path. To these reformers, it was unreasonable to force unhappy spouses to remain married, and partial divorce was an invitation

[7] Robert H. Mnookin and Lewis Kornhauser, "Bargaining in the Shadow of the Law: The Case of Divorce," *Yale Law Journal* 88, no. 5 (Apr. 1979): 950-97.

[8] "Paymaster Roney Files Cross Petition," *Los Angeles Times*, Aug. 20, 1901, 4 (reprinting story from D.C.).

to immorality and vice. While most jurisdictions retained both types of divorce, they used rules about alimony to adjust the desirability of each option to conform to local politics.

Third and perhaps most significantly, by treating divorce largely apart from other legal methods of separation, the divorce literature fails to capture how lawmakers' determination to grant support to wives was, somewhat paradoxically, part of their effort to bolster marriage. Judges and legislators permitted options short of absolute divorce because they hoped such reversible separations might result in couples reconciling. For this strategy to be feasible, the less-than-absolute-divorce options had to provide wives with sufficient support to stall and perhaps avert that final step. The existence of several types of separations also facilitated judges' ability to regulate marital conduct. A judge could grant a wife who followed prescribed wifely duties the ample provision she requested through a separate maintenance order, without decreeing an absolute divorce the husband wanted so that he could marry his paramour. Ensuring that a woman who performed her wifely role received the support marriage promised seemed all the more important as women's changing rights and roles rendered their economic independence a viable and potentially attractive alternative to marriage.[9]

Litigants also viewed marital dissolution laws as a spectrum. Resources available to wives helped them understand that there was a menu of options to enforce their right to financial support. For instance, in a column that ran in the *Quad-City Times* in Davenport, Iowa, in 1914, the attorney-author described in plain language that local wives could secure support from their husbands through separation agreements, separate maintenance orders, or divorce with alimony, and that wives could often obtain attorney's fees and temporary alimony for support while litigation was

[9] See Chapter One on Married Women's Property Acts.

pending.[10] The same year, a male lawyer provided an even more comprehensive account in a book written for the public on *Woman under the Law*, which he "dedicated to the aggressively progressive women of this world, in the hope that it may provide useful ammunition for their combat with defiant conventionality and obstinate conservatism." The relevant ammunition here was: "The wife may enforce her right to support directly by suit for maintenance, or for alimony with divorce, or indirectly, by pledging his credit to others who supply her with necessaries." She could also sign a separation agreement and, in some instances, pursue support through a criminal statute.[11] In practice, the different support methods often worked in succession or blurred, as one failed or spouses' strategies or finances changed.

Separation Agreements

The first step for many couples who wished to separate was to agree to do so without court involvement, with varying degrees of formality. A common method was to sign an agreement to live apart, with the husband providing financial support to the wife either through a one-time transfer of assets or regular payments.[12] Usually these agreements could be entirely private unless and until there was reason to publicize or litigate them. In some jurisdictions, couples filed "deeds of separation" in the local courthouse in a manner similar to deeds for real property.[13]

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[10] Chas. B. Kaufmann, "Iowa Laws: Alimony," *Quad-City Times* (Davenport, IA), June 28, 1914, 11.

[11] Alvah L. Stinson, *Woman under the Law* (Boston: Hudson Printing Company, 1914), iii, 115.

[12] Several scholars have found evidence that private settlements were recognized by courts in earlier periods as "a kind of do-it-yourself divorce." This description is drawn from Suzanne Lebsock's study of Petersburg, Virginia, and appears in her discussion of the 1820s. Suzanne Lebsock, *The Free Women of Petersburg: Status and Culture in a Southern Town, 1784-1860* (New York: Norton, 1984), 68-70. Marylynn Salmon found that the states with the most conservative divorce policies in the antebellum period (New York, Maryland, South Carolina, and Virginia) were particularly accepting of private settlement agreements. Marylynn Salmon, *Women and the Law of Property in Early America* (Chapel Hill: University of North Carolina Press, 1986), 71. Hartog traced a gradual move toward permitting separate maintenance agreements by analyzing treatises and cases from the eighteenth century through roughly 1850. Hartog, *Man and Wife*, 76-86.

[13] This was common enough that treatise writer Joel Bishop termed such agreements "deeds of separation." Joel Prentiss Bishop, *New Commentaries on Marriage, Divorce, and Separation*, vol. 1 (Chicago: T. H. Flood & Company, 1891), 547 (and see *id.* at 549-54 for state-specific rules). For discussion of separation agreements in the form of deeds, see Charles A.

Through the early nineteenth century, judges often refused to uphold separation agreements on the ground that it was against public policy to permit spouses to decide to partially dissolve their marriage. Yet by the mid-nineteenth century, judges in many states had changed course. In 1869, the U.S. Supreme Court observed that courts had sanctioned separate maintenance agreements "for so long a period of time that the law on the subject must be understood as settled."[14]

As divorce became easier and more common by the 1880s, judges reasoned that public policy counseled in favor of upholding separation agreements as a lesser evil.[15] In the words of the New York Court of Appeals in 1887: "Public policy does not turn on the question whether the husband fights out the quarrel to final judgement."[16] Similarly, a *Harvard Law Review* article published in 1901 explained that if a separation could be "quietly arranged out of court, the results seem preferable to those necessarily attendant on the notoriety and scandal of a judicial separation." The spouses, the writer suggested, "are in truth the best and final judges."[17]

Another advantage of permitting private separation agreements was that they were easily reversible, so the marriage might ultimately be saved. While an undercurrent in legal decisions, a fictional account published in the *Youth's Companion* in 1904 illustrates this hope. In the short story, a

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McMahon, "Agreement for Separation Between Husband and Wife," *American Law Review* 17, no. 1 (Jan.-Feb. 1883): 74-75 ("That agreements of this nature are actually made every day, and that many of them are found recorded, in the same manner as deeds of real property, all lawyers know; yet, although this is such a frequent occurrence, it rests in legal sanction which, to say the least, is vague and ill-defined."). Notably, the author contested analysis by Bishop and other treatise writers that held these agreements invalid, suggesting these writers relied on outdated cases. *Id.*, 76-78. For further discussion of Bishop's treatise not matching the reality of judge's decision-making, see discussion of separate maintenance below. For an example of newspaper coverage of a separation deed, see "Separation Agreement Annulled," *Sun* (Baltimore), Jan. 16, 1907, 9 (describing how couple filed agreement to renew cohabitation in record office of Superior Court, superseding separation agreement they had filed the previous month).

[14] Walker v. Walker's Executor, 76 U.S. 743, 751 (1869).

[15] Stinson, *Woman under the Law*, 299.

[16] Pettit v. Pettit, 107 N.Y. 677, 679 (1887).

[17] Note, "Contracts of Separation Between Husband and Wife," *Harvard Law Review* 15, no. 2 (June 1901): 147.

wife demands that her husband provide separate maintenance because of conflicts in their marriage (Figure 3). The man consents, though he secretly hopes his wife will reconsider. As they prepare for the woman to move in with her sister, both realize they want to continue living together and reconcile, becoming better partners than before. The story demonstrates the widespread knowledge that a private agreement for maintenance was an option some spouses chose—so well known that it could serve as a plot device in a youth magazine!—as well as the possibility that this flexibility could work to protect marriage.[18]

Figure 3: Illustration of wife demanding a separate maintenance from her husband

Newspaper articles show that many spouses recognized the advantages of separation agreements in comparison to other options. Wealthy couples could minimize publicity and better

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[18] Sophie Swett, "The Separate Maintenance," *Youth's Companion* 78, no. 35 (Sept. 1, 1904): III.

control their affairs through a private negotiation.[19] Though husbands often had greater resources or other advantages that led to unequal bargaining power, wives could leverage husbands' desire for privacy. Newspapers reported that wives with wealthy or politically ambitious husbands filed for divorce and then agreed to withdraw their suits in exchange for separation agreements they found sufficiently generous.[20]

If a couple with a separation agreement in place did ultimately divorce, courts continued to enforce the contract unless its terms specified otherwise.[21] As one court explained, a judge's authority to protect a wife's interests in this manner "was not intended to take away from her the right to make such a settlement as she might deem best."[22] The limited exception was that if the terms seemed inadequate for the wife's needs or did not provide for the couple's children, courts sometimes raised the amount as part of the divorce proceeding.[23]

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[19] "Vanderbilts Apart," *Washington Post*, Sept. 22, 1909, 4; "Ed. Lauterbach and Wife Agree to Separation," *St. Louis Post-Dispatch*, Jan. 24, 1908, 1 (discussing agreement between "one of the most prominent members of the New York bar" and his wife).

[20] For examples, see "Platt Forced to Pay for Release," *San Francisco Chronicle*, June 4, 1908, 2 (reporting on U.S. Senator from N.Y. agreeing to pay his wife $75,000 to discontinue a pending divorce suit); "George S. Terry Sued for Back Alimony," *New York Times*, Sept. 3, 1909, 18 (reporting on decades-old separation agreement husband entered in exchange for wife dropping divorce suit; husband later became Assistant Treasurer of the U.S.); "Barker Must Pay Wife," *New York Times*, Nov. 19, 1908, 16 (implying husband agreed to pay wife $5,000 per year in exchange for wife not pursuing a divorce).

[21] James Schouler, *A Treatise on the Law of Domestic Relations* (Boston: Little, Brown and Company, 1895), 333; Clark v. Fosdick, 22 N.E. 1111 (N.Y. 1889); Santmyer v. Santmyer, 48 App. D.C. 310 (1919). Sometimes this rule benefitted wives and other times husbands, depending on which spouse expected a more advantageous result in an alimony suit. For examples of wives attempting to void separation agreements to obtain more generous awards, see "Life in Peril, Says Wife: Mrs. B.P. Dukas Would Break Her Separation Agreement," *New York Tribune*, Dec. 12, 1911, 14; "John P. Middleton Sued by Wife for Separation," *Brooklyn Daily Eagle*, Sept. 17, 1911, 5. Basch finds that when separation agreements failed, prompting spouses to seek divorce, "wives rarely fared as well financially as when they were only separated." Basch, *Framing American Divorce*, 109-10.

[22] *Galusha*, 22 N.E. at 1117.

[23] Silverman v. Silverman, 5 N.E. 639 (Mass. 1886) (refusing to uphold contract in which wife purported to release husband from future liability for her support for $500). The more controversial question was whether a separation agreement continued in force after a couple reconciled and cohabited. Some courts held that it did. William C. Rodgers, *A Treatise on the Law of Domestic Relations* (Chicago: T.H. Flood & Co, 1899), 226.

The timing of a separation relative to the contract was the primary legal complication. Courts drew a line between separation agreements executed immediately prior to or after a separation, which were permitted, versus those where a separation might still be avoided.[24] This was not a wholly persuasive approach in the view of many legal commenters. As one treatise writer explained, judges "sustain such covenants upon a suggestion that, separation being inevitable, they are prepared to make the best of it." This was, the writer continued "an unsatisfactory distinction" and not "one likely to afford a resting-place; as this half countenance were not calculated of itself to favor future separation." Nevertheless, this was the growing trend.[25]

Married Women's Property Acts (MWPA) made it easier for spouses to execute separation agreements and bolstered courts' resolve in enforcing them.[26] Indeed, some courts that construed MWPA narrowly in other contexts seemed to delight in recognizing a wife's right to enter a contract for separate maintenance. When upholding an agreement in 1908, the New York Court of Appeals took the opportunity to review the state's "gradual and seemingly reluctant steps [over] the course of a half a century" to grant married women the right to contract. "The courts at first were more conservative than the Legislature, and construed the various statutes with caution and concern," the court acknowledged. "They were not eager to extend, nor even at once to fully recognize, the

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[24] For a particularly influential example, see Galusha v. Galusha, 22 N.E. 1114, 1115 (N.Y. 1889) ("But, while a contract to separate in the future is void, it is now too well settled, both in England and this country, to admit of discussion, that after a separation has taken place a contract may be made… which is effective to bind the husband to contribute the sums therein provided for the future support of the wife."). For similar holdings, see Roll v. Roll, 53 N.W. 716 (Minn. 1892); Henderson v. Henderson, 60 P. 597 (Ore. 1900); Moreland v. Moreland, 60 S.E. 730 (Va. 1908). For counterexamples, see Baum v. Baum, 53 L.R.A. 650 (Wis. 1901) (finding separation agreement void as against public policy); Palmer v. Palmer, 61 L.R.A. 641 (Utah, 1903) (same). By 1911, at least some courts allowed separation agreements when a couple continued living together but ceased sexual intercourse. "Husband and Wife—Contracts Between Husband and Wife—Validity of Separation Agreements," *Harvard Law Review* 24, no. 4 (Feb. 1911): 323. For a counterexample, see Greenwood v. Greenwood, 93 A. 360 (Me. 1915) (where husband and wife continued cohabiting after separation agreement, it was void).

[25] Schouler, *Treatise on the Law*, 328-29. See also Rodgers, *Treatise on the Law*, 225; Joseph Long, *A Treatise on the Law of Domestic Relations* (St. Paul: Keefe-Davidson Company, 1905), 301-2; Stinson, *Woman under the Law*, 299.

[26] On MWPA, see Chapter One.

innovations upon the common law repeatedly made by the Legislature." Getting to the issue at hand, the court noted that under the 1896 version of the state's MPWA, spouses could contract, with the sole exception being that they "cannot contract to alter or dissolve the marriage or to relieve the husband from his liability to support his wife." This provision, the court found, was not meant to stymy wives' preexisting ability to enter separate maintenance agreements. MWPA only made this process easier by eliminating the previous need for a trustee to represent the wife. In this context at least, the court deferred to married women's decision-making power, observing that the wife "is the best judge of what she needs for her support."[27]

Most courts upheld the validity of separation agreements by the end of the century so long as the agreements seemed fair and were executed by couples who had already separated or were separating imminently. In some states where courts refused to enforce separation agreements, legislatures overturned their holdings by statute.[28] Although it is impossible to know how common separation agreements were, as it is likely only a fraction were litigated or otherwise attracted newspaper coverage, they seem to have been an increasingly common and reliable option by the first decade of the twentieth century.[29]

Separate Maintenance

If a couple was unable to reach an agreement or the husband failed to comply, the wife could seek a court order for separate maintenance. This was sometimes called "alimony without

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[27] Winter v. Winter, 84 N.E. 382 (N.Y. 1908). See also Effray v. Effray, 97 N.Y.S. 286 (N.Y. Sup. Ct. App. Div. 1905).

[28] Archbell v. Archbell, 74 S.E. 327 (N.C. 1912) (citing statutes overturning earlier decisions and concluding "we are constrained to hold that public policy with us is no longer peremptory on this question, and that under certain conditions these deeds are not void as a matter of law").

[29] Many of the cases that considered the legality of separation agreements arose from situations other than direct conflict between the spouses. For instance, courts considered whether separation agreements were binding as against a deceased spouse's estate. Palmer v. Palmer, 72 P. 3 (Utah, 1903); Caruth v. Caruth, 103 N.W. 103 (Iowa, 1905).

divorce."[30] To prevail, she would need to show that she lived apart from her husband because of his fault and ask the court to order him to provide regular support payments. Notably, the husband's wrongful conduct need not rise to the level that would justify divorce for the wife to receive separate maintenance.[31]

Courts began granting separate maintenance orders in the early nineteenth century, citing their inherent power in equity to address claims that courts of law could not. Since divorce remained a legislative prerogative rarely exercised in most places in that period, judges sought a way to secure financial support for a wife who lived separately from a husband who was abusive or severely neglectful. Two of the earliest and most influential cases were decided in South Carolina and Virginia in 1809, at a time when both states had equity courts and neither offered judicial divorce.[32] In the words of the Virginia court: "in every well regulated government there must somewhere exist a power of affording a remedy where the law affords none; and this peculiarly belongs to a Court of Equity."[33] Judges also claimed discretion to award separate maintenance by suggesting that they were following precedent set by English chancery courts or that they were absorbing the powers of

[30] This part challenges Hartog's claim that from the nineteenth century through at least WWII, judges "basically felt helpless before the crude reality of separation." Hartog, *Man and Wife*, 30.

[31] The notable exception was Maryland, which held that the husband had to be guilty of divorce fault grounds even in a separate maintenance case. Outlaw v. Outlaw, 84 A. 383 (Md. 1912). See also Tolman v. Tolman, 1 App. D.C. 299 (Ct. App. D.C., 1893) (tracing D.C. law from Maryland but allowing separate maintenance without divorce grounds).

[32] Prather v. Prather, 4 S.C. Eq. 33 (Ct. App. Equity S.C. 1809); Purcell v. Purcell, 14 Va. 507 (Superior Court of Chancery, 1809). For further discussion of how Virginia, South Carolina (and Maryland) differed from states in other regions, see Salmon, *Women and the Law*, 9-11. And for more on the 1809 cases, see *id.* 74-75.

[33] Purcell v. Purcell, 14 Va. At 511. In a later Virginia case, the court wrote: "Surely, in a civilized country, there must be some tribunal to which she may resort. … I would, in such cases, unquestionably stretch out the arm of Chancery, to save and protect her." Nevertheless, that court denied relief because the wife did not seek separate maintenance but rather demanded the specific performance that her husband return an enslaved woman to her. Almond v. Almond, 25 Va. 662 (1826).

English ecclesiastical courts in the absence of such courts in America. These rationales did not uniformly persuade their judicial brethren or treatise writers.[34]

Though couching their interventions in broad principles bolstered by supposed links to precedent, it was clear that practical considerations pushed many judges to grant separate maintenance. Here, the inefficiencies of the necessaries doctrine—to the merchant, wife, and court—often received the blame.[35] In the words of the influential South Carolina opinion from 1809, the necessaries doctrine provided "a very uncertain method, and full of inconvenience and productive of constant litigation." The judge writing the opinion cast himself as "an enemy to innovation, unless well considered and founded on plain utility," yet he felt it was his "duty to give relief in all cases to which the powers of this court could be made to apply, when no other adequate relief can be had." He did not wish to leave the wife "remediless," so he granted her separate maintenance.[36] Over the coming decades, this approach spread, first through the South and then to some states in the West and Midwest.[37]

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[34] For a particularly thorough treatment of rationales supposedly rooted in precedent, see Garland v. Garland, 50 Miss. 694 (1874) (finding right to separate maintenance in court's equity powers). Bishop suggested courts' reasoning in separate maintenance cases was an example of how judges sometimes "accept some thoughtless utterance of a predecessor as though it were reason, and decide cases upon it, without a particular of examination to see whether it is just or false." Bishop, *New Commentaries on Marriage*, 579. For a direct retort to Bishop, see Ira Robinson, "Alimony Without Divorce," *Virginia Law Review* 2, no. 2 (Nov. 1914): 134, 135-36.

[35] For more on the necessaries doctrine, see Chapter One.

[36] Prather v. Prather, 4 S.C. Eq. at 38-39.

[37] Legal history scholarship's focus on the Northeast may have caused misconceptions about available remedies. See Galland v. Galland, 38 Cal. 265, 266-67, 269 (1869) (recognizing that, in permitting this remedy, it joined a slate of Southern jurisdictions: South Carolina, Virginia, Kentucky, North Carolina, and Alabama); Earle v. Earle, 43 N.W. 118, 119 (Neb. 1889) (allowing this remedy, though acknowledging the following states did not: Indiana, New Hampshire, Missouri, New York, Massachusetts, New Jersey, Michigan and Louisiana); Cureton v. Cureton, 117 Tenn. 103 (1906) (in granting separate maintenance, joining Alabama, California, Colorado, the District of Columbia, Iowa, Kentucky, Maryland, Mississippi, North Carolina, Ohio, South Carolina, South Dakota, and Virginia). See also Dole v. Gear, 14 Haw. 554 (1903) (joining courts allowing separate maintenance under equity, despite having adopted relevant laws from Massachusetts, which only afforded this remedy through a statute Hawaii lacked).

Even as state legislatures enacted statutes that permitted judges to decree divorce with alimony—arguably removing the need for equity to intervene—judges nearly always held that the new laws supplemented rather than supplanted their equitable powers to grant separate maintenance. The California Supreme Court provided an early holding to that effect in 1869. If a wronged wife did not desire a divorce, the court reasoned, she should not be left to the uncertain relief provided by the necessaries doctrine. Purchasing on her husband's credit "affords, at best, a most humiliating, unreliable and precarious means of subsistence." And if that method failed, how else could she obtain relief? "Is the law so deplorably deficient as to afford no remedy to a deserted and starving wife under these circumstances?" the court demanded. "If so, it is a reproach to the civilization of the age, and the law-making power should promptly correct the evil." The court, however, *could* provide the "appropriate remedy" of separate maintenance.[38]

Courts also considered how the simultaneous availability of alternate paths could influence spousal behaviors. To deny separate maintenance while upholding separation agreements, the California court reasoned, would be perverse; "[w]e do not perceive on what ground, a wife who *agrees* to separate from her husband, should stand on a more favored footing than one who clings to him in spite of his ill-usage, until she is driven from his house."[39] The court pushed aside the dissent's worry that permitting separate maintenance would "tend to breed discord in families, and to encourage discontented wives to abandon their husbands on frivolous pretexts of ill-usage."[40]

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[38] *Galland*, 38 Cal. at 266-67, 269.

[39] *Id.* at 270-71. *See also* Graves v. Graves, 36 Iowa 310, 314 (1873).

[40] *Galland*, 38 Cal. at 272. As a community property state, California had particularly strong concerns here. It would be an "anomaly" if a wife had a right to half the community property in a divorce but nothing if she was wronged but chose not to pursue divorce. *Id.*

Courts were more concerned about how a contrary holding might encourage misconduct by husbands, which could in turn press wives into seeking divorce. If wives could not pursue separate maintenance, the California court feared, "dissolute and unprincipled husbands would be encouraged to abuse their wives, by a consciousness that any ill-treatment which stopped short of a lawful ground for divorce, was without redress in the Courts."[41] The Nebraska Supreme Court speculated that if a Nebraskan wife's only path to receiving financial support was divorce (to which only she and not he would be entitled because divorce required fault grounds), that framework "would place it within the power of every man, who unrestrained by conscience, seeks to be freed from his obligations to his wife and family," to treat his family poorly to push his wife into seeking the divorce that only he wanted. "The question," the Nebraska court suggested, "is whether or not the plaintiff shall be compelled to resort to a proceeding for divorce, which she does not desire to do, and which probably she is unwilling to do, from conscientious convictions, or in failing to do so she shall be deprived of that support which her husband is bound to give her."[42] Perhaps most explicitly, the Supreme Court of Colorado, in granting separate maintenance, proclaimed: "the policy of the courts is to discourage, rather than encourage, divorces."[43]

Newspaper coverage also indicates that wives and husbands had different views on the attractiveness of separate maintenance relative to other options. For a wife, separate maintenance could provide financial relief that was less damaging than divorce for her social standing, religious convictions, or hope for reconciliation. For a husband, separate maintenance preserved his primary husbandly duty of financial support but did not give him the freedom to remarry offered by divorce

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[41] *Galland*, 38 Cal. at 272.

[42] Earle v. Earle, 43 N.W. 118, 120 (Neb. 1889).

[43] In re Popejoy, 55 P. 1083 (Colo. 1899).

or the privacy afforded by a separation agreement. That some wives preferred separate maintenance played out in spouses' negotiations. For instance, according to news coverage, the "richest man in the entire West, Lieutenant Governor of Colorado, and a prominent candidate for the United States Senate" offered his wife $3 million to seek a divorce against him, yet she declined because she preferred to pursue separate maintenance.[44] Another wife sought separate maintenance because her husband had been "long endeavoring to secure a divorce" in order to marry the daughter of an insurance company magnate. Her choice of remedy made it impossible for him to remarry.[45] By making separate maintenance a viable option, judges kept women like these from pursuing the divorce they might otherwise find necessary to get alimony—and trapped men in marriages they would prefer to dissolve.

While attempting to avoid divorces, judges used analogies to divorce to facilitate equitable decrees. In a Virginia case, the court turned to divorce law to conclude it could transfer a husband's café and other property to his wife as separate maintenance (rather than awarding recurring payments) after the husband absconded. A law review author explaining the case praised it as "amply sustained by the authority of common sense." Suits for separate maintenance were akin to those for alimony with divorce, and so the property division permitted under divorce statutes could provide precedent. This result was appropriate, even though no parallel process would have permitted an ordinary creditor to place a lien on the property. "There is, perhaps, no subject as to which the courts should be left freer to exercise a broad and hard common sense than this one of

[44] "A Colorado Sensation," *Courier-Journal* (Louisville), Apr. 23, 1882, 6.

[45] "Mrs. Draper Sues for Separation," *San Francisco Call*, Dec. 31, 1909, 2.

divorce and alimony," the writer suggested. "[T]he harsh and narrow rules of debtor and creditor must stand aside; the greater interests of society are at stake."[46]

In some states, legislatures granted, affirmed, or modified their courts' power to grant separate maintenance.[47] Judges embraced these statutes for the same reasons their colleagues in other jurisdictions crafted the remedy through equity—to fill gaps left by the necessaries doctrine and to regulate marital conduct. As a Missouri court explained when applying a separate maintenance statute in 1899, the law avoided the "serious embarrassment" the necessaries doctrine caused in forcing a merchant to ascertain a wife's "social position and financial standing."[48] A local paper covering that decision summarized the holding for its readership: "Courts may always determine a proper allowance for the support of a wife and children of a truant husband."[49]

Other courts applying separate maintenance statutes seemed to absorb MWPA arguments in determining what outcome would be fair to the wife. For instance, in 1867, the Michigan Supreme Court upheld a separate maintenance order for a couple who separated by "mutual consent," pursuant to a law that permitted a support award if a plaintiff failed to establish grounds for a divorce. The court concluded that the husband should be bound to support his wife "to enable her to live in a style corresponding with the station in society to which they had attained, and in due proportion to his means." Recognizing that the wife had "by her steady industry, frugality and

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[46] "Husband and Wife. Suit for Alimony without Divorce. Assigning Sum in Gross or Specific Property as Alimony," *Virginia Law Register* 7, no. 3 (July 1901): 219-21.

[47] Interestingly, Congress deleted Oregon's separate maintenance statute when adopting its laws for Alaska. Olsen v. Olsen, 3 Ala. 616 (1909) (discussing this history and allowing separate maintenance under equity).

[48] Youngs v. Youngs, 78 Mo. App. 225 (Kansas City Court of Appeals, MO, 1899) (applying statute from 1889).

[49] "Husbands Must Provide: Courts Can Fix Allowances to Be Given Deserted Families," *Moberly (MO) Weekly Monitor*, Jan. 19, 1899, 4 (citing *Kansas City World*).

privations, contributed largely to the competence he has acquired," the court proclaimed that separate maintenance is "equitably her due, as part of the fund acquired by their joint efforts."[50]

The most notable jurisdiction that did not permit separate maintenance suits was New York. The New York legislature passed a divorce statute in 1828 that allowed a court, when denying a partial divorce, to "make such order or decree for the support and maintenance of the wife and her children or any of them, by the husband, or out of his property, as the nature of the case renders suitable and proper." Nevertheless, judges in the state repeatedly stated they had no authority to order separate maintenance.[51] That New York judges did not award separate maintenance helps explain why they were the first in the country, in 1910, to permit a wife to sue her husband for reimbursement for necessaries.[52] Conversely, because most jurisdictions permitted separate maintenance orders by that time, relatively few courts had reason to follow New York's novel approach to modernizing the necessaries doctrine. Reimbursement suits and separate maintenance orders provided alternative solutions to the same problem (though they were not equally helpful, depending on the circumstances).

By the turn of the twentieth century, most states recognized a wife's ability to file a suit for separate maintenance.[53] As a Boston woman lawyer explained in an article published in 1891, "there

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[50] This language and reasoning may have been influenced by MWPA and related social discourse addressed in Chapter One. Chaffee v. Chaffee, 15 Mich. 184 (1867).

[51] Atwater v. Atwater, 53 Barb. 621, 625 (N.Y. 1868); Davis v. Davis, 75 N.Y. 221 (1878); Ramsden v. Ramsden, 91 N.Y. 281 (N.Y. 1883). For discussion implicitly condemning how earlier opinions found no power to grant separate maintenance "[n]otwithstanding the broad and comprehensive language" of the statute, see Erkenbrach v. Erkenbrach, 96 N.Y. 456, 462 (1884).

[52] See Chapter One.

[53] *Cureton*, 96 S.W. at 609. Some secondary sources continued to claim permitting separate maintenance was a minority approach, but the better supported ones disagreed. For example, see WRM, supra at 403 (quoting treatise taking negative view and suggesting "it is extremely doubtful if the statement just quoted [from the treatise] may be accepted as absolutely correct").

is in nearly all our states some process by which, without applying for divorce, the injured wife may yet compel her husband to provide reasonably, according to his means, for her support, together with a decree of court authorizing her to live apart from him."[54] Countless newspaper articles from the surrounding years document that wives routinely sought and received separate maintenance, which in turn spread the idea that this was an available remedy across places and classes.[55]

The widespread availability of separate maintenance orders demonstrates lawmakers' efforts to uphold husbands' traditional legal and social duty to support wives and children. Filling gaps left by the necessaries doctrine or stepping in where divorce was unavailable or undesirable, separate maintenance orders promised wives a steady stream of payments in line with their husbands' means. Lawmakers hoped and expected that separate maintenance orders would strengthen marriage, both by reinforcing expectations and by literally keeping marriages in place (and perhaps fixable), even while spouses lived apart.

Alimony

The most extreme option available to an unhappy spouse was to pursue a divorce, which could be accompanied by an order for alimony, property division, or a combination of the two. "Alimony" typically meant regular payments of a set amount from husband to (ex-)wife until the death of either party. Alimony installments could be ordered against the husband's person or be granted from or backed by his estate or other property in the form of a lien, trust, or similar mechanism to ensure payment. Contestations over the development, rationales, and application of

[54] Lelia Robinson Sawtelle, "What Support A Wife May Claim from Her Husband," *Chautauquan* 13, no. 4 (July 1891), 517. See also Robinson, "Alimony Without Divorce," 134 (explaining "weight of authority has clearly shifted" to allowing separate maintenance).

[55] For a few examples, see "A Congressman Sued," *Sun* (Baltimore), Jan. 14, 1897, 2; "Wife Would Share Salary," *Washington Post*, Dec. 4, 1897, 12; "Neglected His Wife and Child," *San Francisco Chronicle*, July 3, 1902, 9; "Brown Must Pay Alimony: Judge Orders ex-Senator to Give Wife $150 a Month," *Salt Lake Herald*, Jan. 6, 1903, 5.

alimony law cut to the heart of how judges, legislators, reformers, and litigants understood the financial rights and duties attached to marriage. Decades of negotiation by these stakeholders capture changing conceptions of the value of women's contributions to marriage, the just assignment of marital property, and the role of the law in incentivizing husbandly and wifely conduct.

To understand the social and legal treatments of alimony in this period, it is necessary to begin with an overview of divorce law. In American jurisdictions, divorce was originally available only by grant of state legislatures. Over the course of the late eighteenth and nineteenth centuries, most legislatures enacted statutes replacing legislative divorce with two types of judicial divorce: divorce *a mensa et thoro* and *a vinculo matrimonii*. Because divorce *a mensa et thoro* was only partial, the spouses technically remained married and so could not enter new marriages. Though some jurisdictions also prohibited remarriage following *a vinculo* divorces, especially for the guilty party or for a period of time, this restriction meant little in practice.[56] In some places, a divorce *a mensa* matured into one *a vinculo* after a set period if the couple had not reconciled.[57]

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[56] According to David Stewart, "A Divorced Person's Right and Capacity to Marry," *American Law Review* 20, no. 5 (Sept.-Oct. 1886): 718, 722, 725-26, some states prohibited remarriage of the guilty party for a certain time by statute or by judicial discretion, but the prohibition was typically only considered binding within the state that issued it (though Maryland and North Carolina were exceptions). See also Albert H. Putney, "Divorce Tenth Subject- Domestic Relations: Chapter II," *Popular Law Library* 4 (1908): 240 (discussing that New York did not allow remarriage of guilty party during former spouse's life, while other states banned remarriage for a limited time); "Marriage—Divorce—Right to Remarry," *Law Student's Helper* 17, no. 1 (Jan. 1909): 22 (noting that in some states, such as Wisconsin, both spouses were prohibited from remarriage for a period and that prohibition often applied only within the state); Miltimore v. Miltimore, 40 Pa. 151 (1861) (explaining Pennsylvania did not allow remarriage to the paramour that disrupted the married during the life of the former spouse).

[57] John Garland Pollard, ed., *Code of Virginia as Amended to Adjournment of General Assembly, 1904*, vol. 1 (St. Paul: West Publishing Co., 1904), 1126. Another variation was divorce *nisi*, which was a decree that became a finalized divorce after a set period unless there was an intervening order. Frederic J. Stimson, *American Statute Law* (Boston: Charles C. Soule, 1886), 695.

Both divorce options required a finding of fault against one party, with *a mensa* often available for less egregious behavior.[58] Divorceable conduct varied greatly by state. The most common grounds were adultery, cruelty, and desertion, with the last becoming the most frequent ground pled by 1890.[59] Reflecting local concerns and norms, many states added other options, including impotency, vagrancy, ungovernable temper, gross neglect of duty, imprisonment, and loathsome disease, to name just a few. It was not uncommon for statutes to offer sex-specific fault grounds. For instance, several states allowed a man to divorce his wife after discovering she was unchaste before marriage. A greater number permitted a wife to seek divorce if her husband failed to support her. The most permissive states (numbering only a handful and decreasing by the late nineteenth century) had omnibus clauses that permitted divorce "[f]or any other cause, the court, in its discretion, may deem sufficient."[60] On the conservative end of the spectrum, New York permitted partial divorce on several grounds but absolute divorce only for adultery.[61] And South Carolina permitted neither type of divorce, instead relying on separation agreements and separate maintenance orders.[62]

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[58] For a helpful summary of changes to divorce grounds in the mid-nineteenth century, see Nancy F. Cott, *Public Vows: A History of Marriage and the Nation* (Cambridge, MA: Harvard University Press, 2000), 50-52. On the different grounds for each type of divorce, see Schouler, *Treatise on the Law,* 336-37.

[59] Friedman and Percival, "Who Sues for Divorce," 65. Even the same statutory ground could become more generous over time, depending on judicial interpretation. For a helpful treatment of judicial construction of "cruelty," see Robert L. Griswold, "Law, Sex, Cruelty, and Divorce in Victorian America, 1840-1900," *American Quarterly* 38, no. 5 (Winter 1986): 721-45.

[60] William Browne, "Law of Marriage and Divorce," *Yale Law Journal* 11, no. 7 (May 1902): 340, 349. See also Bishop, *New Commentaries on Marriage*, 757 (describing how allowing judges to grant divorces at their discretion had not worked well in practice, prompting some states to eliminate it). As of 1886, omnibus clauses existed in Connecticut, Wisconsin, Washington, Arizona, and Florida. Stimson, *American Statute Law*, 688.

[61] Schouler, *Treatise on the Law*, 336-37. New York allowed partial divorce for desertion, cruelty, nonsupport, and "conduct of defendant such as may render it unsafe and improper for plaintiff to cohabit." Chester G. Vernier, *American Family Laws*, Vol. II (Stanford: Stanford University Press, 1932): 346, 376.

[62] Salmon explains that during the colonial period, South Carolina chancery courts ordered separate maintenance for cruelty and desertion that looked like divorces *a mensa* from other jurisdictions, but the orders did not use the term "divorce." Salmon, *Women and the Law*, 65. She argues that South Carolina's use of separate maintenance and willingness

All states' laws required that a judge deny divorce when he suspected collusion rather than true fault grounds or when both parties committed divorceable offenses. The party seeking relief had to have clean hands.[63] In practice, it was commonly understood (and often condemned) that a significant portion of divorces were collusive. Couples agreed that one would accuse the other of a fault ground and the defendant would not contest the filing. This strategy often involved one or both spouses committing perjury or manufacturing evidence, sometimes with the aid of lawyers.[64]

Another commonly discussed fact was that by the 1870s, around two-thirds of divorces were sought by and granted to women. As a treatise writer observed in 1902, "[d]ivorce is termed the woman's remedy."[65] Regional variation meant that in the South around half of divorces were awarded to wives, as compared to two-thirds in the North and three-quarters in the West. To some extent the prevalence of women filers might indicate that women were more dissatisfied with their marriages or had greater incentives to pursue formal dissolution. Historians have also found that some couples agreed it would be preferable for the wife to file because of "chivalry, respect of social convention, and convenience."[66]

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to uphold separation agreements renders "the 'divorce' policy of South Carolina… not markedly different from the policies of the New Englanders," which had more liberal divorce law. *Id.*, 76. South Carolina briefly allowed official divorce during Reconstruction. Kellen Funk, "'Let No Man Put Asunder': South Carolina's Law of Divorce, 1895-1950," *South Carolina Historical Magazine* 110, no. 3/4 (July-Oct. 2009): 134-53.

[63] Schouler, *Treatise on the Law*, 336-40. On the transition from legislative to judicial divorce, see Glenda Riley, "Legislative Divorce in Virginia, 1803-1850," *Journal of the Early Republic* 11, no. 1 (Spring 1991): 51. Riley finds that the Virginia General Assembly first adopted divorce *a mensa* in 1827 to legitimize equity courts' provision of separate maintenance. *Id.*, 64.

[64] Friedman and Percival, "Who Sues for Divorce," 70-72; Cott, *Public Vows*, 51.

[65] Browne, "Law of Marriage and Divorce," 344.

[66] Friedman and Percival, "Who Sues for Divorce," 70-72, 79-80. For a remarkably clear example of spousal negotiations over collusive divorce, see State v. Hill, 142 N.W. 231 (Iowa, 1913). This is a criminal case for nonsupport (a remedy discussed in Chapter Four). As evidence, the wife produced a series of letters in which the husband made offers and threats in an effort to secure her cooperation in obtaining a divorce.

Another factor that may help explain wives' dominance in filing for divorce, which historians have not previously recognized, is that it was easier for women to proceed in forma pauperis—citing their supposed poverty to be excused from paying court fees.[67] Some states expressly limited the option of an in forma pauperis divorce to women petitioners. Others had sex-neutral rules, but economic realities and notions of female dependency likely made it more compelling to judges and more comfortable to would-be litigants for a woman to raise this claim.[68] Newspaper coverage indicates that in at least some locations, the poverty requirement was not strictly enforced. For instance, numerous Kansan newspapers depicted wife-petitioners as routinely filing "poverty affidavits." Journalists reported that "a majority of the divorce suits are accompanied by poverty affidavits," even though the wives could afford the fees. "Divorces Come Cheap," one headline

[67] In one early example discussing this possibility, the Chancery Court of New York explained that if a wife could not find a responsible person to sue as her "next friend"—under coverture a wife needed another party to sue on her behalf and provide security for court costs—she could instead make proper application to sue "as a poor person." Robertson v. Robertson, 3 Page Ch. 387 (Chancery Ct. N.Y. 1832). Though it is unclear how frequently New York's petitioner-wives claimed poverty, the case provided precedent for New York and elsewhere decades later. Oliver L. Barbour, *A Treatise on the Practice of the Court of Chancery*, 2nd ed., vol. II (New York: Banks & Brothers, 1875), 263; Arthur P. Will, *Standard Encyclopædia of Procedure*, vol. VII (Los Angeles: L. D. Powell Co., 1913), 749n71. Dylan Penningroth found that some D.C. litigants were able to get "their fees waived or postponed on grounds of poverty" in the early 1900s. Dylan C. Penningroth, "African American Divorce in Virginia and Washington, D.C., 1865-1930," *Journal of Family History* 33, no. 1 (Jan. 2008): 20, 30n24. Some states did not permit in forma pauperis divorce. In 1904, the *American Lawyer* published an article criticizing New Jersey's policy of not allowing divorce cases to proceed in forma pauperis, describing the rule as "rather in the nature of a denial of substantial rights merely because of the poverty of the litigant." "Coram Nobis," *American Lawyer* 12, no. 1 (Jan. 1904): 1. In 1971, the U.S. Supreme Court essentially agreed with that critique. Boddie v. Connecticut, 401 U.S. 371 (1971).

[68] Tennessee's legal trajectory is informative. In 1856, the Supreme Court of Tennessee determined that a law eliminating the requirement that a wife file for divorce through a next friend meant that she could now petition for divorce without providing security for costs "under the pauper law." In justifying this holding, the court proclaimed: "The law delights in the protection of the weak against the strong." Though a husband could technically also sue in forma pauperis, a man could face more evidentiary difficulties in establishing his poverty. For instance, in one case the wife-defendant was able to persuade a court to "dispauper" her husband. And in 1891, the Tennessee Legislature enacted a law that excluded male divorce seekers from exemption from court costs. Hawkins v. Hawkins, 36 Tenn. 105, 106 (1856); Moyers v. Moyers, 58 Tenn. 495 (1872); *Acts of the State of Tennessee Passed by the Forty-Seventh General Assembly* (Nashville: Albert B. Tavel, 1891), 435. An Illinois statute passed in 1845 also specified that only wives could sue for divorce in forma pauperis. M. Brayman, *Revised Statutes of the State of Illinois* (Springfield, IL: William Walters, 1845), 197.

began, "That Is, When a Poverty Affidavit Is Filed at the Same Time."[69] In short, women were the dominant sex in divorce cases in part because of spousal strategizing and collusion.

Alimony negotiations could help facilitate collusive divorce.[70] A husband who wished to divorce but lacked fault grounds could offer his wife money to entice her to file as the plaintiff. As discussed in the section on separate maintenance, some wives were unwilling to cooperate. But if a wife were willing, she might be able to exact a generous settlement. For example, the wife of a wealthy man reportedly demanded one million dollars and held out until her husband sent her a check and then filed for divorce fifteen minutes later.[71] Some wives preferred this method because they believed their husbands were more likely to comply with a private agreement than a court order. As one article that quoted an experienced divorcee explained, the best way to handle alimony was "amicably out of court." In that scenario, "if the girl is shrewd enough she can arrange matters so that her former husband will have no loophole to escape his obligations."[72] Inversely, a wife could offer to forgo alimony to ensure an easy path to divorce. This is precisely what a Montana husband alleged—that his wife told him she would pursue alimony only if he contested her

[69] Some articles suggested greedy attorneys advised wives to plead poverty, so the litigants would have more cash to pay the lawyers' fees. A judge promised to better screen these cases, noting that some of the litigants "are able to wear better clothes than their attorneys, or even the court, for that matter." "Around the Court House," *Minneapolis (KS) Messenger*, Aug. 10, 1893, 4; "Divorces Come Cheap," *Topeka Daily Capital*, Aug. 19, 1896, 6 (this article seems to suggest that a black man also petitioned for a divorce using the poverty affidavit, but it is somewhat ambiguous); "Practice Must Stop," *Topeka State Journal*, Jan. 10, 1900, 7; "Made Poverty Affidavit: Wearer of Diamonds Says She Cannot Pay Court Costs," *Wichita Daily Eagle*, Sept. 19, 1906, 5.

[70] These types of agreements are difficult to recover because they were only recorded in cases or newspapers if something went awry or was otherwise unusual. That many examples are nevertheless recorded is provocative evidence of how common this practice might have been. Some of these stories may have been concocted as part of a legal strategy, but the fact that litigants expected a judge to believe them also suggests that these spousal negotiations happened. Likewise, Basch argues, regarding New York and Indiana between 1815 and 1870, that "[t]he development of sophisticated divorce strategies tended to encourage negotiation in advance of litigation, but it also tended to discourage requests for alimony that were truly adversarial." Basch, *Framing American Divorce*, 112-13.

[71] "The American Divorcees Who Receive the Largest Alimony," *Chicago Daily Tribune*, Apr. 9, 1905, H6.

[72] "Minneapolis Wives after Alimony Have Trouble to Collect," *Minneapolis Star Tribune*, Jan. 2, 1910, 16.

divorce.[73] A Chicago judge was so aware of pre-divorce negotiations that he told a journalist he was suspicious when women did not request alimony because he assumed the couple had agreed to terms beforehand to unlawfully collude in obtaining the divorce.[74]

Negotiations over alimony could also influence the claims raised in divorce proceedings. In 1897, an Atlanta newspaper reported that a wife had been willing to forego alimony if her husband did not impugn her character in his petition. When he sought divorce for infidelity, she chose to counter-file because an alimony award would implicitly clear her name.[75] A wife in St. Louis claimed that she and her husband executed a separation agreement stating that she would not challenge his divorce application if he made only non-scandalous claims. When he breached these terms, she revealed the separation agreement to the judge in order to prove the divorce was collusive and so should not be granted.[76]

In addition to colluding in their hometown courts, Americans traveled to more lax jurisdictions to obtain what became known as "migratory divorces." Indeed, some locations developed reputations as divorce havens. In terms of geography, this typically meant that spouses (more often men) traveled to the Midwest and West. Sometimes couples acted in concert in securing a migratory divorce, conspiring for one spouse to travel and the other to remain at home. Other times a spouse was unpleasantly surprised to learn that a divorce had been granted in a faraway place.[77] This phenomenon was sufficiently well known that in 1911, there was a Broadway play,

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[73] "Cochrane Must Pay Alimony," *Butte (MT) Miner*, May 11, 1902, 6.

[74] "The Alimony Widow," *Chicago Daily Tribune*, Oct. 10, 1909, H1.

[75] "Mrs. Arnold and Alimony," *Atlanta Constitution*, Feb. 13, 1897, 1.

[76] "Agreement for Separation Is Wife's Weapon," *St. Louis Post-Dispatch*, June 27, 1909, 6.

[77] Phillips, *Putting Asunder*, 452-55. Divorce mill states had a somewhat higher proportion of male plaintiffs than their neighbors, reflecting that men were more likely to travel to seek divorce. Friedman and Percival, "Who Sues for

described as a "merry farce," in which a husband and wife unknowingly booked tickets on the same train to Reno, Nevada, to get a divorce. They reconnected when the husband needed the wife's nursing, and they reconciled (Figure 4).[78]

If It Costs a Lot to Marry, It Costs More to Be Divorced!

THE CHICAGO SUNDAY TRIBUNE.

Figure 4: The woman's paper reads: "Reno [a divorce haven], Atty's Fees, Ry. [Railroad] Fare, Court Costs, Alimony."

Migratory divorce created complex legal questions about whether resultant decrees were binding.[79] As a law review contributor explained in 1886, the validity of a divorce might be limited to

Divorce," 80. On geographic variation prompting people from the East to go West for divorce, see "Tales of the Town: Seattle a Little Off Colored," *Seattle Republican*, Apr. 14, 1905, 4.

[78] "If It Costs a Lot to Marry, It Costs More to Be Divorced!" *Chicago Daily Tribune*, June 11, 1911, G6.

[79] The jurisdictional complexities are addressed at greater length in Chapter Three.

the state that issued it, or not. And "[a] divorce, too, may be valid as to one party and not as to the other, and it may destroy the marriage *status* and yet not affect certain property or personal rights of the parties."[80] In the more sensationalized language common to newspapers, one 1888 headline read: "Striking Inconsistencies and Curious Complications—Legalized Harems and Wives with Many Husbands."[81]

Migratory divorce fed a broader, persistent concern about the seeming collapse of the American family.[82] By the 1880s, Christian clergy (especially Catholics) and social reformers pointed to divorce statistics as evidence of how lax divorce laws harmed society. For instance, one prominent Catholic leader condemned divorce as permitting serial polygamy "even worse than Mormonism."[83] Meanwhile, elite lawyers worried that the routine perjury and collusion in divorce proceedings reflected poorly on the legal profession. These stakeholders led a campaign for more restrictive divorce laws. One major effort was to achieve uniformity across states, either through a model statute or federal involvement. Though there were serious discussions about passing an amendment to the U.S. Constitution to permit Congressional control of divorce, that approach failed. Instead, reformers secured state-by-state successes in narrowing fault grounds and strengthening procedural rules to minimize collusion.[84]

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[80] Stewart, "Divorced Person's Right," 718, 723.

[81] "Marriage and Divorce Laws: Striking Inconsistencies and Curious Complications—Legalized Harems and Wives with Many Husbands," *Baltimore Sun*, Nov. 10, 1888, 6.

[82] Phillips, *Putting Asunder,* 456-73; Blake, *Road to Reno*, 130-51; Cott, *Public Vows*, 109-10. On concern about the state of the American family more broadly, see Steven Mintz and Susan Kellogg, *Domestic Revolutions: A Social History of American Family Life* (New York: Free Press, 1988), 107-32.

[83] For a representative example of religion-related discourse that includes the quotation about polygamy, see "Dr. Woolsey on Divorce," *Catholic World* 35, no. 205 (Apr. 1882): 11, 21. This was a common theme. See also "The Catholic Doctrine on Marriage," *American Catholic Quarterly Review* 8 (July 1883): 31, 32.

[84] The American Bar Association began its efforts to secure uniform marriage and divorce laws in 1879. For discussion, see C. LaRue Munson and William D. Crocker, "The Divorce Question in the United States," *Yale Law Journal* 18, no. 6 (Apr. 1909): 387; W. O. Hart, "Uniformity of Legislation," *American Lawyer* 15, no. 12 (Dec. 1907): 559. For a more comprehensive account of 133 historical proposals to amend the U.S. Constitution for reasons related to marriage, see

Reformers, politicians, judges, journalists, and everyday people following the divorce crisis recognized that a major factor influencing spouses' decisions about whether to pursue divorce was the expected financial consequences. In the succinct argument of a contributor to the African-American newspaper the *Chicago Defender*: "The best way to abolish the divorce evil is to strike at the alimony evil. Persons who want to share one another's money should be willing to live together. At any rate there certainly would be fewer divorces."[85]

Newspapers' routine coverage of marital separations and attendant financial consequences cast alimony decrees as easy to obtain. For example, in an article published in the *Chicago Tribune* in 1909, titled "The Alimony Widow," the writer estimated that "something more than a million dollars is burned up every year in Chicago on the altar of departed happiness" (Figure 5). Of the 1,539 divorces filed in Chicago the previous year, most included a request for alimony, and the wife typically received it "[u]nless she is much in the wrong." It was hard to get exact numbers, the writer acknowledged, in part because "[i]n most instances if the Chicago husband is rich, the money question is settled out of court." While the amounts ranged from three dollars per week to $100,000 per year, the reporter offered that "it is known that the average alimony of the divorced wife, either by court decree or outside settlement, will exceed $1,000 a year." A judge interviewed for the story explained that there was no "regular" amount awarded, but most wives with children received from one-third to one-half of what a man owned or of his salary.[86]

Edward Stein, "Past and Present Proposed Amendments to the United States Constitution Regarding Marriage," *Washington University Law Quarterly* 82, no. 3 (Fall 2004): 611-686.

[85] "The Real Evil," *Chicago Defender*, Apr. 29, 1911, 8.

[86] "The Alimony Widow," *Chicago Daily Tribune*, Oct. 10, 1909, H1. The article was republished elsewhere. For example, see "The Alimony Widow," *Salt Lake Herald-Republican*, Oct. 17, 1909, 29.

Figure 5: Image accompanying article about generous divorce awards for wives in Chicago.

In 1910, journalist Georgia Earle captured many threads of this conversation in her article, "Do Our Courts Stimulate Divorce by Awarding Too Big Alimony?" One of her interviewees was a Massachusetts judge, who criticized other judges for granting extravagant awards that incentivized more divorce filings. He also condemned how "enormous sums of money paid for alimony" were covered by newspapers. "The knowledge of how well other women have feathered their nests by this means makes [wives] restless and dissatisfied," the judge suggested, "and probably in many cases leads to the breaking up of homes that otherwise might have been maintained happily and peacefully." As a counterpoint, Earle interviewed a New York lawyer, who explained that courts rarely awarded more than one-third of a man's income, though the amount might increase if

children were involved. In the lawyer's view, lower alimony awards would be counterproductive because they would encourage husbands to pursue divorce.[87]

Because it seemed clear that alimony and other property implications of divorce could influence wives' and husbands' conduct, lawmakers devoted considerable energy and attention to calibrating alimony laws to produce the outcomes they deemed best. The most basic question was whether alimony should be granted following absolute divorce. Once that question was mostly answered in the affirmative, stakeholders considered whether partial divorce continued to serve any legitimate purpose. Though they failed to reach a consensus, their discussions demonstrate how practical concerns informed alimony law.

Legislators and judges also faced two situations that forced them to grapple with the rationales justifying alimony awards. First, could an at-fault wife receive alimony? And second, could alimony awards be modified, especially after the ex-wife's marriage to another man? Lawmakers did not answer these questions consistently, demonstrating the difficulty of balancing a range of interests. Some, perhaps influenced by MWPA, understood alimony as reflecting the wife's contributions to the marriage. As such, her misconduct or remarriage should have little to no bearing on her economic recovery. Others saw alimony as maintenance, justifiable only where the woman acted appropriately as a wife—neither committing an offense during marriage nor becoming another man's wife. In individual cases, the reasoning was blended or muddled, reflecting judges' flexibility and discretion to make orders they deemed just.

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[87] Georgia Earle, "Do Our Courts Stimulate Divorce by Awarding Too Big Alimony?," *New York Tribune*, July 31, 1910, C5.

Do judges have authority to award alimony after absolute divorce?

In the early nineteenth century, even the basic question of whether alimony was permissible for both types of divorce was uncertain. To understand why, it is helpful to start where many American judges began their analyses: a summary of English divorce practice. The typical account was thus: Ecclesiastical courts granted alimony when the wife received a decree *a mensa* (authorized for her husband's adultery or cruel treatment) because the marriage bond was not severed. This alimony—a portion of the husband's income secured against his estate—continued until one of the parties died or they reconciled. Divorce *a mensa* did not include property division because, as the Supreme Court of Tennessee observed in discussing this history in 1838, "the law still looks to a reconciliation between the parties, which would be rendered almost impracticable if the property were divided absolutely, each one taking his own."

Based on this precedent, and often bolstered by statutes, most American courts easily concluded that they had discretion to award alimony to a wife following divorce *a mensa*, especially if the husband were to blame. Because divorce *a mensa* did not end the marriage, the husband retained control over the property (including the wife's property unless subject to revision by MWPA or divorce statutes). Similarly, the wife's and husband's interests in each other's property during widowhood, pursuant to dower or curtesy respectively, remained intact. With these rules still in place, it made sense that the husband continued to be liable for his wife's maintenance. This support took the form of alimony, also sometimes called allowance or support.

The financial consequences for English judicial divorce *a vinculo* were essentially the reverse. English ecclesiastical courts granted divorce *a vinculo* only where the marriage was void *ab initio*. In this situation, the court attempted to return the parties to their premarital status. Property that was the wife's before marriage was returned to her, as the husband had no right to it once the marriage was treated as void. No inheritance interests attached. The court did not award alimony because it

was as though the marriage never existed. (Parliament could also grant absolute divorce, with other financial repercussions, but this provided less precedential value for American judges.)[88]

In the United States, the financial consequences of divorce *a vinculo* were contested. Following English precedent, the default rules were that absolute divorce extinguished dower and curtesy interests and that courts should return the property spouses held separately. When American lawmakers considered what these rules left to an ex-wife—no dower and only her separate property (if any)—some perceived this result as unfair and potentially harmful to society because the wife rarely had the means to be independent. This raised the question of whether ex-wives should be given property held separately by the husband or alimony payments akin to those following divorce *a mensa*. Law on this topic developed haltingly and varied by state.

In states that did not initially have statutes authorizing alimony for divorce *a vinculo*, judges devoted considerable energy to justifying their ability to provide this relief. Their first task was to distinguish English ecclesiastical practice. English precedent seemed ill-fitting, judges argued, because ecclesiastical courts granted divorce *a vinculo* (with no alimony) where a marriage was void, but American courts granted it based on fault. Given this distinction, it would be unjust and socially undesirable to deny alimony to American wives following absolute divorce. The Georgia Supreme Court, for instance, referred to "sound principle and policy" in authorizing this relief. "Certainly where the misconduct of the husband is so grave as to require a total divorce," the court reasoned, "his liability is no less than where his acts are merely such as to authorize a separation from bed and board."[89] The Arkansas Supreme Court likewise recognized alimony following absolute divorce, in

[88] This section builds on Carbone, "Futility of Coherence," 43, 47-51. For cases discussing English divorce practice, see Chunn v. Chunn, 19 Tenn. 131, 134-36 (1838); Kurtz v. Kurtz, 38 Ark. 119, 126 (1881); Davis v. Davis, 68 S.E. 594, 595 (Ga. 1910). On divorce *a mensa* not changing dower or curtesy, see Browne, "Law of Marriage and Divorce," 344.

[89] Campbell v. Campbell, 16 S.E. 960, 961 (Georgia 1893).

part because it feared poverty would turn the wife toward a life of prostitution or starvation.[90] Though often unsure whether precisely the same rules should apply in calculating alimony amounts for divorce *a mensa* and *a vinculo*, many judges rested on the idea that they could exercise their "reasonable discretion."[91]

As courts examined their power to grant alimony following absolute divorce, many legislatures passed statutes to authorize and guide post-divorce asset allocation. By the late nineteenth century, most permitted alimony or something similar, usually in installments but sometimes as a lump sum.[92] The majority also allowed courts to reassign ownership of property.[93] Some permitted the retention or substitution of inheritance rights.[94] These remedies blended in practice. Statutes allowed courts to award property in addition to or in lieu of alimony, or specified alimony could come "out of" a husband's separate estate or real property, or that income from real property could be assigned to the wife.[95]

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[90] Bauman v. Bauman, 18 Ark. 320, 328-29 (1857).

[91] Kurtz v. Kurtz, 38 Ark. 119, 126 (1881).

[92] Stimson, *American Statute Law*, 702 ("In most states, generally, in any case of absolute divorce, the court… has power to decree alimony to the wife," but some limited this to when the husband was at fault or for particular fault grounds). By the 1930s, every state had a statute allowing alimony to the wife in absolute divorce cases except Delaware (instead allowing court to decree a part of husband's property), North Carolina (fragmentary and obscure statutes), Texas (equitable division of the husband's property), and South Carolina (no absolute divorce). Vernier, *American Family Laws,* 264-66.

[93] For an overview of property rules, see Stimson, *American Statute Law*, 699-702.

[94] By the late nineteenth century, some states had passed statutes that departed from default rules that extinguished dower and curtesy upon absolute divorce. Some statutes held that where the wife was the innocent party in an absolute divorce, her right to dower continued "in the same manner as if the husband were dead." Some of these treated dower as accruing at the time of divorce, but others waited to enforce this right until the husband's death. Statutes often left unclear whether receipt of alimony or property division pursuant to divorce (or execution of a separation agreement without terms on dower) should be understood as in lieu of or in addition to dower. A legal scholar writing in 1891 concluded that this was an issue that was "not entirely settled, and upon both sides of which there is legitimate argument." "Dower—Divorce—Estoppel—Alimony," *Central Law Journal* 32, no. 8 (Feb. 20, 1891): 163, 167-68.

[95] This treatment is, by necessity, simplified. Making sense of the variation in alimony and property division occupied hundreds of pages of treatises in the first decades of the twentieth century. My account relies on Carbone, "Futility of Coherence," 47-51, informed by sources cited throughout this section, and with added details from Vernier, *American Family Laws,* 215-60 (cognizant that this source is from a later period and so used judiciously). Vernier writes: "The

Even where statutes did not technically permit alimony following absolute divorce, on the basis that the marriage should be treated as completely severed, legislators and judges found ways to permit parallel remedies. For example, the Indiana Supreme Court noted that its legislature had eliminated divorce *a mensa* and authorized only a lump sum payment upon absolute divorce "on the theory that thenceforth the parties were to be strangers to each other."[96] Nevertheless, the divorce statute permitted judges to "give reasonable time for the payment [of the lump sum] by installments, on sufficient security being given." Both the lump sum and the payments were termed "alimony," even though they were understood not as ongoing maintenance but rather as "an equitable partition" of the "property of the parties, and their joint labors in the accumulations during marriage."[97] In an economy increasingly centered on cash, for many families the transfer of regular sums was more plausible and helpful than property division or a lump sum.

In California, the blurred lines between alimony and property division provided a basis for judges to craft an alimony-like award, seemingly in contravention of legislative intent. In 1890, the California Supreme Court faced the question of whether a lower court had erred in holding a man in contempt for refusal to pay court-ordered "alimony," when the pertinent statute did not permit alimony for absolute divorce. The court characterized the language of the order as a "simple misnomer." Since absolute divorce ended the husband's marital duties, it was true there could be no traditional alimony award. But the state's statute did permit the court to grant the wife an allowance "in consideration of, and as a substitute for, her interest in the community property, or her right of

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decree of alimony is necessarily so closely bound up with property rights as to make any arbitrary classification of statutes between the two topics more or less unsatisfactory." Vernier, *American Family Laws*, 215-217.

[96] Marsh v. Marsh, 70 N.E. 154 (Ind. 1904).

[97] Miller v. Clark, 23 Ind. 370, 375 (1864) (discussing nature of alimony in Indiana to allow wife's estate to continue collecting it, in contravention of alimony traditionally ending upon death of a spouse).

dower or inheritance… [and] compensation for a wrong done to her." This award could be based on the husband's earnings.[98] Though the justifications differed from those in the *a mensa* context, it was effectively alimony in all but name, as the lone dissenter recognized. The legislature intended, the dissenter claimed, for absolute divorce to terminate marriage completely. It was a poor "policy—impolicy, rather" to allow the parties to marry new partners and retain "unequal and inequitable burdens" from the first marriage, as only the husband's duties remained. "It is an anomalous condition of domestic affairs" to force a man "to support a legal relic, who is not only matrimonially dead to him, but is perhaps married to another, who is unable or unwilling to support her," the dissenter argued. But his viewpoint gained little traction.[99]

While the rationales for alimony-like awards varied, a commonality across time and location was that judges had great discretion to craft a remedy they deemed fair. Legal commenters observed that judges determined alimony amounts, for both types of divorce, by considering "all the circumstances of each particular case, such as the estate and ability of the husband, the condition and means of the wife, and the conduct of the parties." There were "no fixed rules," though there were common practices. Providing the wife with one-third of the husband's income during her life was typical (an award that paralleled dower). Notably, the provision of around one-third of an estate indicated that judges did not perceive alimony as serving only to avoid destitution. Rather, the husband was expected to maintain his wife in line with his own class status. Where the wife substantially contributed to the couple's accumulation of property, judges sometimes determined she should get a larger share, potentially equal to her husband. Another variable involved whether the couple had children. If the wife were granted custody, she would receive more money to pay for

[98] In re Spencer, 23 P. 395, 396-97 (Cal. 1890).

[99] In re Spencer, 23 P. 395, 397 (Paterson, J., dissenting).

their children's education and to maintain them "in a manner corresponding to the condition of their father."[100] With so many considerations informing the award, a judge had significant discretion to evaluate myriad facets of litigants' lives and behaviors. That such evaluations and consequences were discussed in newspapers and other lay sources could in turn influence the marital behaviors and expectations of people outside of court.

Should partial divorce be retained?

As it became increasingly certain that judges had discretion to award alimony for both absolute and partial divorce, some commenters wondered whether partial divorce continued to serve a legitimate purpose. In the mid-nineteenth century, judges justified the ongoing availability of divorce *a mensa* much as they did separation agreements and separate maintenance—anything short of absolute divorce was desirable in order to protect the institution of marriage. For instance, in 1857, the Supreme Court of Arkansas recognized that though the removal of barriers to absolute divorce had left "but little scope" for partial divorce, some spouses "might prefer this to the final separation, in the hope of reformation and ultimate reconciliation."[101] In 1864, the Supreme Court of Indiana explained that traditionally spouses separated *a mensa* "may… reunite at pleasure; indeed, it is the policy of the common law that they should do so; and to that end the door is ever left open,

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[100] Edmund Randolph Williams, "Alimony," in *The American and English Encyclopædia of Law*, vol. II, ed. David S. Garland and Lucius P. McGehee, 2nd ed. (Long Island: Edward Thompson Co., 1896): 121-22; Long, *Treatise on the Law*, 299; Browne, "Law of Marriage and Divorce," 353. On support for children, see Stimson, *American Statute Law*, 698. Though data is spotty, the best information available indicates that most divorce suits did not involve children. Department of Commerce and Labor Bureau of the Census, "Marriage and Divorce, 1867-1906" (Washington, DC: Government Printing Office, 1909), 41. When a couple with children did divorce, anecdotally it seems the wife almost always received child custody in this period because the husband rarely sought it. This may also have been negotiated out of court.

[101] Bauman v. Bauman, 18 Ark. 320, 326 (1857) (also explaining that granting alimony only for a mensa would "offer a premium to that kind of divorces," whereas its state legislation demonstrated intent "to diminish" that type of divorce).

while the parties are held firmly by an indissoluble matrimonial tie, as an inducement, from necessity, to a reconciliation."[102]

Other discussants realized some innocent spouses held moral or religious objections to absolute divorce, yet might deserve financial protections like alimony. The religious justification sparked particularly heated debate because it pitted Christian denominations against each other as well as against secular-minded reformers.[103] Catholic leaders were the most vocal proponents of retaining partial divorce because of their complete opposition to absolute divorce.[104] Cardinal Gibbons, head of the Roman Catholic Church in the United States in 1899, explained that church doctrine permitted dissolution of marriage only by death. Acknowledging that a ban on absolute divorce "may sometimes appear rigorous and cruel," he maintained that the "frightful miseries" of divorce were far worse. "Is not the law of divorce a virtual toleration of Mormonism in modified form?" he posed, using a common rhetorical argument. "Mormonism consists in simultaneous polygamy, while the law of divorce practically leads to successive polygamy." After describing rising divorce statistics, he continued, "How can we call ourselves a Christian people if we violate a fundamental law of Christianity?"[105] Other Christian denominations were not prepared to cede the moral high ground to Catholics. For instance, a Protestant author challenged Catholics' claims to

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[102] Miller v. Clark, 23 Ind. 370, 373 (1864).

[103] For sample discussion, see "Rome Severs Marital Ties," *Chicago Daily Tribune*, June 18, 1899, 15 (describing internal conflict of Anglican Church on divorce issue). There was almost no identifiably Jewish participation in these debates. According to one article from the period: "The fact of the matter is that there is no attempt to reconcile the Jewish law of divorce with the United States' law. Unfortunately there is no United States law of divorce, and aside from that, the Jewish law is not in conflict with the State laws." "As to Jewish Divorce," *American Israelite*, Oct. 15, 1903, 4.

[104] E.g., "Dr. Woolsey on Divorce," 21.

[105] "Modified Mormonism," *Boston Globe*, May 15, 1899, 7.

superiority on issues of marriage and divorce by pointing to the Catholic Church's permissiveness about incest and "winks at the unchaste lives of many among its priesthood."[106]

By the late nineteenth century, some judges, legislators, and commenters were staunchly opposed to permitting partial divorce and deeply skeptical of church politicking on this issue.[107] Members of this camp thought partial divorce was at best redundant with separate maintenance (though this was not precisely accurate, as most states allowed separate maintenance for less egregious conduct).[108] At worst, they thought these state-sanctioned separations encouraged sexual impropriety. In 1887, for instance, the Supreme Court of Michigan converted a partial divorce granted by a lower court into an absolute one, even though the plaintiff had not requested this. The court explained it made this move "on grounds of public policy, to prevent the mischiefs arising from turning out into the world, in enforced celibacy, persons who are neither married nor unmarried." With a nod to religious objectors, the court indicated that if the parties had "scruples about remarriage," they could choose to remain single.[109] As a contributor to the *Yale Law Journal* explained in 1902, it was a "disputed question" whether divorce suits *a mensa* "serve any useful purpose," and "[l]aw writers on divorce universally oppose them as conducive to immorality."[110]

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106 Mary Carret, "Does the Protestant Church Uphold and Strengthen Ties of Family?," *Unitarian Review and Religious Magazine* 18, no. 6 (Dec. 1882): 530. Other publications compared the divorce rate of Catholics and Protestants. For example, see "Divorce in New England," *South-Western Presbyterian*, Mar. 29, 1883, 2.

107 For example, a contributor to the *Central Law Journal* condemned how religious groups had pushed for the diminishment of judicial discretion in permitting divorce, and he cast the Catholic Church as "too bigoted and impracticable for a guide in this matter." Percy Edwards, "Judicial Discretion in Divorce," *Central Law Journal* 42, no. 21 (May 22, 1896): 439-42.

108 Judicial opinions, law review articles, and newspapers sometimes confused or blended divorce *a mensa* and maintenance orders and used "alimony" and "maintenance" interchangeably. For an example of how the terminology blended between remedies, see Williams, "Alimony," 98 ("A demand for alimony subsequent to a decree of divorce *a vinculo* is very different from a suit for alimony without divorce, as it is sometimes called, but which is really separate maintenance.").

109 Burlage v. Burlage, 32 N.W. 866 (Mich. 1887).

110 Browne, "Law of Marriage and Divorce," 340, 343.

The debate over partial divorce continued to flare during the 1906 "Divorce Congress," a meeting that drew representatives from nearly every state in an effort to hash out a more uniform (and conservative) divorce law. Some discussants voiced the view that "separation should not be granted as it might tend to bring about a wrongful mode of life." But Catholic attendees objected to eliminating partial divorce. A female Unitarian Minister from Michigan retorted that "the church has a right to discipline its own members, but should not force its views on this congress." Rather, the discussants should consider "the question on a purely sociological basis."[111] She and others who shared her view did not prevail. The model law promoted by the Divorce Congress retained both types of divorce.[112]

Although some legislatures did eliminate partial divorce, others instead turned to modifying their alimony laws.[113] By calibrating the financial rules attached to each type of divorce, savvy legislators recognized they could push or pull litigants to the type of divorce deemed preferable within the local political and religious culture. Pennsylvania provides a particularly illuminating example because generations of its state legislators sought to use alimony law to funnel unhappy spouses to divorce *a mensa*. The state first authorized divorce in 1785, allowing its judges to grant either type of divorce. Only a divorce from bed and board permitted an alimony award—subject to judicial discretion but capped at one-third of the husband's income. If the couple reconciled, the alimony ended. But if the couple separated again because of the husband's misconduct, he owed his wife arrears from the time they were back together. If the wife chose to pursue a divorce *a vinculo*,

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[111] "Divorce Congress Splits on Decree," *Chicago Daily Tribune*, Feb. 22, 1906, 7; "Oh, Me! Oh, My! Fair Ones Cry," *Los Angeles Times*, Mar. 16, 1906, I15.

[112] National Congress on Uniform Divorce Laws, Philadelphia, 1906, *Proposed Uniform Statute Relating to Annulment of Marriage and Divorce Submitted to the Full Committee on Resolutions to the Divorce Congress* (Harrisburg: s.n., 1906).

[113] For examples of states that eliminated divorce *a mensa*, see discussion above about California and Indiana.

the alimony was terminated. In 1815, the legislature replaced the colonial law with one that permitted *only* absolute divorce, again with no alimony, for adultery or willful and malicious desertion. Two years later, they reauthorized *the wife only* to file for divorce from bed and board *with alimony* on four grounds. In 1854, the legislature granted the husband a new ground for absolute divorce—on the basis of his wife's cruel and barbarous treatment (a more extreme version of one of the wife's grounds for divorce *a mensa*). The catch was that the husband would have to pay "just and proper" alimony if he sought divorce on this basis. In short, the only scenario under which a wife received alimony following an absolute divorce in Pennsylvania was when the husband sought the divorce based on her cruelty—which disincentivized him from seeking divorce on that ground. In 1895, the legislature again amended its statute, this time giving judges discretion over whether to grant alimony when the husband alleged extreme cruelty (and they terminated this type of alimony in 1925). Thus, over more than a century, Pennsylvania legislators sought to use alimony rules to deter husbands and wives from choosing divorce *a vinculo* unless absolutely necessary.[114]

New Jersey legislators, by contrast, were skeptical of partial divorce, yet needed to satisfy the demands of the state's Catholics. In 1891, they passed an act providing that either spouse could receive a divorce *a mensa* for desertion, adultery, or extreme cruelty, but in all cases except for those claiming cruelty, "the party applying shall prove that he or she has conscientious scruples against applying for divorce from the bond of matrimony." In other words, a party that sought a divorce for reasons that justified absolute divorce (adultery or desertion) had to pursue absolute divorce unless

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[114] There was only one other meaningful change between 1895 and 1980. In 1905, the legislature authorized both parties to seek absolute divorce from an insane spouse, and both could be required to pay alimony. For a helpful discussion that covers most of this history but does not address sex-specific fault grounds, see Patrick M. Coyne, "The History of Alimony in Pennsylvania: A Need for Further Change," *Duquesne Law Review* 28, no. 4 (Summer 1990): 709, 710-15. For further discussion of the colonial period, see Salmon, *Women and the Law*, 67. For a case that is helpful on the history and differences between the statutes, see Hooks v. Hooks, 187 A. 245 (Sup. Ct. Pa. 1936). For more details on the sex-specific fault grounds, see Miltimore v. Miltimore, 40 Pa. 151 (1861); Gordon v. Gordon, 48 Pa. 226 (1864) (listing four bed and board grounds from 1817 (for wives only)).

the person's religious scruples made this unacceptable. If the court were persuaded to grant the divorce *a mensa*, it then had discretion to decree that the guilty spouse no longer had a right to dower or curtesy and administration of the other party's estate—property consequences typically attached to absolute divorce. The law was passed, according to later newspaper coverage, "principally for the benefit of Catholics, who are opposed to divorces, but who wanted some statute whereby their property rights might be maintained in case of separation."[115]

The manner in which the law distinguished among litigants based on their religious beliefs was challenged in 1896. That year, a Catholic wife sought a divorce *a mensa* from her wealthy Quaker husband on the ground of adultery. According to newspaper coverage, the husband "was willing, even anxious, to secure an absolute divorce, agreeing to pay his wife $5,000 in settlement of all claims." Divorce *a mensa* would be inadequate for him, the paper continued, because he did not want his wife to retain her dower rights in his "considerable property," which would require him to obtain her consent if he wished to sell it. Thus, when the court awarded his wife divorce *a mensa*, terminating curtesy and leaving dower intact, his lawyers appealed. They argued that the statute unconstitutionally discriminated among people based on their partner's supposed religious beliefs. New Jersey's highest court agreed, finding that the legislation was "contrary to the spirit of the constitution of this state and of the United States." The law denied individuals the equal protection of the law and subjected them to "peculiar rules" and "special burdens," merely because their "consorts happen to hold certain scruples." The court's opinion seemed to hold the entire statute unconstitutional, prompting panic among those who thought it might invalidate other divorces. Upon a closer examination of the decision, it became clear that—quite intriguingly—the court

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[115] For context on the law and details about the parties, see "Divorce Law and Religion," *Camden Daily Telegram*, Dec. 3, 1896, 1. For sample coverage of the holding, which included recognition that the law was designed for Catholics, see "A New Jersey Divorce Law Invalid," *Washington Post*, Dec. 3, 1896, 8.

allowed the divorce *a mensa* to remain in place and only reversed the property component of the ruling.[116]

The Pennsylvania and New Jersey legislative experiments demonstrate how the typical approach of retaining two types of divorce was not meant to afford open-ended flexibility to litigants. Legislatures' adjustment of property rules for each type of divorce was a tactic to incentivize spouses to choose the path that state leaders perceived as preferable. Nevertheless, despite their careful efforts, the best available statistics indicate that most people who chose divorce opted for the absolute option.[117]

Can an at-fault wife receive alimony?

Another question that forced courts to consider the purpose of alimony was whether an at-fault wife was eligible. Many divorce statutes did not initially address this issue. Judges recognized that an at-fault wife could not obtain a remedy from ecclesiastical courts, but some found compelling reasons to depart from harsh English precedent. Their opinions show realistic understandings of how marital discord might not map onto fault grounds, aversion to leaving wives impoverished, and remarkable recognition of wives' financial contributions to family wealth.

In an early and particularly thorough example from 1847, the Supreme Court of Alabama dismissed the suggestion that it was unable to award alimony to an at-fault wife as part of a divorce *a mensa* based on English practice. The court emphasized its significant discretion over alimony and

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[116] The case is Middleton v. Middleton, 54 N.J. Eq. 692 (1896). For an example of law review coverage, see "Notes of Cases," *American Lawyer* 5, no. 1 (Jan. 1897): 15 ("The decision at first excited much comment, as it was understood that the court had held the law allowing limited divorces to be void. This was not the case… The decrees of limited divorce will stand, but the property rights of the husbands and wives will be settled under the original law.").

[117] A study of divorce statistics found that between 1867 and 1886, less than 0.01% of divorces granted were *a mensa*. This result is so inconsistent with commentary from the period that it may reflect a major inaccuracy in the records the report used. If the statistic is indeed fair, another possible explanation is that most spouses who preferred something short of absolute divorce turned to separation agreements or separate maintenance. Carroll D. Wright, *Marriage and Divorce in the United States, 1867 to 1886* (Washington, DC: Government Printing Office, 1897), 132.

reasoned that though the wife might technically be at fault, here for desertion, the husband was not necessarily blameless. "It must always in such cases be difficult, if not impossible to trace the causes which, step by step, led to the commission of the crime," the court reasoned. "Slighted affection, unkindness and neglect on the part of the husband may be, and frequently are the remote, if not the proximate causes, which lead to the violation of the marriage vow." In addition to recognizing the complexity of marital dynamics, the court figured that the public had an interest in ensuring the wife "not become an outcast upon society, cut off from the common charities of life, without the means of support, and thus tempted to continue in the commission of vice." The court could, it continued, adjust its award in line with the blameworthiness of the conduct. Here, the wife's desertion was not as extreme as that of an adulteress. Recognizing that "the estate has been created by the economy and industry of the husband and wife," the court affirmed the lower court's decision to give the wife one-third of her husband's personal estate and one-third of his land for use during her life.[118]

More than a half-century later, the Georgia Supreme Court found this issue still unsettled across the country and employed remarkably similar reasoning to the Alabama court's. Obtaining a divorce under Georgia law (uniquely) required the agreement of two special juries, who then had the power to award alimony and divide the couple's property (including assigning some to minor children). The Georgia Supreme Court found that a lower court judge had erred in instructing one such jury that alimony was not permitted where the wife was at fault, here because she deserted. The court acknowledged that English law held that an adulterous wife could not receive alimony and that some American courts had reached the same result. Yet this approach "at times worked a great hardship on the wife… [and] sometimes drove the wife to starvation or a life of shame." Consequently, the English Parliament and some American states had enacted statutes that

[118] Lovett v. Lovett, 11 Ala. 763, 768-70 (1847).

authorized provision of support to at-fault wives "when the courts deem it best." These jurisdictions had found the softer approach justified in part because "the conduct of the husband may not have been exemplary," and "the wife may have collaborated with her husband in acquiring the property held by the latter, that she may have greatly aided in establishing his fortune."

Even in the absence of such a statute, the court determined that Georgia should join the jurisdictions that permitted recovery to at-fault wives. In its analysis, the court found it relevant that the state legislature had passed its most recent divorce statutes *after* its MWPA eliminated a husband's right to his wife's property. "Perhaps the possibility that the labor and services of the wife may have contributed to build up the fortune of the husband may have been in the legislative mind," the court surmised, as it remanded the case for an alimony award. Still, demonstrating some anxiety about this holding, the court concluded: "We do not mean that courts or juries should make matrimonial dissentions attractive as a source of profit. The reverse is true."[119]

A law review article collecting cases decided by 1910 found state courts still differed regarding whether an at-fault wife could receive alimony. Most states left judges with significant discretion to weigh the degree of culpability, the likelihood that an ex-wife would become impoverished, the extent to which she had contributed to the accumulation of property, and other factors. This approach enhanced judges' power to shape social understandings of marital wealth and encourage or punish spouses' conduct.[120]

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[119] Davis v. Davis, 68 S.E. 594, 595-98 (Ga. 1910).

[120] C, "Divorce—Alimony," *Central Law Journal* 71, no. 11 (Sept. 16, 1910): 191-95 (discussing different approaches by state); Williams, "Alimony," 119.

Does an ex-wife's marriage to a new husband terminate alimony?

A final question that cut to the heart of the purpose of alimony was whether it should be terminated upon an ex-wife's marriage to another man. This was a subtype of a broader question about whether and under what circumstances judges could modify an alimony order. It seemed uncontroversial to judges that they could revise an alimony award attached to divorce *a mensa*. These awards were rooted in men's common law duty to support their wives, which could fluctuate as a man's means changed. It was also uncontroversial that judges could modify alimony decrees attached to divorce *a vinculo* if a statute authorized this or if the decree itself reserved a right of modification, which was increasingly common.[121] But if these sources were silent or unclear about the permissibility or legitimate reasons for alimony modification, judges had to analyze the reasons alimony existed in order to explain their decisions.[122]

Intriguingly, only a few cases considering an ex-wife's right to continue collecting alimony upon remarriage reached states' highest courts through the mid-nineteenth century. These courts' holdings were inconsistent and often considered other facts and legal arguments, making it unclear whether the remarriage was determinative. To the extent these opinions directly commented on the remarriage, two courts expressed discomfort with the possibility that a remarried wife could pursue alimony from her first husband (in one they envisioned the second husband as the co-plaintiff, even though he had already died), while a third found that view "certainly questionable."[123]

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[121] Note, "Revision of Alimony Decrees," *Harvard Law Review* 26, no. 5 (Mar. 1913): 441. Notably, a husband's increased expenses (such as because he remarried) could not be a basis for the reduction in alimony. "Divorce—Alimony—Avoidance by Subsequent Marriage," *Yale Law Journal* 12, no. 8 (June 1903): 510.

[122] Sammis v. Medbury, 14 R.I. 214, 216 (1883) (explaining why alimony following divorce a vinculo should follow different modification rules than for divorce a mensa).

[123] Bankston v. Bankston, 27 Miss. 692 (1854) (finding it would be inequitable to allow a remarried wife to seek alimony from first husband twenty years after divorce, when she had received two-thirds of his estate at that time); Ablee v. Wyman, 76 Mass. 222 (1857) (declining to enforce an ex-wife's separation agreement with first husband on the basis that it was superseded by an alimony award and observing that whether a "mere divorce and subsequent marriage would be held to discharge" the defendant's liability for alimony "is certainly questionable"); Bowman v. Worthington, 24 Ark. 522

With the law so unsettled, a New York court's clear holding permitting continued alimony garnered significant attention. In *Shepherd v. Shepherd* (1874), a trial court considered whether a wife's remarriage should terminate the previous husband's alimony obligation. The woman was receiving alimony from two past husbands while married to a third, and it was the second husband who sought modification. The court reasoned that the alimony decree had not been made contingent on the wife's remaining single. The relevant statute "expressly secures the wife the right to marry again where she is the innocent party to the decree," the court declared. "And it neither expressly, nor by any reasonable implication, deprives her of her allowance by way of alimony for so doing." Since alimony was an "entirely statutory" remedy, the court did not have discretion to modify the award absent legislative authorization. The court also offered an alternative rationale that was more frequently recounted in later cases and law review articles. The court explained: "In one sense, [the alimony] was a *punishment* justly imposed upon [the ex-husband] for the violation of his marital obligations; and that reason exists with as much force at this time, for its continuance," as when it was originally ordered. The New York Court of Appeals affirmed without opinion.[124]

(1867) (After death of wife's second husband, she pursued alimony from the first. The Court determined it lacked jurisdiction to grant wife alimony because of relief she sought in another state. The Court then continued that if it were mistaken on the jurisdiction issue, a different reason she could not recover was that she had remarried. It would not accord "with propriety and good sense" to allow her to recover from the first husband. The Court expressed discomfort with the fact that, if the second husband were still alive, he would have been joined in the action to sue the first husband.). The possibility a second husband might be the one to benefit from alimony was not merely speculation. For instance, in one case a second husband was able to recover unpaid alimony from the first husband after the wife died. *See* "Husband Gets Alimony," *Xenia (OH) Daily Gazette*, Oct. 7, 1896, 2.

[124] Shepherd v. Shepherd, 1 Hun 240, 241-42 (NY Sup. Ct. First Dept., 1874) (emphasis added), affd. 58 N.Y. 644 (1874). In a fascinating New York case a few years later, a man sought to modify his alimony obligations after remarrying his ex-wife, even though the divorce decree banned him from marrying anyone. The court refused his relief on the basis that the remarriage constituted a misdemeanor and so should not provide a basis for him to cease paying alimony. Moore v. Moore, 8 Abb. N. Cas. 171 (N.Y. City Court, 1877). Though New York's punishment theory was routinely condemned in the following decades, a critic writing in 1916 found that "the idea keeps cropping up at frequent intervals" despite being "illogical." In the writer's view, alimony "should be concerned with only one thing – the provision for the support of the wife." F. Granville Munson, "Some Aspects of the Nature of Permanent Alimony," *Columbia Law Review* 16, no. 3 (Mar. 1916): 217, 228-29.

In the next major opinion on this issue, in 1881, the Supreme Court of Illinois characterized New York's approach as "neither conclusive nor satisfactory." The Illinois decision proceeded on a somewhat different basis because the relevant statute there allowed the court to modify alimony decrees when "reasonable and proper," but did not specify whether remarriage was a permissible reason. Drawing from English ecclesiastical precedent, the court explained that alimony existed to continue the husband's marital financial duties which, absent legislation, would end upon absolute divorce. The court also found it probative that alimony ceased upon the death of the wife and could not continue to be collected by her estate, which indicated that the purpose of alimony was to provide the wife with support. When she remarried, such aid was no longer needed. "It would be difficult to suggest or conceive any cause that would present grounds more 'reasonable and proper' for suspending further payment of alimony than the subsequent marriage of the divorced wife," the court determined. "Aside from its positive unseemliness, such a policy finds no support in any equitable consideration." It would be "illogical as well as unreasonable" for a wife to simultaneously have support obligations from two men. Addressing the counterargument that such a result might constitute an unlawful and undesirable restraint on marriage, the court pointed to the expiration of widows' military pensions upon remarriage to dismiss this concern. If a wife wished to remarry and thereby forfeited her claim to alimony, that was "a matter of her own voluntary election."[125]

The following year, the Supreme Court of Ohio charted a compromise: an ex-wife's marriage to a new man did not automatically terminate alimony but "may, in some cases, afford sufficient ground for reducing the amount."[126] Other courts followed and elaborated on this approach, which

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[125] Stillman v. Stillman, 99 Ill. 196 (1881). See also Harrie M. Humphreys, "Remarriage of the Wife a Ground for the Reduction of Alimony," *Central Law Journal* 35, no. 25 (Dec. 16, 1892): 480-82 (casting the New York approach "as leading into an inextricable legal tangle").

[126] King v. King, 38 Ohio St. 370 (1882). See also Williams, "Alimony," 138.

notably gave judges more discretion than a rule that automatically terminated or continued alimony payments. Some courts taking this view expressly recognized that alimony served a blended purpose—incorporating the wife's contributions to the husband's property upon and during marriage, her inchoate dower, and the husband's "obligations to support her in a manner suitable to her station in life." Based on this understanding, a variation on the compromise approach was to attempt to assign values to different components of an alimony award. Where alimony reflected property division, it followed that it should not be subject to modification. But where its purpose was maintenance, a wife's new marriage could justify reduction or even termination.[127]

While attractive in theory, the move to disentangle the components of an alimony award was difficult in practice. An Ohio case demonstrates this with unusual explicitness. In that case, a wife's remarriage prompted her millionaire ex-husband to seek alimony modification. The judge hearing the case acknowledged that a "cursory investigation" of case law indicated that remarriage terminated alimony, perhaps because of "the repugnance felt towards the anomalous position of a wife being released at her own request of all obligations towards her former husband, and thereafter receiving assistance and support from him as well as from a possible second husband." Still, it seemed unfair to this judge for the at-fault first husband—whose significant wealth was "perhaps augmented through the efforts of the wife"—to be relieved of financial obligations for reasons unrelated to his conduct. Thus, the judge reduced the alimony amount to represent that the wife no longer needed maintenance but should be compensated for her proportional contributions to the husband's estate.[128] Unfortunately for the wife, the appellate court was not persuaded by this approach. In a far briefer opinion, that court reversed on the narrow basis that the alimony decree

[127] Brandt v. Brandt, 67 P. 608 (Or. 1902).

[128] Madden v. Madden, 18 Ohio Dec. 167, 169, 175 (Ct. Common Please, Hamilton County, Ohio 1907); "Reduced: Madden's Alimony Order," *Cincinnati Enquirer*, July 28, 1907, 12.

had incorporated an earlier award of separate maintenance, which could have been based only on the wife's needs and not property division. Thus, the lower court could not retrospectively find different bases for components of the award.[129]

In the following decades, jurisdictions remained divided over the permissibility and rationales for modifying alimony upon remarriage. A particularly insightful law review article published in 1892 recognized that "the difference in opinion is based upon the light in which alimony is viewed." Some states permitted alimony to a wife "as that to which she in equity would be entitled, either as having been accumulated by their joint labor, or as having been set apart to her much in the nature of dower." In a striking analogy, the writer explained that under this approach, alimony

> is well likened to the property of a partner which, the partnership being dissolved and the assets divided between the members in proportion to the original amount invested, is held by the other partner as a trustee for the first, the share of the first to be paid to him at certain times and in certain specified amounts by the second.

Thus, the wife's alimony should not be terminated upon remarriage. Yet other states' courts, he explained, considered alimony following divorce *a vinculo* to be a mere allowance, akin to that provided after divorce *a mensa*. Under this reasoning, a wife's remarriage rendered the ex-husband's contribution unnecessary and even "an unjust burden."[130]

Gradually the weight of authority shifted toward holding that the wife forfeited alimony if she remarried.[131] Termination of alimony upon remarriage seemed to better fit social mores and

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[129] Madden v. Madden, 21 Ohio C.D. 30 (Circuit Ct. Ohio, 1908); "Madden: Triumphs Over Ex-Wife," *Cincinnati Enquirer*, July 19, 1908, 8.

[130] Humphreys, "Remarriage of the Wife," 480.

[131] Compare "Remarriage Affecting Payment of Alimony," *Ohio Legal News* 5 (Feb. 7, 1898): 124 (finding issue decided by only three courts of last resort and finding split among courts at all levels) with Browne, "Law of Marriage and Divorce," 340, 353 ("in most states the wife's marriage to another man does" discharge the alimony obligation).

practical concerns. Ongoing alimony payments made it financially difficult for the husband to remarry, which in turn might prompt immorality.[132] And some wives seemed to feel stigma about continuing to collect alimony when married to a different man.[133] In some places legislatures moved this direction by statute. For instance, the New York legislature passed a law authorizing modification of alimony decrees in 1895.[134] Still, judges there remained unsure to what extent remarriage justified or required modification.[135] So in 1904, the legislature went further, passing a bill stating that if the husband-defendant provided proof of the wife's remarriage, the court "must… annul[]" the provisions "directing payments of money for the support of the plaintiff," though obligations to support minor children would remain in place.[136] A commentator suggested the statute was "not to be taken as implying the injustice of alimony." Rather, the statute clarified that alimony "is surely designed for the protection of an injured wife and more particularly the

132 "Reduction of Alimony," *American Lawyer* 5, no. 5 (May 1897): 202-3. See also Emerson v. Emerson, 87 A. 1033 (Md. 1913) (identifying that inconsistent ideas about and even terminology describing "alimony" led to difficulties in determining whether alimony should be terminated upon remarriage and holding that the better rule was that alimony did terminate, though "there may exist facts and conditions that would induce the court to withhold this relief").

133 For instance, the former wife of a Vanderbilt pledged she would stop receiving alimony if she remarried. When she married a man with much less money, however, she changed tunes—instead justifying her collection of alimony by donating significant amounts to charity and being generous to her employees. "The Woman Who Gets the Most Alimony," *Chicago Daily Tribune*, Dec. 30, 1906, F1.

134 Prior to this statute, judges had developed a common practice of inserting a clause in judgments to reserve a right of modification. "Modification of Provisions for Alimony after Judgment," *Albany Law Journal* 60, no. 26 (Dec. 1899): 408.

135 For an example of judges' tentative steps on this issue, see Kirafly v. Kirafly, 73 N.Y.S. 708, 709-10 (Sup. Ct. N.Y. 1901) ("While it has been held that the remarriage of a woman who has obtained a divorce from her husband does not, of itself, entitle the former husband to the annulment of a provision for alimony in the final decree of divorce, still it seems to me that such remarriage constitutes a very important factor in the determination of an application by the former husband for a modification of the decree.").

136 *Laws of the State of New York, Passed at the One Hundred and Twenty-Seventh Session of the Legislature*, vol. 1 (Albany: J. B. Lyon Company, 1904), 885-86.

maintenance of young children and not as an investment for frivolous women which makes United States gold bonds look like the proverbial thirty cents."[137]

The determination that alimony was modifiable, including that it could be terminated upon remarriage, emphasized the facet of alimony that was tied to a wife's maintenance, rather than her contributions to the accumulation of marital wealth. Although not all jurisdictions joined this stance, that influential states like New York did so likely shaped lawmakers' and others' perceptions of marital partnership itself. Moreover, as discussed in the next chapter, the fact that alimony was modifiable presented major complications for its enforcement across state lines.

Alimony and the Reinforcement of Gendered Dependency

While most family support litigation and discussion assumed wives were the party that needed financial protections, MWPA and related changes to women's economic and legal rights raised questions about the appropriateness of this one-sided liability. Perhaps the clearest way this tension arose was when men sought to obtain separate maintenance or alimony from their wives. A minority of lawmakers and commenters—especially in the Midwest and West and including some suffragists—believed that advancements in women's rights rendered it fair for marital duties to become reciprocal in at least some circumstances, such as when a husband was destitute. A husband in Ohio, a state at the forefront of allowing men to receive alimony, captured key components of this reasoning. He began by noting that he was old and "feeble," while his wife had money. "In years gone by I shared my earnings with her," he recalled. "Why shouldn't I now have alimony?"[138]

[137] "New Alimony Club," *American Lawyer* 12, no. 10 (Oct. 1904): 427.

[138] "'Certainly, Wife Should Pay Alimony,' Says Akron Man, Who Is Suing to Collect It," *Akron Evening Times*, Apr. 30, 1915, 4.

The answer in most states was that alimony was a woman's remedy, rooted in female dependency. Judges, legislators, and other discussants justified excluding husbands from receipt of alimony and like financial relief by citing men's typically superior economic standing and obligation to perform labor to support themselves. Though these commenters occasionally were willing to entertain the possibility that women's increasing legal rights might warrant reducing the frequency of alimony awards to wives, the inverse proposition was unthinkable. That some wives could be self-supporting did not require acknowledgement that some husbands were dependent. Yet even while claiming to maintain gendered remedies for marital dissolution, judges' discretion to divide property and adjust inheritance interests did not leave men completely unprotected. Rather, judges' methods of transferring assets to husbands—which discussants denied constituted "alimony"—obscured the reality that some men did indeed rely on their wives' resources. Especially by reassigning property, courts could secure relief for men without directly challenging gendered conceptions of need.[139]

Around the turn of the century, a few Midwestern legislatures and courts showed openness to allowing men to receive alimony to varying degrees.[140] In one of the earliest moves, Ohio passed a law in 1893 that authorized courts, when granting divorce "by reason of the aggression of the wife," to grant a husband alimony from the wife's real and personal property in a lump sum or installments

[139] Some men denied they sought alimony, likely reflecting the stigma attached to male dependency. "Doesn't Want Alimony," *St. Louis Post-Dispatch*, Nov. 22, 1896, 23 (Husband "claims that an effort has been made to create the impression that he was unwilling to work, and had asked his wife to pay him $15 a week alimony. These statements he says are wholly false, as he has never, directly or indirectly, asked his wife for alimony."). *See also* "Capt. Taggart Does Not Want Alimony," *Oakland Tribune*, Aug. 10, 1905, 5.

[140] A few earlier cases held that men were not eligible for alimony because state statutes did not authorize this remedy. It is notable that all of these cases arose in the Midwest and proceeded to the states' highest courts. Somers v. Somers, 17 P. 841, 845 (Kan. 1888); Meldrum v. Meldrum, 24 P. 1083, 1088 (Colo. 1890); Green v. Green, 68 N.W. 947 (Neb. 1896).

"as the court deems just and equitable."[141] Law review and newspaper coverage documents that some men received alimony pursuant to this law.[142]

Perhaps inspired by Ohio, a Chicago judge awarded temporary alimony to a man in 1896, despite the fact that the Illinois legislature had not passed a law like Ohio's. In the course of a divorce proceeding, the judge ordered the plaintiff-wife to give her husband alimony *pendente lite*, an amount to support a partner as a suit progressed (commonly awarded to women). According to the judge, "[t]he moral obligation is just the same," for both spouses. Newspapers explained that the wife could afford the twenty dollars per month because of assets she inherited upon the death of her late husband. Her current husband was "old, feeble and destitute and would be compelled to apply to the County for support unless the wife came to his aid."[143] Though an appellate court soon reversed the trial court's novel order on the basis that there was no statutory authority, the situation first sparked discussion in nearby states.[144]

Midwestern news articles, with varied degrees of facetiousness, construed the man's alimony award as a natural and perhaps fair evolution in women's increasing legal rights. Papers reprinted coverage under headlines such as, "A Chicago Judge Calls the 'New Woman Bluff' and Makes Her

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[141] At the same time, they passed a parallel law about a wife's rights when the divorce was for the husband's aggression. James M. Williams, *The Revised Statutes of the State of Ohio*, 3rd ed. (Cincinnati: H. W. Derby & Co, 1884), 30.

[142] "Current Topics," *Albany Law Journal* 57, no. 6 (Feb. 1898): 84; "Husband Gets Alimony," *Times-Tribune* (Scranton, PA), May 11, 1901, 1 (carrying story on Cincinnati); "Wife Gets Divorce; Husband Gets Alimony," *Salt Lake Telegram*, June 28, 1912, 8 (carrying story about Cleveland). Iowa's alimony statute was also understood as allowing judges to grant alimony to husbands. McDonald v. McDonald, 90 N.W. 603 (Iowa, 1902); Lindsay v. Lindsay, 178 N.W. 384 (Iowa, 1920).

[143] "She Must Support Him," *St. Louis Post-Dispatch*, Feb. 18, 1896, 10.

[144] In a brief opinion, an Illinois appellate court simply stated that there was "no reciprocal duty" at common law, and the divorce statute "gives her—not him—alimony. To give it to him is not to administer existing, but to make new, law." Groth v. Groth, 69 Ill. App. 68 (App. Ct. Ill., 1896).

Pay Alimony."[145] Another article suggested: "The new woman asks for equal rights, moral and civil, with man. But rights imply obligations. With every increase of civil or moral rights there must be in justice an increase of responsibilities."[146] And an Iowan paper quipped: "If the new woman will insist on wearing the pants she will have to learn how to go down into their pockets."[147]

Law review contributors made similar connections between women's rights and men's alimony. A contributor to the *Chicago Law Journal* observed that because legislation had been readjusting marital relations, "the bestowal and acceptance of such equality impose upon the wife an equal share of the duties and obligations which before rested entirely upon the husband."[148] Similar reflections were offered outside the Midwest, too. In "The 'New Woman' in Court," a contributor to the *Harvard Law Review* argued that the extension of liability to wives reflected "common fairness." Though acknowledging that "[t]here may be a difference of opinion" on the issue, he suggested "so much has been justly said against the fairness of modern legislation, as removing woman's disabilities without imposing upon her the corresponding burdens, that it is rather refreshing to see this very legislation instrumental in imposing the 'burdens' with a vengeance."[149]

Other writers expressed skepticism about extending liability to wives, despite trends toward sex equality. An article that collected and analyzed coverage from other sources argued that "the movement to secure alimony to husbands is not a legitimate and logical, but only a superficial outgrowth of the spirit of democratic marital equality." Alimony was appropriate for wives because

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145 "A Chicago Judge Calls the 'New Woman Bluff' and Makes Her Pay Alimony," *Hutchinson (KS) News*, Feb. 19, 1896, 1; "Wife Must Pay Alimony," *Xenia (OH) Daily Gazette*, Feb. 19, 1896, 2.

146 "Woman's New Estate," *Windsor (MO) Review*, Feb. 20, 1896, 4.

147 [No Title], *Morning Democrat* (Davenport, IA), Feb. 23, 1896, 2.

148 "Right of Husband to Alimony," *Albany Law Journal* 55, no. 2 (Jan. 1897): 25 (reprinted from *Chicago Law Journal*).

149 Note, "The 'New Woman' in Court," *Harvard Law Review* 10, no. 3 (Oct. 1896): 177.

the husband typically was the "money-getter" and had control over family funds, the author explained. Wives' increased property rights did not serve to "morally entitle husbands to alimony, but rather, it would seem, to *lessen the number of cases in which alimony should be granted to wives*."[150]

Some Midwestern legislative debates likewise indicated a concern about how mutual alimony obligations would undermine gender norms. For instance, in 1901, the Michigan legislature declined to pass a proposed bill that would authorize courts to grant alimony to husbands. According to a reporter, one legislator "[voiced] the general sentiment that he had no sympathy with husbands of this stripe."[151] Men were expected to work to support themselves, not to adopt the emasculating posture of dependency.

In states where men clearly could not receive post-divorce alimony because of statutory text, courts faced the question of whether they could award separate maintenance if the couple remained married. The first notable example arose in in 1896 in Los Angeles, where a trial judge faced a pathetic set of facts. Samuel and Mary Livingston, who were 83 and 79 years old, respectively, had married in Minneapolis in 1881. According to newspaper coverage, Mary had persuaded Samuel that they should first live off his $2,000 savings because her $10,000, received from her ex-husband, was better invested. After they spent Samuel's money, Mary attempted to have him committed to an insane asylum. When this was unsuccessful, he sued for divorce. Upon learning from his lawyer that he would likely end up penniless because all the property was in his wife's name, he dropped the divorce suit and instead sought separate maintenance of $75 per month to avoid destitution. This was seemingly permitted under a California statute that required a wife to support her husband "out

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150 "Equality Before the Law," *Seattle Post-Intelligencer*, Mar. 21, 1897, 4 (emphasis added).

151 "For Abused Husbands," *News-Palladium* (Benton-Harbor, MI), Mar. 28, 1901, 13; "Day with the Lawmakers," *Detroit Free Press*, Apr. 24, 1901, 2 ("The purpose of the measure is to protect old men who marry young women, the contention being that the latter get their husbands to deed over their property and then secure divorces."); "Willis' Strong Words," *Detroit Free Press*, May 9, 1901, 2.

of her separate property, when he has no separate property, and he is unable, from infirmity, to support himself." A reporter for the *Los Angeles Herald* was sympathetic to the husband, observing that "when a man sues his wife for support the world looks on, wags its wise head and thinks the poor fellow might do better with his money… than give it to an attorney to make an impossible fight." Still, the writer thought "it is a poor law that won't work both ways, and there are cases where the man suffers very real hardship."[152]

Though wives were clearly responsible for supporting their destitute husbands under the California statute, the law did not include any provision authorizing a court to enter an order to that effect. This quickly became a problem because Mary refused to comply with an order to pay $24 per month, and she was sent to jail for contempt of court. If the court were not authorized to enter such an order, this incarceration was unlawful. The California Supreme Court concluded that the lower court had not erred. Citing *Galland*, in which it relied on inherent equity powers to grant a wife alimony without divorce, the court held that it could also extend this relief to a husband.[153]

In 1911, the Nebraska Supreme Court received significant attention for a similar holding. Emma and Claus Hagert had married in Sweden in 1880, and they had later divorced and remarried each other. Since the remarriage, their domestic life had been "trouble galore," according to newspaper coverage. The husband was elderly, infirm, and destitute, while the wife owned significant land. The wife filed for divorce in 1909, and the husband cross-filed, also asking for temporary alimony and suit money for the pendency of the litigation. The judge determined he

[152] "Suing for His Support," *Los Angeles Herald*, Sept. 1, 1896, 10. An earlier account suggested that a trial judge had dismissed the divorce suit and advised that a suit for maintenance might be permissible. "Suing His Wife for Alimony, *Los Angeles Herald*, Apr. 7, 1896, 8. On the original divorce filing, see "Time for a Divorce," *Los Angeles Times*, Mar. 17, 1896, 8.

[153] "A Woman in Contempt," *Los Angeles Herald*, Feb. 16, 1897, 10; "Feminine Indiscretion," *Los Angeles Herald*, Mar. 3, 1897, 10; Livingston v. Livingston, 49 P. 836 (Cal. 1897).

lacked statutory authorization to grant the husband this pre-judgment relief, and he also denied the divorce. The Supreme Court of North Dakota affirmed the decision regarding pre-judgment support, writing that only the legislature had the power to change the law "to allow the husband alimony in recognition of the wife's liability to support him."[154] Two years later, the wife filed for divorce again, this time accusing her husband of committing adultery. Instead of also seeking a divorce, the husband now responded with an action for separate maintenance, as well as temporary support and counsel fees. The trial judge sided with the husband. While the wife appealed, the husband became so impoverished, a newspaper reported, that he often went without food. The board of county commissioners had to support him, providing aid the man pledged to repay if the highest court decided in his favor.[155]

The North Dakota Supreme Court relied on its inherent powers in equity to affirm the separate maintenance award for the husband. The court explained that the state had a statute that required a husband to support himself and his wife from his labor and for the wife to support her husband "out of her separate property, when he has no separate property and he is unable from infirmity to support himself." Much like the California statute, the North Dakota law did not include any enforcement mechanism. The court thus turned to the widespread use of courts' equity powers to grant wives separate maintenance to conclude that it could extend this reasoning to award support to the husband. The result was justified in part because of the "the advance of the rights of womankind from a position of subordination to man to the present plane of civil equality of the

[154] "Hagert Troubles to Be Aired Before High Court," *Grand Forks (ND) Herald*, Nov. 4, 1909, 5; Hagert v. Templeton, 123 N.W. 283, 284 (N.D. 1909); "Decision in Hagert Case," *Grand Forks Herald*, Apr. 15, 1910, 10.

[155] "County to Aid Claus Hagert," *Grand Forks Daily Herald*, Nov. 13, 1910, 2; "Hagerts Are at It Again," *Grand Forks Daily Herald*, May 18, 1911, 10; "Cline Woman Went on Stand in Action," *Grand Forks Herald*, June 17, 1911, 5.

sexes in personal and property matters."[156] The decision garnered nationwide press, often under misleading headlines indicating a North Dakota husband could receive post-divorce "alimony."[157]

Figure 6: Cartoon of husband receiving alimony award from a judge in North Dakota[158]

Commenters were mostly unpersuaded by the North Dakota court's reasoning, even as they acknowledged that needy husbands could be appropriately awarded wives' property. According to a contributor to the *Michigan Law Review*, the decision "has attracted far more than the customary interest among the laity and has subjected the court rendering it to a considerable amount of criticism, besides furnishing the basis of no end of humor throughout the country." The author thought the more persuasive way to justify aiding impoverished husbands was through property allocation.[159]

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156 Hagert v. Hagert, 133 N.W. 1035, 1038-40 (N.D. 1911).

157 "Wife Must Support Husband, Says Court," *Grand Forks Daily Herald*, Nov. 27, 1911, 5; "Wife Compelled to Pay Alimony," *Detroit Free Press*, Nov. 28, 1911, 11; "Husband Can Get Alimony," *Washington Post*, Nov. 28, 1911, 1.

158 F. T. Richards, "Alimony for Husbands in Dakota," *Life* 58, no. 1522 (Dec. 28, 1911): 1167.

159 WRM, "Right of Husband to Recovery Alimony Independent of an Action for Divorce," *Michigan Law Review* 10, no. 5 (Mar. 1912): 402.

The following year, a *Harvard Law Review* contributor captured the prevailing view that husbands should not receive separate maintenance or alimony. The wife's longstanding ability to obtain such relief had not been based merely on common law principles, which arguably could be extended to the husband because of women's increasing equality. There was "a deeper reason… for the wife's right to support from her husband, namely, the fact that the woman is in the nature of things dependent on the man." The statutes that enlarged women's rights at most indicated "only that the right [to alimony] should be denied the wife." Though a man could receive support from his wife's property, the writer acknowledged, this "is wholly distinct from alimony technically so called."[160] In these years, courts in Oklahoma, California, and Wisconsin likewise found no power to grant alimony to husbands because of statutory text, though the result could be softened through property division.[161]

By the mid-1910s, Midwestern openness to awarding support to men remained the minority approach. Ohio and nearby states reported the highest number of men seeking and receiving alimony.[162] An article published in several sources in 1913 interviewed the trial judge from the 1896 Chicago case and reported that he continued to maintain that husbands should be eligible for alimony. Under the subheading "If the Feminine Partner of the Firm Has the Means and the Other Partner Has Not, Why Shouldn't She Settle for the Liabilities?," the judge pled his twenty years of experience handling divorce cases to argue that "reciprocity" between the sexes would be

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[160] Note, "The Right of Husband to Sue Wife for Alimony," *Harvard Law Review* 25, no. 6 (Apr. 1912): 556-58.

[161] E.g., Brenger v. Brenger, 125 N.W. 109 (Wis. 1910); Poloke v. Poloke, 130 P. 535, 536 (Okla. 1913); Eisenring v. Superior Court, 158 P. 1062 (Cal. App. 1917). Several lower courts in Washington awarded alimony to husbands in the 1910s, but the state's supreme court found this not permissible under the state's statute in 1922. For sample newspaper coverage, see "Husband Gets Alimony," *Los Angeles Times*, Jan. 5, 1914, 4 (reporting on Seattle). The case is Jacobson v. Superior Court, 207 P. 227 (Wash. 1922).

[162] "6,000 Women Pay Alimony, Census Report Reveals," *Brooklyn Daily Eagle*, Nov. 3, 1912, 22; "Alimony for Husbands?," *Chicago Daily Tribune*, Apr. 24, 1915, 426.

appropriate. Recognizing that this idea still appeared novel, he "declare[d] that all law is made up of what were once regarded as alarming precedents by the communities." The article's author, who clearly had a larger agenda, focused instead on how sex equality could eliminate wives' alimony. He speculated: "The clamor of the sisterhood for equal rights may subside to a still small voice if they realize that with that acquisition they lose their most valued prerogative—alimony."[163]

Some proponents of women's suffrage also embraced possible connections between women's rights and changes to alimony law. For instance, following the North Dakota case, suffragists in St. Louis went on record as supporting the decision. "They think it is an important recognition of the equality of the sexes and will aid them in their fight to obtain the right to vote in this State," read a newspaper article reprinted in other states. The president of the Equal Suffrage League of Missouri praised the case and added that she was "considering the question of whether all alimony should be abolished in Missouri in the event women are given the right to vote." The wife of the dean of the medical school at Washington University in St. Louis concluded: "Those of us who believe in equal rights believe also in equal obligations."[164]

But equal obligations in alimony were not universally embraced as a matter of law for more than a century. Instead, lawmakers in most jurisdictions continued to maintain that alimony and separate maintenance were women's remedies. Wives were expected to be dependent on their husbands, and so well-behaved wives could expect court enforcement of husbands' financial duties

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[163] "Should Women Pay Alimony? Why Not?," *Chicago Daily Tribune*, Feb. 23, 1913, G5; "Shall Women Pay Alimony?," *Law Student's Helper* 21, no. 4 (Apr. 1913): 16-18.

[164] "Suffragists Favor Alimony for Men," *Philadelphia Inquirer*, Dec. 3, 1911, 47; "Women Approve Alimony for Men," *Fort Wayne Sentinel*, Dec. 11, 1911, 15. For similar discussion, see Helen Dare, "Ethics of Alimony and Matrimony to Be Fixed," *San Francisco Chronicle*, Aug. 14, 1910, 28 (describing Eastern club women advocating against permanent alimony in childless marriages); "Alimony Merely One Sided Form of Grafting," *Asheville (NC) Citizen-Times* (reprinting story from New York), Sept. 4, 1910, 17 (arguing women should get half the marital property and no alimony); Georgia Earle, "Do Our Courts Stimulate Divorce by Awarding Too Big Alimony?," *New York Tribune*, July 31, 1910, C5 (suggesting pride should keep a wife from accepting money from a man with whom she wouldn't live. Accepting alimony, she suggested, "doesn't seem to me to be square or sturdy or American.").

upon separation or divorce. This remedy bolstered marital expectations, whereas extending "alimony" to men would have challenged prevailing gender norms. Still, the judicial discretion cultivated in the context of awarding support to wives did permit courts to partially address husbands' needs. Courts could discretely fashion property allocation to protect husbands, in recognition of the men's contributions to marital wealth, inability to work, or appropriate husbandly conduct. Because property division was not the gendered remedy of "alimony," this did not seem to pose a direct challenge to traditional marital rights and duties.[165]

Conclusion

Throughout the nineteenth and into the twentieth centuries, legislators and judges authorized alimony and other support payments to help control marital behaviors and protect marriage as a gendered institution. They permitted and refined four types of separations in order to facilitate this regulation. Whether motivated by religion, politics, or the hope that spouses might reconcile, many commenters appreciated that courts could grant support to a wife without her being pushed to seek an absolute divorce. Judges could keep undeserving spouses locked in marriage, even while preventing the wife from becoming destitute. In granting separate maintenance or alimony, judges sometimes acknowledged that women's contributions to marriage warranted economic recovery. Yet overall, judges' support decrees reified women's status as dependents and men's role as providers.

Lawmakers knew that the system they constructed was far from perfect. Newspapers routinely described the logistical, financial, and legal obstacles to recovery. The next chapter turns to

[165] By the 1930s, fifteen jurisdictions allowed a husband to receive alimony following absolute divorce in at least some circumstances and 24 allowed a court to give him part of his wife's property. Fewer allowed men alimony for limited divorce. Vernier, *American Family Laws*, 262, 303-308, 456. The U.S. Supreme Court held that states could not require that only husbands pay alimony in 1979. Orr v. Orr, 440 U.S. 268 (1979).

men's strategies for evading support enforcement. Though lawmakers made a concerted effort to close legal loopholes, they were only partly successful in countering men's tactics. The ingenuity they showed in broadening the support orders available to wives and ex-wives was undermined by broader legal rules and principles about debt and jurisdiction, especially when wives attempted to obtain or enforce orders across state lines.

Chapter Three
"Duty, not debt": Men's Challenges to Enforcement of Family Support Orders

Though spouses routinely pursued legal separations, and lawmakers showed a real willingness and even ingenuity in crafting meaningful financial protections for women, the receipt of court-ordered support was far from assured. Men sometimes attempted to circumvent the enforcement of alimony, separate maintenance, or property allocation through legal and extralegal means. They deployed three major evasion strategies: not complying while remaining local, declaring bankruptcy, and fleeing the jurisdiction.

Scholarship has emphasized a subtype of the third of these possibilities: desertion apart from any litigation. Historians have long recognized that some husbands abandoned their wives informally, without shouldering the costs of divorce.[1] The combined expense of court costs, attorney's fees, and alimony were surely more than some men would or could bear, especially if they saw a cheap alternative in leaving the state.[2] Recognizing this reality, social reformers sometimes called desertion the "poor man's divorce."[3]

The focus on extralegal desertion captures an important part of marital dissolution dynamics, but it overlooks other prevalent scenarios. Many men did not want to leave their communities,

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[1] It is impossible to know the rates of desertion. For a study that makes productive use of federal pension applications to understand the fluidity of marital status due to desertion and serial marriage in this period, see Beverly Schwartzberg, "'Lots of Them Did That': Desertion, Bigamy, and Marital Fluidity in Late-Nineteenth-Century America," *Journal of Social History* 37, no. 3 (Spring 2004): 573-600.

[2] For instance, Susan Tiffin, *In Whose Best Interest: Child Welfare Reform in the Progressive Era* (Westport, CT: Greenwood Press, 1982), 147, discusses how in Chicago in the early 1900s, a divorce cost fifty dollars, whereas the average laborer earned twelve dollars per week.

[3] For an example, see "Is Wife Desertion the Poor Man's Divorce?," *Wilkes-Barre (PA) Times Leader*, Aug. 28, 1907, 4. Michael Willrich discusses how social reformers adopted the language of "the poor man's divorce" around the turn of the twentieth century but pushes back against the accuracy of the phrase because many desertions were temporary or at least not originally intended to be permanent. Michael Willrich, "Home Slackers: Men, the State and Welfare in Modern America," *Journal of American History* 87, no. 2 (Sept. 2000): 460, 470-71.

employment, and children. Historians have found that non-wealthy men increasingly saw value in formal dissolution by the late nineteenth-century.[4] These men, like men of all classes, sometimes sought to evade resultant court-ordered payments while remaining local. When men did flee, it was not always in lieu of litigation. A significant number of men left to get a divorce elsewhere, and others moved after support orders were already in place. This chapter discusses legal contestations over whether and how courts could respond to men's tactics for evading support orders.

If a man had assets, a judge commonly backed an order for maintenance, alimony, or property division with liens, bonds, and similar mechanisms. As a treatise writer explained in 1886, courts in most states could order that a man subject to a support decree retain particular portions of his real property or estate, compel him to give security to guarantee payment and, failing this, enforce alimony through execution, attachment, or sequestration of property. These methods were seemingly effective to ensure payment by many men of means because most men did not want to forfeit their assets.[5] But if a man worked only for wages and had no property or savings—an increasingly common situation—these longstanding options were not available.

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[4] Lawrence M. Friedman, "Rights of Passage: Divorce Law in Historical Perspective," *Oregon Law Review* 63, no. 4 (1984): 549, 658 ("Divorce was thus not only a luxury of the rich, or an economic necessity for the middle class. It began to spread to the poor, to those who lacked an economic reason for divorce, but who shared the desire for regularity of status."). See also Dylan C. Penningroth, "African American Divorce in Virginia and Washington, D.C., 1865-1930," *Journal of Family History* 33, no. 1, (Jan. 2008): 21, 23 (finding that urban, middle-class African-Americans were "probably overrepresented in divorce cases, because they could better afford the fees and had more tangible property to fight over").

[5] Frederic J. Stimson, *American Statute Law* (Boston: Charles C. Soule, 1886), 704; Chester G. Vernier, *American Family Laws*, vol. II (Stanford: Stanford University Press, 1932): 290-92. These approaches seem to have been commonly known and used. For a few pieces of evidence, see Barber v. Barber, 2 Pin 297 (Wis. 1849) (discussing New York statute that provided that a husband be required to provide reasonable security for performance of alimony decree, and property could be sequestered if he failed to comply); "Big Alimony," *Atlanta Constitution*, Feb. 13, 1888, 5 (describing that wife's "handsome alimony" award was "being secured by a first lien" on her husband's possessions, valued at half a million dollars). Savvy men could sometimes evade even these methods. For example, see "Former Wife Brings Suit," *Visalia (CA) Times-Delta*, Dec. 31, 1907, 5 (describing how through sophisticated understanding of real property law, husband was able to trick ex-wife into surrendering lien on property that secured alimony award).

By the early twentieth century, the practice of backing support orders with specific assets was becoming untenable because of the spread of formal separations to non-wealthy couples and the disconnect between labor and tangible property. As one lawyer reported to his state bar association in 1907: "Not only is the divorce epidemic becoming prevalent in the so-called higher circles… but it is also spreading with alarming rapidity among the very poor." Though less dramatic for the class in between, the divorce rate was nevertheless "growing rapidly enough to threaten social meningitis." The reach of divorce to the working and middle classes, the author suggested, was problematic because those men could not afford to maintain two households, especially if they remarried.[6] By 1913, it had become clear that enforcing alimony awards was difficult because of "the increased number of men living on salary," according to a law review contributor. If divorce could be granted only when such men furnished large sums to create a trust or otherwise ensure future support payments, divorce would be out of reach for many. But forcing men to stay married might be no better for their dependents because the men could then spend their money as they pleased, rather than providing appropriate financial support. "It would seem that there is no way to escape the trouble," the writer worried.[7]

Newspaper articles also routinely emphasized the difficulty of support enforcement, even in the same coverage that trumpeted the ease with which women could obtain the initial orders. "Every begrudged dollar is given with a sneer and received with a tear—although the tear may be hidden beneath a woman's smile of triumph," one Chicago journalist observed. "Where one man in a thousand pays cheerfully and promptly, the other 999 resort to all sorts of subterfuges to evade

[6] Lewis H. Machen, "The Duty of the State to Diminish Divorce," in *Report of the Nineteenth Annual Meeting of the Virginia State Bar Association*, ed. John B. Minor (Richmond: Richmond Press, 1907), 226.

[7] John Lisle, "The Bases of Divorce," *Journal of the American Institute of Criminal Law and Criminology* 4, no. 1 (May 1913): 30, 45-46.

payment…. They give up their jobs rather than see the women they once promised to love forever get a share of their salaries." According to a woman lawyer practicing in Chicago, "no matter how much property a man may own, or how much money he may draw, when alimony is desired of him he becomes as poor as he can be."[8]

An article published in the *Minneapolis Star Tribune* in 1910 astutely catalogued the obstacles wives faced. "Ordinarily it is easy enough to obtain a divorce, if there is reasonable cause for it," the writer observed. "But it is one thing to say that a certain amount of alimony shall be paid, and a wholly different proposition when it comes to paying it." The man could have "quietly assigned his property to some trusty friend," or "'skipped' town before the first installment came due and flown to parts unknown." The wife would need to pursue "a long litany of litigation… during which, of course, [she] has to live on expectations."[9] Other press coverage indicated that the obstacles to recovery seemed so steep that some wives did not bother seeking alimony in the first place.[10]

When a man who lacked assets failed to comply with a support order, a court could turn to the common law option of jailing him for contempt of court. Countless courts used this method, though the extent to which it was helpful was debatable. The threat of a contempt proceeding likely contributed deterrence, but in practice it often resulted in the man sitting idly in jail rather than supporting his dependents. Moreover, judges and commenters increasingly perceived the incarceration of men for nonpayment of alimony as legally and morally suspect because of its incongruity with the mid-nineteenth-century abolishment of debtors' prisons. Nevertheless, most

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[8] "The Alimony Widow," *Chicago Daily Tribune*, Oct. 10, 1909, H1.

[9] "Minneapolis Wives after Alimony Have Trouble to Collect," *Minneapolis Star Tribune*, Jan. 2, 1910, 16.

[10] "She Declined to Accept Alimony," *St. Louis Post-Dispatch*, Mar. 3, 1904, 2; "Woman Refuses to Take Alimony After Getting a Divorce," *Inter Ocean* (Chicago), June 10, 1906, 4.

courts continued to permit the civil jailing of alimony nonpayers by developing the theory that alimony and like payments were not "debts" because they were "duties."

This duty-not-debt reasoning, in turn, helped push back against men's second legal strategy for alimony evasion: declaring bankruptcy. In a series of early-twentieth-century cases, the U.S. Supreme Court held that support payments were not dischargeable in bankruptcy, even though the plain language of the 1898 Bankruptcy Act more easily permitted the opposite interpretation. As in the contempt context, judges demonstrated a pronounced effort to uphold support orders—treating family support debt more favorably (from the wife's perspective) than other types. Lawmakers were unwilling to allow broader principles about the treatment of debtors to interfere with family support obligations.

Men's real success in avoiding liability was in fleeing the jurisdiction. While a portion of these evasions occurred with no court involvement, this chapter focuses on how such conduct could culminate in litigation. Common scenarios included a spouse pursuing a divorce in a state far from where the other lived or seeking recognition of an existing alimony decree in a new state. State courts varied in their willingness and rationales for honoring orders from sister states, though one discernible pattern was an effort to protect wives' financial interests.

During the same term in which the Supreme Court began protecting women's alimony awards from discharge in bankruptcy, the Court also endeavored to bring uniformity to states' treatment of foreign alimony and divorce decrees pursuant to the U.S. Constitution's Full Faith and Credit Clause. The clause, supported by enabling legislation, requires that states respect "the public acts, records, and judicial proceedings of every other State."[11] A prerequisite to qualify for full faith and credit is that the court issuing the order or judgment must have had jurisdiction over the matter.

[11] U.S. Const. art. IV § 1.

The question of which court should have jurisdiction over the dissolution of a marriage, when spouses lived in different places, was not easily answered. After a promising start in 1901, the Supreme Court muddled this issue so badly that for decades thereafter it was possible for one member of a couple to be married, while the other was not. In a related line of cases from the same years, the Court determined that alimony orders were subject to full faith and credit only when they were overdue, and so courts were not obligated to enforce foreign orders for future installments.

The Court's cases on foreign divorce and alimony orders were widely condemned for being unprincipled and impractical. While in isolation this might seem to indicate a lack of judicial resolve to enforce family support orders, or at least a harmful prioritization of state sovereignty over wives' needs, this chapter finds more nuanced reasons for the justices' seeming failures. But regardless of the rationales, the rules promulged by the Supreme Court posed major hurdles to effective enforcement of support orders in an increasingly mobile society.[12]

Nonpayment and Contempt Incarceration

Perhaps the most common noncompliant scenario was for a man to simply stop paying after a support order was in place. When this occurred, the orders were not self-enforcing. The wife had to pursue another round of litigation to get relief, an effort that could be expensive, time-consuming, and, in many instances, unsuccessful.[13]

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[12] For particularly helpful treatments of the complexities of divorce and alimony sought across state lines, see Ann Laquer Estin, "Family Law Federalism: Divorce and the Constitution," *William & Mary Bill of Rights Journal* 16, no. 2 (Dec. 2007): 381-432; Neal R. Feigenson, "Extraterritorial Recognition of Divorce Decrees in the Nineteenth Century," *American Journal of Legal History* 34, no. 2 (Apr. 1990): 119-67. Scholarship has devoted less attention to enforcement of locally obtained alimony orders across state lines.

[13] William H. Baldwin, *Family Desertion and Non-Support Laws* (New York: James Kempster Printing, 1904), 13 ("Even in the few cases where [the man] has some [property which can be reached by civil suit], the expense and delay of prosecuting the suit… make the remedy practically unavailable.").

If there was no collateral at stake, the wife's option was to ask a judge to hold the man in contempt of court. American courts' contempt power, which was inherited from English practice, allowed judges to incarcerate individuals who interfered with court proceedings or remedies in some way. Over time, contempt grew to encompass courts' enforcement of equitable orders, which is how alimony decrees were typically classed. The idea here was that the use of incarceration would incentivize the man to pay or perhaps motivate his friends and family to assist.[14]

The use of contempt incarceration for nonpayment of alimony became contested in the mid-nineteenth century, as states passed laws to protect debtors. As discussed in Chapter One, legislatures enacted Married Women's Property Acts (MWPA) beginning in the 1830s in order to insulate a portion of families' property from creditors. A related effort, pursued in the decades before and then blending with MWPA enactment, was to ban or limit so-called debtors' prisons that housed men who were unable to pay their creditors.[15]

The abolishment or restriction of debtors' prisons took varied forms. Historian Peter Cole dates the first major development to 1811, when Massachusetts banned imprisonment of petty debtors. Legal scholar Christopher Hampson emphasizes 1821, when Kentucky became the first state to abolish debtors' prisons altogether, soon followed by Ohio and Illinois. Regardless of precisely which legal reforms are identified as part of this effort, the important point is that every

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[14] That enforcement of alimony orders fell under a court's contempt power represented an expansion of the classic uses of contempt. According to one legal scholar, "typical" contempt scenarios included an "actual disturbance made in the court itself which interferes with the process of litigation," "direct insults to the court itself in its presence," and "any interference with persons or property which are in the hands of the court." Joseph H. Beale, Jr., "Contempt of Court, Criminal and Civil," *Harvard Law Review* 21, no. 3 (Jan. 1908): 161, 162-64. Another explained that "[a] refusal to do justice to other parties in equity suits came to be known as civil contempt; although it is not inherently a contempt of court at all. Confusion has inevitably arisen…." Note, "Nature of Criminal Contempt," *Harvard Law Review* 25, no 4 (Feb. 1912): 375, 375.

[15] For discussion of how these laws related to MWPA, see Richard Chused, "Married Women's Property Law: 1800-1850," *Georgetown Law Journal* 71, no. 5 (June 1983): 1359, 1402; Norma Basch, *In the Eyes of the Law: Women, Marriage, and Property in Nineteenth-Century New York* (Ithaca: Cornell University Press, 1982): 124, 157-58.

state ended imprisonment for debt in at least some contexts by the 1870s. The general trend was that states in the Midwest, West, and South enacted the most sweeping provisions, often enshrining abolition language in their constitutions. A representative constitutional provision read: "No person shall ever be imprisoned for debt."[16] By contrast, states in the Northeast and Mid-Atlantic tended to pass piecemeal statutory changes. Their legislatures chipped away at imprisonment for debt by, for instance, excusing women, absolving petty debtors who surrendered all of their property and took "debtor's oaths," and requiring creditors to pay prison expenses to discourage the use of incarceration for minor debts.[17]

The provisions against imprisonment for debt were understood as protecting poor men, as well as their wives and children. In a newspaper column explaining why such laws were so important, published in the *New-York Daily Tribune* in 1843, the writer cast imprisonment for debt as "a great moral wrong" that punished poverty and "confound[ed] innocence with crime." He also raised practical concerns. In the absence of such a ban, merchants sold items they knew a family could not afford, expecting that "some tender-hearted neighbor" would bail the man out of debtors' prison. Moreover, placing a debtor in jail "robs families of their subsistence." It was no help to the

[16] Peter J. Coleman, *Debtors and Creditors in America: Insolvency, Imprisonment for Debt, and Bankruptcy, 1607-1900* (Madison: State Historical Society of Wisconsin, 1974), 249-57; Christopher Hampson, "The New American Debtors' Prisons," *American Journal of Criminal Law* 44, no. 1 (Fall 2016): 19-25. Newspaper accounts support Hampson's casting of Kentucky, Ohio, and Illinois as leading a distinct new effort. See, e.g., "Imprisonment for Debt," *Workingman's Advocate* (New York), Feb. 27, 1830, 3. On the politics and practice of imprisonment for debt in an earlier period, see Bruce Mann, *Republic of Debtors: Bankruptcy in the Age of American Independence* (Cambridge, MA: Harvard University Press, 2002): 78-108.

[17] "Imprisonment for Debt," *Christian Secretary*, Dec. 25, 1830, 194 (describing regional variation in use and laws regarding debtors' prison); "Imprisonment for Debt," *Family Magazine*, May 1, 1841, 364 (describing gradual progression of statutes and variation by state). For a later survey focused on constitutional provisions, see J. C. Thomson, "Imprisonment for Debt in the United States," *Juridical Review* 1, no. 4 (1889): 357.

family for the man to be seized, "shutting him up in idleness, leaving his wife and children to charity or starvation."[18]

Given that bans on imprisonment for debt were intended in part to protect families from creditors, it was unclear what should happen when a man's creditor was his wife (or ex-wife), seeking recovery for herself and their children.[19] The first state supreme courts to face this question found it difficult. For instance, in 1868, the Supreme Court of North Carolina admitted it originally thought the state's 1866 law abolishing imprisonment for debt applied to alimony cases, "but upon a careful examination of the act," the court determined (with no explanation) that the ban applied only to cases at law and not those arising from equity.[20]

In the 1860s and 1870s, several state supreme courts in jurisdictions with broadly worded bans on imprisonment for debt cautiously concluded that contempt incarceration was still permitted for alimony nonpayment. In cases in which alimony took the form of an order *pendente lite* (temporary support during the pendency of the litigation) or for maintenance following a partial divorce, courts reasoned that the contempt was for failure to obey an ongoing order, rather than for a debt per se.[21] In cases of absolute divorce, some courts figured that alimony was a stand-in for property division. Since such alimony was akin to an equitable injunction on property, rather than

[18] "A Word to New Jersey," *New-York Daily Tribune*, Feb. 4, 1843, 2.

[19] There was some analogous precedent, though it is unclear whether any judges made the connection. In 1818, the Supreme Court of Pennsylvania held that a congressional act prohibiting arrest or imprisonment of soldiers for debts under twenty dollars contracted before enlistment or for any debts after enlistment did not apply when the man was charged under the poor law with deserting his wife and child. In that scenario, the imprisonment "[i]s not for a debt of any kind; he has made a contract with no person whatever. But he has been charged with a breach of duty, in deserting his wife and child, without providing any means for their support." Commonwealth v. Keeper of the Jail of Philadelphia, 4 Serg. & Rawle 505, 506 (Pa. 1818).

[20] Wood v. Wood, 61 N.C. 538 (1868).

[21] Ex Parte Perkins, 18 Cal. 60 (1861); Carlton v. Carlton, 44 Ga. 216 (1871).

tied to a contract or tort, arrears were not exactly a "debt."[22] The length, complexity, and hedging in these opinions indicate that judges found incarceration for family support nonpayment to be uncomfortably close to retaining debtors' prison. The Supreme Court of Illinois proclaimed that alimony contempt incarceration should be "limited to cases of necessity only, in accordance with the spirit that dictated the constitutional restriction" on imprisonment for debt.[23]

In these years, Missouri was the only state that took the contrary approach. The Missouri legislature had begun considering the abolishment of imprisonment for debt by 1821.[24] In 1843, it passed a statute disallowing imprisonment for "any debt or contract whatever."[25] It is unclear why there was no controversy regarding the relationship between this law and family support duties for more than two decades.[26] But in 1866, Edward and Mary Coughlin provided the test case. The Coughlins had been married for twelve years when the wife obtained a divorce, with an alimony award of $10 per month. Edward refused to comply. In the clever recounting of the *St. Louis Post Dispatch*, Mary, "though having no personal attachment to him, had an attachment issued from the

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[22] E.g., Wightman v. Wightman, 45 Ill. 167 (1867) (where alimony decree was made a lien on ex-husband's lands, his incarceration for refusal to pay was not imprisonment for debt because it "was not originally founded upon a contract"). This reasoning is clearer in the later case of Cook v. Cook, 64 N.E. 567, 573-75 (Ohio, 1902). There the Ohio Supreme Court recognized that earlier opinions explaining why contempt incarceration for alimony *pendente lite* did not violate the constitutional ban on imprisonment for debt may have implied that contempt incarceration for regular alimony nonpayment would be unconstitutional. The court instead determined that the justification used in the *pendente lite* cases—that the incarceration was for violation of an order rather than for nonpayment—was an extra rather than the sole rationale. Contempt incarceration was permitted for nonpayment of alimony following absolute divorce because this remedy "is in the nature of a partition" and recognizes "the right of the wife to participate in the accumulations which are presumably the result of their joint efforts and joint economies." Because alimony represented a share to which the wife was entitled, it was not a "debt," and therefore nonpayment still permitted incarceration.

[23] Goodwillie v. Millimann, 56 Ill. 523, 525-26 (1870).

[24] "Proceedings of the Legislature," *St. Louis Enquirer*, July 14, 1821, 3.

[25] "An Act to Abolish Imprisonment for Debt," *Radical* (Bowling Green, MO), Jan. 28, 1843, 3.

[26] Though the Missouri legislature enacted new domestic relations and MWPA laws in 1866, the pertinent language about how alimony could be enforced was essentially the same. For the previous version, see Charles Hardin, *The Revised Statutes of the State of Missouri* (Jefferson, MO: James Lusk, 1856), 664-65. For the new version, see A. F. Denny, *The General Statutes of the State of Missouri* (Jefferson, MO: Emory S. Foster, 1866), 561.

Court for his body." In other words, she sought to have him held in contempt, and he was indeed incarcerated on that basis. Edward had no money for alimony, the article continued skeptically, yet "succeeded in raising sufficient [funds] to engage a lawyer and present a petition to the Supreme Court for a writ of *habeus corpus*."[27]

In *Coughlin v. Ehlert*, the Supreme Court of Missouri held that because imprisonment for debt had been abolished, contempt incarceration was not permitted for alimony nonpayment. In contrast to the complex, detailed opinions issued by other states' courts, the Missouri court did not even mention the relevant statutory language. Rather, relying on dicta from a case from the previous decade involving dower interests in slaves, it simply stated: "As process against the body for the non-payment of debt cannot now be issued, there would seem to be no means of putting a party in contempt for disobeying orders or decrees for the mere payment of money." Contempt incarceration was still permitted, the court explained, if a person "disobeyed a decree for the performance of acts which are within his power. … If it were shown, for instance, that the party had in his possession a certain specific sum of money, or other things, which he refused to deliver up under the order of the court." Despite this caveat, the decision was interpreted both inside and outside the state as holding that nonpayment of alimony could never be addressed through contempt incarceration.[28]

It quickly became apparent to Missourians that the court's holding left them in an unacceptable position for handling family support delinquents. The next year, the legislature became the first in the country to pass a criminal law that addressed failure to support a wife. The statute

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[27] "Imprisonment for Debt—Habeus Corpus," *St. Louis Dispatch*, Oct. 29, 1866, 2.

[28] Coughlin v. Ehlert, 30 Mo. 285 (1866). The case cited on dower was Roberts v. Stoner, 18 Mo. 481, 484 (1853), in which the court held: "As process against the body, for the non-payment of a debt, cannot now issue, there would be no means of putting a party in contempt. These remarks are only intended for decrees for the mere payment of money."

made it a misdemeanor for a husband to "without good cause, abandon his wife, and fail, neglect, and refuse to maintain or provide for her," or to do the same regarding any legitimate child under age twelve.[29] Writing in 1869, the Missouri Supreme Court cast the statute as "entirely new in this State, and perhaps without precedent in the legislation of the country."[30] Unfortunately, the legislative record and newspaper coverage do not indicate legislators' intentions, but the timing suggests two possible motives. Most relevant here, lawmakers may have sought to partially reestablish the availability of incarceration now that contempt incarceration was not permissible. The 1869 opinion supports this interpretation; the court wrote that the law's "object is not primarily to punish the husband but to protect the wife, and to secure her against the consequences of such desertion."[31] Second, this law may have been part of Southern states' post-Civil War effort to use criminal law to impose family support duties on newly freed African Americans. Most states did not criminalize nonsupport of wives until the 1890s.[32]

After Missouri's misstep, all but one or arguably two courts concluded that alimony nonpayment could result in contempt incarceration, without violating rules against imprisonment for debt. That this approach was not inevitable is perhaps most provocatively demonstrated by the reception of a case authored by distinguished Michigan Supreme Court Justice Thomas Cooley in

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[29] David Wagner, *The Statutes of the State of Missouri*, vol. 1 (St. Louis: W. J. Gilbert, 1870): 467.

[30] Missouri v. Newberry, 43 Mo. 429, 432 (1869). For evidence the Missouri criminal nonsupport law was enforced, see for example Missouri v. Larger, 45 Mo. 510 (1870) (affirming conviction for misdemeanor abandonment and nonsupport under 1867 state statute); "Wife Abandonment," *St. Louis Post-Dispatch*, Sept. 4, 1879, 1 ("Louise Elbe has caused the arrest of [illegible] Elbe, her husband, on a warrant of abandonment."); "A Criminal Chat: The Warrants Which are Popular in the Various Seasons," *St. Louis Post-Dispatch*, Oct. 3, 1884, 7 (quoting assistant prosecuting attorney as stating wife abandonment cases rising thirty per cent per year, with two warrants sought against husbands every day); "Wife Abandonment Now Docketed for Trial in the Court of Criminal Correction," *St. Louis Post-Dispatch*, June 24, 1884, 8 (reporting on fifteen wife abandonment cases awaiting trial).

[31] *Missouri v. Newberry*, 43 Mo. At 432.

[32] This possibility is addressed in greater depth in the next chapter, which discusses the widespread criminalization of nonsupport.

1872. Like his Missouri colleagues, Cooley wrote that, to use contempt in an alimony case, "[t]here must be something of wrong beyond the mere failure to pay money."[33] An early law review treatment cited this case, rather than *Coughlin*, for the seemingly straightforward proposition that "there can be no imprisonment for failure to obey an order of Court in divorce proceedings directing the payment of alimony."[34] Yet Michigan judges continued to incarcerate alimony debtors via contempt, without apparent recognition (or maybe even deliberate disregard for) this case.[35] After rarely being cited, the case was overruled in 1921.[36]

Nebraska temporarily joined Missouri to form a tiny minority but soon reverted to allowing alimony contempt incarceration. In 1898, the Nebraska Supreme Court proclaimed: "Manifestly, a decree for permanent alimony is a debt, within the meaning" of the constitutional provision reading "[n]o person shall be imprisoned for debt in any civil action on mesne or final process unless in case of fraud."[37] In 1922, the Nebraska court expressly overruled its predecessor bench on this point, ironically blaming unnamed "social reformers" for undermining men's liability.[38] Meanwhile, lower

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33 Steller v. Steller, 25 Mich. 159 (1872).

34 Thomson, "Imprisonment for Debt," 366.

35 E.g., Potts v. Potts, 36 N.W. 240 (Mich. 1888).

36 In Bowman v. Webster, 183 N.W. 232, 234 (Mich. 1921), the court acknowledged the defendant had "good reason" to rely on *Steller* to argue a statute allowing alimony attachment violated the state's constitution, but then noted that no subsequent case had "followed or overruled" *Steller* on that point. One Michigan case had allowed imprisonment for refusal to pay an amount ordered by a probate judge, and "[t]he great weight of authority now is that alimony is not a debt within the contemplation of the constitutional inhibition." After quoting a single treatise, the court concluded: "The trend of modern opinion, the weight of authority, and the apparent wisdom of the legislation impel us to depart from the said holding quoted from *Steller v. Steller*," and to find the alimony contempt law did not "offend" the state's constitution.

37 There is no apparent reason tied to the state's contempt laws or debtor's prison provision to explain this move. Leeder v. State, 75 N.W. 541, 542 (Neb. 1898).

38 Cain v. Miller, 191 N.W. 704, 707 (Neb. 1922) ("Despite the ideas of some would-be social reformers, it is still the legal duty of every husband to support his wife, and until this duty has been removed by the Legislature it should be enforced.").

court judges in Missouri asked their superiors and the legislature to join the majority approach to no avail.[39] A century passed before Missouri, which also enshrined a ban on debtors' prisons in its constitution in 1875, began permitting contempt incarceration for noncompliance with family support orders.[40]

As courts across the country reached a consensus by the 1890s that broad bans on incarceration for debt did not prevent alimony contempt incarceration, they also elevated a rationale that had been less prominent in earlier opinions: alimony was not a debt because it was a duty.[41] Courts easily extended this reasoning to apply to bastardy cases[42] and separate maintenance orders as well.[43] Thus, in the first year of the twentieth century, the Supreme Court of Florida concluded: "It is almost universally settled that alimony or maintenance from the husband to the wife is not a debt,"

[39] For example, see "Judges Ask New Law for Relief of Divorcees," *St. Louis Post-Dispatch*, Dec. 28, 1908, 2. In 1909, a circuit court judge prepared an "instructive paper" for his Court of Appeals brethren explaining how Missouri had become an outlier in treating alimony as a debt. The court considered several arguments as to why it should distinguish or depart from *Coughlin*, but the court concluded that "the judgment for alimony and maintenance is a judgment for the payment of money merely… not enforceable by commitment of the recalcitrant debtor to jail as for contempt for noncompliance." Ex Parte Kinsolving, 116 S.W. 1068, 1072 (St. Louis Mo. Ct. App. 1909).

[40] The 1875 constitutional provision, which remains in force today, reads: "That no person shall be imprisoned for debt, except for nonpayment of fines and penalties imposed by law." Mo. Const., art. II. § 16. The legislature authorized the use of contempt in alimony and child support cases in 1974, and courts found this law constitutional. For discussion, see Coyle v. Coyle, 971 S.W. 2d 325 (Mo. Ct. App. 1998).

[41] Andrew v. Andrew, 62 Vt. 495 (1890) ("The decree is not because of an indebtedness, but it on the ground of a personal duty."); Huber v. King, 22 So. 887 (La. 1897) ("An order for alimony in a divorce suit is nothing more than the judicial sanction and enforcement, under abnormal conditions, through the judiciary, of the duty by the husband to support the wife."); Tolman v. Leonard, 6 App. D.C. 224 (Ct. App. D.C. 1895) ("It is the judicial ascertainment and declaration of a specific duty which the husband owes to the wife, in accordance with the law of that favored relation, and is akin to the ordinary decree for specific performance.").

[42] E.g., In re Wheeler, 8 P. 276, 278 (Kan. 1885) ("The charge of maintenance and education, while it is in the nature of a civil obligation and imposed in a proceeding which is essentially civil, though criminal in form, is not based on a contract, either express or implied. It is the duty of the father to make provision for the support of his illegitimate offspring.").

[43] E.g., Barclay v. Barclay, 83 Ill. App. 366 (1898); In re Popejoy, 55 P. 1083 (Colo. 1899).

falling within prohibitions against imprisonment for debt. Rather, "[i]t is regarded more in the light of a personal duty due not alone from the husband to the wife, but from him to society."[44]

The legitimacy and legality of incarcerating alimony delinquents took a different path in states with narrower, gradual statutory abolition of imprisonment for debt. There, the issue was one for legislators more than judges. New York provides a rich example that, while unusual in many respects, is particularly important because of the nationwide coverage it received and the influence of its approach on other states. New York's 1831 foray into this space was the Stilwell Act, which banned imprisonment for contract debt, unless the creditor accused the debtor of fraud. New Yorkers soon found that this caveat swallowed the rule. Creditors routinely made vague allegations of fraud, landing debtors in jail for lengthy periods. Moreover, the Stilwell Act left many types of imprisonment for debt untouched.[45]

Over the next half-century, New Yorkers condemned how their state still permitted debtors' prison. Newspapers reported on the legislature's repeated failures to pass better legislation.[46] Though articles and editorials often focused on problems with the fraud exception, their language indicated general condemnation of how civil debt incarceration blurred the civil-criminal divide. For instance, a contributor to the *New York Daily Times* in 1854 proclaimed: "if there are any actions now termed

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[44] Bronk v. State, 31 So. 248, 252 (Fla. 1901). See also *In re Cave*, 66 P. 425, 426 (Wash. 1901) ("It is the well-settled law of this country that a decree or order for alimony in a divorce proceeding is not a debt, within the meaning of that term as used" in provisions banning incarceration for debt.); Gompers v. Buck's Stove & Range Company, 221 U.S. 418, 442 (1911) (in case examining application of contempt in another context, using alimony contempt as an example to illustrate holding, thereby demonstrating how uncontroversial alimony contempt was by this time).

[45] For detailed discussion, including the full statutory language, see David McAdam, *The Act to Abolish Imprisonment for Debt and to Punish Fraudulent Debtors, Commonly Called 'The Stilwell Act'* (New York: E. G. Ward, 1880). Pennsylvania copied New York's approach to permitting incarceration of fraudulent debtors. For discussion, see Abraham Freedman, "Imprisonment for Debt," *Temple Law Quarterly* 2, no. 4 (July 1928): 330, 355-61.

[46] E.g., "New York Legislature," *New York Herald*, Mar. 4, 1848 (legislation to address incarceration for nonpayment of fines); "New York Legislature," *New York Herald*, Jan. 15, 1850 (legislation to address debt when the state was the creditor); "Gov. Hoffman and Imprisonment for Debt," *New York Times*, Nov. 6, 1871 (reporting on governor's call for change to imprisonment for debt law).

civil, deserving of punishment as crimes, let them be turned over to the criminal code, and at once abolish all arrest and imprisonment in civil cases, now and forever."[47] Decades later, another wrote that civil confinements for debt were "virtually usurpations of the powers of criminal law to punish wrongs or injuries which the law has already expressly refused to regard as crimes."[48]

In addition to principled legal concerns, New Yorkers condemned imprisonment for debt as barbaric and counterproductive. Journalists covered seemingly unjust anecdotes about debtors trapped in jail indefinitely. Rather than working to pay off their debts and support their families, the men sat in jail at taxpayer expense.[49] The *New York Tribune* reported in 1869 that it frequently received "pathetic" letters from imprisoned men and their families. Letters in women's handwriting, the paper claimed, stated that "the worst feature of this law for imprisonment for debt is not in the sufferings of the one who is imprisoned but in the blow that is struck at the wife and children left without the care of the husband and father."[50] In the more pointed language of the same newspaper in 1885: "Nothing can be more stupid than to imprison a man for debt, but such imprisonment is worse than stupid; it is cruel and unjust." Men could be imprisoned for life, and their stories "if plainly told, would read like narrative from the Middle Ages." This was not only harmful to the men; "their homes have been broken up; their wives and children have been deprived of the means of

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[47] Justice (pen name), "Imprisonment for Debt," *New York Daily Times*, Aug. 9, 1854. For a similar argument, see Civic Liberty (pen name), "Imprisonment for Debt," *New-York Daily Tribune*, Aug. 23, 1853.

[48] "Prisoners for Debt," *New-York Tribune*, Dec. 6, 1880, 4. In responding to an "apologist" lawyer's letter justifying the law a few years later, the editor of the *New-York Tribune* wrote, "When fraud has been committed, prove it and punish the guilty man through the criminal courts." Editor, "Imprisonment for Debt," *New-York Tribune*, Mar. 22, 1884, 7.

[49] "Eldridge-Street Jail, Imprisonment for Debt," *New-York Daily Tribune*, Dec. 9, 1856, 7. For a similar account, see Imprisonment for Debt, *New York Times*, Mar. 20, 1873, 4; C, "Imprisonment for Debt," *New-York Daily Tribune*, Jan. 30, 1858, 8.

[50] "Imprisonment for Debt," *New-York Tribune*, Feb. 13, 1869, 2.

living." Meanwhile, the public had to support the debtors. "In short, a more thoroughly barbarous, uncivilized, inhumane and irrational procedure cannot be pointed out."[51]

Rhetoric against the debtors' prison regime took on particular resonance because of perceived similarities to treatment of African Americans in the South. Just a few years before the Civil War, one commenter condemned New York's debtor prison laws as "without parallel" except to the Fugitive Slave Law. He explained: "Both of these systems are equally subversive of the rights of a free people; and both are founded on *ex parte* affidavits. The one is applied to reclaim an alleged slave; the other to reduce a freeman to slavery."[52] After the Civil War, similar comparisons continued. One writer found it "intolerable" that men could still be imprisoned pursuant to civil process. "In effect the State law abolishing imprisonment for debt has been circumvented here almost precisely as some of the Southern States circumvented the fourteenth amendment," he claimed. "We no longer call it imprisonment for debt, but we continue to incarcerate human beings because they cannot pay what they owe."[53]

In the 1880s, New Yorkers developed a plan to balance the interests of creditors and debtors: time-limited incarceration for debt. Proposed over several years, the law passed in 1886, as an amendment to the Code of Civil Procedure. Under the new framework, a debtor could be incarcerated for just three months for debts under $500 or six months for debts over $500. The restrictions expressly applied to men held in contempt "for nonpayment of alimony or counsel fees

[51] "Imprisonment for Debt," *New-York Tribune*, Feb. 13, 1885, 4.

[52] C, "Imprisonment for Debt," 8.

[53] "Imprisonment for Debt," *New-York Tribune*, Mar. 12, 1884, 4.

in a divorce case."[54] In the words of the New York Court of Appeals, reflecting on the significance of the change a couple decades later, the 1886 law was the first "marked advance" made against the "barbarous, cruel, and senseless" practice of imprisonment for debt since the Stilwell Act.[55]

Though legislators clearly intended for the 1886 law to aid alimony debtors, judges disagreed about its application. In 1889, a lower court faced the question of whether a man who had served a six-month term for nonpayment of alimony could be imprisoned again for alimony that accrued subsequently. The court said no. The statute dictated that "the prisoner shall not be again imprisoned upon like process issued in the same action." The court found this language to be "broad and plain," and have an "obvious meaning." A contrary interpretation of the statute, in the court's view, would mean the 1886 statute "has accomplished no substantial benefit to the defendant… for he may still be perpetually imprisoned." The wife was not left in a helpless position, as she could still attempt to seize any property the man owned.[56]

The New York Court of Appeals affirmed with no opinion, but the dissent (written by future U.S. Supreme Court Justice Rufus Peckham) condemned how this result undermined alimony enforcement. The majority's and lower court's approach problematically meant that even a man with "a confessed ability to comply" would be released. "It seems to me," Peckham argued, that the lower court's statutory construction "ought not to be adopted, if there be *any other rational one possible*. I think there is." The statute should not be interpreted as a bar to subsequent incarcerations for judgments that required payment in installments, he suggested. This would still mean the 1886 law

[54] For coverage of the proposal, see "Prisoners for Debt," *New-York Tribune*, Dec. 6, 1880, 4; "To Empty Ludlow Street Jail," *New York Sun*, May 14, 1886; "Imprisonment for Debt," *New-York Tribune*, May 16, 1886; "Imprisonment for Debt," *New-York Tribune*, June 6, 1886. On passage, see "Good News for Debtors," *New York Times*, June 17, 1886.

[55] Levine v. Shea, 94 N.E. 1060 (N.Y. 1911).

[56] Winton v. Winton, 5 N.Y.S. 537 (N.Y. Sup. Ct. 1889).

provided some benefit to alimony debtors in that it granted their automatic release after three or six months. Under the majority's rule, "a defaulting, but able, debtor is enabled to wholly defy the process of the court upon submission to a brief incarceration without any labor." Upon release, the debtor could move his property beyond the court's jurisdiction and permanently refuse to comply. "We cannot believe it possible," he concluded, "that the legislature meant any such result as that."[57]

Peckham's fears about the incentives created by the court's holding were validated over the coming decades, as New York City became infamous for its alimony delinquents. The time restrictions on contempt incarceration rendered it logical for some men to serve three or six months to avoid a lifetime of payments.[58] These men came to be known as members of the "alimony club." The phrase "alimony club" first gained traction in the 1890s, when it referred to prominent actors and wealthy men who were actually paying alimony. A comedic play called "The Alimony Club" spread the lingo.[59] By 1902, the alimony club included two types of men: those who paid alimony because they wished to continue working in New York's theater scene and so could not risk contempt incarceration, and those who instead left town. The latter group returned to the city on Sundays, when civil arrests were not permitted, and departed on the 11:55 PM ferry back to New Jersey. Though this strategy generally worked, sometimes it hit snafus. On one Sunday an actor was

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[57] Winton v. Winton, 117 N.Y. 623 (Peckham, J., dissenting) (emphasis added). For a minor carve-out to the majority opinion, see Reese v. Reese, 61 N.Y.S. 760 (Sup. Ct. App. Div. N.Y. 1899) (where man was incarcerated for contempt of an interlocutory alimony decree, he could be imprisoned again later for contempt of the final decree).

[58] For instance, one man brought a suitcase when he turned himself in for nonpayment of alimony. Since he owed under $500 at that point, he would only need to serve three months. "'Times Hard, Jail Me': Man, Behind with His Alimony, Yearns for Cell and Goes," *Washington Post*, July 16, 1914, 4.

[59] For examples of actors, comedians, and wealthy men described as being in or likely to join the "alimony club," see "Comedian Dixey," *Emporia (KS) Daily Republican*, May 18, 1894, 4; [No Title], *Austin American-Statesman*, Sept. 5, 1894, 2 (describing a Vanderbilt as "about to joint" the New York Alimony Club); [No Title], *Buffalo Evening News*, Oct. 12, 1897, 2 (describing an actor as being a member of the Alimony Club). On the play, see "The Avenue Theater," *Pittsburgh Daily Post*, Dec. 8, 1896, 4; [No Title], *New York Times*, Feb. 14, 1897, 11 (noting actors "will present a farce called 'The Alimony Club' at Proctor's Theatre…").

recognized by his ex-wife's brother, who initiated a physical altercation to get both arrested for disorderly conduct. The desk sergeant at the police station understood the situation and was slow to release the ex-husband on bond. In the wee hours of Monday morning, the man was freed and rearrested for civil contempt. "[H]is tidy, nice little ex-wife, who was present, availed herself of her turn to gloat," a newspaper reported. The writer speculated that the man would now pay the $2,000 he owed in arrears.[60]

A few years later, the alimony club morphed into a physical location—specifically the Ludlow Street Jail or what one article facetiously dubbed "Hotel de Ludlow."[61] The Ludlow Jail was designated for civil prisoners, the vast majority of whom tended to be alimony non-payers. Over the following years, newspapers across the country delighted in recounting the supposed extravagance and good fun men had while serving their terms.[62] One reported on how the alimony club's twenty members enjoyed a "sumptuous Christmas dinner, over which the warden himself presided." After dinner they smoked cigars, and their "president" (the oldest resident) sang a song composed by a former member, entitled "I'd Rather Be in Jail than Married."[63] On another occasion, the alimony club celebrated a man who had been released from a Kansas jail after spending twenty-two months there for nonpayment of alimony. They suggested that President William Howard Taft should

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[60] "Had to Pay Alimony: Finally Trapped by Patient, Suffering Wife," *Evening Star* (Washington, DC), May 24, 1902, 26. For an account that similarly emphasizes actors as the constituency of the alimony club and discusses how they came to New York City on Sundays, this time by riding the "alimony train" from Philadelphia, see "The Alimony Club," *Baltimore Sun*, Apr. 7, 1904, 8.

[61] "Now for Jail Concerts," *New-York Tribune*, Jan. 25, 1912, 5. For an early use of Alimony Club in this context, see "Joins the Alimony Club," *Evening World* (New York), Dec. 21, 1905, 4.

[62] For example, see "Scandal Is Housed in Alimony Club," *New-York Tribune*, July 27, 1912, 5; "Alimony Club Has Fine Time," *Nashville Tennessean*, Mar. 22, 1913, 1; "No More Butterfly Visitors for the Alimony Club Men," *Democrat and Chronicle* (Rochester), Aug. 2, 1913, 1. There was similar coverage of a smaller alimony club in a Brooklyn jail. *See* "Civil Jail to Be Ready Perhaps by February 1," *Brooklyn Daily Eagle*, Dec. 31, 1907, 2; "Why Not a Hotel Suite for the Alimony Club?," *Brooklyn Daily Eagle*, Jan. 22, 1908, 18.

[63] "Alimony Club in Gay Mood," *New-York Tribune*, Dec. 27, 1910, 3.

appoint him "anti-alimony commissioner of the United States."[64] An image accompanying another article depicted the arrival of Ludlow's new "musical warden" in 1912 (Figure 7). The warden brought instruments and a parrot, which the artist drew singing "home was never like this."[65]

LUDLOW STREET JAIL HAS A MUSICAL WARDEN.

The Alimony Club prepares for winter entertainments.

Warden Johnson arriving at the Ludlow street jail carrying his violin case. Later he practised a while to reconcile his pet parrot to her new surroundings.

Figure 7: Drawing and photograph of Ludlow Street Jail warden

[64] "Peter Ball Is Hero," *Topeka State Journal*, July 25, 1911, 1.

[65] "Now for Jail Concerts," *New-York Tribune*, Jan. 25, 1912, 5.

Stories about the alimony club continued until 1919. That year, which not coincidentally followed women's enfranchisement in the state, the legislature amended the civil contempt law to permit repeat incarcerations for failure to comply with ongoing orders. According to newspaper coverage, the bill had been drafted by a male candidate for municipal court judge "and was enacted into law through the efforts of women leaders at the capital." The writer continued, "[f]or years the alimony club has been the standing joke of newspapers all over the country," but "[l]egislators seem intent on taking all the joy out of life."[66] In the words of the judge who had developed the law: "Of course there are a good many men who do not care particularly about me, but I have made a score of friends among the women."[67]

Though the New York City alimony club was an anomaly during its roughly two decades of existence, the situation nevertheless points to broadly shared problems in alimony enforcement. While some men surely felt stigmatized if they fell behind in payments and would not want to spend a single day in jail, others viewed alimony evasion as a sort of game. A major difficulty, courts and commentators perceived, was that some men had no qualms about sitting idly in jail, and indeed might enjoy it, while others were truly poor for reasons beyond their control.

To avoid counterproductive or unjust contempt incarceration, judges needed a reliable way to distinguish between willful and involuntary alimony debtors. In a series of cases, state supreme courts determined that it was appropriate to allow a man facing a finding of contempt to prove he

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[66] "New Law Has Teeth that Bite All Joy from Alimony Club," *Brooklyn Daily Eagle*, Aug. 17, 1919, 66. See also "Alimony Club Wiped Out," *Baltimore Sun*, Aug. 31, 1919, 15; "Alimony Club May Meet in Jail Now," *Los Angeles Times*, Sept. 1, 1919, I12.

[67] Fay Stevenson, "Hard Winter Ahead for Erstwhile Members of the Alimony Club," *Evening World* (New York), Sept. 13, 1919, 11.

could not comply because of illness, poverty, or misfortune.[68] For instance, the Supreme Court of Minnesota explained that a man could not be guilty of contempt for nonpayment of alimony "if he was unable to do so, and did not voluntarily create the disability for the purpose of avoiding such payment."[69] A correspondent to the *New-York World*, who claimed to have "himself been a victim of the brutal law of imprisonment for debt" praised a New York court's similar holding as "simple common sense. It is impossible to get blood out of a stone."[70]

Courts divided on how to handle men who lacked the means to comply because they refused to work or to seek more lucrative opportunities. A New York court found it inexcusable that a man lived at his father's house to avoid working and paying alimony. If the man lacked property, "it was his duty to try to earn something, he had no right to lay idle."[71] The Supreme Court of Georgia reached the same result but with notably different reasoning. That court recognized that a "court cannot assume direct control of [a man's] will and muscle and compel him to labor. To do this would be to reduce him to a sort of juridical slavery, and would contradict the spirit of our institutions." It was "one of the privileges of a freeman" to be idle. Nevertheless, the court could use its contempt powers in such circumstances. "Pressure is a great concentrator and developer of force," the court mused, "even the vision of the respondent himself may be cleared and brightened,

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[68] Shaffner v. Shaffner, 72 N.E. 447, 449 (Ill. 1904) ("Where he seeks to satisfy the court that his failure to pay is due entirely to his inability to pay, the burden is on him to establish that fact."). *See also* Galland v. Galland, 44 Cal. 475 (1872); Peel v. Peel, 50 Iowa 521 (1879); Newhouse v. Newhouse, 12 P. 422 (Or. 1886).

[69] Hurd v. Hurd, 65 N.W. 728, 729 (Minn. 1896).

[70] "In Prison for Debt: A Blot on the Statute-books of the State—Why Should It Not Be Removed?," *Buffalo Weekly Express* (reprinting article from *New-York World*), Apr. 8, 1886, 7.

[71] Lansing v. Lansing, 41 How. Pr. 248 (Sup. Ct. N.Y. 1871).

so that he will discern ways and means which were once hidden from him."[72] Some courts, though, determined that they did not have the power to hold a man in contempt for refusal to get a job.[73]

By the early 1900s, courts in most states were willing to use contempt incarceration to coerce the payment of alimony and like orders. Though the possibility of being sent to jail for alimony nonpayment likely contributed general deterrence, it was an imperfect solution for individual families. Such confinements could not reach all men and, even when men were jailed, their wives did not necessarily benefit. Still, the justifications courts developed to retain contempt incarceration as a legitimate tool were crucial for later reform efforts. By embracing the notion that unpaid family support orders were not interspousal debts but rather unsatisfied societal duties, judges and other discussants created fertile ground for the later enactment of criminal nonsupport statutes.

Alimony Debts and the Bankruptcy Act of 1898

Another way men attempted to escape accrued and future alimony liability was to declare bankruptcy. Congress passed and repealed a series of bankruptcy acts from 1800 through 1878, often motivated by the same financial crises that inspired MWPA and debtors' prison bans. A financial panic in 1893 prompted Congress to pass permanent bankruptcy legislation in 1898 that was broader than the previous versions. The 1898 law permitted discharge of "any fixed liability" embodied in a written document or judgment.[74]

The 1898 Bankruptcy Act's wording raised the possibility that alimony and like payments were dischargeable as debts. Within a year after passage, law journals noted "an unfortunate conflict

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[72] Lester v. Lester, 63 Ga. 356 (1879). See also "Refusal to Pay Alimony Punished as Contempt," *Harvard Law Review* 30, no. 5 (Mar. 1917): 518.

[73] Ex Parte Todd, 50 P. 1071 (Cal. 1897) ("The order was clearly in excess of the power of the court, which cannot compel a man to seek employment in order to earn money to pay alimony, and punish him for his failure so to do.").

[74] Hampson, "New American Debtors' Prisons," 20.

of opinion," among courts on this question. There was ample precedent for considering alimony to be a "duty, not debt" from the debtors' prison cases, as well as a separate body of cases finding alimony to be non-assignable to third parties. Still, there seemed to be reasonable arguments that the Bankruptcy Act, as an independent statute, might not follow that pattern. If Congress meant to exclude alimony payments from discharge, some courts and discussants observed, the legislation should have so stated.[75] In one of the earliest cases on this issue, the U.S. District Court for Kentucky ordered a state court to release a man who, after having his debts discharged in bankruptcy, had been jailed for alimony nonpayment contempt. The bankruptcy proceeding, the court determined, encompassed the family support obligation. "Whether wisely or unwisely, congress did not, in fact… distinguish between judgements for alimony and other judgments," the court concluded.[76]

Other discussants postulated that there might be valid reasons to differentiate between different types of alimony debts in the bankruptcy context. Some suggested that eligibility for discharge might turn on whether the liability was alimony *arrears*, which were more obviously "fixed" because a specific amount had accrued, or future alimony installments, which were sometimes subject to modification and so arguably not fixed.[77] Similar reasoning might lead to varied treatments

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[75] W. G. Mathews, "Alimony as a Provable Debt in Bankruptcy Proceedings," *Virginia Law Register* 5, no. 6 (Oct. 1899): 365; "Alimony as a Debt of a Bankrupt," *Central Law Journal* 49, no. 23 (Dec. 8, 1899): 454; "Constitutional Law—Bankruptcy—Alimony," *Yale Law Journal* 9, no. 8 (June 1900): 370. For sample newspaper discussion, see "Does Alimony Stop?," *Inter Ocean* (Chicago), Nov. 5, 1899, 7 ("The question which has been deeply interesting Chicago lawyers for months, as to whether a petition in bankruptcy acted as a stop of the payment of alimony, is still left for the state courts to decide.").

[76] In re Houston, 94 F. 119, 121 (1899).

[77] On alimony modification, see Chapter Two. On the relevance in the alimony context, see "Bankruptcy—Provable Debts—Arrears of Alimony," *Harvard Law Review* 14, no. 2 (June 1900): 153.

of alimony awards depending upon the issuing states' laws, as some states' courts had more discretion to modify alimony arrears and installments than others.[78]

In 1901, the U.S. Supreme Court intervened to bring uniformity. In *Audubon v. Shufeldt*, the question was whether alimony arrears were dischargeable. The Supreme Court of the District of Columbia had decided they were. On appeal, the U.S. Supreme Court struggled with this issue in part because of how it related to another area of law—the application of the U.S. Constitution's Full Faith and Credit Clause. The clause requires that states respect "the public acts, records, and judicial proceedings of every other State."[79] The same year that *Audubon* was on the docket, the Court heard *Lynde v. Lynde*, which considered whether alimony arrears and future payments were entitled to full faith and credit. In an opinion authored by Justice Horace Gray, the *Lynde* Court distinguished between alimony debts and installments. It held that an alimony sum already due was "fixed," such that a sister state court must enforce it. But an order for future payments was subject to modification and so "was not a final judgement for a fixed sum" subject to full faith and credit.[80]

Justice Gray's *Lynde* holding placed him in a difficult position when writing the opinion in *Audubon*, released the following month. The casting of alimony debt as "a fixed sum already due," to qualify for full faith and credit, seemingly brought it very close to the Bankruptcy Act's language permitting discharge of "any fixed liability."[81] But the Court did not want to reach that result. To come out the other way required spin. It is worth quoting the opinion at some length to illustrate how the

[78] For a case explaining why discharge of alimony might be permitted under some state divorce laws but not others, see In re Nowell, 99 F. 931 (D. Mass. 1900).

[79] U.S. Const., art. IV, § 1.

[80] Lynde v. Lynde, 181 U.S. 183, 186-87 (1901).

[81] Lynde, 181, U.S. at 187.

question forced the Court into muddled reasoning, which in some respects benefited from inconsistencies in state courts' conceptions of alimony in these years. The Court explained:

> Alimony does not arise from any business transaction, but from the relation of marriage. It is not founded on contract, express or implied, but on the natural and legal duty of the husband to support the wife. … Generally speaking, alimony may be altered by [the court with jurisdiction] at any time, as the circumstances of the parties require. The decree of a court of one state, indeed, for the present payment of a definite sum of money as alimony, is a record which is *entitled to full faith and credit* in another state and may therefore be there enforced by suit. But its obligation in that respect *does not affect its nature*…. Permanent alimony is regarded rather as a portion of the husband's estate to which the wife is equitably entitled, than as strictly a debt; alimony from time to time may be regarded as a portion of his current income or earnings; and the considerations which affect either can be better weighed by the court having jurisdiction over the relation of a husband and wife than by a court of a different jurisdiction.

In sum, alimony could be all sorts of things. But should those things be dischargeable in bankruptcy? The Court thought not. After summarizing state court opinions from other contexts that held alimony was not a debt, and quickly casting aside recent U.S. District Court bankruptcy holdings to the contrary, the Court found that "neither the alimony in arrear at the time of the adjudication in bankruptcy, nor alimony accruing since that adjudication, was provable in bankruptcy."[82]

Much to the justices' likely regret, *Audubon* did not settle all pertinent questions. In *Dunbar v. Dunbar* (1903), the wife had agreed not to contest a divorce in exchange for her husband's entering a contract that promised her $500 per year for herself and $250 per year for each child (until age fourteen) in monthly installments.[83] The question was whether this support obligation—created by contract—was dischargeable. This time the opinion was written by Justice Peckham, who as noted

[82] Audubon v. Shufeldt, 181 U.S. 575 (1901) (emphasis added). For sample newspaper coverage, see "Hard Luck for Alimony Payers," *Buffalo Review*, June 15, 1901, 6.

[83] The lower court dismissed the man's contention that he should not be liable under the agreement because it was unlawfully executed in furtherance of a collusive divorce. That court justified enforcement on the basis that the "agreement was made and performed by the defendant for several years." Dunbar v. Dunbar, 62 N.E. 249 (Mass. 1901).

above issued a pointed dissent when his brethren on the New York Court of Appeals held that a single term of incarceration for alimony nonpayment was all that was permitted.

Here again Peckham clearly wanted to find a way to hold for the wife, even though it would have been cleaner to reach the contrary result. Surely a debt based on a contract fell within the Bankruptcy Act, but Peckham found a way around this. The opinion first handled the contract provisions for the wife. The $500 portion seemed to fall within the Bankruptcy Act's language permitting discharge of annuity dependent upon life, given that it would cease if the wife died. The Court was able to avoid this outcome because the contract also stated that it would terminate if the wife remarried. The Court determined that such a scenario did not fall within the purview of the act because "of the innate difficulty, if not impossibility, of estimating or valuing the particular contingency" of whether the wife would remarry. Because it was impossible to value the debt, it could not be discharged. The Court then moved to the $250 portion of the contract and found it "not of a nature to be proved in bankruptcy." The Court said it could "assume" that all states had a common law obligation that fathers support their legitimate children. The contract merely recognized that liability, and Congress did not intend to release the father through the Bankruptcy Act.[84]

Another complication Peckham had to overcome to reach this holding was that, after the litigation in *Dunbar* began, Congress had amended the Bankruptcy Act to state that debts due from alimony or maintenance orders were not dischargeable. This sequence of events might imply that the 1898 version of the act, which was binding in *Dunbar*, did not carve out alimony-style debt from discharge. Congressmen had begun suggesting by at latest January 1900 that they should amend the

[84] Dunbar v. Dunbar, 190 U.S. 340 (1903).

Bankruptcy Act to treat alimony orders as "sacred."[85] In June 1902, the House of Representatives considered an amendment steeped in the moral and gender norms of the time. The proposed language read that bankruptcy "shall not release the bankrupt from liability for alimony due or to become due the wife, or for maintenance or support of wife or child, or for seduction of an unmarried female, or for criminal conversation." (Criminal conversation was a tort action against a third party for committing adultery with one's spouse.) The reasons for these exemptions, according to a representative from New York, were "too patent to require statement."[86] The amendment passed on February 5, 1903, a few months before *Dunbar*.[87] In the opinion, Peckham acknowledged the amendment's provisions "are not to apply to cases pending before their enactment." Nevertheless, he argued that the language showed "the legislative trend in the direction" of not allowing discharge of family support obligations.[88]

Even after the amendment, the justices could not escape the tortured reasoning that was necessary to protect alimony from the grips of the Bankruptcy Act because there were still other pending cases that predated the statutory change. In *Wetmore v. Markoe* (1904), the Court faced the question of whether a finalized alimony award—which could not be amended pursuant to New York law as it existed at the time the order was entered—constituted a dischargeable debt. This time it was Justice William R. Day's turn to avoid the potentially easy answer in order to bolster alimony enforcement. "The mere fact that a judgment has been rendered does not prevent the court from looking into the proceedings with a view of determining the nature of the liability which has been

[85] "Would Amend Bankruptcy Act as to Alimony," *Chicago Tribune*, Jan. 7, 1900, 5.

[86] 35 Cong. Rec. H6940, H6942 (June 17, 1902).

[87] 32 Stat. at L. at 797 Chap. 487, Sec. 17.

[88] Dunbar, 190 U.S. at 353.

reduced to judgement," the Court began. While in earlier bankruptcy cases the alimony at issue had still been subject to modification, the Court admitted, "this fact does not change the essential character of the liability, nor determine whether a claim for alimony is, in its nature, contractual so as to make it a debt." The judgment here was not based on a contract but "rather a legal means of enforcing the obligation of the husband and father to support and maintain his wife and children." It was, in short, a "duty." As such, it was "not a debt in any just sense." The Court concluded that "[t]he bankruptcy law should receive such an interpretation as will effectuate its beneficent purposes, and not make it an instrument to deprive dependent wife and children of the support and maintenance due them from the husband and father, which it has even been the purpose of the law to enforce."[89]

Thus, through the heroic efforts of the Supreme Court (and amendments by Congress), family support orders survived the Bankruptcy Act of 1898.[90] More broadly, the series of bankruptcy cases helps capture the crystallization of the idea that alimony payments were societal duties, rather than private debts. This conceptualization was not inevitable or longstanding, but rather the creation of judges who found family support obligations more important—likely for practical as well as moral reasons—than other financial liabilities.

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[89] Wetmore v. Markoe, 196 U.S. 68 (1904). Yet again, there was the wrinkle that Congress had passed legislation specifying that family support payments were not dischargeable only in 1903, perhaps implying that was not the law prior. The Court dismissed this argument, suggesting "[t]he amendment may… have been passed with a view to settling the law upon this subject, and to put at rest the controversies which had arisen from the conflicting decisions of the courts, both state and Federal, upon this question." *Id.*

[90] Lower courts continued to face complicated questions about which debts fell within the alimony and support duties carveout for decades. For discussion, see Sheryl L. Scheible, "Defining 'Support' under Bankruptcy Law: Revitalization of the 'Necessaries' Doctrine," *Vanderbilt Law Review* 41, no. 1 (Jan. 1988): 18-27.

Support Enforcement Across State Lines

Whether alimony was a fixed debt intersected with another legal issue that was crucial to whether men would be able to evade payments. When did the U.S. Constitution's Full Faith and Credit Clause, which requires that states honor the acts, records, and proceedings of sister state courts, mandate that a court recognize a divorce decree or alimony order that was issued by a foreign court?[91] By the late nineteenth century, this question became more practically, politically, and legally salient because of heightened mobility, politics about migratory divorce, and changes to rules on courts' jurisdiction.[92]

One reason for the uncertainty was that the U.S. Supreme Court became increasingly willing to recognize that spouses could be domiciled in different states, which introduced questions about which state should have control over their marital status and related issues. Under coverture, a wife's domicile had followed that of her husband, a concept called "derivative domicile." But in *Barber v. Barber* (1858), a wife was permitted to sue in a federal court to enforce an alimony order granted pursuant to a divorce *a mensa*. The federal court had jurisdiction over the matter based on the parties' diversity of citizenship. An essential premise for diversity of citizenship was that the wife had established a domicile in a state different from her husband's.[93]

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[91] U.S. Const., art. IV, § 1.

[92] On political controversy over migratory divorce, see Chapter Two.

[93] Barber v. Barber, 62 U.S. 582, 594-99 (1858). For discussion of the broader significance of derivative domicile, see Kerry Abrams, "Citizen Spouse," *California Law Review* 101, no. 2 (Apr. 2013): 407. *Barber* is more frequently recalled today for its disavowal of federal jurisdiction over divorce, which gradually expanded into the idea that federal courts do not have jurisdiction over any domestic relations cases. See Kristin A. Collins, "Federalism's Fallacy: The Early Tradition of Federal Family Law and the Invention of States' Rights," *Cardozo Law Review* 26, no. 5 (Apr. 2005): 1761, 1847 ("Today Barber is considered to be the origin of the domestic relations exception to federal jurisdiction, even though, as Judith Resnik and Libby Adler have observed, the Barber Court actually affirmed the use of federal power in certain domestic relations cases.").

Building on *Barber*, in *Cheever v. Wilson* (1869), the Supreme Court dismissed the contention that a wife's domicile necessarily followed her husband's, writing that "the converse… is so well settled that it would be idle to discuss it. The rule is that she may acquire a separate domicil whenever it is necessary and proper that she do so." Once a wife had a separate domicile, she could seek a divorce decree in her local court. "The place of the marriage, of the offence, and the domicil of the husband are of no consequence," the Court concluded. Because the Indiana court that issued the divorce at issue had jurisdiction, based on the wife's domicile in that state, full faith and credit applied. Therefore, the Supreme Court held that the District of Columbia was obligated to recognize the Indiana divorce.[94]

While *Cheever* established that full faith and credit applied to a divorce decree entered in a state where the plaintiff was domiciled and both spouses participated in the proceeding, it did not necessarily answer what rules applied to an *ex parte* foreign divorce. Could a court change the marital status of an absent spouse, who had perhaps never even been within the borders of the state? Was the state in which the absent spouse was domiciled required to honor the supposedly changed marital status within its own borders, pursuant to the Full Faith and Credit Clause?[95]

Both before and after *Cheever*, many state courts avoided analyzing the applicability of the Full Faith and Credit Clause by instead recognizing *ex parte* foreign divorces pursuant to comity, a concept derived from international law that afforded sovereign states discretion about which foreign

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[94] Cheever v. Wilson, 76 U.S. 108, 124 (1869). For further discussion and application of this principle in state cases, see Morton Stevenson, "Duty of Wife to Follow Domicile of Husband," *Central Law Journal* 53, no. 14 (Oct. 4, 1901): 264; Note, "The Domicile of a Wife," *Harvard Law Review* 28, no. 2 (Dec. 1914): 196.

[95] State courts understood *Cheever* as indicating divorce jurisdiction should follow the rules for proceedings in rem, which meant jurisdiction was based on domicile. This approach was endorsed by the U.S. Supreme Court in dicta in the canonical civil procedure case of Pennoyer v. Neff, 95 U.S. 714, 735 (1878), and confirmed by that Court the following decade in Maynard v. Hill, 125 U.S. 190 (1888). For more detailed treatment, see Estin, "Family Law Federalism," 385-86. On uncertainties about the application of full faith and credit prior to *Pennoyer*, see Michael M. O'Hear, "'Some of the Most Embarrassing Questions': Extraterritorial Divorces and the Problem of Jurisdiction Before *Pennoyer*," *Yale Law Journal* 104, no. 6 (Apr. 1995): 1507.

orders to recognize. Most U.S. states chose to respect sister states' divorce decrees, so long as the plaintiff was domiciled in the issuing state and followed pertinent rules to give the other spouse constructive notice. Constructive notice is a kind of legal fiction by which a party is assigned knowledge of a proceeding because, for instance, the plaintiff posted notice in newspapers.

A small minority of states placed limitations on which foreign divorces they would recognize. Most notably, New York, Pennsylvania, South Carolina, and North Carolina—all of which had conservative divorce laws—refused to recognize foreign court decrees that purported to change the marital status of their own citizens. Thus, in some scenarios one spouse was understood as married and the other as divorced.[96]

While the divide in states' treatment of foreign divorces reflected differing conceptions of state sovereignty, historian Neal Feigenson has offered the important additional observation that state courts in both camps were seeking to protect women's property rights in a society that was increasingly mobile and in which men were more often the ones who moved away. Based on analysis of dozens of nineteenth-century appellate cases, Feigenson found that "judges in every state almost always applied the rules of jurisdiction so as to guarantee women's property rights arising from the marriage." This seems most immediately clear in the conservative states. Feigenson finds, for instance, that Pennsylvania courts refused to honor a single foreign *ex parte* divorce decree, which may be explained by that fact that, in all but one, "validation of the decree would have defeated a woman's right to dower or to administer her husband's estate, or her right to support from a living spouse." If a foreign court could not end a marriage through an *ex parte* hearing, then the local wife's

[96] Feigenson, "Extraterritorial Recognition of Divorce Decrees," 123, 126-29; Estin, "Family Law Federalism," 387.

marital financial rights remained intact.[97] If the man later came back to the wife's location, the local court could proceed against him for a support order or property division.[98]

Feigenson finds that Midwestern states were the most permissive about allowing a foreign court to alter the marital status of their own residents, and yet even these courts generally did not allow foreign *ex parte* divorce decrees to affect their residents' rights to dower or alimony. The foreign court could alter marital status *but not property rights*.[99] For example, the Ohio Supreme Court found that "public policy requires the recognition of the validity" of *ex parte* divorce decrees, but this "principle … does not require that they should be allowed to operate in the foreign jurisdiction *beyond the dissolution of the marriage*." In the case at issue, the husband had followed the relevant rules to obtain an *ex parte* divorce in Indiana, with no alimony award for the wife. The Ohio court held that the Indiana decree did not preclude the wife from seeking alimony in a subsequent Ohio proceeding (in which the court had jurisdiction over the husband because he entered an appearance). The contrary result "would be to allow [the foreign divorce] to work a fraud upon the pecuniary rights of the wife," the court explained. Such a result "is rendered necessary by no principle of comity or public policy—the only grounds upon which *ex-parte* decrees of divorce are authorized and supported."[100]

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[97] Feigenson, "Extraterritorial Recognition of Divorce Decrees," 129, 140.

[98] The extent to which this option was available depended on whether the home jurisdiction recognized the foreign divorce and, if so, whether it nevertheless was willing to grant alimony separate from and after divorce. For discussion, see Jonathan Kelly, "Right to Alimony After Divorce," *American Law Register* 33, no. 1 (Jan. 1885): 1, 20. Kelly suggests: "Perhaps the solution is that marriage is a status, hence an *ex parte* divorce is valid because it acts upon this status. Alimony cannot be decreed *ex parte*, because it is different from the thing 'status,' and there is no jurisdiction to decree *in personam* in *ex parte* proceedings; hence it can be decreed after an *ex parte* divorce or else there would be a failure of justice." *Id.* at 21.

[99] Feigenson, "Extraterritorial Recognition of Divorce Decrees," 148-157, 160.

[100] Cox v. Cox, 19 Ohio 502 (1869). *See also* Cook v. Cook, 14 N.W. 33 (Wis. 1882) ("To give such a [divorce] judgement the effect of barring the wife of all interest in the Wisconsin lands, is to enlarge its provision and incorporate in it, by way of comity, what the Michigan court had no power or jurisdiction to adjudge. It would be to enable the husband to do, by way of desertion and a secret foreign divorce, what it would have been impossible for him to have accomplished if he had remained a resident of this state. … We are not disposed to sanction so great an imposition upon our own

That states had differing policies on this issue created major complications and uncertainties regarding property ownership, inheritance, bigamy, adultery, and more. But it was unclear how these inconsistencies should be resolved. As the New York Court of Appeals observed in justifying its own refusal to recognize *ex parte* foreign divorces, it would not "tend to a state of harmonious and reliable uniformity," to simply let the first court to act "bind or loose the citizens of other sovereignties." While recognizing "[i]t will prove awkward, and worse than that, afflictive and demoralizing, for a man to be a husband in name and under disabilities or ties in one jurisdiction, and single and marriageable in another," the court concluded "it is only in degree that it is harder than the results of other conflicts in law." The contrary decisions in sister states "are ably expressed; they are honestly conceived," but they are only "one side of a judicial controversy, the dividing line whereof is well marked, and is not lately drawn." It was ultimately for the U.S. Supreme Court "as the final arbiter, to determine how far a judgment rendered in such a case… shall be operative, without the territorial jurisdiction of the tribunal giving it."[101]

On April 15, 1901, the U.S. Supreme Court took up the challenge. During the same term in which Justice Gray wrote the *Audubon* bankruptcy decision, he also authored four opinions dealing with jurisdictional complexities in divorce and alimony litigation. Three of these cases focused on

citizens, and the domestic policy of our own state."). As Feigenson recognizes, Wisconsin was often listed as subscribing to the majority approach, but much of its reasoning was more similar to New York's. Feigenson, "Extraterritorial Recognition of Divorce Decrees," 154. The concurring judge in *Cook* understood his colleagues as considering the wife still married, writing: "It is difficult for me to understand how the husband can be unmarried and the wife remain married." He concurred in the result but said it should be based on the court's authority to grant alimony independent of divorce. Cook v. Cook, 14 N.W. 443, 443-44 (Wis. 1882).

[101] People v. Baker, 86 N.Y. 78, 88 (1879). Even after the Supreme Court gave more guidance on this point in *Pennoyer*, the New York Court of Appeals continued to find the issue unsettled. O'Dea v. O'Dea, 101 N.Y. 23 (1885) ("This conflict of opinion, however much to be regretted, continues, and it yet remains for some ultimate authority to relieve the point from the difficulties now attending it, and determine the civil rights of parties whose relations, as legally defined by different state tribunals, are liable to be regarded on one side of the state line as matrimonial, and on the other side as meretricious.").

the application of full faith and credit to foreign divorces, and one addressed alimony decrees apart from any underlying divorce.[102]

The most important of the foursome, *Atherton v. Atherton* (1901), provided an opportunity to force all states to follow what was already the majority approach of recognizing courts' ability to alter the marital status of both spouses when only one was present.[103] The facts of the case began in 1888, when New York resident Mary G. Kelsey married Kentucky resident Peter Lee Atherton in New York. The couple immediately moved to Kentucky and lived there until the wife, alleging cruel and abusive treatment, returned to her family. The husband agreed to this separation, as evidenced by a settlement agreement. Nevertheless, in December 1892, the husband sought a divorce in Kentucky by claiming his wife abandoned him. The husband followed proper procedures for informing his wife of the suit under Kentucky law (giving her constructive notice), and he was granted a divorce in March 1893. Meanwhile, in January 1893, the wife initiated a suit for divorce in New York. The New York court determined that because the wife was no longer a resident of Kentucky and had not received personal notice in the case, the Kentucky decree was void as against her. This meant the New York court could still award alimony. The husband appealed, citing the Full Faith and Credit Clause.[104]

In a seven-two majority opinion, Justice Gray held that the Kentucky divorce barred the wife from pursuing her divorce with alimony in New York because there was "no doubt" that full faith

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[102] For discussion, see "The Divorce Cases," *Southern Law Review* 1, no. 10 (Mar. 1902): 771. In the two relatively minor cases, the Court held that a divorce was not entitled to full faith and credit when the plaintiff was not domiciled in the issuing state and the defendant did not appear. Streitwolf v. Streitwolf, 181 U.S. 179 (1901); and Bell v. Bell, 181 U.S. 175 (1901). For newspaper coverage of how these decisions made it more difficult for New Yorkers to continue getting divorced in South Dakota, see "Prominent People of New York among Those Troubled about Divorce Decision," *Cincinnati Enquirer*, Apr. 18, 1901, 1.

[103] Atherton v. Atherton, 181 U.S. 155 (1901).

[104] *Atherton*, 181 U.S. at 155-59. For discussion, see Feigenson, "Extraterritorial Recognition of Divorce Decrees," 165.

and credit applied to the Kentucky decree. The Court offered that the state where a husband and wife had lived together retained jurisdiction to change their marital status, even if one spouse had left. This meant all other states were required to give full faith and credit to the divorce.[105]

Justice Peckham, who had sought to allow multiple contempt incarcerations for New York's alimony debtors and who authored perhaps the least persuasive of the bankruptcy-alimony cases, dissented. This is particularly notable because Peckham dissented only nine times during his nearly fifteen-year tenure at the Supreme Court.[106] Here again, Peckham was concerned about protecting women's financial interests. In Peckham's view, if the husband was guilty of cruelty and misconduct in Kentucky, the wife had a right to obtain a separate domicile in New York. As such, her husband's suit in Kentucky "was not conclusive against her." Peckham focused on the incentives the majority's holding created for a misbehaving husband. That a husband could "drive his wife from his home by conduct which entitled her to a divorce" and then get a divorce in his own jurisdiction, which no longer had jurisdiction over her, seemed to him "to be at war with sound principle and the adjudged cases."[107]

Because most states already followed the *Atherton* approach, just pursuant to comity rather than full faith and credit, commenters cast the case as making a mild and positive intervention into states' approaches to recognizing divorce. An article in the *Harvard Law Review*, for example, explained that the Supreme Court had "quite properly overruled" the doctrine that had existed in New York.[108] A Note in the *North Carolina Law Journal*, drawing coverage from other publications,

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[105] *Atherton*, 181 U.S. at 162.

[106] "Peckham, Rufus Wheeler Jr." in *Biographical Encyclopedia of the Supreme Court*, ed. Melvin I. Urofsky (Washington, DC: CQ Press, 2006), 395, http://library.cqpress.com/scc/bioenc-427-18168-979452.

[107] *Atherton*, 181 U.S. at 173-74 (Peckham, J., dissenting).

[108] Note, "Jurisdiction in Divorce Proceedings," *Harvard Law Review* 15, no. 1 (May 1901): 66, 67.

noted some skepticism about *Atherton* but overall suggested "[t]here is really nothing new in any of the [1901 divorce] decisions."[109]

Justice Gray died in 1902, and the next divorce jurisdiction decisions were written by conservative Justice Edward White for a small majority.[110] The first of these was *Andrews v. Andrews* (1903), which struck a major blow to migratory divorce. In *Andrews*, a husband and wife were domiciled in Massachusetts and unable to qualify for a divorce there. Consequently, the husband traveled to South Dakota for the sole purpose of obtaining a divorce. Because he did not intend to remain in the state, he did not acquire a domicile there. The wife entered an appearance through counsel and consented to the divorce in exchange for a settlement in 1892. The husband then returned to Massachusetts and married another woman. After the husband died, the first wife sought to invalidate the South Dakota divorce in order to inherit as the widow. The Massachusetts Supreme Court sided with her, finding the divorce invalid. The U.S. Supreme Court affirmed. Writing for the majority, Justice White held that even when both parties were present for a foreign divorce proceeding, the decree was not subject to full faith and credit if neither party was domiciled in the issuing state. A contrary result, the Court wrote, would cause "the destruction of all substantial legislative power over the subject of the dissolution of the marriage tie," because spouses could easily make a quick trip to a lax jurisdiction to get a decree.[111]

Justice Peckham joined a dissent with no opinion, but it is interesting to speculate as to his thinking. One possibility is that he was flummoxed by the fact that there was no way to protect the marital property rights of both "wives," as he may have wished to do, given his typical sympathy for

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[109] Note, "Divorce Law—U.S. Supreme Court Decisions," *North Carolina Law Journal* 2, no. 3 (July 1901): 91, 93.

[110] Feigenson, "Extraterritorial Recognition of Divorce Decrees," 166.

[111] Andrews v. Andrews, 188 U.S. 14, 38 (1903); Feigenson, "Extraterritorial Recognition of Divorce Decrees," 166.

women's financial vulnerability. It is also possible that this future writer of *Lochner v. New York* (1905)—the infamous case striking down labor protections on the ground that the laws violated freedom of contract—wished to protect contracts in the marital context as well.[112] Indeed, Peckham's opinion in *Lochner* merged paternalism toward women's traditional economic role and the privileging of contract. He wrote that the protective labor legislation at issue was an unreasonable interference with a man's right "to enter those contracts in relation to labor which may seem to him appropriate or necessary for the support of himself *and his family*."[113]

The most significant and controversial of Justice White's divorce jurisdiction opinions came almost exactly a year after *Lochner*. In *Haddock v. Haddock* (1906) the Court divided five to four, with Justice Peckham in the majority this time. The Haddocks were originally residents of New York and married there in 1868. Immediately following the wedding, the husband abandoned the wife. In 1899, the wife, who had remained in New York, filed for divorce from bed and board and alimony and obtained personal service over the husband. In response, the husband presented a divorce he had obtained in Connecticut in 1881. In the Connecticut proceeding, the husband had served his wife by publication and through the mail to her last known address, as required by Connecticut law, but she had not appeared. The New York courts refused to give full faith and credit to the Connecticut decree. Instead, they granted the wife a divorce from bed and board with alimony of $780 per year. The question for the Supreme Court was whether the New York court had violated the Full Faith and Credit Clause.[114]

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[112] Andrews, 188 U.S. at 42 (the other dissenters were Justices Brewer and Shiras).

[113] Lochner v. New York, 198 U.S. 45, 56, 59 (1905) (emphasis added).

[114] Haddock v. Haddock, 201 U.S. 562, 564-66 (1906). For additional discussion, see Feigenson, "Extraterritorial Recognition of Divorce Decrees," 166; Estin, "Family Law Federalism," 388.

Though *Atherton* seemed to dictate that the New York court was obligated to treat the Connecticut divorce decree as binding on the wife, Justice White's majority did not so hold. After an exhaustive examination of Supreme Court precedent, state cases, and international law, the Court concluded that, although the New York courts *could* enforce the Connecticut decree as a matter of comity, they were not *required* to do so under the Full Faith and Credit Clause.[115] Forced to contend with *Atherton*, the majority asserted that the proposition many legal authorities had supposedly drawn from the case—"that the domicil of one party alone is sufficient to confer jurisdiction upon a judicial tribunal to render a decree of divorce having extraterritorial effect"—was incorrect. Instead, the *Haddock* Court argued that *Atherton* rested solely "upon the principle of matrimonial domicil," a term the Court did not define but that seemed to take into account where the parties married, where they cohabited, and whether the spouse seeking the decree had wrongfully deserted or justifiably left the location where the parties last lived together.[116] A contrary holding, the Court argued, gave each state "the power of overshadowing the authority of other states, thus causing the marriage tie to be less protected than any other civil obligation, and this to be accomplished by destroying individual rights without a hearing and by tribunals having no jurisdiction."[117]

Four justices joined in two dissents. In one, Justice Oliver Wendall Holmes emphasized that the majority "purports to respect, and not to overrule, *Atherton v. Atherton*…. And yet it appears to me that the whole argument that prevails with the majority of the court is simply an argument that *Atherton v. Atherton* is wrong."[118] Though he did "not suppose that civilization will come to an end

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[115] *Id.* at 605-06. The opinion was 15,000 words. The Court noted it could have gone through more state cases but doing so "would expand this opinion to undue length." *Id.* at 586.

[116] *Id.* at 583-85.

[117] *Id.* at 580.

[118] *Id.* at 632.

whichever way this case is decided," the majority opinion "not only reverses a well considered decision of this court but is likely to cause considerable disaster to innocent persons, and to bastardize children hitherto supposed to be the offspring of lawful marriage."[119] Justice Holmes professed puzzlement regarding the majority's treatment of the Full Faith and Credit Clause, noting that there was "no exception in the words of the Constitution."[120]

Public reactions to *Haddock* were negative. Newspaper coverage indicated widespread confusion. Journalists could not understand what the Court had even held, with summaries of the case widely diverging.[121] One of the more accurate (and lengthy) headlines captured the Court's seeming inconsistency and its consequences: "Atherton Divorce Stands: But the Supreme Court Reverses Itself: Much Speculation Among Louisville Lawyers: Notable Decision and Effect on Second Marriage: CHILDREN ILLEGITIMATIZED."[122]

Most legal scholars considered the opinion to be wrongly decided. In perhaps the most melodramatic critique, one writer observed that *Haddock* was more "astonishing" to the bar than *Dred Scott v. Sanford* (1857), the notorious antebellum case that held that African Americans were ineligible for U.S. citizenship. It was particularly striking, he thought, that the case rendered marital fault a jurisdictional fact. "This novel and extraordinary doctrine has never before been suggested by a civilized court or author," he observed. "The Supreme Court of the United States is entitled to the

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[119] *Id.* at 628.

[120] *Id.* at 632-33.

[121] For example, the *Washington Post* suggested the holding was "that a divorce cannot be granted in Connecticut when the marriage was performed in New York." "Hits Divorce Law," *Washington Post*, Apr. 17, 1906, 1. The *New York Times* article began: "That a divorce valid in all States cannot be given by the courts of a State in which only one party to the marriage resides, was the rule laid down by the United States Supreme Court today." "No Inter-State Divorce, Supreme Court Holds," *New York Times*, Apr. 17, 1906, 3.

[122] *Courier Journal* (Louisville), Apr. 18, 1907, 1.

credit of originality, at least."[123] The case had created "a revolution in the administration of divorce law," another critic wrote. The majority's distinguishing of *Atherton* "is purely arbitrary and technical, a shadow with no substance, so far as any principle underlying the matter is concerned. … The mind refuses to be convinced." The only silver lining was that the Court's decision did not eliminate "a chief lever for divorce reform" and indeed "call[ed] loudly for a remedy," such as uniform divorce legislation.[124]

Reformers and other commenters suggested that *Haddock* should not be the final word. Members of the Divorce Congress—a group that had drawn participants from almost every state in meetings during the preceding years in an effort to draft a model conservative divorce law—immediately recognized *Haddock*'s unacceptable repercussions, even though the opinion aided their goal of discouraging migratory divorce.[125] In their ongoing reform efforts, they sought to "escape the result" of the decision through mutual state agreement to recognize divorces pursuant to comity. The Dean of Cornell Law School, who was also a New York delegate to the Divorce Congress, explained: "Next to the evils of the migratory divorce are the evils, often affecting innocent persons, of regarding parties as divorced in some States and still husband and wife in other States."[126] Several years later, echoing Justice Holmes's dissent, another legal scholar predicted: "Civilization will not come to an end, nor, we may predict, will the decisions of the United States Supreme Court on this interesting and important topic, until some consistent and comprehensible principles are laid down

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[123] Joseph H. Beale, Jr., "Constitutional Protection of Decrees for Divorce," *Harvard Law Review* 19, no. 8 (June 1906): 586.

[124] D. D. Murphy, "The Divorce Problem and Recent Decisions of the United States Supreme Court," *American Lawyer* 14, no. 11 (Nov. 1906): 499.

[125] On the Divorce Congress, see Chapter Two.

[126] Ernest Huffcut, "The National Congress on Uniform Divorce Laws," *Independent* 61, no. 3026 (Nov. 29, 1906): 1265, 1266.

for its government."[127] Yet, in the coming decades, the issue only became more complicated, as identifying a consistent meaning for "matrimonial domicile" remained evasive.[128]

Meanwhile, as the Court muddled through the question of when full faith and credit attached to divorce decrees, it also struggled to determine the applicability of full faith and credit to alimony awards. This line of cases was rooted in the fourth of Justice Gray's 1901 opinions, *Lynde*, noted above for the complication it posed for the bankruptcy analysis. The Lynde marriage was dramatic from the start. Charles Lynde, the son of a prominent Brooklyn lawyer, had married against the express wishes of his parents shortly after graduating from Princeton in 1884. His wealthy parents then cut him off. The bride was Mary Yarde Wright, who was "reputed to be one of the handsomest women in the state of New Jersey." Mary was also from a prominent family and was the niece of a well-known judge. The couple lived together in New Jersey until 1892, when Charles decided to move to Australia to speculate on gold mining. In 1893, Mary obtained a divorce in New Jersey. The court did not grant her alimony because Charles was not served with process, and the court lacked jurisdiction over him or any of his property. A few years later, Charles returned to America with a self-made fortune. Upon his arrival, he learned that Mary had divorced him, both their children had died, and he had inherited $500,000 from his deceased father. After this major change in circumstances, Charles settled in New York and married a new woman.

In 1896, Mary, who had been supporting herself as a legal stenographer, sued to reopen the New Jersey case and seek alimony. Charles appeared in the suit via his attorney, which gave the court jurisdiction over him. The court was therefore able to order Charles to give Mary $80 per

[127] Henry Berger, "Extra-Territorial Effect of Decree for Divorce on Constructive Service," *American Law Review* 45, no. 4 (July-Aug. 1911): 564, 585.

[128] Estin, "Family Law Federalism," 389. For an example of a court attempting to make sense of *Haddock*, see Montmorency v. Montmorency, 139 S.W. 1168 (Ct. App. Tex. 1911).

week, arrears of nearly $8,000, and $1,000 in counsel fees.[129] Charles refused to comply. Unable to get relief against any property in New Jersey, in 1898, Mary's lawyer asked a New York court to enforce the New Jersey decree. In 1899, a New York court obliged, ordering Charles to pay $80 per week and entering a money judgment of nearly $15,000, to cover the amount of the New Jersey decree that had already accrued. The intermediate appellate court revised this award, keeping the arrears judgment but eliminating the order for future installments. Both parties were dissatisfied and appealed, and the New York Court of Appeals affirmed.[130]

In 1901, the case reached the U.S. Supreme Court, which adopted the New York courts' distinction between alimony already due and future installments. In a brief opinion, Justice Gray wrote that only the former was "fixed" and thereby entitled to full faith and credit. "The provision of the payment for alimony in the future was subject to the discretion of the court of chancery of New Jersey, which might at any time alter it, and was not a final judgement for a fixed sum," Justice Gray explained.[131] This decision was not the end of the road for either the Lyndes or for this legal question. Indeed, both the Lyndes and the law that their case established proceeded on unfortunate trajectories.

The Supreme Court's decision that only past-due alimony was enforceable through full faith and credit left Mary (and countless other wives with alimony decrees in a different state from where their ex-husbands resided) in the position of needing to sue each time an alimony installment went unpaid in order to get a judgment for the past due amount. Unsurprisingly, then, Mary soon sued

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[129] "Miss Wright Wants Alimony," *New York Times*, Mar. 23, 1896, 8; "Lynde Has a Big Bill to Pay," *New-York Tribune*, Jan. 12, 1899, 11; "Mr. Lynde of Blue Point," *Hartford Courant*, May 21, 1901, 10. For her suit to reopen the alimony issue, see Lynde v. Lynde, 54 N.J. Eq. 473 (Ct. of Chancery N.J., 1896).

[130] The facts are helpfully recounted in Lynde v. Lynde In re Westervelt, 52 A. 694 (N.J. Eq. 1902), as well as Lynde v. Lynde, 162 N.E. 979 (N.Y. 1900).

[131] Lynde v. Lynde, 181 U.S. 183 (1901).

Charles yet again. In July 1901, their lawyers reached a settlement that required Charles to give Mary $41,000. After the money changed hands through the attorneys, Mary was distraught that her lawyer retained $23,000 for his fee. Not shy of litigation, Mary hired new counsel to sue her alimony lawyer on the basis that the fee was exorbitant.[132] Her action received such widespread coverage that the attorney felt compelled to defend himself in a letter to the *New York Times*. He claimed Mary had entered a contingency agreement to pay half the amount recovered, and he reminded readers that from 1896 through 1901, "the case was almost continuously before the courts of New Jersey and New York and the United States."[133]

The New Jersey Court of Equity sided with Mary. After an extensive review of alimony law dating back to English ecclesiastical courts and running through pertinent state statutes, the court concluded that a claim for alimony "is a purely personal right, and not in any sense a property right." As such, a wife could not assign it to another person in a contingency-fee arrangement. Moreover, the court continued, contingent fee agreements in divorce litigation were against public policy because they could mislead the Chancellor hearing a case about the nature of how an award would be allocated. Consequently, the lawyer had to return the amount, less certain specified expenses, and await a hearing to determine his fair compensation.[134]

Charles Lynde also did not live happily ever after. A few years after settling the alimony issue, "Sporting Lynde," as he was sometimes called, "insisted on driving" an automobile, against his chauffeur's advice. In the horrendous accident the followed, Charles was decapitated. His second wife, who survived the accident with minor injuries, soon learned that Charles had left her nothing

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[132] "Fee for Divorce, Excessive," *Washington Post*, July 8, 1902, 1.

[133] James Westervelt, "Mr. Westervelt's Explanation," *New York Times*, July 12, 1902, 6.

[134] Lynde v. Lynde In re Westervelt, 52 A. 694 (N.J. Eq. 1902).

in his will. The document, executed in 1904, stated that her conduct was "unworthy of a wife to such an extent as to be detrimental to my own welfare."[135]

Meanwhile the *Lynde* opinion met significant critique. It seemed to many commenters and lower court judges that *Lynde* was inconsistent with or implicitly overruled *Barber*, despite not even citing it.[136] *Barber* had allowed a wife to enforce a New York judgment for alimony installments that *had not yet accrued* in a federal court in Wisconsin. Though full faith and credit was not discussed in that case, the holding implied that such alimony judgments were covered.[137] But in *Lynde*, the Court clearly held that future alimony installments were not entitled to full faith and credit. In the following years, state courts cited *Lynde* when declining to enforce sister-state alimony orders for future payments.[138]

In *Sistare v. Sistare* (1910), the Court attempted to reconcile *Lynde* and *Barber* and establish reasonable rules for the application of full faith and credit to future alimony installments. After summarizing the earlier cases, the unanimous opinion authored by Justice White offered that "[w]hen these two cases are considered together we think there is no inevitable and necessary conflict between them, and, in any event, if there be, that *Lynde v. Lynde* must be restricted or qualified so as to cause it not to overrule the decision in the *Barber* Case." Going forward, "generally speaking, where a decree is rendered for alimony and is made payable in future instalments, the right to such instalments becomes absolute and vested upon becoming due, and is therefore protected by

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135 "The Motor He Drove Kills 'Sporting' Lynde," *New York Times*, Sept. 4, 1906, 1; "Attacks Wife in Will," *Sun* (Baltimore), Dec. 3, 1906, 11.

136 In *Israel v. Israel*, 148 F. 576 (3d. Cir. 1906), the court observed: "it cannot be reasonably assumed" that the Supreme Court had overlooked *Barber* when deciding *Lynde* and, "if there be any inconsistency, [*Barber*] must be considered as overruled, or at least modified, by the later case."

137 Barber, 62 U.S. at 594-99 (1858).

138 See, e.g., Cureton v. Cureton, 65 S.E. 65, 68 (Ga. 1909) (citing *Lynde*).

the Full Faith and Credit Clause, provided no modification of the decree has been made prior to the maturity of the instalments." However, there was a carve out to the rule. Full faith and credit would not apply where "the right to demand and receive such future alimony is discretionary with the court which rendered the decree, *to such an extent that no absolute or vested right attaches*… even although no application to annul or modify the decree in respect to alimony had been made prior to the instalments becoming due." In other words, a court need not enforce its sister state's alimony order as to future payments if the home jurisdiction's court still had the right to modify the decree to some ambiguous extent. Demonstrating the application troubles to come, the Supreme Court then held that the Sistare alimony decree was entitled to full faith and credit by finding that the Connecticut court that had held to the contrary had misconstrued New York alimony law.[139]

Law review commenters were not impressed, finding neither the reconciliation of *Barber* and *Lynde* nor the new rules to be well considered. According to an article in the *Central Law Journal*, "[t]hese rules seem to us either to leave or to attempt to close a loophole, the existence of which depends upon construction by state courts of their own statutes." The caveat the Court had created "is inconsistent with the enjoyment" of the right to have a foreign judgment or decree enforced, "and seems, therefore, to us unsound."[140]

Though after *Haddock* and *Sistare* courts remained free to enforce foreign divorce decrees and alimony orders via comity, the Supreme Court's holdings allowed major inconsistencies and difficulties for spouses seeking to conclusively settle their marital dissolutions. It was not until the 1940s that the Court returned to the *Haddock* mess and developed a policy termed "divisible divorce." Under this approach, the Court relaxed the jurisdictional requirements for divorce decrees

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[139] Sistare v. Sistare, 218 U.S. 1, 11-20 (1910).

[140] "Full Faith and Credit Clause in Respect of Alimony Instalments," *Central Law Journal* 71, no. 4 (July 29, 1910): 55-56.

to avoid the problem of inconsistent marital statuses across state lines. The "divisible" aspect was that the Court continued to use stricter jurisdictional rules for attendant alimony and child custody determinations. The result was similar to the approach developed by Midwestern states in the nineteenth century; *ex parte* foreign divorce decrees were typically subject to full faith and credit, but foreign courts could not necessarily alter the property rights of the absent spouse.[141] The following decade, the Court returned to the *Lynde/Sistare* line of cases and created new rules for enforcement of future alimony installments.[142]

What explains the Court's lackluster full faith and credit decisions in the alimony and divorce contexts in the early twentieth century? One possibility is that the Court was terrible at formulating consistent full faith and credit jurisprudence in general in this period, regardless of the underlying subject matter, because it was seeking to navigate state sovereignty concerns.[143] The Court's unpersuasive reasoning may have been exacerbated by the fact that it was perpetually behind on issuing opinions in these years.[144] Under these explanations, there is nothing special to glean about the Court's views on divorce and alimony.

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[141] Estin, "Family Law Federalism," 395-416. Full faith and credit still applies differently for divorce than for other types of litigation. For instance, parties to a divorce proceeding cannot give a court jurisdiction by consent; at least one must be domiciled there. James Weinstein, "The Federal Common Law Origins of Judicial Jurisdiction: Implications for Modern Doctrine," *Virginia Law Review* 90, no. 1 (Mar. 2004): 223.

[142] For discussion, see Eugene Scoles, "Enforcement of Foreign 'Non-Final' Alimony and Support Orders," *Columbia Law Review* 53, no. 6 (June 1953): 817; Comment, "According Full Faith and Credit to Foreign Modifiable Alimony Decrees," *University of Chicago Law Review* 26, no. 1 (Autumn 1958): 136.

[143] This impression is supported by David P. Currie, "The Constitution in the Supreme Court: Full Faith and the Bill of Rights, 1889-1910," *University of Chicago Law Review* 52, no. 4 (Fall 1985): 867, 880-92.

[144] Alexander M. Bickel and Benno C. Schmidt, *History of the Supreme Court of the United States*, vol. IX, *The Judiciary and Responsible Government, 1910-21* (New York: Macmillan, 1984): 8, 84. See also Feigenson, "Extraterritorial Recognition of Divorce Decrees," 122 ("The answer appears to be that on this issue, as on many others, nineteenth century federalism largely preserved state autonomy.").

Another possibility, which seems plausible given the Supreme Court's and lower courts' efforts in the bankruptcy and contempt settings, is that judges were attempting to balance the interests of husbands, wives, and society. In these years, judges were influenced by societal panic over the divorce rate and the ability of divorce havens to undermine conservative divorce laws. They subscribed to a gendered understanding of marriage, in which men had a duty to provide for wives and children, and they recognized that it would be harmful to marriage as an institution for men to be able to evade these obligations. They consequently wished to protect women's financial expectations in marriage without unduly incentivizing women to seek divorce. Crafting rules to maximize these objectives was no easy task. The jurisdictional restrictions on migratory divorce reflect the intermingling of these goals. Since most migratory divorce was sought by men, limiting the extraterritorial financial consequences typically benefitted women and removed one of the inducements to men's seeking foreign divorces in the first place.[145]

Other cases and evidence from the period bolster this interpretation of the Supreme Court's divorce opinions as seeking to protect what the justices perceived as women's interests. For instance, in 1909, the Court faced the question of whether the Full Faith and Credit clause could compel a state to recognize a foreign court's order regarding real property within its own borders as part of a divorce settlement. In holding that full faith and credit could not reach this scenario, the Court was seemingly on firm footing because of analogous precedent outside the divorce context. Nevertheless, the majority apologetically admitted there was "much temptation" to follow the state court's contrary holding because otherwise the husband could convey property "in fraud of [his ex-

[145] To be sure, women did not always win, in part because of the slipperiness of "marital domicile." See, e.g., Thompson v. Thompson, 226 U.S. 551 (1913).

wife's] rights."[146] Further afield, it is worth recalling that in the midst of these jurisdiction-focused cases, the Supreme Court issued its unanimous decision in *Muller v. Oregon*, upholding labor regulations for women (in sharp contrast to the treatment of labor legislation for men, in *Lochner*), on the basis of women's dependency and role as mothers.[147] The Court may have likewise sought to protect women in their gendered sphere in the divorce context. Taken together, these decisions suggest that the Court tended to support women's marital financial rights and encountered difficulties because of the complexities of federalism.

Conclusion

Especially as increasing mobility and anonymity in urban cities undercut reputational and other harms that might attach to noncompliance with family support orders, courts struggled to find effective ways to enforce such awards. Though courts found rationales to distinguish alimony and similar obligations from other types of debt in the contexts of civil incarceration and bankruptcy, they were less successful in maneuvering through jurisdictional obstacles.

The legal enforcement methods that solidified by the early twentieth century proved a serious problem to the alimony and separate maintenance laws courts and legislatures had worked so hard to develop. While civil contempt incarceration was an imperfect solution even if pursued locally, it was nearly useless across state lines. The wife would need to find and follow the man, hire a lawyer, and pay court fees in the other jurisdiction, and would then face all the problems of in-jurisdiction proceedings. A man who had recently fled would likely be willing to leave once again, either while the litigation was pending or soon after a decree. And even if the wife succeeded in

[146] Fall v. Eastin, 215 U.S. 1 (1909). Though the existence of two dissenters (with no opinion) suggests the case was not free from controversy, law review coverage indicates it fit well within analogous cases outside the divorce context. Note, "The Extra-Territorial Force of a Decree by a Court of Equity," *Harvard Law Review* 23, no. 5 (Mar. 1910): 390.

[147] Muller v. Oregon, 208 U.S. 412 (1908).

getting the man incarcerated for contempt, it was no use to her for him to sit idly in jail. Once he was released, the process might begin again.

The problems with civil support recovery prompted reformers to consider alternative mechanisms to enforce men's family obligations and led them to identify criminal law as a potential solution. In contrast to civil support orders, criminal prosecutions did not require a second round of litigation for contempt, thus avoiding fees and delays. Men incarcerated for a crime, as opposed to civil contempt, could be forced to perform hard labor, which reformers believed contributed more deterrence and, in some locations, provided a source of financial support for dependents. Criminal law also permitted extradition, circumventing some of the jurisdictional complications. That judges had already solidified the idea that family support was a duty to society, rather than merely a debt to the private family, further justified the use of criminal law.

Chapter Four
"Not a mere poor law": The Criminalization of Family Nonsupport

Over the course of the nineteenth century, it became increasingly clear that existing social and legal methods of enforcing men's breadwinner obligations were no match for the changes wrought by industrialization and heightened immigration and mobility. Though lawmakers had worked valiantly to modernize the operation of the doctrine of necessaries and legal separations to ensure support for wives and children, these remedies were difficult to enforce when men were mobile and worked only for weekly wages.[1] Especially in rapidly growing cities, reformers recognized that they needed other legal tools to enforce men's family financial duties.

In some jurisdictions, legislators and reformers first turned to the poor law to fill the gaps. Derived from Elizabethan statutes, the poor law permitted officials to fine or even incarcerate certain relatives if their kin seemed likely to or had become public charges. Though the key family liability provisions of the poor law did not initially apply to spouses, in the mid-nineteenth century legislators began to gradually broaden the statutes to require marital support. Most notably, the revised poor laws in New York and Pennsylvania allowed wives and children to initiate suit and collect payments directly, rather than be sent to almshouses reimbursed by their negligent breadwinners. Still, the revised poor law shared a crucial shortcoming with the other laws targeting family nonsupport: it was ineffective at reaching men across state lines.[2]

Building on the poor law, and especially a subtype of poor law that punished vagrancy and misspending money that should have gone toward family support, state legislatures gradually turned to criminal law beginning in the late 1860s. Southern states upgraded quasi-criminal vagrancy

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[1] For more detail on these points, see previous chapters.

[2] Seemingly no scholarship addresses how poor law was revised to cover marital duties during the nineteenth century.

statutes to misdemeanors, largely to control the labor of newly freed African Americans. These laws were not intended to ensure support for dependents based on a male breadwinner model, akin to the revised poor law experiments of the Northeast. Rather, the Southern laws were designed to coerce all members of black families to work. In the following decades, a handful of Midwestern states blended the motivations and methods of the revised poor law and the Southern misdemeanor statutes. They rendered it a misdemeanor for a man to fail to support his wife or children, employing the severity of Southern laws but with goals more like those of the Northeast. Still, misdemeanor nonsupport laws remained a tentative and minority approach.

By the 1890s, charity groups feared that the family desertion rate was escalating, and they were deeply reluctant to use their limited resources to support families that had able-bodied but delinquent male breadwinners. In order to reach men across state lines and to deter any from thinking this was an effective escape, these reformers recognized the need for extradition, which was only available through criminal law. Their proposal to criminalize nonsupport and desertion was uncontroversial, so the debate centered on whether a felony or misdemeanor would be superior. Most jurisdictions found a misdemeanor more strategic but retained a range of options that facilitated prosecutorial discretion and minimized costs and procedural delays. Reformers also appreciated that criminal law could expand the range of available punishments, which could help deter and address this conduct.

Though historians have offered significant contributions to understanding the criminalization of nonsupport beginning in the 1890s, their work has left crucial aspects of this topic unexamined. Michael Willrich has provided the most comprehensive law-focused treatment. Willrich writes that every state passed new criminal laws penalizing desertion and nonsupport from 1890 through 1915 to police men's breadwinner obligations. This development, Willrich astutely argues, complicates feminist historians' casting of mothers' pensions and workmen's compensation as a

two-track gendered social welfare scheme, in which only female aid recipients were subject to state supervision and societal stigma. By adding criminal nonsupport to the picture, Willrich demonstrates, it is apparent that Progressives used the courts to regulate masculinity as well.[3]

Willrich's compelling account leaves room for further analysis in the relationship between the criminal statutes and the laws they joined. Willrich does not mention the need for extradition and instead pins the timing of criminalization on "pervasive public concern for the state of the marital union during the Progressive Era" and "growing awareness of the moral and fiscal costs of desertion and in a public will to preserve traditional gender roles when the new realities of wage labor threatened to turn those roles into obsolete legal fictions." While these concerns were surely relevant, they were present in earlier decades and do not explain why the answer was necessarily criminal law. This chapter shows that what was new by the late nineteenth century was the perception that mobility was complicating social and legal enforcement of men's family duties.[4]

Another major contributor to this literature is Anna Igra, who has explored how particular concerns within New York City's Jewish community led Jewish organizations to use innovative

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[3] Michael Willrich, "Home Slackers: Men, the State, and Welfare in Modern America," *Journal of American History* 87, no. 2 (Sept. 2000): 460-89. For similar discussion see Michael Willrich, *City of Courts: Socializing Justice in Progressive Era Chicago* (New York: Cambridge University Press, 2003), 147-50. For an account with themes, see Martha May, "The 'Problem of Duty': Family Desertion in the Progressive Era," *Social Service Review* 62, no. 1 (Mar. 1988): 44. May's account focuses on how charity workers sought to regulate "working-class masculinity." She provides some discussion of how criminalization mattered for extradition and the types of punishments available, but her focus is on how social welfare workers responded to nonsupport in a manner that facilitated novel state intervention in family life.

[4] Willrich includes some discussion of how criminal laws intersected with and worked alongside other options. The key passage reads: "Even though some states (including Illinois) had previously criminalized desertion in vagrancy and disorderly persons statutes, the new desertion and nonsupport laws clearly ratcheted up the state's power over wage-earning husbands. The power of the state—and the public at large—to police delinquent husbands grew, as lawmakers colonized this old area of equity and civil jurisdiction for criminal law. Legal aid activists hailed the new statutes as 'unpriced relief' for poor wives, who could now pursue legal action against their husbands by signing a criminal complaint. But though wives were the preferred complainant… desertion and nonsupport was now a crime against the state. *Anyone* could set the prosecutorial machinery in action. … Prosecutors, meanwhile, assumed a role previously performed mostly by private parties, the merchants who filed suits to recover credit extended to wives for 'necessaries.'" Willrich, "Home Slackers," 473. In this summary, Willrich seems to imply that criminal law replaced civil and equitable options, when in fact they all continued to develop in tandem. This is important because a focus on criminal law gives the impression that courts only regulated poor men's finances.

tactics to address men's desertion. Her work provides illuminating analysis of how charity reformers, wives, and husbands understood this conduct and its consequences. As a work of social history focused on one place and especially one community, Igra's scholarship understandably provides little attention to the technical aspects of legal reform. Though she notes that New Yorkers sought a felony law to gain access to extradition, this is a sparse detail in comparison to her other discussion of reformers' motives. In her telling, the reason criminal nonsupport laws became a pressing goal in the 1890s was that charity groups had begun considering pensions for destitute mothers, and these reformers believed it would be appropriate to distinguish between widows and deserted wives in that context. Only the former, reformers thought, should receive public relief. Igra suggests this framing "laid the groundwork for increased attention to the prosecution of nonsupporting husbands and fathers."

By situating New York's criminalization story within a temporally broader and law-focused account, this chapter finds that some of Igra's conclusions are not fully compelling. New Yorkers had been routinely prosecuting non-supporting husbands for decades under the state's revised poor law. Discourse on mother's pensions may have heightened concern about deserted wives, but it did not introduce the salience of the distinction between deserted wives and widows. Another one of Igra's core arguments is that the passage of criminal laws placed a considerable burden on deserted wives to track down their husbands and otherwise cooperate in criminal proceedings, yet rarely helped them secure support. Though it is true that wives had to be involved for the nonsupport machinery to work, Igra's account does not recognize how criminal law reduced the cost and time wives had to invest as compared to the preexisting options. Moreover, the suggestion that the criminal regime was ineffective is likely skewed by Igra's reliance on select files from the National

Desertion Bureau, a Jewish organization whose clients' experiences may not have been representative.[5]

Finally, Susan Tiffin provides an account with significant scrutiny of laws addressing desertion and nonsupport *of children*. Her interpretation is that the criminal laws that existed to address child abandonment had proven inadequate by around 1890, with minimal enforcement and unhelpful punishments for perpetrators. Social welfare leaders became distressed about the law's inadequacies because of concern about American family life, and they expected that a criminal nonsupport law would serve as a deterrent and permit extradition. Though her account comes closer to the arguments presented in this chapter, it misses a substantial part of the legal landscape by centering on children. The criminal enforcement of marital support duties intersected with a broader range of longstanding legal options, all of which informed how legislatures and courts expected support for children to be enforced—typically as part of an undifferentiated award granted to the wife. Tiffin's focus on children causes her to miss this broader context.[6]

This chapter builds on these historians' accounts, while offering several interventions. In these historians' telling, criminal nonsupport laws arose from a vacuum or replaced ineffectual laws. Using the foundation developed in previous chapters, beginning earlier in time, and expanding beyond the single-city focus employed by Willrich and Igra, this chapter shows that criminal laws

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[5] Anna R. Igra, *Wives Without Husbands: Marriage, Desertion, & Welfare in New York, 1900-1935* (Chapel Hill: University of North Carolina Press, 2007); Anna R. Igra, "Likely to Become a Public Charge: Deserted Women and the Family Law of the Poor in New York City, 1910-1936," *Journal of Women's History* 11, no. 4 (Winter 2000): 59; Anna R. Igra, "Male Providerhood and the Public Purse: Anti-Desertion Reform in the Progressive Era," in *The Sex of Things: Gender and Consumption in Historical Perspective*, ed. Victoria de Grazia (Berkeley: University of California Press, 1996), 188-211; Anna R. Igra, "Marriage as Welfare," *Women's History Review* 15, no. 4 (Sept. 2006): 601-10. For another work of social history focused on desertion in NYC's Jewish community, see Bluma Goldstein, *Enforced Marginality: Jewish Narratives on Abandoned Wives* (Berkeley: University of California Press, 2007) (especially Chapter Four).

[6] Susan Tiffin, *In Whose Best Interest? Child Welfare Reform in the Progressive Era* (Westport, CT: Greenwood Press, 1982), 147-61. Another child-centered account is provided by Drew D. Hansen, Note, "The American Invention of Child Support: Dependency and Punishment in Early American Child Support Law," *Yale Law Journal* 108, no. 5 (Mar. 1999): 1123, 1145-49 (blending poor law, child abandonment statutes, and criminal nonsupport in the late nineteenth century, thereby casting early child support enforcement as focused on dependents likely to become public charges).

were added to a robust range of support enforcement methods. Given that nonsupport was already unlawful and stigmatized by the late nineteenth century, this chapter argues that proponents of criminalization primarily sought to address existing laws' inability to reach across state lines. Only criminalization would permit extradition, which seemed increasingly necessary because of men's heightened mobility.

A second and related intervention is to get beyond the notion that only poor men were subject to judicial regulation of their finances. Igra's account expressly claims that there was a clear divide between a family law of the rich and the poor, with only the latter involving meaningful regulation.[7] This framing is implied to a lesser degree in the other historians' work because of their decision to focus on criminal law in isolation. While acknowledging that poor and immigrant men were the most likely to be targeted by criminal law, this chapter argues that this reality reflects the fact that wealthier and less mobile men were often sufficiently coerced to support their families through social pressures backed by civil and equitable enforcement methods. The difference in legal treatment by class reflects the limitations of civil law in reaching transient men whose assets consisted of weekly wages, rather than an effort to treat poor families harshly. Moreover, by the 1910s, many judges and legislators interpreted or reformed their criminal laws to reach men of all classes.

Finally, existing treatments have devoted little attention to men's legal challenges to quasi-criminal and criminal nonsupport laws' validity and application. This chapter mines such litigation for further insights. In crafting criminal statutes, lawmakers borrowed methods from other support laws and repackaged them with a criminal label. Delinquent breadwinners (or their lawyers) recognized the novelty of these statutes and pressed against what they characterized as the criminal

[7] Igra, *Wives Without Husbands*, 4, 41, 43, 83.

imposition of civil duties. Though in a limited number of cases judges found that the procedural protections afforded were insufficient for the assigned punishments, judges upheld nearly every criminal nonsupport law as constitutional.[8]

While most courts easily found nonsupport statutes constitutional in theory, the more difficult questions came in application. Did a state legislature have the power to punish a man for failing to support his family at the level to which they were accustomed, rather than restricting criminal law to situations involving the direct public harm of dependents needing charity? Some appellate judges, particularly those hearing early cases in the Northeast, construed penal nonsupport statutes to apply only when dependents became destitute because of the statutes' connections or parallels to the poor law. These judges pointed non-impoverished wives to civil and equitable options instead. Indeed, many cases were on appeal because a wife had tried to use the criminal law in combination with other options. Judges found it both unfair and inefficient for a wife to be able to raise essentially the same argument in two forums.

Outside the Northeast and over time, judges tended toward more generous interpretations of criminal nonsupport statutes. These judges borrowed from the doctrine of necessaries to explain why the criminal law could require a man to support his wife and children in line with his means. A criminal nonsupport statute, one influential opinion explained, "is not a mere poor law. It is a domestic duty law, and was intended to cover the case of a woman who is left destitute according to any just and humane estimate of her situation, although in the eyes of paupers she might appear rich."[9] Even in states where appellate courts never reached such a broad construction of the criminal

[8] Willrich acknowledges that men contested criminal nonsupport laws by refusing to pay, running away, or even abusing their wives, but he does not discuss how they also brought legal challenges. Igra devotes a helpful chapter to men's non-legal responses. Her attention to their legal challenges is limited to a handful of cases from New York, which this chapter will show is an unrepresentative jurisdiction. Tiffin also overlooks such case law.

[9] State v. Waller, 126 P. 215, 216 (Kan. 1913).

nonsupport laws, newspaper articles and repetitious appellate cases demonstrate that trial-level judges regularly extended the remedy to protect wives and children who were far from destitute. There was not a neat line between a family law of the rich and the poor. The line was between wives who were willing to seek the powerful arm of the criminal law and those who were not.

The Revision of the Poor Law

American states had maintained a body of statutes known as the "poor law" since the colonial period to govern how localities handled impoverished residents. Components of these laws specified which relatives were liable if kin became public charges, how support obligations could be enforced, and what form public relief might take. Over the course of the nineteenth century, legislators and judges altered the scope and application of the poor law in response to evolving understandings about charity and poverty, economic crises, and social changes tied to industrialization, urbanization, emancipation, and immigration.

American poor law was rooted in the Elizabethan poor law enacted in England in 1601, which itself drew from earlier statutes. Under the Elizabethan model, the able-bodied poor (including children) were put to work or apprenticed, and any who refused were jailed. Children were taken from parents who were unable to maintain them. Hospitals and almshouses for the unwell were available only to longstanding residents who had "settlement" in the community. Foreign paupers could be banned from the town.

Most relevant for later desertion law, the Elizabethan poor law contained several provisions placing liability for the poor on their kin. Parents, grandparents, and children of destitute people unable to work were liable to support each other at a level determined by local justices of the peace, and failure to comply could be punished with a monthly fine. People who threatened to abandon their children and flee outside the jurisdiction could be jailed unless they provided surety, which meant securing bond from a third party that would be forfeited if the promisor failed to comply.

Notably, none of these provisions governed marital liability, as this was understood as sufficiently addressed by coverture.[10]

American colonies and later states imported the Elizabethan poor law and gradually developed it through statutory revisions to fit local needs.[11] For instance, the New York poor law enacted in 1788 imposed liability for indigent kin who were unable to support themselves if related as grandparents, parents, children, or grandchildren. Violators could be sued by the overseers of the poor and fined ten shillings per person per week, "for the use of the poor of such city or town." Another provision stated that if a father, husband, or widow absconded from the person's place of legal settlement and left a wife or children as public charges, the justices of the peace could sell the absconder's real or personal property to support the dependents. Parents were also held liable for illegitimate children.[12]

American lawmakers also enacted vagrancy statutes, sometimes within the poor law and other times standing alone, to punish people who were idle or misspent money and thereby left their families in need. These, too, were born from centuries-old English precedent. An early example was included in the Massachusetts statutes in force in 1660. Titled "Idle Persons," the law authorized

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[10] Jacobus tenBroek, "California's Dual System of Family Law: Its Origin, Development, and Present Status: Part I," *Stanford Law Review* 16, no. 2 (Mar. 1964): 258-59, 279, 283-85; Stefan A. Riesenfeld, "The Formative Era of American Public Assistance Law," *California Law Review* 43, no. 2 (May 1955): 175, 199. Historians have published studies on subcomponents of poor law, such as on the criminalization of begging and the use of poor law to control different groups. A common theme is the use of vagrancy law to compel men's labor. See Amy Dru Stanley, "Beggars Can't Be Choosers: Compulsion and Contract in Postbellum America," *Journal of American History* 78, no. 4 (Mar. 1992): 1265-93; Risa Goluboff, *Vagrant Nation: Police Power, Constitutional Change, and the Making of the 1960s* (New York: Oxford University Press, 2016). Far less attention has been devoted to the poor law provisions compelling familial support payments.

[11] tenBroek, "California's Dual System," 291-96, 304; Michael B. Katz, In the Shadow of the Poorhouse: A Social History of Welfare in America (New York: Basic Books, 1986), 13-14; Mimi Abramovitz, Regulating the Lives of Women: Social Welfare Policy from Colonial Times to the Present (Boston: South End Press, 1988), 78-79; William P. Quigley, "Reluctant Charity: Poor Laws in the Original Thirteen States," University of Richmond Law Review 31, no. 1 (1997): 111.

[12] Laws of the State of New York Passed at the Sessions of the Legislature Held in the Years 1785, 1786, 1787, and 1788 Inclusive (Albany: Weed Parsons & Company, 1886), 643-44, 738. For broader discussion, see Martha Branscombe, The Courts and the Poor Laws in New York State, 1784-1929 (Chicago: University of Chicago Press, 1943), 15-16.

sending to the house of correction "some persons in this Jurisdiction, that have families to provide for, who greatly neglect their callings, or misspend what they earn, whereby their families are in much want, and are thereby expected to suffer, and to need relief from others." Often these statutes were passed in concert with legislation authorizing or regulating the workhouses to which such persons could be sent.[13]

By the late 1700s, many colonies and later states had passed similar and broader statutes that covered "vagrants," "rogues," "vagabonds," "beggars," "disorderly persons," and other miscreants. A sampling from New York's 1788 list of "disorderly persons" included "all persons, who not having wherewith to maintain themselves, live idle without employment," beg, juggle, tell fortunes, wander abroad and lodge in taverns, live as prostitutes, or "run away and leave their wives or children, whereby they respectively become chargeable to any city or town." All disorderly persons could be sent to the house of correction to perform hard labor for up to sixty days.[14]

In other places, the vagrancy and poor laws were blended. For instance, Virginia enacted a statute in 1792 titled: "An Act providing for the Poor, and declaring who shall be deemed Vagrants." This statute notably did not include the common Elizabethan-style provision for fining grandparents, parents, children, or grandchildren for not supporting those relations. But it did state: "Any able bodied man, who, not having wherewithal to maintain himself, shall be found loitering, and shall have a wife or children, without means for their subsistence, whereby they may become burdensome to their County or Town," or any able bodied man without a family who wandered

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[13] *The Colonial Laws of Massachusetts, Reprinted from the Edition of 1660* (Boston: Rockwell & Churchill, 1889), 259. For more discussion of colonial vagrancy statutes, see Quigley, "Reluctant Charity," 164-68. Quigley traces these laws to the fourteenth century in William P. Quigley, "Five Hundred Years of English Poor Laws, 1349-1834: Regulating the Working and Nonworking Poor," *Akron Law Review* 30, no. 1 (Fall 1996): 84. The connection between vagrancy laws and workhouses is apparent in some of their texts and locations in the state code. For related discussion, see Edward Warren Capen, "The Historical Development of the Poor Law of Connecticut" (diss., Columbia University, 1905), 61-63; John Cummings, *Poor-Laws of Massachusetts and New York* (New York: Macmillian, 1895).

[14] Laws of the State of New York (1886), 643.

abroad and loitered without employment or went begging, "shall be deemed and treated as a vagrant." Magistrates could commit such persons to the workhouse to labor for up to three months or handle them as the overseer of the poor treated his charges.[15]

Over the course of the nineteenth century, the vagrancy statutes spread to new locations and covered more conduct. Even as the statutes diversified, they continued to provide authority to punish men whose idleness or misspending caused their families to be in need. For instance, the Territory of Michigan passed a statute "for the punishment of idle and disorderly persons" (separately from poor law) in 1818, the text of which stated it was adopted from Vermont. This law allowed punishment of "any vagrant, lewd, idle, or disorderly persons, stubborn servants, common drunkards, common night-walkers, pilferers, or any persons wanton and lascivious in speech, conduct or behavior, common railers or brawlers, *such as neglect their callings and employments, misspend what they earn, and do not provide for themselves or their families*." Such persons could be whipped or hired out to do labor, "the proceeds of which to be applied to the use of the poor of the county."[16] States continually refined these statutes into the mid-nineteenth century.[17]

If family support provisions—whether they be rooted in the poor law or a vagrancy statute—failed, American states followed English practice in giving their towns, cities, or counties four main options to support paupers. The overseers or commissioners of the poor might,

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[15] *A Collection of All Such Acts of the General Assembly of Virginia* (Richmond: Samuel Pleasants, Jun. and Henry Pace, 1803), 180-86. See also, for example, *Acts and Laws of the State of Connecticut in America* (New London: Timothy Green, 1784), 208. Benjamin Klebaner found that South Carolina also lacked the Elizabethan provision placing liability on kin but nevertheless withheld public support from those with kin that could support them. Benjamin Joseph Klebaner, "Some Aspects of North Carolina Public Poor Relief, 1700-1860," *North Carolina Historical Review* 31, no. 4 (Oct. 1954): 481. William Quigley adds Kentucky, Louisiana, and Tennessee to this list. William P. Quigley, "The Quicksands of the Poor Law: Poor Relief Legislation in a Growing Nation, 1790-1820," *Northern Illinois University Law Review* 18, no. 1 (Fall 1997): 57.

[16] *Laws of the Territory of Michigan, vol. 1* (Lansing: W.S. George & Co., 1871), 588-89.

[17] For example, see *The Revised Statutes of the State of Connecticut* (Hartford: H.S. Parsons and Co., 1849), 556.

depending on local preferences and whether the poor person was able-bodied, auction such individuals to the highest bidder as laborers, contract with private parties to provide care for them, place them in a poorhouse or workhouse, or give them in-kind or cash assistance they could use in their own home, which was called "outdoor relief." Throughout the seventeenth and eighteenth centuries, larger towns and cities preferred poorhouses, whereas smaller localities more often used the other options (though Southern communities rarely chose the auction method).[18]

Beginning in the 1820s, prominent city leaders, especially from New York and Massachusetts, began to advocate for the expanded use of poorhouses. Proponents pressed for the reduction of outdoor relief, which they believed encouraged idleness. Instead, they proposed, able-bodied paupers should be compelled to labor in workhouses, which would save money because of efficiency and deterrence. Moreover, they suggested, this treatment would improve the character of the poor by instilling a strong work ethic. By the 1840s, other states in New England, the Middle Atlantic, and Midwest followed, so that by the Civil War, even many rural areas ran poorhouses. Observers immediately recognized that these institutions failed to deliver on supporters' promises. Many were dirty, overcrowded, and dangerous; did not improve inhabitants' behavior; and provided no cost savings relative to outdoor relief. Nevertheless, the use of poorhouses increased, and the provision of outdoor relief declined into the 1870s.[19]

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[18] Poor relief was typically handled at the local level, but state governments were sometimes responsible for paupers who did not have settlement in a community. On the four options, see Katz, *Shadow of the Poorhouse*, 13-15; Abramovitz, *Regulating the Lives of Women*, 84-93.

[19] tenBroek, "California's Dual System," 296; Katz, *Shadow of the Poorhouse*, 15-17, 22-35, 40; David J. Rothman, *The Discovery of Asylum: Social Order and Disorder in the New Republic*, rev. ed. (New Brunswick: Aldine Transaction, 2008), 165, 183-98; Walter I. Trattner, *From Poor Law to Welfare State: A History of Social Welfare in America*, 6th ed. (New York: Free Press, 1999), 58-59; Branscombe, *Courts and the Poor Laws*, 21, 30-37; Abramovitz, *Regulating the Lives of Women*, 137-41, 146-50, 155-63; Benjamin J. Klebaner, "Poverty and Its Relief in American Thought, 1815-61," *Social Service Review* 38, no. 4 (Dec. 1964): 382.

While experimenting with greater use of poorhouses, some of the largest and most influential cities also altered their laws pertaining to kinship liability. In 1833, the New York legislature introduced a vagrancy-style law specific to New York City. The extant version of the statewide "disorderly persons" statute made it an offense for a person to abandon a wife or children, leaving them as public charges. The new version placed that component in its own section and extended it to apply to "[a]ll persons… who *may neglect to provide, according to their means*, for their wives or children." One way of understanding this language is that the legislature sought to incorporate the common law necessaries doctrine, which required a husband to support his wife according to his station in life, into the poor law. Though judges fought over how to construe "according to their means" for a century, the statute nevertheless shows legislative intent to offer additional marital remedies through a revised poor law.[20] The statute also provided a new option to address this conduct. Disorderly persons were not necessarily placed at hard labor. Instead, they could give surety to guarantee their good behavior, which likely made the law more useful because hard labor provided deterrence but no financial benefit to dependents.[21]

A revision in 1860 further refined New York City's poor law to more closely resemble private remedies. It dictated that the proceeding begin with an "oath," which was interpreted as allowing a wife to initiate a case, rather than relying on the commissioners of the poor to do so. The legislature also authorized family members to testify against the perpetrator, whereas under common law coverture spouses could not testify against each other.[22] Wives used this version to pursue

[20] There is further discussion of the "according to their means" language below.

[21] Laws of the State of New York Passed at the Fifty-Sixth Session of the Legislature (Albany: E. Croswell, 1833), 11.

[22] *Laws of the State of New York Passed at the Eighty-Third Session of the Legislature* (Albany: Weed, Parsons, and Co., 1860), 1007. See Smith v. Commissioners of Public Charities, 9 Hun. 212 (NY Sup. Ct. 1876) (finding wife could initiate case and testify under New York City law); People v. Meyer, 33 N.Y.S. 1123 (N.Y. Gen. Sessions, 1895) ("Any person may make the complaint."). But see People v. Crandon, 17 Hun. 490 (NY Sup. Ct. 1879) (finding wife could initiate case but not testify under statewide law).

support. One particularly unfortunate defendant, for instance, was ordered to pay $20 per week to his wife, an amount an appellate judge hearing the case for an unrelated technical reason noted was "probably, more than he can earn, throughout the year."[23] Newspaper coverage from the following decades reported that wives could turn to the Outdoor Poor Department of New York City's Commissioner of Public Charities for assistance pursuing their claims. The same department also collected and disbursed the resultant payments through what was colloquiality known as the "alimony bureau." Some such press coverage provided readers with step-by-step instructions on how to obtain support in this manner.[24]

Meanwhile, the New York legislature more haphazardly revised the statewide rules on "disorderly persons." In 1859, sloppy drafting reduced the reach of the "disorderly persons" offense to cover those "who threaten to run away and leave their wives or children a burthen on the public," but not those who actually deserted; the legislature fixed the omission two years later. The 1859 version also contained some advancements like those for New York City, such as allowing the use of sureties in lieu of jail and for proceedings to begin on anyone's oath.[25] In 1881, the state's last major changes of the period were enshrined in New York's Code of Criminal Procedure. The Code divided vagrants and disorderly persons into separate categories, albeit not with any obvious logic. The "Disorderly Persons" title included people who "actually abandon their wives or children without adequate support, or leave them in danger of becoming a burden upon the public, or *who*

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[23] In re Albert H. Hook, 55 Barb. 257 (Supreme Court New York County, 1869).

[24] Particularly detailed examples include "Runaway Husbands and the Law," *New York Times*, Sept. 22, 1901, SM14; "The Number of New-York Men Who Pay Alimony Has Increased Since the City Began to Collect It," *New-York Tribune*, Apr. 12, 1903, B5; "Husbands as Assets," *Washington Post*, June 18, 1905, C12. Sources from around the turn of the century indicate that the alimony bureau was in operation by the 1870s, but no evidence has been found from that decade.

[25] The Revised Statutes of the State of New York, 5th ed., vol. II (Albany: Banks & Brothers, 1859), 903-5; New York, Laws of the State of New York Passed at the Eighty-Fourth Session of the Legislature (Albany: Munsell & Rowland, 1861), 244.

neglect to provide for them according to their means," or those who threaten to run away and leave wives and children as public charges.[26] Thus, through piecemeal statutory changes and on the ground innovations, the New York legislature transformed its poor law from an outdated method of securing a pittance for destitute kin to a workable approach to enforcing men's marital duties. While the revised poor law could not benefit all women who needed support—for practical, social, and judicial reasons discussed further below—the progression of the statutes indicates that legislators sought to ensure wives and children would be maintained at a level appropriate to their class.

§ 2159.

Kings county justice's order against a person threatening to abandon wife and children, or either, etc.

See *ante*, § 536.

STATE OF NEW YORK.
Kings County, City of Brooklyn, } *ss:*

Whereas, was, on the day of , 18 , in the , in said city of Brooklyn and county of Kings, duly convicted before a court of special sessions, held by and before the undersigned justice of the peace of the city of Brooklyn, at the said city of Brooklyn, in said county of Kings, of the criminal offense of having, on the day of , 18 , at the said city of Brooklyn, in said county of Kings, abandoned his wife, and threatened to run away and leave his wife and children a burden upon the public, and neglected to support her and them.

And, therefore, I order that the said pay to the superintendent of the poor of said county, for the support of said wife and children, weekly and every week, the sum of dollars, for the period of one year from the date of this order; and I do hereby certify the reasonable costs of apprehending and securing the said , and of this order, at the sum of dollars.

Given under my hand, at , in the city of Brooklyn, aforesaid, the day , 18 .

, *Justice of the Peace of the city of Brooklyn.*

Figure 8: Sample form used to procure poor law kinship support in Brooklyn as of 1870[27]

[26] Laws of the State of New York Passed at the One Hundred and Fourth Session of the Legislature, vol. II (Albany: Weed, Parsons, and Co., 1881), 220-23.

[27] Edward Wade, *Code Relating to the Poor in the State of New York* (Albany: Weed, Parsons and Company, 1870), 690.

Pennsylvania legislators also made meaningful amendments to the state's poor law. Dating from the colonial period, that state's poor law had three approaches to kin liability. Parents, grandparents, children, and grandchildren had to support each other if unable to work, or else they would be fined. As of 1836, such fines collected in Philadelphia were to be "applied to the relief and maintenance of such poor person," whereas previous iterations and the version in force in the remainder of the state seemingly left it to the discretion of the overseers of the poor how to use the money. The law applied the vagrancy label to people who "not having wherewith to maintain themselves and their families, live idly and without employment, and refuse to work for the usual and common wages given to other labourers in the like work." And a third provision, dating from at least 1771, provided that if a man separated from his wife without reasonable cause or if a father or mother deserted children, leaving them as public charges, the person's property could be seized and sold or else they could be jailed until they complied or gave security to guarantee their future performance.[28]

In 1867, the Pennsylvania legislature introduced a fourth method to enforce support duties. The new statute permitted, "in addition to the remedies now provided by law," that if any husband or father separated from his wife or children without reasonable cause or "neglect[ed] to maintain" them, such dependents "or any other person" could seek a warrant for the man's arrest on a charge of "desertion." In other words, like New York's recently enacted law and unlike the classic poor law, initiation of the proceeding was not limited to public officials responsible for paupers, even though

[28] James Dunlap, *The General Laws of Pennsylvania* (Philadelphia: T & J Johnson, 1847), 635; John Purdon, *A Digest of the Laws of Pennsylvania* (Philadelphia: M'Carty & Davis, 1824), 651-85; John Purdon and George M. Stroud, *A Digest of the Laws of Pennsylvania*, 7th ed. (Philadelphia: Thomas Davis, 1847), 1148.

the action was pursued in the name of the state. Moreover, the deserted wife was permitted to testify against her husband.[29]

After a hearing, a court could order the man, "being of sufficient ability, to pay such sum as said court shall think reasonable and proper, for the comfortable support and maintenance of the said wife, or children, or both, not exceeding one hundred dollars per month." The person then could be imprisoned until he complied or gave security.[30] That courts were authorized to award up to $100 per month indicates that the law was not intended merely to keep dependents from becoming public charges. Indeed, a full award of this amount would provide a wife and children with almost twice the amount needed to maintain a working-class Philadelphian family of five. Rather, it seems Pennsylvania, like New York, was seeking an alternative method to enforce the necessaries doctrine. In the words of prominent Pennsylvania jurist George Sharswood, upholding a conviction under the statute a few years after its enactment, "[i]t is evident that this proceeding is intended as a remedy for the wife or child, the party injured." Newspapers indicate the statute was used immediately. Moreover, some Pennsylvania cities increased the efficiency of handling these cases by hearing them in specially designated court terms.[31]

That New York and Pennsylvania were leaders in revising their poor laws to reach marital nonsupport should not be surprising. In addition to the fact that they had large cities with increasing immigrant populations, their domestic relations laws left problems other states did not have. Both

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[29] Laws of the General Assembly of the State of Pennsylvania (Harrisburg: Singerly & Myers, 1867), 78-79.

[30] *Id.*

[31] Demott v. Commonwealth, 64 Pa. 302, 305 (1870). For newspaper coverage, see "Police Intelligence," *Pittsburgh Daily Commercial*, Jan. 30, 1868, 4; "Desertion Court," *Reading (PA) Times*, Feb. 7, 1874, 4; "The Desertion Court," *Times* (Philadelphia), Dec. 29, 1883, 3. Working-class Philadelphian men earned between $350 and $650 per year, which their wives and children supplemented. Around $650 annually was estimated as sufficient for a family of five. Allison Elizabeth Kelsey, "How the Other Nine-Tenths Lived: Interpreting the Working Class Experience in Philadelphia, 1870-1900" (Master's thesis, University of Pennsylvania, 1997), 20-23.

states were among those with the most conservative divorce laws. New York allowed absolute divorce only for adultery and did not permit separate maintenance orders, and Pennsylvania almost never allowed alimony after absolute divorce.[32] These jurisdictions were also among the least willing to recognize *ex parte* foreign divorce decrees. That unhappy wives lacked marital dissolution options accompanied by financial support placed pressures on other areas of law to find solutions. Given a growing aversion to incarceration for debt in this period, the possible window of desirable alternatives was narrow.[33]

Turning to the poor law allowed legislatures to build on longstanding legal principles they could refine to fit modern needs. The resulting statutes at least purported to allow non-destitute wives to initiate proceedings, in the name of the state, to secure support above what would have been mandated by traditional poor law. The dependents could use the proceeds in their own homes and at their own discretion, rather than the money going to the commissioner of the poor. Especially as city leaders became increasingly skeptical of outdoor relief, the revised poor law furthered their goals of supporting indigent family members and enforcing labor expectations for men. These approaches kept families off the public dole and brought the added benefit of reinforcing marital expectations and gendered understandings of rights and duties.

The Criminalization of Family Abandonment and Nonsupport in the South

As historians have detailed, following the Civil War, many Southern states passed "Black Codes" to maintain a racial caste system conducive to exploiting formerly enslaved people's labor. These laws applied special contract and domestic relations rules to "persons of color." Within a few years after passage, the Black Codes were repealed or amended due to Northern outrage. This left

[32] See Chapter Two.

[33] See Chapter Three.

the preexisting race-neutral laws or prompted passage of race-neutral versions of what otherwise looked like Black Codes. Going forward, racially disparate treatment came in implementation. These statutes drew from preexisting poor law and vagrancy statutes to a greater extent than scholarship sometimes acknowledges, but they did introduce a novel feature that has received less notice from historians: some Southern legislatures upgraded offenses related to spousal abandonment and nonsupport to a misdemeanor.[34]

South Carolina passed one of the earliest and harshest Black Codes in December 1865, titled "An Act to Establish and Regulate the Domestic Relations of Persons of Color, and to Amend the Law in Relation to Paupers and Vagrancy." As suggested by the title, the act combined concepts from domestic relations law, vagrancy, and poor law. One section rendered it a misdemeanor for a husband or wife to abandon the other "for any cause." Convicted persons could be "bound to service" from year to year, with profits applied to supporting the spouse and children. A father was obligated to "support and maintain his children under fifteen years of age," though failure to do so was not designated a crime.[35]

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[34] On the initial passage of Black Codes to regulate black people's labor and the strategic shift to race-neutral laws in response to Northern opposition, see Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Perennial Library, 1989), 199-201; Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation* (New York: Cambridge University Press, 1998), 125-27. Though Stanley's scholarship is exceptionally helpful on a conceptual level, it overstates the novelty of the laws passed in this period. See especially Stanley, *From Bondage to Contract*, 108-109; Stanley, "Beggars Can't Be Choosers," 1265-93. Laura Edwards also provides meaningful analysis of the legal and social significance of marriage for African Americans during Reconstruction, but she does not discuss criminal nonsupport other than in the context of bastardy. Laura F. Edwards, *Gendered Strife and Confusion: The Political Culture of Reconstruction* (Urbana: University of Illinois Press, 1997). Tera Hunter describes how Black Codes regulated black people's labor, including through the forced apprenticeship of children. Tera W. Hunter, *To 'Joy My Freedom: Southern Black Women's Lives and Labors after the Civil War* (Cambridge, MA: Harvard University Press, 1997), 29, 35-36. Legal historians have examined civil rights challenges to the labor compulsion aspect of Black Codes and similar laws in later periods. For examples, see Risa L. Goluboff, *The Lost Promise of Civil Rights* (Cambridge, MA: Harvard University Press, 2007), 69-70; Michael J. Klarman, *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (New York: Oxford University Press, 2004), 71.

[35] Acts of the General Assembly of the State of South Carolina Passed at the Sessions of 1864-65 (Columbia: Julian A. Selby Printers, 1866), 291-92.

In the years after Black Codes became politically unviable, some former slave states passed race-neutral misdemeanor statutes to punish abandonment of children. States throughout the country had criminalized child abandonment beginning decades earlier, so the child-focused component of the Southern statutes was not novel. By at least 1829, New York criminalized the abandonment in designated dangerous locations of a child under age six. A number of states copied this statute nearly verbatim prior to the Civil War.[36] In 1865, New York released a proposed Penal Code authored by David Dudley Field and others that proposed that the criminal abandonment law apply whenever a parent or person responsible for a child under age six "deserts such child *in any place whatever*, with intent to wholly abandon it." They also suggested a new provision targeting failure to support: "Every parent of any child who willfully omits, without lawful excuse, to perform any duty imposed upon him by law to furnish necessary food, clothing, shelter, or medical attendance for such child, is guilty of a misdemeanor."[37] Though New York did not adopt statutory language along these lines for decades, the Penal Code was soon influential elsewhere. For instance, California adopted both provisions in 1871.[38] Thus, the Southern misdemeanor child abandonment laws passed after the Civil War may reflect the intermingling of the New York model and the Black Codes. For example, Georgia's law, passed in 1866, contained no mention of race and made it a misdemeanor for a father to voluntarily abandon his children, "leaving them in a dependent and destitute condition."[39]

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[36] *The Revised Statutes of the State of New-York*, vol. II (Albany: Packard and Van Benthuysen, 1829), 665. For an example of a statute following New York's, see William Wedgwood, *The Constitution and Revised Statutes of the State of Maine* (Portland: Sanborn & Carter, 1843), 113. See also Shannon v. People, 5 Mich. 71 (1858) (noting that Michigan adopted child abandonment law from New York).

[37] Commissioners of the Code, *The Penal Code of the State of New York* (Albany: Weed, Parsons, & Co., 1865), 121.

[38] Revised Laws of the State of California, Penal Code (Sacramento: D.W. Gelwicks, 1871), 63.

[39] Clark et al., *The Code of the State of Georgia*, (Atlanta: Franklin Steam Printing House, 1867), 844.

Southern states' real innovation was the criminalization of abandonment and nonsupport of *wives*. In 1867, Missouri garnered nationwide press when it became the first to incorporate failure to provide for a wife into a misdemeanor-level offense. Specifically, this race-neutral statute made it a crime for any husband to "without good cause, abandon his wife, and fail, neglect, or refuse to maintain and provide for her" or to do the same regarding a legitimate child under age twelve.[40] Two years later, the Missouri Supreme Court crooned that this law was "perhaps without precedent in the legislation of the country." Still, recognizing the legislation's antecedent in vagrancy law, the court held that a wife could testify against her husband, which contravened the typical rules of coverture but had long been permitted in vagrancy cases. According to the court, the purpose of the statute "is not primarily to punish the husband, but to protect the wife, and to secure her against the consequences of such desertion."[41] Though the legislative record and newspaper articles do not reveal Missouri legislators' motives for criminalizing the nonsupport of wives, some evidence indicates the misdemeanor was not necessarily motivated by efforts to control black families. The legislature began discussing this law just a few months after the state's highest court disallowed civil contempt incarceration for nonpayment of family support orders, as discussed in the previous chapter. Moreover, the state already had an antebellum vagrancy statute in force that covered leaving wives or children as public charges and permitted offenders to be auctioned to the highest bidder as laborers.[42]

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[40] David Wagner, *The Statutes of the State of Missouri*, vol. 1 (St. Louis: W.J. Gilbert, 1870), 497. For sample newspaper coverage, see "An Act to Punish Worthless Husbands," *Oregonian* (Portland), Apr. 27, 1867, 4; "An Act to Punish Worthless Husbands," *Montana Post* (Virginia City), June 1, 1867, 7; "Warning to Husbands," *Chicago Tribune*, Apr. 19, 1868, 2; "The Legislature of Missouri," *Evening Star* (Washington, DC), Apr. 24, 1868, 2.

[41] Missouri v. Newberry, 43 Mo. 429 (1869).

[42] Henry S. Geyer, *A Digest of the Laws of Missouri Territory* (St. Louis: Joseph Charless, 1818), 424-26. The vagrancy law was also reenacted in 1879. *The Revised Statutes of the State of Missouri, 1889*, vol. II (Jefferson City: Tribune Printing Co., 1889), 2041-41.

North Carolina passed a race-neutral law that ostensibly reached even more conduct in 1869. Under the title "An Act to Protect Married Women from the Willful Abandonment or Neglect of Their Husbands," the terminology was more reminiscent of Married Women's Property Acts than Black Codes. The first provision made it a crime for a husband to "willfully abandon his wife without providing adequate support for such wife, and the child and children which he has begotten upon her." The second made it a misdemeanor for any husband "while living with his wife [to] willfully neglect to provide adequate support for such wife and the child or children which he has begotten upon her." In other words, desertion *or* neglect could result in a misdemeanor conviction. Borrowing from vagrancy language, the statute added that it would be "presumptive evidence that such abandonment and neglect is willful" if the man "neglects applying himself to some honest calling for the support of himself and his family," and instead sauntered around, gambling, being a drunkard, or similar.[43]

Thus, in the same years that Pennsylvania and New York sought to enhance financial protections for urban wives through a revised poor law, Southern states contributed a different kind of innovation—criminalization. Though both types of reforms and individual cases received nationwide press, the revised poor law and the misdemeanor spousal nonsupport laws remained minority approaches in the following years. Outside New York City and Philadelphia, the revised poor law did not seem to fill a pressing need. Likewise, outside the South, criminalization did not seem necessary or perhaps appropriate. These ideas began to gain traction after depressions in 1873 and 1893, with increasing numbers of states blending these experiments and trying their own.

[43] *Public Laws of the State of North Carolina Passed by the General Assembly at its Session 1868-69* (Raleigh: M.S. Littlefield, 1869), 556. Though it is unclear how frequently the statute was used, it was at least sometimes a basis for extradition. "Arrested for Wife Desertion," *Virginian-Pilot* (Norfolk), June 8, 1900, 10 (reporting on "colored barber" arrested on warrant from North Carolina for wife desertion).

“Scientific Charity” and the Need for Family Support Enforcement

In 1873, America experienced its worst depression to date. The ensuing crisis prompted significant changes to philanthropic theory and the organization of charities. One of the major consequences was the reduction or elimination of public outdoor relief, which placed greater strain on private charities, yet also empowered them.[44] Other developments shifted reformers’ and lawmakers’ understandings of proper provision for dependent children. Together these developments prompted lawmakers to devote increasing attention to enforcing family support duties, most notably through the passage of a few misdemeanor statutes in the Midwest.

In the aftermath of the depression of 1873, it became clear that many cities had an excessive number of uncoordinated and wasteful private charities and that Gilded Age political graft and corruption had extended into public charities. These realizations led to the rise of Charity Organization Societies (COS), which promoted a theory of poor relief called “scientific charity.” Rather than providing alms, these organizations’ stated goal was to make charity work more systematic, rational, and efficient by serving as a central location for cooperation, recordkeeping, and referrals. Inspired by experiments across the Atlantic, Buffalo opened the first U.S. COS in 1877. New York City’s particularly influential branch (NYCOS) was founded in 1882. COS soon spread across the country, from large cities to small and from North to South. By 1900, there were 138.

As relief rolls grew to new heights over the course of the 1870s, opposition to outdoor relief became fiercer than in prior decades. Proponents of scientific charity believed alms contributed to pauperism and dependency, and they viewed public outdoor poor relief as particularly outdated and as a symbol of wasteful public spending. Distinguishing between the “deserving” and “undeserving” poor, COS leaders and their allies advocated for the needy to be sent to institutions or to be given

[44] Katz, Shadow of the Poorhouse, 58.

limited amounts of private financial aid overseen by "friendly visitors" (often middle-class white women), who could provide counsel and supervision. By making charity primarily private, they hoped to avoid the perception that relief was a right, and they expected they would be better able to control the working class. Under the influence of COS, many cities reduced or abolished public outdoor relief (especially in the form of cash) into the twentieth century. For example, Brooklyn first limited public outdoor relief to coal and then ceased providing it altogether. By 1900, public outdoor assistance had been terminated in New York City, Baltimore, St. Louis, D.C., San Francisco, Kansas City, New Orleans, Louisville, Denver, Atlanta, Memphis, Charleston, Cincinnati, Indianapolis, Pittsburgh, and more.[45]

In the same years that reform leaders grew more opposed to public outdoor relief, their views on the appropriate handling of children also evolved. Informed by new conceptions of childhood development, there was a growing consensus that children should be protected from the market and other possible sources of harm.[46] One conclusion was that pauper children should not be sent to poorhouses, where they might mix with a range of undesirable adults. Instead, poor children should be housed in special orphan asylums. Parents reticent to take children to poorhouses felt relatively favorably toward orphanages because they expected better care for their children there. Some charity reformers also expected the shift to orphanages to be beneficial because it would separate children from incapable parents and thereby stop the passing down of dependency. In the

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[45] Katz, *Shadow of the Poorhouse*, 37, 47-51, 66-85, 164; Trattner, *From Poor Law*, 89-99; Branscombe, *Courts and the Poor Laws*, 158-59; Abramovitz, *Regulating the Lives of Women*, 150-55; Viviana A. Zelizer, *The Social Meaning of Money* (Princeton: Princeton University Press, 1997), 122-54. On the political considerations involved in abolishment of cash versus coal outdoor relief, see Adonica Y. Lui, "The Machine and Social Policies: Tammany Hall and the Politics of Public Outdoor Relief, New York City, 1874-1898," *Studies in American Political Development* 9, no. 2 (Fall 1995): 386.

[46] Michael Grossberg, "'A Protected Childhood': The Emergence of Child Protection in America," in *American Public Life and the Historical Imagination*, eds. Wendy Gamber, Michael Grossberg, and Hendrik Hartog (Notre Dame: University of Note Dame Press, 2003), 216-217.

coming years, orphan asylums grew dramatically, mostly housing children whose parents could not afford to keep them.[47]

In 1874, a further child-centered spark for legal reform came in the form of a highly publicized and tragic case of child abuse in New York City. One direct consequence was the creation that year of the New York Society for the Prevention of Cruelty to Children (NYSPCC). By 1902, 161 other cities had also created SPCCs. SPCCs lobbied for criminal statutes to address child abuse, abandonment in destitute circumstances, and other conduct related to children. In many locations, the local SPCC exercised quasi-police functions, arresting and prosecuting adults who violated these statutes. Through enforcement and educational campaigns, SPCCs drew attention to the need to protect vulnerable children.[48]

As influential charity leaders and politicians sought sources of financial support for children other than public charity, they began to turn toward criminal law. In these same years, as discussed in the previous chapter, the abolishment of debtors' prisons and enactment of the Thirteenth Amendment raised legal, social, and moral impediments to civil incarceration and some applications of imprisonment at hard labor. In the 1870s, courts in Midwestern states, which had passed the broadest bans on imprisonment for debt, were still struggling to justify the continuing use of contempt incarceration for family support nonpayment. Creating a *criminal* statute to punish family

[47] Katz, *Shadow of the Poorhouse*, 103-9. Condemnation of housing children in almshouses began by the 1840s, and there were significant efforts to cease sending them there by 1866. In the early 1880s, some states made it illegal to send children to poorhouses unless they were under two and with their mothers. Mason P. Thomas, Jr., "Child Abuse and Neglect, Part I: Historical Overview, Legal Matrix, and Social Perspectives," *North Carolina Law Review* 50, no. 2 (Feb. 1972): 302.

[48] Katz, *Shadow of the Poorhouse*, 103-9, provides a general overview. For histories of the groups that pushed for and helped implement these laws, see John E. B. Myers, *Child Protection in America: Past, Present, and Future* (New York: Oxford University Press, 2006), 34-37; Susan J. Pearson, *The Rights of the Defenseless: Protecting Animals and Children in Gilded Age America* (Chicago: University of Chicago, 2011), 3, 21; Grossberg, "A Protected Childhood," 219-24. For a brief article challenging the emphasis on 1870s changes by noting that child abuse had been prosecuted since the colonial period, see Sallie A. Watkins, "The Mary Ellen Myth: Correcting Child Welfare History," *Social Work* 35, no. 6 (Nov. 1990): 500. For discussion of earlier social and legal changes, see Thomas, "Child Abuse and Neglect," 306-7.

nonsupport may have alleviated concerns about the constitutionality and morality of jailing delinquent breadwinners, as criminal proceedings clearly permitted incarceration.[49]

Legislative reforms were further influenced by the postbellum context, as Congress and courts across the country considered the scope of the Thirteenth Amendment's ban on "involuntary servitude, except as a punishment for a crime whereof the party shall have been duly convicted."[50] In 1885, the U.S. Supreme Court cited this language when it determined that for a court to sentence a person to imprisonment at hard labor, the defendant was entitled to the full trappings of the criminal law.[51] Several Midwestern state supreme courts soon determined that this meant they could no longer permit incarceration at hard labor pursuant to their quasi-criminal vagrancy statutes.[52] Though Midwestern legislatures began converting vagrancy-style offenses into misdemeanors before these cases were heard, lawmakers may have been motivated by similar considerations or anticipated these decisions.[53]

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[49] See Chapter Three. That the language of the Thirteenth Amendment had been included in the Northwest Ordinance of 1787 (covering what became Ohio, Indiana, Illinois, Michigan, Wisconsin, and Minnesota) may also be relevant to how those states' legal cultures responded to imprisonment for debt, though the Ordinance did not apply once they became states.

[50] U.S. Const. amend. XVIII. For discussion, see Aviam Soifer, "Federal Protection, Paternalism, and the Virtually Forgotten Prohibition of Voluntary Peonage," *Columbia Law Review* 112, no. 7 (Nov. 2012): 1607.

[51] The U.S. Supreme Court held that "imprisonment at hard labor, compulsory and unpaid, is, in the strongest sense of the words, 'involuntary servitude for crime,' spoken of in the provision of the ordinance of 1787, and of the thirteenth amendment of the constitution, by which all other slavery was abolished." Thus, for this punishment to be inflicted, a defendant was entitled to full criminal procedure protections, such as indictment or presentment by a grand jury. *Ex parte* Wilson, 114 U.S. 417, 429 (1885). See also Wong Wing v. U.S., 163 U.S. 228, 235-36 (1896) ("judicial trial" required to subject aliens to punishment at hard labor because such punishment is only permitted for an "infamous crime").

[52] The Supreme Court of Minnesota concluded that municipal ordinances had to be understood as crimes in order to carry punishments including fines, incarceration, or hard labor. State ex rel. Erickson v. West, 43 N.W. 845, 847 (Minn. 1889). The Missouri Supreme Court held that to impose imprisonment at hard labor, a man would need to be convicted of a crime, rather than a vagrancy-level offense. Thompson v. Bunton, 22 S.W. 863 (Mo. 1893).

[53] Not all Midwestern states jumped directly into a misdemeanor. For example, in April 1881, the Indiana legislature took a tentative step reminiscent of Pennsylvania's 1867 law, creating a nonsupport penal offense that was short of a full misdemeanor. The statute read: "Whoever, without cause, deserts his wife, child or children, and leaves such wife or her child or children a charge upon any of the counties of this State, *or without provision for comfortable support*, shall be fined" between ten and one-hundred dollars. *Laws of the State of Indiana* (Indianapolis: Carlon & Hollenbeck, 1881), 222-23. For

In June 1881, the Michigan legislature passed a novel law that rendered it a misdemeanor for Detroit residents to "refuse or neglect to support their families," unless their conduct "was occasioned by sickness or other physical or mental disability, or for good cause." Showing ties to the vagrancy law that had long been in place, the law cast these individuals as "disorderly persons." The punishment was imprisonment in the Detroit House of Correction for up to ninety days. Meanwhile, the wife or children could get a certificate from the court to present to the commissioners of the poor to get an allowance, "in money or in kind" from the poor fund. The provision was paltry: thirty cents per day for a wife and child or twenty cents for a wife alone.[54] According to a newspaper article reporting on this statute's use two years later, the bill had been prepared and secured by the Detroit Association of Charities to relieve the "domestic torture" of nonsupport. "Several cases have under this enactment been brought to the notice of the Detroit Association of Charities," the article continued, "and some of them prosecuted successfully, while in others the mere threat of prosecution was sufficient to produce the desired result." The article concluded by encouraging "benevolent citizens who hear of families afflicted by dissipated husbands" to report the situation to the local committee or central office of the Associated Charities, and it provided the address to do so.[55]

Wisconsin followed next, in stages that reveal the blending of several concerns. The legislature's first move, in April 1882, was to pass a fairly standard law criminalizing fathers'

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discussion of the law's application and shortcomings, see "Will Be Tried Here Soon," *Richmond (IN) Item*, Nov. 29, 1881, 1; "Very Cheap," *Daily Democrat* (Huntington, IN), Oct. 10, 1892, 2.

[54] Local Acts of the Legislature of the State of Michigan Passed at the Regular Session of 1881 (Lansing: W.S. George & Co., 1881), 342.

[55] "Wives and Children: Punishment Provided for Husbands and Fathers Who Neglect to Support Them," *Detroit Free Press*, Feb. 3, 1883, 6.

abandonment of children.[56] In 1885, the legislature made two amendments. First, it rendered the language about abandonment of a child sex-neutral, so that mothers could also be guilty (as was already true in many states). More significantly, the legislators added a provision that made it a misdemeanor for a husband to "willfully abandon his wife, leaving her in a destitute condition, or being of sufficient ability … refuse or neglect to provide for her." Both crimes permitted imprisonment in the county jail for thirty days to one year, or a fine of up to $500, or both.[57] (This punishment was technically too severe for a misdemeanor, so the state's highest court retroactively rendered wife and child abandonment to be felonies in 1894 to maintain the statute's constitutionality.[58]) The legislation garnered positive press from local newspapers, with one casting the 1882 law as "[o]ne of the most just enactments of the Legislature" and suggesting "[t]his is a righteous statute and should be enforced."[59] Still, the remedy left much to be desired, as evidenced, for instance, by an unsuccessful 1887 proposal to give the fine (after payment of court expenses) to the wife and children.[60] The legislature did have some success in fixing a loophole created by the "of sufficient ability" language by adding "or able to earn the means of their support" in 1889.[61]

In 1893, Illinois joined its neighbors, with the legislature making it a misdemeanor for a husband to abandon and neglect or refuse to maintain and provide for his wife or children. A

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[56] The Laws of Wisconsin Passed at the Annual Session of the Legislature of 1882 (Madison: David Atwood, 1882), 650.

[57] The Laws of Wisconsin, Except City Charters and their Amendments, vol. 1 (Madison: Democrat Printing Co., 1885), 411-12.

[58] State v. Grunke, 59 N.W. 452, 453 (Wis. 1894) ("The act inaptly makes the offense a misdemeanor…. It is not perceived wherein the constitution is violated in this. It is a question of construction whether the offense is a misdemeanor or shall be deemed a felony.").

[59] [No Title], *Green Bay Press-Gazette*, Mar. 16, 1882, 1.

[60] "Wisconsin Legislature," *Wisconsin State Journal*, Feb. 24, 1887, 1.

[61] "Chapter 321," *Representative* (Fox Lake, WI), May 10, 1897, 8.

journalist describing the law suggested, "[n]o one will complain of this. The abandonment of their families by men who forget honor and obligation has become an abuse so widespread as to call for the severest punishment." The only thing the writer found "strange" was that "such a law should be necessary in Chicago, where one would imagine a husband, if he wanted to desert his wife, would find a Chicago divorce court the easiest way out of the difficulty, saving both expense and the danger of imprisonment." The writer concluded that "the Illinois wife is in much better position than her sisters elsewhere, since her husband, if he deserts her, will only jump out of the frying pan into the fire, from perhaps angry wife to the penitentiary."[62]

Prosecutors in nearby states without criminal desertion or nonsupport statutes tried to use existing laws creatively, though not always with success. For instance, the Supreme Court of Arkansas overturned the misdemeanor conviction of a man accused of "leaving his wife and child without the means of support," while living in adultery with another woman. The Arkansas court noted that the state lacked typical Elizabethan kinship liability laws. The statute it did have—which rendered it a misdemeanor to "commit an act injurious to the public health, or public morals"—was too vague because it depended "upon the moral idiosyncrasies of the individuals who compose the court and jury."[63] To effectively reach this conduct, criminal laws focused on family nonsupport or desertion were needed.

[62] Harvey Hurd, *The Revised Statutes of the State of Illinois, 1893* (Chicago: Chicago Legal News Co., 1893), 809. For newspaper coverage, see "Wife Desertion a Crime," *Times-Democrat* (New Orleans), Aug. 14, 1893, 4. It was not uncommon for writers to note that divorce and criminal abandonment were alternate remedies a wife could pursue. For example, see "Wife Abandonment," *St. Louis Post-Dispatch*, June 24, 1884, 8 ("In the mid summer, the unhappily mated female's fancy turns to thoughts of a persecution [sic] for abandonment or a divorce proceeding.").

[63] Ex parte Andrew Jackson, 45 Ark. 158 (1885).

The Depression of 1893 and the Misdemeanor versus Felony Debate

From 1893 into 1897, yet another financial crisis and depression prompted rethinking about how to ensure support for families. Scientific charity seemed inadequate to explain or handle the dramatic unemployment rates, which reached as high as 35 percent in New York. Under the circumstances, moral condemnation of the poor for their individual choices seemed less fair. While some COS remained skeptical of all outdoor relief and defensive about their philosophy, others experienced a dramatic turnabout and even began to give alms directly. Still, members of COS and other charity leaders—typically middle-class, white professionals—remained wary of extending public or private alms to destitute families deserted by male breadwinners. They wanted to preserve strained resources for women and children who truly lacked male providers, such as widows and orphans.[64] They also feared that providing support would incentivize men to desert or provide an opportunity for collusion, in which "the desertion was purely fictitious, designed to extort money from the charitably inclined."[65]

Reticence to provide families with outdoor relief became a pressing problem in part because of continuing advancements in child psychology and the decreasing economic usefulness of children. Reformers began to believe that it was best to keep poor children with their mothers, rather than maintaining them in the orphan asylums that had grown popular in the 1870s. In 1900, Edward T. Devine, the general secretary of NYCOS, captured the growing consensus in an article he published in *Charities*, the influential NYCOS publication he edited. "The breaking up of a family by any outside agency is justified only when it is merely the outward expression of a destruction

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[64] Katz, *Shadow of the Poorhouse*, 147-50; Trattner, *From Poor Law*, 101-3.

[65] Ada Eliot, "Deserted Wives," *Charities Review* 10, no. 8 (Oct. 1900): 346-48. For another example of this common trope, see "Family Deserters: All Day Conference at Charities Building—Remedies Suggested," *New-York Tribune*, Apr. 30, 1903.

which has already taken place," Devine suggested. "The presumption… is against either compulsory or voluntary breaking up of the family." This shift in perspective was not universal. Most notably, Catholics continued to defend orphan asylums. Nevertheless, by 1909, the preservation of the family was sufficiently well accepted that it was enshrined as a principle during the first White House Conference on Children.[66]

While the 1910s brought the innovation of "mothers' pensions" to keep at least some families together, in the interim reformers turned their gaze to delinquent breadwinners. If they could enforce men's breadwinner duties, charity leaders recognized, women could remain at home with their children without draining charitable resources or needing public funds.[67] When reformers examined existing laws to understand why support enforcement often fell short, they identified two main problems: inadequate punishments and difficulty reaching men across state lines.

One of the most prominent and representative early voices in tackling men's desertion and nonsupport was Baltimore charity worker Mary Richmond. In a series of widely reprinted talks on "Married Vagabonds" in the 1890s, Richmond aimed to bring "scientific scrutiny" to men who neglected their families. She relied on a multistate survey she conducted to bemoan how infrequently

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[66] Edward Devine, "The Breaking Up of Families," *Charities Review* 10, no. 10 (Dec. 1900): 461. NCCC was founded in 1879 as the first major professional association for charity workers. Though NCCC was intended to unite state charity boards, private agencies, and public welfare officials, it was overshadowed by COS. Tiffin, *In Whose Best Interest*, 149-50; Katz, *Shadow of the Poorhouse*, 103-9, 113-15, 119, 124-29. Grossberg also notes that women's increasing prominence in civil society contributed to making children's issues more important by the end of the century. Grossberg, "A Protected Childhood," 217.

[67] State legislatures began considering "family aid" provisions, later often called "mother's pensions" or "widow's pensions," in the mid-1890s. In 1897, both houses of the New York legislature passed a mothers' allowance bill that would have provided for destitute mothers, regardless of whether they were widowed or deserted. Opponents condemned the legislation as the "shiftless fathers' bill," and the governor vetoed it. Among the strongest opponents was NYCOS, which continued to disapprove of public outdoor relief. Igra finds that most Jewish charities, including the N.Y. umbrella organization United Hebrew Charities (UHC), did not agree with the policy of withholding support from deserted wives. Indeed, UHC already provided *private* pensions to widows and deserted mothers. (In some other cities, the leaders of Jewish charities held views more similar to Protestant-dominated COS.) More than a decade after New York's failed bill, in 1911, Missouri and Illinois became the first states to pass such legislation. By 1913, twenty states (mostly in the Central and Western United States) provided such support. New York did not establish a mother's pension plan until 1915.Igra, *Wives Without Husbands*, 30-33; Abramovitz, *Regulating the Lives of Women*, 153, 193-94.

existing laws seemed to be applied. She attributed nonenforcement in part to a lack of public support, which she believed charity leaders should address through educational campaigns. She also recognized flaws in the laws themselves. Many states still retained a rule rooted in coverture that prevented wives from testifying against their husbands in penal cases, rendering convictions difficult. And even if convictions were secured, punishments available in most places—fines and imprisonment—did little to help families.[68]

Charity workers, judges, and other stakeholders from across the country shared Richmond's concerns about the inadequacies of existing laws and compared their states' approaches to identify best practices. For instance, in a discussion following one of Richmond's speeches, attendees from Northeastern states, as well as Nebraska, Michigan, and Missouri, discussed the utility of various punishments. A participant from Norwich, Connecticut, said he found "plenty of law" in his state, but in practice it was ineffective because "[s]uch men are often willing to enter a jail and be well fed and kept warm and, as a general thing, have nothing to do but read trashy literature, leaving their families to starve or be supported by towns or by benevolent people." A judge from New Haven reported that Connecticut was considering a bill that would permit jailing "worthless husbands" at hard labor for up to three years, with any proceeds (beyond the cost of maintaining these men) going to their families. Moreover, the judge suggested, "[t]here will be some reformatory influence in the services of the chaplain and in the daily work." Harsher discussants, including Richmond herself, were not fully persuaded. "A man is still a pauper," Richmond declared, "if he has to have work provided for him."[69]

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[68] Mary E. Richmond, "Proper Treatment of Idle or Drinking Men and Their Neglected Families: 'Married Vagabonds,'" *Charities Review* 4, no. 8 (June 1, 1895): 401-2 (presented and discussed at Charity Organization Section Meeting, May 27, 1895). Reprinted as "Married Vagabonds," in *Lend a Hand* (Feb. 1, 1896): 103. For newspaper coverage, see "The Married Vagabond," *Sun* (Baltimore), Dec. 13, 1898, 7; "The Married Vagabond," *Salt Lake Tribune*, Apr. 23, 1898, 2.

[69] See discussion following Richmond, "Proper Treatment," 408, 414, 416.

Notably, Richmond and her ilk did not perceive desertion and nonsupport as the unique fault of any racial, ethnic, national, or religious groups. While statistical analyses conducted by charity organizations in the surrounding years considered the possibility that there might be a correlation between family abandonment and nationality, race, or religion (as well as age, number of children, and many other plausible factors), researchers did not find any strong patterns. Indeed, their inability to find explanations linked to offenders' backgrounds contributed to their conclusion that the blame should fall on individuals' moral failings. For example, NYCOS's Lilian Brandt drew from a survey distributed to twenty-five cities to analyze possible explanations for desertion in 1905. One topic she addressed was "nationality," which she divided into European countries of origin and, for the United States, "white," "Negro," and "Indian." From this data, Brandt concluded: "The number of nationalities represented among these families suggests that desertion is a failing common to the human race, not confined to any particular sections of it."[70] She later described the typical "deserting husband" as "[y]oung, able-bodied, capable of earning good wages but disinclined to work, intemperate, and without any sense of responsibility; coming back home when it suits his convenience, but leaving again without concern for his family."[71]

Certainly, some charity reformers held racist or xenophobic views and occasionally focused on nonsupport problems in specific communities. Even still, their treatments indicate that they saw the causes of family abandonment as contextual, rather than something inherent about a group. In New York City and Chicago, for instance, the conduct was often understood as related to immigration, and therefore Jewish, Italian, and other European ethnic groups sometimes received

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[70] Lilian Brandt, *Five Hundred and Seventy-Four Deserters and Their Families* (New York: Charity Organization Society, 1905), 18.

[71] Brandt is quoted in "Is Wife Desertion the Poor Man's Divorce?" *Wilkes-Barre (PA) Times Leader*, Aug. 28, 1907, 4 (reprinted from *Charities and Commons*).

pointed attention.[72] Immigrant men arrived in the city with a plan to send remittances home, one journalist explained, but then found "America is not all milk and honey." The men's connections to their European families faded and they married local women. If their original families then made their way to the United States, problems obviously ensued.[73] Even in the South, race was notably absent from discussions of passing wife desertion laws, though racial stereotypes sometimes appeared in coverage of the laws' application.[74]

By the turn of the century, charity leaders increasingly focused on existing laws' inability to reach men across state lines and the resultant need for extradition. For instance, Boston charity leader Ada Eliot, who later became a probation officer, claimed that "[i]n most states, a man practically may or may not support his family, as he chooses" because "evasion is easy" and penalties "ineffectual." When a man left the state, Eliot recognized, "there is no power that can reach him." What was really needed, she concluded, was a felony law.[75] In 1900, Devine spoke for many of his colleagues when he described family desertion as "an evil of increasing magnitude and menace,"

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72 For an example that focuses on Italian men, contextualizing their conduct by discussing broader issues broader issues, and concludes that desertion "is not the habit of the average immigrant," see Kate Holloday Claghorn, "The Italian Under Economic Stress," *Charities* 12, no. 18 (May 1904): 501.

73 "Why Men Desert Their Wives and Children," *Chicago Daily Tribune*, Apr. 8, 1906, F2 (claiming the worst offenders were Russian and Polish Jews, followed by Germans and Britishers).

74 This assessment is based on broad reading in newspapers and charity publications, as well as targeted searches for coverage of the passage and enforcement of Virginia's 1904 misdemeanor nonsupport law. For representative sources that do not indicate race-related motivations, see "To Make Wife Desertion Punishable," *Free Lance* (Fredericksburg, VA), Nov. 19, 1903, 2; "Men Must Support Wives or Go to Jail," *Times Dispatch* (Richmond), Aug. 19, 1904, 8; "Wife Desertion Cases," *Times Dispatch* (Richmond), Oct. 12, 1905, 5. The African American newspaper *Richmond Planet* does not seem to have had any particular interest in the statute. Some articles published the following decade indicate enforcement was understood as having racial implications. For instance, a report on a change in how Lynchburg, Virginia, was enforcing the law claimed that "[o]ne of the results… is that to-day more negro husbands are providing for their wives and families. … The indolent black man who is of the caliber not to provide for his wife and family has little to fear of ten days in jail for vagrancy, which was formerly the punishment, if any punishment was meted out at all," but "fear" of the new combined use of probation and hard labor on the roads was an effective deterrent. "Big Expenditure in Street Work," *Times Dispatch* (Richmond), Jan. 6, 1913, 3.

75 Eliot, "Deserted Wives," 346-48.

which imposed heavy burdens on charitable resources. The most straightforward solution, it seemed, was to introduce federal legislation. Recognizing this might be politically unfeasible or even impossible without an amendment to the U.S. Constitution, attention instead turned to making state offenses extraditable.[76]

The level of crime necessary to legally permit and practically obtain extradition caused debate. It was clear to charity reformers that the poor law or its revised versions were insufficient for this purpose because they were not "criminal" statutes. Citing the poor laws' Elizabethan origins and historical treatment, judges deemed them "quasi-criminal."[77] Thus, reformers evaluated elevation of nonsupport to a misdemeanor or a felony.

The uncertainty about the level of offense necessary for extradition was rooted, at least in part, in the Inter-State Extradition Conference of 1887. Ever since the U.S. Supreme Court's 1860 holding in *Kentucky v. Dennison* that the federal government had no power to force governors to cooperate with extradition requests, states had faced challenges in securing extradition.[78] In 1887, pointing to the lack of uniformity and reciprocity as well as "vexatious delays" in extradition, the governor of New York proposed that states send representatives to a meeting to develop better

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[76] Devine, "Breaking Up of Families," 461, 464-65. For other federal proposals, see "Deserted Wives," *Charities* 5, no. 14 (Sept. 1900): 1; "Wives' Protective Association," *St. Louis-Dispatch*, Sept. 24, 1909, 12.

[77] The "quasi-criminal" label meant these laws were penal in nature but not subject to the formal trappings of criminal law. Duffy v. People, 7 Hill 75 (1843) (determining nonsupport proceedings under 1833 New York law did not qualify for a jury trial because of lineage from English poor law); Demott v. Commonwealth, 64 Pa. 302 (1870) (finding Pennsylvania's 1867 nonsupport law "quasi-criminal" because it was not tied to a particular settlement (as in poor law) or to particular property (as in civil cases) but rather to "the person of the deserter wherever he may be"); Terrill v. Crawford, 8 Pa. D. 169 (Ct. Common Pleas PA, 1899) (finding that 1867 law was not "a proceeding on a criminal charge" for purposes of paying witness fees); State v. Miller, 52 A. 262 (Del. 1902) (classing nonsupport statute as "quasi-criminal" in order to apply lower burden of proof). But see State v. Schweitzer, 6 L.R.A. 125 (Conn. 1889) (finding statute penalizing nonsupport of wife a criminal rather than civil prosecution).

[78] Kentucky v. Dennison, 65 U.S. 66 (1860). Dennison was not reversed until Puerto Rico v. Branstad, 583 U.S. 219 (1987). See also Goodwin Brown, ed., *Proceedings of the Inter-State Extradition Conference, Held at the Rooms of the Association of the Bar of the City of New York, August 23d, 24th and 25th, 1887* (Albany: Argus Company, 1887), 8 (pointing to *Dennison* as in effect rendering the surrender of fugitives a discretionary matter).

approaches.[79] The attendees drafted a proposed Congressional law (which never passed) as well as nonbinding uniform guidelines for the states (which became highly influential).[80]

One of the Conference attendees' goals was to avoid extradition of "petty offenses," an effort that posed two challenges. First, as the discussants recognized, distinguishing among different levels of crimes departed from the plain language of the Extradition Clause of the Constitution, which applies to "Treason, Felony, or other Crime." Second, there was no straightforward way to define which offenses were "petty" because of variation in states' statutory terminology and classification systems. The participants solved this dilemma by formulating a "Resolution in Relation to Extradition for Minor Offenses," which recommended "that the Governors of the demanding States discourage proceedings for the extradition of persons charged with petty offenses, and that, except in special cases, under aggravating circumstances no demand should be made in such cases." In other words, the resolution encouraged governors to employ self-restraint in requesting extradition, thereby limiting the number of extradition requests but still preserving gubernatorial discretion.[81]

While the resolution contained no reference to specific offenses, the drafters' discussion provides insight into their intent. For instance, a Pennsylvania representative explained: "the idea was to exclude certain misdemeanors, as fornication and bastardy and offenses under the liquor law." Somewhat inconsistently, though, the draft Congressional bill specified the type of evidence required for extradition in cases of "seduction, fornication or bastardy," implying that these should

[79] Brown, Inter-State Extradition Conference, 4-5.

[80] Fred Somkin, "The Strange Career of Fugitivity in the History of Interstate Extradition," *Utah Law Review* 1894, no. 3 (Summer 1984): 511, 517-18.

[81] U.S. Const. art. IV § 2, cl. 2; Brown, *Inter-State Extradition Conference*, 24-29, 66-69, 87.

be subject to extradition.[82] Although the discussants never mentioned nonsupport, that conduct would not have seemed out of place if categorized with these inconsistently treated family and sex-related crimes.[83]

Against this ambiguous backdrop, charity workers and likeminded legislators initially deemed it safest to pursue a felony-level nonsupport offense, as documented in their conference proceedings and publications. For instance, in 1900, a report in *Charities* noted that Ohioans sought to raise their child abandonment statute "from a misdemeanor to a felony in order that the delinquent father may be followed to other states, as the Hebrew Charities of New York wish to do."[84] The belief that a felony was needed also filtered into lay publications. An advice column published in 1895 informed a deserted wife that the "only course open" to her was to follow her husband and "cause his arrest on a charge of non-support and desertion" wherever she found him. This was necessary, the writer explained, because "his offense is a misdemeanor, not a felony, and for the former he cannot be extradited."[85]

Perhaps because they had not been extraditing nonsupporters pursuant to their trailblazing misdemeanor statutes, Midwestern states took the lead in trying the felony approach. Michigan and Ohio began by raising child abandonment to a felony, in 1897 and 1900, respectively. The felony

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[82] Brown, Inter-State Extradition Conference, 67-68, 95.

[83] See, e.g. John Bassett Moore, *Treatise on Extradition and Interstate Rendition* (Boston: Boston Book Company, 1891), 1439 (showing one suggested Pennsylvania guideline as reading: "Requisitions will not issue in cases of fornication and bastardy, desertion (except under special and aggravated circumstances), nor in any case to aid in collecting a debt or enforcing a civil remedy…."). It was well settled that there was no extradition for collecting debts or to obtain jurisdiction in a civil matter. Brown, *Inter-state Extradition Conference*, 10.

[84] "Deserted Wives" (Sept. 1900), 1, 3. See also "Needy Families in Their Homes," *Charities* 9, no. 1 (July 5, 1902): 17-18 (noting discussion of need for legislation to make desertion extraditable during charity meetings).

[85] A sneakier option the author offered was to inform local police of any felony the husband previously committed and have him extradited on that basis instead. "Broken Hearted Woman," *Buffalo Evening News*, June 21, 1895, 17.

coverage was first extended to wives by Minnesota in 1901, followed soon thereafter by Michigan in 1903.[86]

Minnesota's felony wife desertion law seemed promising for securing extradition. As newspaper coverage explained, "it is believed by the lawyers that deserving husbands can be arrested in and extradited from other states." Thirty test warrants were immediately issued after the statute was enacted. "If the law stands the test," the article continued, "it is not unlikely that other states may follow Minnesota's example." That coverage spread to other states likely increased that possibility. As an Ohio paper explained to its readers, without a law like Minnesota's, "[s]o long as the husband remains in the same place with his family he can be got at and made to pay, but once out of the jurisdiction of the court, he is practically a free man."[87]

Initial coverage of Minnesota's law also touted the benefits of felony-level punishments. An article republished across the country detailed how George A. Kenney had "the distinction of being the first man convicted" in Minneapolis. The court was "lenient," giving him ninety days in the workhouse instead of the maximum three years in prison. "Mr. Kenney's bad eminence should be a warning to other men who are inclined to neglect, evade or shirk their duty to their families," the journalist suggested. Misdemeanor punishments had not been effective, so the felony approach "is a new departure in sociology." When a man was fined, his wife was usually the one who "hustled around and raised money to pay," or the man was sent to jail. "But now he is confronted by a hard labor proposition… under more disagreeable conditions than free labor could possibly involve." That the felony punishment could coerce a man into supporting his wife "gives the wife a better

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[86] William H. Baldwin, *Family Desertion and Non-Support Laws* (New York: James Kempster Printing, 1904), 87-88, 112-13.

[87] [No Title], *News Democrat* (Urichsville, OH), June 28, 1901, 4; [No Title], *Daily Arkansas Gazette* (Little Rock), May 17, 1901, 4; [No Title], *Richmond* (VA) *Times*, May 8, 1901, 4.

chance than she had before." She could force her husband to provide or else "get rid of him." Thus, the bill was understood as "an important step in the accomplishment of women's rights."[88]

Legislators apparently did not think through or fully commit to women's rights, however. Minnesotan wives still could not testify against their husbands in felony cases but could do so for misdemeanors. Thus, legislators soon attempted (unsuccessfully) to lower the offense to a misdemeanor, perhaps willing to sacrifice clear eligibility for extradition in exchange for easier convictions.[89] Wives' inability to testify became a stumbling block in other early felony-adopters, too. For example, a man in Port Huron, Michigan, successfully challenged his wife's ability to testify to his desertion under a felony law that applied only when the man left the state. She could, however, testify to the misdemeanor version of the offense, and so he was convicted on that basis. This meant a maximum penalty of thirty days in jail rather than three years.[90] Other states took the more obvious approach of passing legislation that allowed wives to testify in felonies or carved out exceptions for specific crimes including nonsupport, but it took time for legislators to agree on this path.[91]

Despite these glitches, reformers in other states also advocated for the passage of felonies. For instance, the Milwaukee Associated Charities asked the Wisconsin legislature to raise its law to a felony in 1902. A charity agent explained that the "idea is not an innovation, as Minnesota and Iowa

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[88] "Wife Abandonment a Felony," *Courier-Journal* (Louisville), Nov. 3, 1901, A5; "Wife Abandonment a Felony," *Ottawa Journal*, Nov. 15, 1901, 7.

[89] "Work of Senators," *Saint Paul Globe*, Feb. 28, 1902, 5. For discussion of Minnesota nonsupport laws, see Baldwin, *Family Desertion*, 18-20.

[90] "Flaw in Simons Law," *Detroit Free Press*, May 5, 1904, 7. On Michigan's law, see Baldwin, *Family Desertion*, 87-88. The same issue derailed the criminal law in Ohio. "Decision Weakens Law: Court Holds Wife Cannot Testify Against Husband for Desertion," *Detroit Free Press*, Dec. 2, 1908, 3.

[91] Baldwin, *Family Desertion*, 15 (noting recent change to Vermont law). On states changing their laws to permit wives to testify against husbands, see Baldwin, *Family Desertion*, 29-30.

have already made the abandonment of wife or children a felony, and Illinois is preparing to follow their example." The "best men working in the charitable field" believed "the only way to check the evil is to apply drastic treatment." Once delinquent breadwinners knew they could be extradited, the agent believed, they would be less likely to desert in the first place. Still, this interviewee would not be satisfied by merely securing extradition because most men did not "fear" imprisonment. "It is my opinion that imprisonment does not cure," he explained. "I am in favor of the Delaware whipping post for men guilty of abandonment or wife beating, with as much publicity as possible."[92]

Charity leaders in the Northeast tracked Midwestern developments and soon agreed that a felony was advantageous. The need for a felony was a major theme during a conference on "Family Desertion," held in the NYCOS library in April 1903. Devine opened the meeting "by reading extracts from an exhaustive memorandum… on the subject of extradition of criminal deserters." From this memorandum and the following discussion, it seemed a felony law was essential and also fair. The attendees, who held government posts related to the care of children or within COS and similar organizations, still believed that nonsupport reflected moral failings more than economic conditions. They speculated that men deserted because they knew charities would support their dependents and because the punishments were not severe enough to inspire fear. Richmond (now general secretary of the Society for Organizing Charity of Philadelphia) offered somewhat more nuanced and revealing theories. She attributed the seeming rise in men's desertion rate to "industrial conditions and immigration." Specifically, married women's "increasing desire" to earn wages because they had, as single women, "tasted the delights of liberty" led wives to maintain "the kind of a home from which a man would naturally want to run away." Immigration contributed to the problem because foreigners escaping "repressive laws to a free atmosphere gives them a sense of

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[92] "Wife Desertion a Felony," *Boston Daily Globe*, Dec. 28, 1902, 22 (printing story from Milwaukee).

delight in doing as they please which reacts against the family." Regardless of the specific reasons, the discussants were unified in perceiving, in another speaker's words, that the main problem was "men's moral delinquency."

The conference concluded with the appointment of a committee to create specific resolutions, with Richmond as the chair. Presented by her later that month, the resolutions called desertion a "serious evil," imposing "a great burden upon public and private relief funds" and "causing untold suffering" to women and children. The resolutions identified extradition as "the most effective remedy and deterrent," and concluded that the National Conference of Charities and Corrections (NCCC) should petition governors to request and honor extradition of deserters.[93]

But charity reformers and other stakeholders also recognized that felony-level criminalization brought political, legal, and practical challenges. A full-page "symposium" published by the *Boston Post* provides a detailed treatment of the reasons some of that city's charity leaders, women lawyers, religious authorities, and judges questioned the utility or appropriateness of a felony. While some of the contributors fully supported a felony law as a deterrent and for extradition, others feared a felony would be counterproductive. The latter group suggested that a felony might motivate men to desert further away to reduce the likelihood of being caught, impose a harmful stigma on convicts, expose men to corrupting influences in prison, and perhaps lessen authorities' willingness to enforce the law because of a perception it was too harsh. A judge cautioned that sending a man to state prison would "destroy[] whatever vestige of self-respect such a

[93] "Conference on Family Desertions: Law to Make Desertion of Wife and Children a Felony Is Advocated in New York," *Charities* 10, no. 19 (May 9, 1903): 483-86. Newspaper coverage reflected the focus on the need for a criminalization to get extradition. "Family Deserters: All Day Conference at Charities Building—Remedies Suggested," *New-York Tribune*, Apr. 30, 1903, 7; "Family Desertion Resolutions," *Charities* 10, no. 20 (May 16, 1903): 488.

man may retain, and depriv[e] the family of whatever chance they may have had of getting a bit of money from him."[94]

Legislatures cautiously considered the tradeoffs between quasi-criminal (poor law), misdemeanor, and felony nonsupport laws. For instance, in 1903, legislators in Pennsylvania considered whether to add a misdemeanor or felony to permit extradition, as the state's 1867 revised poor law could not. Legislators believed that a misdemeanor technically qualified for extradition but might not seem serious enough to prompt allocation of extradition funds. On the other hand, they thought a felony was too harsh. Ultimately, they agreed on a misdemeanor and further reassured themselves that by keeping the 1867 law in place as well, "all ordinary cases" could proceed under quasi-criminal procedure "which would have the advantage of greater speed, since it requires no jury."[95] The following year, a Pennsylvania charity group reported to its New York counterparts that the state had not yet found an appropriate test case for the misdemeanor because they only planned to use it when extradition was required. "As to proceeding under this law where the man is within the State, we do not wish to do that, because the procedure is much more complicated," they explained in a letter.[96] Once the state began using the misdemeanor, prosecutors even found a way around allocating the extra procedure. They extradited using the misdemeanor, dropped the charges,

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[94] "Should Wife Desertion Be Made a Felony, Punishable by Imprisonment?" *Boston Post*, Nov. 15, 1903, 27. For a similar discussion based on survey responses in Iowa, see "Law Against Bum Husbands," *Quad-City Times* (Davenport, IA), Dec. 23, 1906, 13. See also "Extradition of Deserting Husbands," *Charities* 14, no. 9 (May 27, 1905): 773-74 ("There are those who believe that a law making desertion a misdemeanor can be more easily and satisfactorily enforced than one making it a felony.").

[95] "Make Wife Desertion Criminal," *Pittston Gazette*, Feb. 11, 1903, 4; "Many Wives Are Deserted Annually in Pennsylvania," *Wilkes-Barre (PA) Times Leader*, Feb. 12, 1903, 4; Helen Foss, "The Genus Deserter: His Singularities and Their Social Consequences—A Study of Local Fact and Interstate Remedies," *Charities* 10, no. 18 (May 2, 1903): 459.

[96] Isabel C. Barrows, ed., Proceedings of the New York State Conference of Charities and Correction (Albany: J. B. Lyon Company, 1904), 202.

and proceeded under the quasi-criminal statute. Though it was contested whether this strategy was lawful, Pennsylvania continued doing it for decades.[97]

Felony doubters found their champion in William H. Baldwin, a member of the Board of Managers of the Associated Charities of Washington, D.C. A former steel industry professional from Ohio, Baldwin retired to D.C., where he supported a range of social welfare and health causes.[98] In 1904, Baldwin published *Family Desertion and Non-Support Laws*, a detailed and influential overview of existing criminal statutes and a proposed model law to secure extradition and effective enforcement. Baldwin also noted the existence of civil remedies, but he explained "it has not seemed worth while" to discuss them in detail because they were not real options for most families. Men whose "assets consist of potential earnings" have "no property which can be reached by civil suit." Moreover, in the rare exceptions to this situation, the expense and delay of civil proceedings made them "practically unavailable."[99]

Baldwin began by outlining the causes of desertion and nonsupport. Drawing from recent statistical studies, he argued that the desertion rate was increasing for "complicated" reasons including greater travel, the ease of transferring between different types of employment after mastering modern machinery, and knowledge of other locations spread through newspapers. Even more perversely, newspaper articles about the phenomenon of desertion could encourage this behavior by "awaken[ing] a dormant impulse, just as cheap novels prompt some boys to start out as

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[97] William H. Baldwin, "Is It Lawful to Bring a Man Back to Pennsylvania by Extradition on the Charge of Desertion under the Act of March 13, 1903, for the Purpose of Proceeding Against Him Under the Act of April 13, 1867?" *Journal of the American Institute of Criminal Law and Criminology* 4, no. 1 (May 1913): 20-29; Commonwealth v. Kenney, 80 Pa. Super. 418 (Superior Ct. Penn. 1923).

[98] Tiffin, *In Whose Best Interest*, 154. May, "Problem of Duty," 50.

[99] Baldwin, Family Desertion and Non-Support Laws, 13, 15-16.

Indian fighters." In short, modern technology and urbanization meant it was easy, cheap, and potentially attractive to desert.

Money featured as a motivator and facilitator of such desertions, as well as the reason to intervene. Baldwin worried that if a man could spend as little as a nickel to take a trolley or ferry to a neighboring state, "where he can spend all he earns for his own gratification, he is in danger of finding some excuse for going." Baldwin embraced the lingering lessons of scientific charity; he understood the cause of desertion as a "moral weakness" and even a "serious moral defect." That deserters were "offenders" rather than "unfortunates" meant it was appropriate to handle them using the criminal law.[100] The use of criminal law was further justified by emphasis on the harm the conduct caused to the public. Baldwin maintained that the public had "a right to demand" that a husband provide financial support for his family, even if a wife were not willing to initiate a proceeding. On the other hand, so long as a man supported his family, Baldwin did not think desertion should be a criminal offense.[101]

Believing that desertion and nonsupport were moral failings society had a right to address, Baldwin provided an influential fourteen-point list of suggestions for a model approach. Two aspects proved most salient in subsequent reforms: extradition and punishment. His first suggestion, and the one he promoted most vocally in later publications and talks, was to make desertion and nonsupport an extraditable criminal offense through passage of misdemeanor laws. Felony laws were unappealing, he argued, because their severity rendered them politically contentious and might

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[100] *Id.*, 5-9.

[101] *Id.*, 9-10, 27-28. Baldwin's analysis of desertion's causes echoed those of other charity leaders. For example, in 1902, the United Hebrew Charities of New York conducted a study that claimed: "In the large majority of cases, the deserter evaded his moral and legal responsibility not because he could not provide for [his family], but because he preferred to provide for someone else, or because he found his home atmosphere distasteful." Morris D. Waldman, Monroe M. Goldstein, and National Conference of Jewish Charities, *Family Desertion: Report of the Committee on Desertion (National Desertion Bureau* (Cleveland: National Conference of Jewish Charities, 1912) (discussing earlier study).

make juries reluctant to convict. Moreover, Baldwin argued that nonsupport cases should be heard in the "court of lowest rank" to avoid delays and court fees, which would not be permissible for a felony offense. He blamed legal confusion and cost for the ineffectiveness of misdemeanors to that point and explained why neither should be an impediment. To prove that misdemeanors qualified for extradition, Baldwin analyzed the U.S. Constitution, federal and state statutes and cases, and correspondence with officials in most states. Turning to practicalities, Baldwin cast the cost of extradition as minimal in comparison to the potential benefits. Unlike other retrieved criminals, who would be punished at the state's expense, deserters "are wanted to take up forsaken duties, to resume burdens which the community must otherwise bear for them."[102]

Baldwin proposed penalties designed to maximize deterrence and ensure family financial support. The punishment, he wrote, should be "imprisonment at hard labor … long enough to make the man dread the punishment more than the exertion required to support his family."[103] A sentence of a year would not be "too long" and "should always and without exception be at hard labor" because "[s]imple confinement has no terrors, as a rule, and is welcomed by many." The profit from a man's work at hard labor (beyond the cost of housing and clothing him) should go to his family, which Baldwin speculated would make the man "work more cheerfully and effectively than if work means only punishment." Furthermore, this approach would preserve "the unity of the family… in spite of the intervening prison walls, and it will be easier for him to resume his proper

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[102] Baldwin provided a few examples of how much extradition cost. He found it was $10 to $12 per case in Ohio, and that Wisconsin paid agents who retrieved offenders $8 per diem. Baldwin, *Family Desertion and Non-Support Laws*, 15-16, 19, 30-47, 53-54.

[103] *Id.*, 54.

place and discharge his interrupted duties when the hour of his release comes."[104] The family's unity, in Baldwin's view, was at heart financial.

Baldwin spoke and published widely, with many charity workers and legislators lauding his analysis, but local politics impeded his message in important jurisdictions—most notably, New York.[105] As of Baldwin's report, New York had two relevant laws. It still had the quasi-criminal law derived from the poor law that applied to nonsupport of wives and children. And it had a misdemeanor law secured by NYSPCC that criminalized failure to provide food, clothing, and other necessities for a child up to age fourteen. Finding a misdemeanor unlikely to attract the attention and budget necessary for extradition, more than a dozen philanthropic societies—including NYCOS, NYSPCC, and religiously affiliated charities—cooperated in drafting a bill. Many of these organizations wanted a felony that would apply to the failure to support children or wives. NYSPCC, however, repeatedly objected to and interfered with passage of such a law, claiming it would flood the criminal courts with divorce-type cases and that wives would be able to use the law to harass their husbands. (The more likely explanation for NYSPCC's objections is that its leaders recognized their own power would be enhanced if the only way to extradite an offender was through a law focused on children because the organization dominated child-related prosecutions in its quasi-police function.) Because NYSPCC was powerful in New York politics, the felony law that legislators managed to pass applied only to child abandonment.[106]

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[104] *Id.*, 57.

[105] For example, see William H. Baldwin, "Family Desertion and Non-Support Laws," *Charities* 14, no. 3 (Apr. 15, 1905): 660. On Baldwin's influence, see "Men Who Have Families Dependent on Charity," *Washington Times*, Apr. 16, 1905, 9 (describing Baldwin's extradition analysis as an "important discovery").

[106] Barrow, *Conference of Charities and Correction*, 202. See also Frank E. Wade, "Family Desertion and Non-Support Laws," *Charities* 14, no. 4 (Apr. 22, 1905): 682; "Charity Interests in Support of Measure," *Buffalo Evening News*, Jan. 16, 1905, 19. For further discussion, see Tiffin, *In Whose Best Interest*, 156.

What's Wrong With New York Husbands?
7000 Wives Are Abandoned There Yearly

Whisky and Gambling, Which Leave Poverty in Their Wake, Are Blamed by Veteran Magistrate for Appalling Wreckage of Homes—Women Rarely, If Ever, Leave Their Spouses.

Special to the Post-Dispatch.

NEW YORK, Aug. 19.—According to a statement made by Joseph Pool, a veteran City Magistrate, more than 7000 women are abandoned in New York by their husbands in the course of a year.

"There is no way of telling the exact number from the court records," said Magistrate Pool, "because the husbands are brought before us often on a charge other than that of abandonment—for disorderly conduct, for instance. Then at the hearing the real charge is disclosed by the evidence."

"What is the chief cause of abandonment?" the Magistrate was asked.

"Intoxication, I should say from my experience in the different police courts. Drink is at the bottom of most all of

Why So Many New York Homes Are Wrecked.

wife. There are men who gamble, but do not drink. When I say gambling I mean betting on the races in poolrooms, for that is the prevailing form of gambling with which we come in contact. Husbands think they can make money without working, merely by betting on the races. Then when they are broke, with no work and no money, they abandon their families."

"Do most of the wives who are abandoned have children?"

"Yes, in the vast majority of cases in the police courts the wives that are abandoned have children, often five or six or more. The evidence in many of these cases is enough to bring tears to any judge's eyes. Wives, forsaken by their husbands, struggle along, trying to support themselves and their little ones, while their worthless husbands loaf. Finally, we see the pale-faced wives in court, appealing to justice as a last resort."

"Do wives often abandon their husbands?"

"No, not once in ten thousand times, I should say from my experience. Certainly, such instances among the class of people with whom we deal are rare. I do not at this time personally recall such a case.

Women Are the Sufferers.

"Of course over in the Essex Market district, on the east side, we get cases where women leave their husbands—and for the following reasons: A man marries a woman, gets her money and runs away and marries another woman. The second wife hears of the other

Figure 9: Image depicting reasons New York charity reformers believed men were deserting their families and that a criminal law should be passed[107]

Baldwin, who had helped advise the drafting committee, believed the New York felony bill was redundant with the existing child abandonment misdemeanor. He soon regretted cooperating with his New York counterparts because the New York felony law received significant publicity which fed, in his words, the "mistaken impression that extradition of deserters is impossible until the offense is made a felony." In a letter to the editor of the *Washington Post*, Baldwin described the New York felony law as a "mistake" that had "done much to protect deserters by emphasizing the

[107] "What's Wrong with New York Husbands? 7000 Wives Are Abandoned There Yearly," *St. Louis Post-Dispatch*, Aug. 20, 1905, 23.

erroneous impression that extradition is not possible where the offense is not a felony." Baldwin spent years trying to correct this misperception through publications in charity journals and the lay press.[108]

Though Baldwin was disappointed in New York's legal reforms, he got a testing ground to demonstrate the superiority of his model law in 1906, when Congress passed a misdemeanor for the District of Columbia modeled on his proposal. The D.C. criminal nonsupport law authorized a fine that would go to the offender's family or imprisonment at hard labor which, after a later amendment, permitted profits to be paid to the family. Initial reports were positive, and coverage indicated that the bill would be widely enforced. For instance, an early defendant—ordered to give his wife $60 of his $100 monthly salary—was a police officer.[109]

Baldwin publicized the success of his approach for D.C. nonsupport cases in newspaper articles that ran across the country. In these accounts, he claimed that D.C.'s experience "proved that it is possible to bring deserting husbands to time and make them support their families, however much they may want to skip out and leave wives and children to shift for themselves." The D.C. law incentivized a man to work, and "[t]he man decides whether he will work in confinement or out of it." More specifically, a man convicted of non-support was first placed on probation by the juvenile court judge, who ordered him to pay a specified amount each Saturday night—"the plan heads off many a Saturday night spree"—at a local police station. The police gave the money to the court, which distributed it to the wife on Monday mornings. If a man refused to abide by this plan,

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[108] William H. Baldwin, "An Extraditable Offense: Not Necessary for Desertion to Be a Felony to Bring Back Fugitive," *Washington Post*, July 17, 1905, 9; William H. Baldwin, "The Canadian Extradition Treaty and Family Deserters," *Journal of the American Institute of Criminal Law and Criminology* 12, no. 2 (Aug. 1921): 210.

[109] "Mr. Baldwin Proposes a Law for Imposing Punishment on Wife Deserters," *Washington Post*, Dec. 15, 1905, 9; Mrs. John Wesley Douglass, "Efforts Made in Washington: The Juvenile Court Bill Becomes Law – History of the Movement," *New York Observer and Chronicle* 84, no. 45 (Nov. 8, 1906): 590; "Wife Deserters' Fate: Must Support Families or Go to the Workhouse," *Washington Post*, Apr. 18, 1906, 3; "Must Support His Family: Court Orders Policeman Hollidge to Pay His Wife $60 a Month," *Washington Post*, Feb. 17, 1907, 12.

defaulted, or deserted a second time, he was sent to the workhouse, which for D.C. meant working on a gang in Rock Creek Park, "where Mr. Roosevelt when President used to take his afternoon gallop." Baldwin described the approach as a win-win-win. The men worked and were supplied with "good food," the government secured labor at a reduced rate, and wives received fifty cents per day. "Beyond the money value of the labor," Baldwin continued, "is the moral effect of the work and its compensation on the man in his relations to his family." The experience supposedly "reformed" many men. Still, financial savings were the prominent theme in the articles. In 1910, Baldwin concluded that in the nearly four years the law had been in effect, families had received $3,876 from prisoners' wages and $90,865.84 from those on probation. "This proves the success of the plan," Baldwin concluded, "and the writer believes it ought to be generally adopted."[110]

Baldwin's influence over criminal nonsupport laws grew even further when he advised and was acknowledged as the leading expert by the Commissioners on Uniform State Laws, who met to create a model desertion law beginning in 1909. The Commissioners were a group of elite, governor-selected experts from forty-one states and territories, tasked with studying and proposing uniform laws to address pressing legal problems of their day. In April 1909, the group's Committee on Marriage and Divorce issued a report containing a draft "Act Relating to Family Desertion and Non-Support." Relying heavily on Baldwin's report, they credited statistics that desertion was increasing "due to moral rather than to physical causes." Also echoing Baldwin, they determined "the community has *the right* to intervene." The report summarized Baldwin's fourteen points and then

[110] William H. Baldwin, "For Wife Deserters: Washington Makes Them Labor and Support Families," *New-York Tribune*, June 12, 1910, C8; William H. Baldwin, "Mending Broken Families: A Very Interesting Plan Is Being Worked Out Satisfactorily in Washington," *Detroit Free Press*, May 8, 1910, D2.

provided a model act similar to Baldwin's. As the authors explained, Baldwin's monograph "covers so fully the principles involved in these questions that little can be added thereto."[111]

Drafts of the Uniform Act reveal the central importance but also complexity of securing extradition without requiring the full trappings of felony proceedings.[112] By the final version, Baldwin's view had prevailed that elevating the offense to a misdemeanor was sufficient for extradition and was the preferable grade for procedural and political reasons. Still, the Commissioners used "crime" rather than "misdemeanor" in the final version of the law because some states would be unable to use confinement at hard labor below the felony level.[113]

The Commissioners considered a range of punishments that captured experiments states were employing across the nation. The 1909 version provided three options: (1) a fine to be paid, in whole or part, to the wife or guardian of the children; (2) imprisonment at hard labor for up to twelve months (with a footnote acknowledging additional legislation might be necessary for states to follow the D.C. approach, in which the government took some of the profits to cover the cost of the man's imprisonment and gave a per diem rate to the wife and children); or (3) at the court's discretion, an order requiring the defendant to pay a weekly sum to the wife or the child's guardian and releasing him on probation for one year.[114]

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[111] National Conference of Commissioners on Uniform State Laws, Report of the Committee on Marriage and Divorce with First Tentative Drafts of Acts on the Subjects of Marriages and Licenses to Marry and Relation to Family Desertion and Non-Support (Philadelphia: Press of Allen, Lane & Scott, 1909), 16-19, 28. There was also a second draft published in August 1910. National Conference of Commissioners on Uniform State Laws, Report of the Committee on Marriage and Divorce with Second Tentative Drafts of Acts on the Subjects of Marriages and Licenses to Marry and Relation to Family Desertion and Non-Support (Williamsport, PA: Railway Print, 1910).

[112] National Conference, Report of the Committee on Marriage and Divorce (1909), 33-34.

[113] American Desertion Act, 5.

[113] National Conference, Report of the Committee on Marriage and Divorce (1909), 29.

[114] *Id.*, 28, 31.

By the time the Commissioners completed the final version more than a year and a half later, new obstacles had arisen or been brought to their attention, somewhat undermining their original proposals. A recent opinion from the Criminal Court of Appeals of Texas held that it violated the state's constitution—which read in relevant part "No appropriation for private or individual purposes shall be made."—to require that a criminal fine be paid for the benefit of a wife or child.[115] While the Commissioners did not explicitly note this case, they seemingly responded to it by modifying the language about fines so that no recipient was specified. Such a remedy provided deterrent value but no direct benefit to wife or child. The Commissioners also hedged in the final version regarding imprisonment at hard labor, acknowledging that this approach was not available in all types of institutions and was in a state of flux. "In some States 'convict labor' has been either abolished or limited as the result of the influence of the Labor Unions," they explained. Perhaps to compensate, the Commissioners raised the maximum imprisonment time to two years but allowed for it be "with or without hard labor, in the discretion of the Court."[116] It was only the Commissioners' proposal that courts have the power to require periodic payments and place defendants on probation that remained intact, and indeed was extended from a period of one year to two.[117]

The uniform criminal nonsupport act received wide positive publicity, leading to further criminalization and extradition. Within a few years, nearly every state had criminalized desertion or

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[115] Ex parte Smyth, 120 S.W. 200 (Tex. Crim. 1909). See also "Law Held to Be Invalid," *Austin Statesman*, May 13, 1909, 2.

[116] National Conference, Report of the Committee on Marriage and Divorce (1910), 3, 5-6. For more detail on prison labor in this period, see Rebecca M. McLennan, The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776-1941 (New York: Cambridge University Press, 2008), 193-238, and Jonathan Simon, Poor Discipline: Parole and the Social Control of the Underclass, 1890-1990 (Chicago: University of Chicago Press, 1993), 35-37.

[117] National Conference, Report of the Committee on Marriage and Divorce (1910), 7.

nonsupport, mostly at the misdemeanor level, although with a notable increase in felonies as well.[118] As Baldwin expected, felony laws proved unattractive in practice because they brought cumbersome legal machinery, reticence by prosecutors, lack of cooperation by wives, and other hurdles. An article in *Charities and Commons*, for instance, reported that a New York City charity group found "the district attorney's office disinclined to prosecute and follow up desertion cases referred to it since the offense was made a felony."[119] Consequently, in 1909 and 1910, felony cases comprised less than two percent of New York nonsupport suits.[120] Still, having a felony on the books was beneficial in providing deterrence and prosecutorial flexibility. Reflecting on the portfolio of legal options retained by many states, Baldwin "recall[ed] the story of the man who replied to the inquiry of the undertaker, after the death of his mother-in-law, as to whether he should embalm, cremate or bury: 'Embalm, cremate and bury; take no chances.'"[121]

With criminal nonsupport laws in place, extradition became a reality. From 1906 through 1910, twenty states requested extradition of nonsupport offenders, together totaling 837 requests, with Ohio, Illinois, New York, and New Jersey leading the pack. While not a huge number, in some states nonsupport comprised a significant portion of overall extradition requests. In Ohio, New York, and Wisconsin, between 20 and 30 percent of extradition requests were for nonsupport.[122]

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[118] In 1912, Baldwin listed thirteen states where the highest relevant offense was a felony, thirty-six where the highest was a misdemeanor, and five with no penal law on the subject: Iowa, Nevada, Oregon, Tennessee, and Texas (where it had recently been ruled unconstitutional). William H. Baldwin, *The Present Status of Family Desertion and Non-Support Laws* (address delivered at the National Conference of Charities and Corrections, Boston, MA, June 10, 1911) (New York, J. Kempster Printing Co., 1912): 1-3. According to Tiffin, one-third of states accepted the Uniform Act model in the following two decades. Tiffin, *In Whose Best Interest*, 157-58. By 1916, every state criminalized nonsupport or desertion, albeit at different levels. Willrich, *City of Courts*, 147.

[119] "1,800 Deserted Wives," *Charities and Commons* 22 (Sept. 18, 1909): 838.

[120] Baldwin, Present Status of Family Desertion, 6-9, 21-23.

[121] *Id.*, 8.

[122] *Id.*, 19.

Legal Challenges to Criminal Nonsupport Laws

From states' earliest efforts to revise the poor law and pass criminal statutes, men challenged the laws' constitutionality and application to their conduct. Appeals were relatively infrequent because most defendants lacked resources to hire sophisticated lawyers. Nevertheless, dozens of cases demonstrate that some men had both the means and desire to contest nonsupport statutes. Notably, challenges did not turn on conceptions of the home as a private space impervious to government regulation. Rather, men and their lawyers objected to what they viewed as inadequate procedural protections relative to the punishments or a problematic blurring of the civil-criminal divide. Though courts almost always upheld the criminal laws, they sometimes required greater procedural protections or cabined the laws' scope.

In one of the first cases to reach a state's highest court, the defendant questioned whether the Louisiana legislature had the authority to create a misdemeanor to handle what he characterized as "essentially matters of a civil character." The Supreme Court of Louisiana upheld the legislature's power, emphasizing the public interests at stake. The court explained,

> The performance by a husband and father of the legal duties which he voluntarily assumed in contracting marriage is a matter which not only affects the particular parties in interest, but the public at large, as affecting the general public welfare. The state itself is deeply interested in upholding and seeing the rights and obligations springing from the family relations, for upon their being upheld and enforced rest the well-being of society itself. The statute we are considering has for its object the effective correction of any mistaken idea which particular men may have on this subject.[123]

Local papers were supportive, with one journalist warning: "From this time on husbands who have inclination to shirk obligations of support may take warning, because if their wives are so inclined they will be called on to answer in the criminal courts." The reporter continued that "[t]he law

[123] State v. Cucullu, 35 So. 300, 302 (La. 1903).

referred to is a good one, made to punish the wretches who abandon without just cause those whom the most sacred obligation, freely contracted by them, binds them to care for and support."[124] Courts in states with similar statutes followed this reasoning.[125]

In the following decades, courts upheld criminal desertion and nonsupport statutes against a hodgepodge of constitutional challenges pertaining to procedures and punishments. Defendants' unsuccessful arguments included that misdemeanor nonsupport laws warranted jury trials, that allowing a defendant to pay a regular amount to his wife in lieu of punishment was the equivalent of transferring criminal fines to private parties, that it was unlawful for the proceeds of a man's imprisonment at hard labor to be paid over to his dependents, and that incarceration pursuant to these statutes violated constitutional protections against imprisonment for debt.[126] Courts rarely struggled with these questions. For instance, in facing the argument that its criminal nonsupport law permitted unlawful imprisonment for debt, the Supreme Court of South Carolina countered that "[t]he state has always busied itself about the domestic relations," and the money ordered "is not for any 'debt' by the husband to the wife; it is for the husband's failure to obey society's law, made for society's subsistence."[127] The Supreme Court of Kansas dismissed a defendant's contention that the punishment of two years at hard labor was too harsh, remarking that the severity of the statute

[124] "Warning to Wives [sic] Deserters," *Thibodaux (LA) Sentinel*, July 11, 1903, 2.

[125] For example, see Green v. State, 131 S.W. 463, 463 (Ark. 1910) ("The constitutionality of statutes similar [to the one in this state] has been sustained by the Supreme Court of Louisiana, and treated as valid by other courts.").

[126] For examples of courts rejecting these and other challenges to criminal nonsupport laws, see People v. Heise, 100 N.E. 1000 (Ill. 1913); State v. Latham, 188 S.W. 534 (Tenn. 1916); Martin v. People, 168 P. 1171 (Colo. 1917).

[127] State v. English, 85 S.E. 721 (S.C. 1915).

"need trouble no one who possesses sufficient manhood and decency to entitle him to remain outside prison walls."[128]

The only major setback came in Texas in 1909. In *Ex Parte Smyth*, the Court of Criminal Appeals of Texas reluctantly held the state's criminal abandonment statute unconstitutional on several grounds. In the first place, the remedy—paying over the man's fine to his family—violated the state constitution's provision reading: "No appropriation for private or individual purposes shall be made." Second, the statute allowed the judge to order the husband to pay a weekly amount to his wife or children before trial (with the defendant's consent) or after conviction in lieu of punishment. The court found that this provision violated the constitutional command: "No power of suspending laws in this state shall be exercised except by the Legislature." Yet another reason the statute was invalid was that "it deprives the defendant of the right of a trial by jury, which is also guaranteed by the Constitution." The court therefore held the whole statute invalid despite the "beneficent purpose of this legislation, all of which we readily and cheerfully concede."[129]

While it seemed clear in most states that the legislature had the power to criminalize desertion and nonsupport and had some flexibility in the attached punishments, the more difficult task for courts was to ascertain the range of conduct to which these statutes could apply. Some of the earliest and most sustained challenges were lodged against New York's revised poor law, and precedent set by these opinions was influential inside and outside the state, for both quasi-criminal

[128] State v. Gillmore, 129 P. 1123 (Kan. 1913).

[129] Ex Parte Smythe, 120 S.W. 200 (Tex. Crim. 1909). A few other criminal statutes were held unconstitutional in the 1920s. State v. Sansome, 97 So. 753 (Miss. 1923) (dismissing many of defendant's challenges to felony nonsupport law, but agreeing that it was unconstitutional in allowing a complaint under oath rather than requiring an indictment); Postelwait v. State, 228 P. 789, 791 (Okla. Crim. 1924) (finding that criminal law copied from Texas was not unconstitutional for reasons discussed in *Smyth*, but portion was invalid in authorizing the court to change the amount of the support order over time without using a jury because this was "a futile attempt to create a civil liability in a criminal case, in the nature of an obligation to pay alimony or money for support and maintenance, usually enforced by a suit in equity").

and criminal laws. The major question was whether criminal law was limited to situations in which dependents were likely to become public charges, as under the traditional poor law.

The New York cases began with dueling interpretations of the revised poor law that was in place for Kings County. (The state legislature passed laws specific to many of its cities and counties.) The Kings County law had, since 1844, attached the "disorderly persons" label to people who "abandon, neglect or refuse to aid in the support of their families." In 1871, the legislature seemed to narrow the language; that version applied when people abandoned their wives or children and left them "without adequate support, a burden on the public."[130]

A few years later, in *State v. Pettit*, a trial court and intermediate appellate court differed in their interpretations of the scope of the 1871 law, starting off decades of conflict between trial judges (often called magistrates), appellate judges, and legislators. The specific question in the case was whether a man could be held liable under the revised poor law when he arranged for his family to stay with his parents, but the wife refused to go because the father-in-law sometimes became drunk and abusive. The trial court had found that the statute did not apply to the husband's conduct, on the basis that the wife had managed to support herself and their children and so they did not become public charges. The intermediate appellate court reversed. That court reasoned that what mattered was the husband's nonsupport, and it was "wholly immaterial who furnishes [the family] with support, so long as he does not. It is his omission to perform his moral as well as legal duty, that constitutes the violation of the statute." An alternative holding, the court recognized, would force the wife and children to become destitute paupers, sent to the poorhouse, before the husband could be liable. Since kin would be unlikely to let this happen, "worthless husbands will be

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130 Laws of the State of New-York Passed at the Sixty Seventh Session of the Legislature (Albany: C. Van Benthuysen and Co., 1844), 266-69; Laws of the State of New York Passed at the Ninety-Fourth Session of the Legislature, vol. 1 (Albany: Argus Co, 1871), 784-85.

relieved altogether from the support of their families, and their support be transferred to the relatives of the wife." The judge declared he could not "believe that any such result was ever contemplated; and a construction of the statute that would lead to such result, ought not to be given to it unless it will bear no other."[131]

While *Pettit* was on appeal, another division of New York's intermediate appellate court heard a different Kings County case, *People ex rel Kehlbeck v. Walsh*. The facts of the case pointed the judges to the opposite sympathies. The wife was "strong and healthy and gets drunk" and had acted violently, whereas the husband was elderly, unwell, slept in his son's store, and earned only $200 per year. The wife had previously sought a divorce with alimony, which had been denied. Now she sought to use the quasi-criminal law to force her husband to provide her with support. The opinion for the court was merely that the statement of facts did not constitute an abandonment. A concurrence went further. The concurring judge explained that the rewording in the 1871 statute meant that mere neglect to support was insufficient to state an offense. The legislature deliberately narrowed the law, he continued, in reaction to the fact that "[m]any wives abandon their husbands, and then invoke the summary and stringent power of a magistrate to compel their husbands to support them." The judge suggested the doctrine of necessaries was sufficient for marital support, unless a wife became absolutely destitute. "The statute of 1871 was not intended to furnish a civil remedy to deserted wives," he concluded, "but to protect the public against the expense of supporting paupers."[132]

The following year, *Pettit* reached the New York Court of Appeals, which likewise concluded that the revised poor law should not serve as a replacement for civil remedies. "The statute is not a

[131] People v. Pettit, 3 Hun. 416 (NY 4th Dept., 1875).

[132] People ex rel Kehlbeck v. Walsh, 11 Hun. 292 (NY 2d Dept., 1877).

substitute for an action of divorce, it was not designed to settle marital controversies nor to furnish relief for violations of marital obligations except in the single particular of requiring a support or maintenance," the court commanded. If a wife had grounds for divorce, that was the path she should pursue because the quasi-criminal law "was designed to enforce actual physical support only."[133]

This case set off a contest between the New York legislature and the state's courts. The legislature seemingly believed its statute had been misinterpreted or else regretted the narrowing. In 1882, it passed a Kings County law that made it an offense for people to abandon their wives or children "without adequate support, a burden on the public… [or] *neglect to provide for them according to their means*."[134] The following year, the part of the intermediate appellate division that heard *Walsh*, including some of the same judges, refused to cooperate. In *Douglass v. Naehr*, the wife would not live with her husband because she believed he had been unfaithful. She moved in with her daughter and initiated quasi-criminal proceedings. The trial court found the man guilty, but the intermediate appellate court reversed. After acknowledging the amended statute, the court nevertheless concluded that the purpose was still "to protect the public against the burden of supporting wives and children" and "was not intended to give the wife any new remedy, either directly or indirectly." Though the statute might seem to warrant convicting the husband if "[i]nterpreted literally," the court doubted that "could have been the legislative intent." Sparring with the legislature, the court offered: "Any other view would result in a most serious disturbance of the reciprocal rights and duties which are founded upon the marital relation." Not wanting to seem unsympathetic, the court suggested that if the husband had mistreated the wife, she could get a divorce with alimony. It

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[133] People v. Pettit, 74 N.Y. 320 (1878).

[134] Laws of the State of New York Passed at the One Hundred and Fifth Session of the Legislature, vol. 1 (Albany: Weed, Parsons, and Co., 1882), 201-11.

seemed to the court that what the wife really wanted was "a separate maintenance."[135] (Notably this case was decided during a period when other states permitted separate maintenance orders in civil cases, as discussed in Chapter Two. New York was an outlier in not offering that remedy, and so New York wives instead attempted to use the quasi-criminal law for a similar result.)

That New York's judges still preferred for wives to use civil law approaches whenever possible was particularly clear in cases where wives tried to use poor law in combination with other options. For example, when a woman received a divorce from bed and board with no alimony because of the husband's poverty, she was not later permitted to seek relief under the poor law. Although the Commissioner of Public Charities and two levels of New York's judges sided with her, the Court of Appeals held the permissible remedy was for the wife to seek modification from the court that granted the divorce.[136]

Over the following years, New York's appellate courts consistently held that it was necessary for a wife or child to be at risk of becoming a public charge for the revised poor law to apply, yet magistrates resisted.[137] Perhaps the most notorious example arose when an internationally famous

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[135] People ex rel. Douglass v. Naehr, 1 Crim. R. 513 (Sup. Ct. General Term, Sept. 1883). The same trio of judges sounded more sympathetic the following year, when holding that a wife was permitted to testify in such cases. "There is no rule of law requiring a wife to remain under the roof of a brute, in constant danger of life and limb, under pain of starvation," they wrote. People ex rel. Sherrer v. Walsh, 33 Hun. 345 (Sup. Ct. General Term, July 1884).

[136] People ex rel. Commissioners of Public Charities and Correction v. Cullen, 47 N.E. 894 (Ct. App. N.Y. 1897). But when a wife had only been awarded temporary alimony during the pendency of a civil suit for separation, her husband could be found guilty of quasi-criminal nonsupport. People ex rel. Goetting v. Schnitzer, 71 N.Y.S. 320 (Cty. Ct. Kings, N.Y., 1901). And when a husband violated a private separation agreement, he could not use the existence of the contract as a bar to prosecution because that would "enable him to take advantage of his own wrong" and could result in his family becoming a burden on taxpayers. People v. Meyer, 9 N.Y. Crim R. 529 (Ct. Gen. Sessions N.Y., 1895). See also Bowen v. State, 46 N.E. 708, 709 (Ohio, 1897) (separation agreement does not impede prosecution of misdemeanor nonsupport of children because "the duty [the father] owes the public of saving it from the expense of supporting his children is personal and continuing, and cannot be affected by any agreement he may make with another"). But see Commonwealth v. Smith, 200 49 A. 981 (Pa. 1901) (a valid, reasonable separation agreement bars proceeding against a man under Pennsylvania's quasi-criminal law from 1867); Virtue v. Illinois, 122 Ill. App. 223, 224-26 (App. Ct. Illinois 1905) (if a couple separates by mutual consent and the husband fails to comply with separation agreement, he cannot be liable under criminal statute because he did not commit the element of willful abandonment).

[137] For examples, see People v. Harris, 60 Hun. 581 (Sup. Ct. NY Gen. Term, 1891); People ex rel. Karlsioe v. Karlsioe, 37 N.Y.S. 481 (Sup. Ct. App. Div. 1896); Feeney v. Dershem, 79 N.Y.S. 612 (Sup. Ct. App. Div. 1903).

dancer known as "La Petite Adelaide" recovered support payments under the revised poor law. In 1901, newspapers in New York and beyond published articles about how the "noted dancer" collected payments from her estranged husband with the assistance of the Outdoor Poor Department's alimony bureau. A representative article opened by explaining that the "pretty little danseuse, sometimes known as Mrs. William A. Lloyd," was a "leading member of the growing woman's organization, the 'Alimony Club.'" Adelaide "dazzled" the alimony clerk responsible for distributing support payments when she arrived "in shining silk and ostrich tips," her chauffeur waiting outside. She received eight dollars per week in alimony from her advertising executive husband, which he was induced to provide after spending time imprisoned at Blackwell Island. This income supplemented the generous income she earned herself. According to newspaper reports, she used several dollars of the alimony to pay the chauffeur for the trip to the alimony bureau and donated the remainder to the poor.[138]

Adelaide, while certainly an extreme example, was not the only woman receiving support she did not strictly need. Although newspaper reports explained that a wife had to swear she was likely to become a public charge to qualify, one article reported, "[t]he unlikeliness of this contingency in many cases had caused the 'alimony clerk'… to smile many times." The writer continued:

> The "alimony club," of the Outdoor Poor Department, is one of the strangest anomalies of Strange New York. Expensive gowns rub against tattered calicos. Smiles mingle with tears. Dollars received from the "alimony clerk" are dropped into golden purses bulging with greenbacks, and others are tucked away carefully in the corner

[138] For the most detailed coverage, see "Noted Dancer Collects Alimony in Automobile," *Evening World* (New York), May 9, 1901, 5; "Interesting Bits of Gossip about Other Players Who Are Greatly in the Public Eye this Season," *St. Louis Post-Dispatch*, Sept. 13, 1901, 12. Other articles showing the broad coverage the story received include "William Lloyd Is a Prisoner," *Albany (OR) Democrat*, May 31, 1901, 2; "Odd Call for Alimony," *Fort Wayne Daily News*, May 10, 1901, 1. Adelaide likely lacked grounds for divorce. She did not secure a divorce until a decade later in Suffolk County, Massachusetts. "Dancer Secures Divorce," *Boston Daily Globe*, Mar. 21, 1912, 5. She then married her also-divorced dance partner. "'La Petite Adelaide' Weds Partner," *New York Times*, June 4, 1913, 11. About a decade later, they starred in a comedy about a former husband who still loved his remarried wife. "Dancing a Fine Art," *Washington Post*, Sept. 10, 1922, 56.

> of a soiled handkerchief which has just given up its last nickel to
> bring the poor owner to the alimony fountain.

While for some women the money was "needed badly," in other cases it "permit[ted] wives to live more luxuriously than when they washed, ironed and cooked for the gay men they promised to 'honor and obey.'"[139]

New York's appellate judges attempted to clamp down on what they viewed as magistrates' unauthorized expansion of the revised poor law. In the 1906 case of *People ex rel. Demos v. Demos*, an intermediate appellate judge yet again instructed his inferiors that for the quasi-criminal law to apply, it was mandatory that there be proof that the defendant had abandoned his wife or child and left them in "imminent danger" of becoming public charges. This time the wife was living apart from her husband through their mutual agreement that she housesit for an acquaintance. When the husband failed to provide support payments he promised as part of this plan, she initiated a quasi-criminal suit. The trial court convicted the husband, but the appellate court reversed. Citing earlier cases, the court explained that "[t]he statute was not enacted for the settlement of matrimonial differences, and Magistrates' Courts were not organized to adjust domestic quarrels." If the man in the case were guilty of conduct that justified the wife in living apart from him, she should sue for a civil separation. "A Magistrate's Court is not a divorce court," the court concluded, "and complaint of abandonment in that court is not a proper method for obtaining a decree of separation from bed and board."[140]

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[139] "Noted Dancer Collects Alimony," 5.

[140] People ex rel. Demos v. Demos, 100 N.Y.S. 968 (Sup. Ct. NY App. Div. 1906). Several appellate-level cases over the next few years reached the same conclusion, demonstrating an ongoing dispute between trial-level and appellate judges on this issue. Goetting v. Normoyle, 191 N.Y. 368 (1908); People ex rel. Prince v. Prince, 112 N.Y.S. 688 (Sup. Ct. App. Div. 1908); People v. DeWolf, 118 N.Y.S. 75 (Sup. Ct. App. Div. 1909).

By 1909, the magistrates were so frustrated by their appellate brethren's interpretation of the revised poor law that they aired their grievances during hearings on the operation of the city's courts. According to one magistrate, *Demos* meant that "there is absolute foreclosure of remedy" for poor litigants, who could not afford to pursue a separation in the state's civil courts. He therefore proposed that magistrates' jurisdiction be expanded to include "cases in which there has been no desertion, in which husband and wife, for example, are living together, but the husband is shiftless and lazy or he is cruel and inhuman in the treatment of the wife or the children." It would not unduly impose on the jurisdiction of the civil courts, he suggested, if magistrates could "be given the right to use reasonable remedies to reform, to bring together the couple or perhaps to allow a limited separation for a short time." In furtherance of this idea, he agreed it would be wise to create a specialized court for these matters. And indeed, as discussed in the next chapter, these hearings culminated in the creation of a specialized domestic relations court, as part of the magistrate court system. The domestic relations court was empowered to attempt to reconcile couples, regardless of whether there had been an abandonment, and to enforce support payments that continued even if a couple lived together (though the public charge requirement was not removed until 1933).[141]

The conflict that played out between New York's legislators, appellate judges, and magistrates regarding the scope of the quasi-criminal nonsupport law had many features unique to the state but also anticipated and influenced disputes that arose across the country in the interpretation of the full-fledged criminal desertion and nonsupport laws. Charity reformer proposals, resultant statutory language, and frequent amendments often left unclear whether a guilty verdict required nonsupport, desertion, or the combined existence of both, as well as whether there

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[141] "Testimony of Alexander H. Geismar," in *Proceedings of the Commission to Inquire into the Courts of Inferior Criminal Jurisdiction in Cities of the First Class*, vol. III (Albany: J. B. Lyon Co., 1909), 2312-15. For more on the new court and later changes, see the next chapter.

was a minimum level of destitution necessary for the law to apply. The Uniform Act covered those who "desert *or* willfully neglect *or* refuse to provide" for wives or children "in destitute or necessitous circumstances."[142] While some states followed this model, statutory language varied.[143]

One set of legal challenges turned on whether a guilty verdict required simultaneous abandonment and nonsupport. Baldwin found that the offense was "often spoken of simply as 'family desertion,'" regardless of statutory requirements, because desertion typically implied nonsupport.[144] In some instances, though, courts had to determine whether the law attached to just one of these behaviors. Most statutes were clear, or courts interpreted them to hold, that mere abandonment was insufficient to constitute the crime. Nonsupport was an essential element because the harm, to society or the family, was at core economic.[145] Yet for the same reason, some jurisdictions permitted convictions for nonsupport without desertion.[146] Some courts even permitted a finding of criminal liability for nonsupport when the statutory text seemed to also require

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[142] American Desertion Act, 3.

[143] Indeed, variation was one of the reasons the model law was proposed in the first place. As of 1904, Baldwin found the laws so varied that he created a detailed chart to help sort them. Baldwin, *Family Desertion and Non-Support Laws*, 27-28, 48, 141-42.

[144] Baldwin, *Present Status of Family Desertion*, 3-4. For another example of how the language was imprecise, see State v. Morgan, 136 N.W. 521 (Iowa 1912) (interpreting pertinent statute to include three separate offenses, which were "all named as 'desertion,'" even though two required only neglect or refusal to provide).

[145] Cuthbertson v. State, 101 N.W. 1031 (Neb. 1904) (in finding that abandonment alone did not constitute a crime, explaining that "it is beyond question that the real purpose of the Legislature in passing this statute was to make it a penal offense for a man, without good cause, to neglect or refuse to provide for his wife").

[146] This analysis focuses on wife desertion because child abandonment statutes used different phraseology. For examples of relatively straightforward statutory construction of statutes regarding wife desertion and/or nonsupport, see State v. Witham, 35 N.W. 934, 935 (Wis. 1888) (finding two provisions of statute to create distinct offenses, one making it a misdemeanor for a husband to abandon his wife and leave her destitute and the other making it an offense for him to refuse or neglect to provide for her); Missouri v. Miller, 90 Mo. App. 131, 133 (St. Louis Ct. App, MO 1901) ("The law conjoins the two infractions of the marital contract, and the husband must be guilty of both these acts; that is, he must have deserted the wife and must also have refused to maintain her."); People v. Heise, 100 N.E. 1000, 1003 (Ill. 1913) ("By the statute two elements are required to constitute the offense: The act of abandonment, and the neglect and refusal to maintain and provide for the wife.").

abandonment. For example, the Florida Supreme Court found that the desertion language in its statute applied to the conduct of a man who only failed to support his family because "desertion" was not "confined solely to physical separation." Rather,

> [the] word 'desertion' conveys the idea of neglect of a duty. I desert a friend, not merely by leaving his presence, but by failing to perform a service for him that he had a reasonable right to expect of me, and a man may be said to desert his family if he withholds from it the means necessary to its support.

Though this analysis just pertained to a Florida statute, it captures the spirit of many of the cases. In many locations, appellate judges sought to justify broad applications of the laws.[147]

An even more persistent question was whether a wife and child had to be likely to become public charges for the criminal law to step in. Though appellate courts' responses were not uniform, the overall tendency—especially over time—was to apply the laws expansively. For instance, in 1898, the Michigan Supreme Court considered a statute that contained "public charge" language that ambiguously applied to the full statute or just some provisions. The Michigan Supreme Court held that only a portion of the statute was constrained by the public charge element. It distinguished the law from those in place in New York and New Jersey, finding that the Michigan legislature did not intend "to limit the liability of the husband to instances where the public has actually been called upon to afford relief, thus denying liability where a wife, through her own exertions or the aid of friends, avoids pauperism." The statute covered "all cases of unjust neglect."[148]

Other judges found a middle ground between broad interpretations like Michigan's and those in conservative jurisdictions such as New York. For example, the Supreme Court of

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[147] It is unclear why he was charged under that component of the statute because, as the court noted, there was another subdivision that specifically applied to "withholding of means of support." Welch v. State, 67 So. 224, 225 (Fl. 1915). See also Dempsey v. State, 157 S.W. 734, 735 (Ark. 1913) (holding that desertion alone did not constitute an offense, but desertion in conjunction with providing only "slight and inadequate provision" was covered). But see "Husband and Wife—'Desertion,'" *Yale Law Journal* 24, no. 6 (Apr. 1915): 518-19 ("To hold that non-support is desertion, is to add a meaning to the latter term which does not seem justified by its use in either ordinary or legal phraseology.").

[148] People v. Malsch, 77 N.W. 638, 639 (Mich. 1898).

Connecticut agreed with a defendant that the state's statute "is one designed for the protection of the public interest, and not for the enforcement by a wife of her marital rights of support and maintenance." If a wife wished to secure support commensurate to her station in life, she would need to use civil litigation. Nevertheless, the court suggested it did not "by any means follow that the support which the statute contemplates is one to be arbitrarily determined by the ordinary cost of pauper support." Instead, it was appropriate to consider "all the circumstances relating to the situation." In short, the court approved the trial court's award because it fell between a civil remedy and merely keeping the wife from becoming a public charge.[149]

Many statutes stated that dependents had to be in "destitute or necessitous circumstances" to apply, but even here courts found justifications to construe the statutes generously. For example, the Virginia Supreme Court, considering the state's 1904 misdemeanor, found "no fixed standard" to define "destitute" and "necessitous." The meaning "may vary with the conditions to which parties have been accustomed," the court explained. "The necessaries of one person may be the luxuries of another, reared in and habituated to different surroundings." For this reason, the defendant's culpability was for a jury to determine.[150]

In the most influential case construing this language, the Kansas Supreme Court pointed to the doctrine of necessaries in holding that the legislature did not mean for "destitute and necessitous" to limit the required support to "primitive physical needs." The court explained: "The law is not a mere poor law. It is a domestic duty law, and was intended to cover the case of a woman who is left destitute according to any just and humane estimate of her situation, although in the eyes

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[149] Belden v. Belden, 74 A. 896, 897 (Conn. 1909). But see Stedman v. State, 86 So. 428, 431 (Fl. 1920) (statute criminalizing withholding "the means of support" was only intended to prevent dependents from becoming public charges and not "as substitutes for statutes affording civil remedies as such").

[150] Burton v. Commonwealth, 63 S.E. 464, 466 (Va. 1909).

of paupers she might appear rich." Relating "necessitous" to the necessaries doctrine, the court concluded that the husband must supply not only "things absolutely indispensable to human existence and decency, but those things, also, which are in fact necessary to the particular person having the right to demand and support maintenance." The necessaries doctrine was not always useful, the court acknowledged, so the legislature provided this additional "method and a sanction adequate to secure performance." Though some penal statutes on the topic "contemplated nothing but redress of the public grievance" of family members becoming public charges, the court explained that others, including the Kansas statute, "were designed to aid civil remedies for the enforcement of the liability for support and maintenance."[151] Newspaper coverage informed local readers that the defendant could face one to two years in the state penitentiary for leaving his wife in "necessitous" circumstances, even though she lived with and was the "daughter of one of the well-to-do families near Marquette."[152] The headline for another article trumpeted the case as holding that the nonsupport law was for "Both Rich and Poor."[153]

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[151] State v. Waller, 126 P. 215, 216-17 (Kan. 1913). For sample cases relying on these arguments from *Waller*, see Brandel v. State, 154 N.W. 997 (Wis. 1915); State v. Latham, 188 S.W. 534 (Tenn. 1916). But see Moorman v. State, 93 So. 368, 368-69 (Miss. 1922) ("We do not think, however, it is necessary for conviction to show that the deserted ones were in dire poverty and distressful want; but in order to come within the meaning of the statute [passed in 1920 and containing language "destitute or necessitous circumstances"], it must appear that they are substantially destitute or without means of securing the reasonable necessities of life."). For other cases holding that a wife's support by others does not exonerate the husband, see State v. English, 85 S.E. at 722 (reasoning that to allow support by others to absolve defendant would "acquit those wrongdoers who may have married women with parents able to support them, and to convict those wrongdoers who may have married women whose parents are poor"); Trial v. State, 205 S.W. 343, 346 (Ct. Crim. App. Tx. 1917) ("The fact that some one else, even a near relative of the wife and baby, was able and willing to support them from suffering for lack of food and raiment would not, and could not, relieve the appellant from his unquestioned duty and responsibility."); Kistler v. State, 129 N.E. 625, 627-28 (Ind. 1921) (finding that "the great weight of authority" holds that support from a wife's parents does not relieve husband of criminal liability for nonsupport). See also State v. Bess, 137 P. 829 (Utah 1913); Donaghy v. State, 100 A. 696 (Del. 1917). But see People v. Turner, 156 P. 381 (Ct. App. Ca., 1915) (collecting cases, including under older vagrancy statutes or child-specific criminal laws, that held a man could not be criminally liable when a wife was being cared for by her father but then deciding the case on other grounds).

[152] "Jay Waller Is Convicted: Ending to a Sensational Marquette Case," *Salina (KS) Daily Union*, Mar. 17, 1913, 3.

[153] "Says 'Anti-Affinity' Law for Both Rich and Poor," *Topeka Daily Capital*, Nov. 9, 1913, 14.

Though the scope of criminal nonsupport laws remained contested for decades, in 1955 the Supreme Court of Maryland was confident that the majority approach was to construe the statutes broadly. "Even in the statutes which require destitution as a prerequisite," the court found, "the courts have refused generally to interpret the statutes literally." Instead, "[t]hey have carried over into the testing of the criminal offense the same standards applied at common law to necessaries and what constituted them." In other words, the scope of a man's liability was "relative, elastic and dependent upon circumstances, that is, the means and station in life of the couple." Moreover, under the necessaries doctrine, the wife's separate means were irrelevant to determining the extent of the husband's duties. Acknowledging that a few states still retained a public charge requirement, the Maryland court joined the majority approach to the contrary. "The higher and more important object" than preventing public charges, the court explained, "was to provide directly for unsupported wives and children, and to punish this offense against them, and by fear of punishment to prevent the committing of such offenses."[154]

Conclusion

Though penal laws to enforce marital support duties were originally limited and ineffective, generations of legislators gradually revised states' poor laws and vagrancy statutes to complement and supplement civil litigation options. Mid-nineteenth-century experiments first revised the poor law to apply to spouses and, in some places, to extend beyond the destitute. In the following decades, laws and ideas related to emancipation, labor, and debt prompted a handful of states to upgrade vagrancy statutes to misdemeanors. By the final decades of the century, it seemed that the

[154] Ewell v. State, 114 A.2d 66, 69 (Md. 1955) (the final quotation is drawn from State v. Moran, 121 A. 277, 279 (Conn. 1923)). The court's holding was particularly striking because of the facts of the case. After a long marriage, the wife sought a divorce but the couple instead settled privately. The wife became unhappy with the terms of the settlement and turned to the local prosecutor. Even though the wife had $10,000 and the husband claimed much less, the man was convicted.

main impediment to legal enforcement of family support obligations was men's mobility. Charity reformers first believed that a felony law was necessary to reach across state lines, but ultimately many states concluded that a misdemeanor was ideal to secure extradition with fewer procedural protections.

Because of the criminal statutes' ties to the poor law, appellate courts in some states were reluctant to allow criminalization to touch families in which dependents were not at risk of becoming public charges. Yet trial judges and legislators pushed back, and over time it became acceptable for criminal law to enforce duties in line with what a family could expect pursuant to the doctrine of necessaries. The criminal nonsupport law was not a mere poor law. It was not limited to the poor, not stymied by state lines and, as the next chapter continues, not restricted to outdated modes of enforcement.[155]

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[155] For examples of middle-class or wealthy men pursued through criminal nonsupport laws, see "Broker Must Support Wife," *New York Times*, Mar. 9, 1911, 6; "Heir Gets Delay," *Chicago Daily Tribune*, June 7, 1912, 8; "Dr. Morris Still Held," *New York Times*, June 29, 1912, 7; "M'Donald Ex-Magistrate Jailed," *New York Tribune*, May 6, 1913, 2. Wealthy men may have been attractive candidates for extradition because of the likelihood that the expense of transporting them would prove worthwhile. "John A. Farwell Is Arrested as Wife Deserter," *Chicago Daily Tribune*, Jul. 12, 1919, 15 ("Chicago real estate man" whose mother had inherited almost a million dollars); "Brooklyn Pitcher Waives Extradition," *Hartford Courant*, Sept. 6, 1917, 17; "To Face Wife's Non-Support Charge: Art Dealer Is Taken East after Fight Against Extradition," *Los Angeles Times*, June 18, 1918, I8; "To Extradite Twombly," *New York Times*, Dec. 1, 1931, 22 ("inventor and millionaire").

Chapter Five
"The heart and soul of a successful family court": The Symbiotic Development of Probation and Specialized Domestic Relations Courts

As charity reformers secured stronger laws to address family nonsupport, they and other stakeholders also considered how to best ensure a quasi-criminal or criminal proceeding would result in real financial benefits for dependents. Charity workers and politicians sought to maximize deterrence, preserve the family, reinforce or teach gendered obligations, and lighten the burden on charities and the state to support women and children. In the first decades of the twentieth century, they developed two interrelated reforms in furtherance of these goals: probation and specialized courts of domestic relations.

When quasi-criminal and criminal nonsupport laws were first developed and applied, convictions were followed by the classic penal sanctions of fines and incarceration. It was immediately apparent that these methods had undesirable consequences. Most notably, in many jurisdictions there was no way to transfer the proceeds from prison labor or fines to families, so these punishments did not alleviate destitution beyond their ability to contribute deterrence. In fact, they often made families' financial circumstances worse. Though some locations experimented with variations that would allow transference of fines or prison labor proceeds to families, political and legal challenges undermined this tactic in many states.

By the late 1890s, reformers became optimistic about the nascent option of probation. Formal probation built upon and blended previous practices. The legal foundation was suspended sentence, under which a convicted person was released conditionally on his good behavior. The social forerunner was "friendly visiting," through which charity workers monitored a family's conduct to ensure its members were "worthy" of receiving charity. Under probation, a court-

appointed officer could conduct similar investigations, surveillance, and supposed rehabilitations, with the threat of incarceration constantly looming to induce probationers' cooperation.

Probation seemed particularly useful for handling nonsupport cases. Judges commonly tasked probation officers with attempting to reconcile couples prior to formal court proceedings. If this failed, the officers observed litigants' home lives, provided reports and recommendations to judges, and oversaw or literally performed the transference of wages from husbands to wives. Probation meant that a man could remain with his family and serve in the breadwinner role, away from the corrupting and unprofitable setting of prison. Moreover, advocates emphasized the intangible benefits of probation surveillance, such as Americanizing immigrants and inculcating manly independence and self-respect. Though nonsupport provided the justification for probation interventions, oversight was not narrowly constrained. Probation officers instructed probationers and their family members on topics including housekeeping, alcohol abuse, and the treatment of children. In furtherance of this type of regulation, many probation departments developed a gendered division of labor.

As the number of nonsupport cases grew, discussion turned to reforming the courts in which these matters were heard. Reformers sought to increase efficiency and expertise, in line with other Progressive Era court reorganization. In 1910, New York City opened the country's first official court of domestic relations, reflecting a compromise between the interests, goals, and expectations of judges, probation officers, politicians, and the leaders of religiously affiliated charity organizations. Within a few years, many other cities followed. Criminal nonsupport courts staffed by probation officers intervened more pervasively in family behaviors and finances than had been possible under prior approaches.

Because nonsupporters were so commonly placed on probation, probation officers became deeply invested in the viability and power of domestic relations courts. The most prominent and

influential of their organizations, the National Probation Association (NPA), devoted resources to standardizing and spreading the tribunals. In this symbiotic relationship, the success of probation as a profession was dependent upon the scope and resources of the domestic relations courts, while the effectiveness of the courts and power of the judges turned on the abilities and availability of probation officers.

Starting in 1917, the NPA led an effort to expand domestic relations courts into "family courts" that also encompassed juvenile delinquency and divorce. This effort had mixed results, so that by the 1930s, the title "domestic relations court" or "family court" described a spectrum of tribunals. Though the courts varied in their scope and operation throughout these decades, with those in the Midwest taking on the broadest jurisdiction, the common core was that they focused on criminal nonsupport cases and employed staffs of probation officers. In the words of the family court judge of Omaha, Nebraska, in 1928: "Effective probation work is the heart and soul of a successful family court."[1]

This chapter's attention to the intersecting histories of probation and specialized family courts connects and intervenes in scholarship on both. There is a rich literature examining the Progressive Era creation of specialized courts. This scholarship largely focuses on juvenile courts, which are commonly dated to Chicago's 1899 tribunal.[2] Other work on specialized courts in this period focuses on women's courts.[3] While some specialized court scholarship acknowledges the

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[1] L. B. Day, "The Development of the Family Court," *Annals of the American Academy of Political and Social Science* 136, no. 1 (Mar. 1928): 105, 110.

[2] While Chicago is typically credited as opening the first juvenile court in 1899, cities experimented with treating juvenile delinquents differently and apart from adult criminals in earlier decades. For a helpful historiography of juvenile court scholarship, see Miroslava Chavez-Garcia, "In Retrospect: Anthony M. Platt's *The Child Savers: The Invention of Delinquency*," *Reviews in American History* 35, no. 3 (Sept. 2007): 464-81.

[3] "Women's courts" or "morals courts" primarily handled prostitution cases. For excellent treatments, see Amy J. Cohen, "Trauma and the Welfare State: A Genealogy of Prostitution Courts in New York City," *Texas Law Review* 95, no. 5 (Apr. 2017): 915-91; Mae C. Quinn, "Revisiting Anna Moskowitz Kross's Critique of New York City's Women's Court: The Continued Problem of Solving the 'Problem' of Prostitution with Specialized Criminal Courts," *Fordham*

involvement of probation officers, these works do not fully recognize the novel and contingent nature of probation in this period. Because probation was developing in tandem with specialized courts, the courts' power and scope influenced understandings of what probation officers could and should do.[4]

Given the scholarly interest in Progressive Era court reform, it is surprising how little analysis has centered on domestic relations courts. Two books discuss the creation and operation of these tribunals in individual cities, Chicago and New York. These contributions are insightful, but their geographic and temporal limitations cannot illuminate how the domestic relations court idea spread and varied or why it failed to take hold in some places.[5] Discussion of family courts in legal scholarship has been mixed. Some family law scholarship condemns early domestic relations courts based on the erroneous claim that these tribunals decriminalized domestic violence.[6] Legal scholars interested in family courts for their procedural innovations have contributed helpful but brief historical accounts that do not engage with family law scholarship.[7] This chapter's broader reach,

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Urban Law Journal 33, no. 2 (Jan. 2006): 665-726; Amanda Glasbeek, *Feminized Justice: The Toronto Women's Court, 1913-1914* (Vancouver, UCB Press, 2009).

[4] For notable scholarship that takes seriously the identities and professionalization of probation officers, see Anne Meis Knupfer, "Professionalizing Probation Work in Chicago, 1900-1935," *Social Service Review* 73, no. 4 (Dec. 1999): 478-95; Cheryl D. Hicks, *Talk with You Like a Woman: African American Women, Justice, and Reform in New York, 1890-1935* (Chapel Hill: University of North Carolina Press, 2010).

[5] Michael Willrich, includes one chapter on this topic in *City of Courts: Socializing Justice in Progressive Era Chicago* (New York: Cambridge University Press, 2003), 128-71. Anna R. Igra discusses the New York City court throughout *Wives Without Husbands: Marriage, Desertion, & Welfare in New York, 1900-1935* (Chapel Hill: University of North Carolina Press, 2007). An unpublished dissertation completed in 1950 also includes some historical background for the courts in existence at that time. Theodore Fadlo Boushy, "The Historical Development of the Domestic Relations Court" (PhD diss., University of Oklahoma, 1950). A third book focuses on the treatment of divorce litigation and allots two chapters to court reform in the 1950s and 1960s. J. Herbie DiFonzo, *Beneath the Fault Line: The Popular and Legal Culture of Divorce in Twentieth-Century America* (Charlottesville: University Press of Virginia, 1997).

[6] For a recent example of scholarship offering this this claim, see Jane K. Stoever, "Enjoining Abuse: The Case for Indefinite Domestic Violence Protection Orders," *Vanderbilt Law Review* 67, no. 4 (May 2014): 1015, 1040 (citing earlier works, including Elizabeth Pleck, *Domestic Tyranny: The Making of American Social Policy against Family Violence from Colonial Times to the Present* (New York: Oxford University Press, 1987)).

[7] See Amy J. Cohen, "The Family, the Market, and ADR," *Journal of Dispute Resolution* 2011, no. 1 (2011): 100-3 (describing family courts from the 1910s to the 1930s in the context of the development of alternative dispute

longer scope, and novel use of newspapers and archival collections emphasizes the contested and variable nature of family court formation.

By examining domestic relations courts and their probation officers, this chapter also challenges the canonical account of probation's formative years. In *Conscience and Convenience: The Asylum and Its Alternatives in Progressive America*, David Rothman claims that cities absorbed the costs of probation, despite near-immediate recognition of probation's shortcomings, because its availability facilitated plea bargaining. While plea bargaining may have been relevant, Rothman's account fails to consider which types of offenders were most often placed on probation in these years. Closer attention to that aspect of probation's history reveals that in many influential cities one of the most common reasons men were placed on probation in the early twentieth century was for family nonsupport. Nonsupport and domestic relations courts also figured prominently in probation publicity materials and early organizing efforts. Thus, an essential angle to understand how probation evolved and spread is to recognize its use in family litigation.[8]

The Application of Probation to Criminal Nonsupport

In the 1890s, charity leaders, judges, legislators, and other stakeholders gradually turned to the nascent field of probation as the best option for handling delinquent breadwinners. Probation

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resolution); Elizabeth L. MacDowell, "Reimagining Access to Justice in the Poor People's Courts," *Georgetown Journal on Poverty & Policy* 22, no. 3 (Spring 2015): 478-79, 488-94 (using family court as example of a "quintessential poor people's court" and examining the negative implications of a long history of "informality and interventionism"). See also Jane Spinak, "Romancing the Court," *Family Court Review* 46, no. 2 (Apr. 2008): 258-74 (using family court history to question promise of modern problem-solving courts).

[8] David J. Rothman, *Conscience and Convenience: The Asylum and Its Alternatives in Progressive America* (Boston: Little, Brown, 1980). Rothman's account is still routinely cited. For example, in *Breaking the Pendulum: The Long Struggle over Criminal Justice*, the authors devote a full textbox to describing Rothman's "influential account" of probation. Philip Goodman, Joshua Page, and Michelle Phelps, *Breaking the Pendulum: The Long Struggle over Criminal Justice* (Oxford: Oxford University Press, 2017), 55-56. George Fisher offers a similar argument regarding an earlier period, but he uses a broader understanding of what constitutes probation that does not involve supervision by a probation officer. George Fisher, *Plea Bargaining's Triumph: A History of Plea Bargaining in America* (Stanford: Stanford University Press, 2003); George Fisher, "Plea Bargaining's Triumph," *Yale Law Journal* 109, no. 5 (Mar. 2000): 857-1086.

built on a range of legal and social forerunners, most notably suspended sentence and "friendly visiting" that had been conducted by Charity Organization Societies and similar groups to police families that received charity. In effect, formalized probation combined these precedents—tasking court officials with close supervision and regulation of offenders in lieu of prison. Probation officers developed wide-ranging authority, which was backed by the court's power to incarcerate any probationers who did not comply.[9]

When charity workers' sought to criminalize nonsupport around the turn of the century, they had been optimistic about the usefulness of imprisonment at hard labor for its deterrent value and financial savings. Influential leader of the misdemeanor movement William Baldwin was a proponent, suggesting that a system under which a man's prison labor supported his dependents would safeguard "the unity of the family… in spite of the intervening prison walls." Baldwin also expected that forcing a man to work in prison would make it "easier for him to resume his proper place and discharge his interrupted duties when the hour of his release comes." Even at the heyday of this proposal, not all discussants shared Baldwin's stance. While imprisonment at hard labor was sometimes effective and remained in use for decades to come, some locations reserved hard labor for more serious offenses or were constrained by constitutional provisions from giving proceeds to dependents. Moreover, some reformers recognized that prison could have a corrupting influence and permanently damage family relationships.[10]

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[9] For discussion of "friendly visiting," see Michael B. Katz, *In the Shadow of the Poorhouse: A Social History of Welfare in America* (New York: Basic Books, 1986), 159-66. Probation arguably has legal forerunners dating back to the Middle Ages. For an at times skeptical discussion of some of the alleged forerunners of probation, including benefit of clergy, judicial reprieve, recognizance, bail, and filing of cases, see David Dressler, *Practice and Theory of Probation and Parole* (New York: Columbia University Press, 1959).

[10] William Baldwin, *Family Desertion and Non-Support Laws* (New York: James Kempster Printing, 1904), 56-57. For more detail on this point, see previous chapter.

A major reason imprisonment at hard labor did not remain the preferred approach for handling men convicted of nonsupport involved labor politics. In these same years, labor organizations lobbied against prison labor and outmaneuvered charity reformers. An article published in *Charities* in 1905 captures these tensions. The author condemned how California and New York made the "mistake" of limiting the sale of prisoner-made goods. "The practice of shutting up thousands of men in the United States in jail and keeping them there in idleness for the sake of withdrawing them from competition is [labor] 'protection' with a vengeance and the vengeance is visited on the prisoner and on the community," the author critiqued. "The result is to make mendicants, loafers and vagrants." Turning specifically to wife desertion, the writer explained that states needed a solution that is "economic, as well as punitive; which will help the wife to pay her landlord and grocer." A law to place men at labor with a portion of their earnings reserved for their families could have been passed ten years earlier in New York, the writer speculated, "[b]ut to-day the jails and penitentiaries of New York state are largely filled with idle men who do not even earn the thirty cents a day which the state pays for their maintenance." In short: "The whole subject of prison industry is thus seen to be related to any solution of the problems of vagrancy and non-support." As the first decade of the twentieth century progressed, labor organizations' challenges to prison labor decreased the utility of incarcerating non-supporters.[11]

As imprisonment at hard labor began losing its appeal, probation was gaining traction. Probation had been in use in Massachusetts for several decades, with seeming success. The common

[11] "The Treatment of the Criminal," *Charities* 15, no. 12 (Dec. 23, 1905): 406, 407. The Commissioners who drafted the American Uniform Desertion Act noted that state law on acceptable prison labor was in flux and some states had abolished or limited prison labor "as the result of the influence of the Labor Unions." National Conference of Commissioners on Uniform State Laws, *American Uniform Desertion Act* (Williamsport, PA: Railway Printing Company, 1910), 5-6. On shifts in prison labor in this period, see Rebecca M. McLennan, *The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776-1941* (New York: Columbia University Press, 2008), 193-238. See also Jonathan Simon, *Poor Discipline: Parole and the Social Control of the Underclass, 1890-1990* (Chicago: University of Chicago Press, 1993), 35-37 (discussing connection between restrictions on prison labor and rise of parole).

American probation origin story celebrates the forward-thinking and generous actions of Boston shoemaker John Augustus, who became known as the "father" of probation. Augustus owned a shop near a Boston courthouse, and in 1841, at age fifty-seven, he began volunteering to supervise people convicted of crimes if they seemed capable of reform. Augustus later recalled that his efforts started when he provided bail for a man accused of being a common drunk, who promised to remain sober to avoid imprisonment. The man kept his promise and, when he returned to the court three weeks later for sentencing, the judge was pleased and imposed only a one cent fine plus court costs. Augustus concluded that his intervention had been a success: "The man continued industrious and sober, and without doubt has been by this treatment, saved from a drunkard's grave."[12] Augustus then expanded his work to supervising more defendants, including women and children, even housing many people in his home. He was soon supported by donations and joined by likeminded volunteers. By the time of his death in 1859, Augustus had bailed almost two thousand people. In each of these cases, he technically worked as a private citizen rather than an officer of the court. The power to respond to infractions (reportedly very few) was still solely the domain of the judge.[13]

About a decade after Augustus's death, Massachusetts began building on his legacy by formalizing probation through a series of statutes. The first step came in 1869, when a law allowed the appointment of an agent to the Board of State Charities to investigate children's cases. In 1878, Massachusetts passed a statute that funded probation officers for Boston's criminal courts, naming

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[12] Charles Lionel Chute and Marjorie Bell, *Crime, Courts and Probation* (New York: Macmillan, 1956), 31-52; Dressler, *Probation and Parole*, 13-14, citing John Augustus, *A Report of the Labors of John Augustus, for the Last Ten Years, in Aid of the Unfortunate* (Boston: Wright & Hasty, 1852); reprinted as John Augustus, Sheldon Glueck, and National Probation Parole Association, *John Augustus: First Probation Officer* (New York: National Probation Association, 1939), 4-5. British probation has a remarkably similar origin story, tracing its roots to a man named Matthew Davenport Hill of Birmingham, England, who began work like Augustus's in the same year. Chute and Bell, *Crime, Courts and Probation*, 68-69.

[13] Dressler, *Probation and Parole*, 14-18.

police officers and charity workers as eligible for the role. In statutes passed in the 1880s and 1890s, Massachusetts allowed cities and towns to appoint probation officers, enacted statewide probation, expanded probation to the superior court, and placed courts in charge of appointing officers.[14]

By the 1890s, Boston judges, charity leaders, and prison officials touted the usefulness of probation, including to handle family nonsupport. In 1893, the Secretary of Commissioners of Prisons for Massachusetts explained, in an address before the New England Conference of Charities, Correction and Philanthropy, that the state had been refining probation for decades and that the method promised to increase the likelihood of "reformation" of offenders. One of the uses he highlighted was placing a man who neglected his family on probation "on condition that he should apply his earnings to the support of his family."[15]

Meanwhile, other states experimented with post-conviction options that avoided incarceration. One approach was to allow prisoners out on bond with a duty to report back to the court on a set schedule. A more hands-on approach was fostered by private organizations. Prisoner aid associations expanded their involvement from visiting prisons to investigating cases and assisting defendants in court and after release. Many judges in cities in New York monitored people during suspended sentences by relying on volunteers from social and religious organizations, as well as police and court employees. These volunteers set the stage for the introduction of formal probation, but importantly they were not officers of the court and did not have the power to revoke suspended sentence for noncompliance. Moreover, they did not have specialized training or have a sense of themselves as constituting a distinct professional identity.[16]

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[14] Chute and Bell, *Crimes, Courts and Probation*, 56-66; Dressler, *Probation and Parole*, 11-12, 18-19.

[15] "Address of Fred G. Pettigrove," *Lend a Hand: A Record of Progress* 11, no. 6 (Dec. 1893): 455, 457-58.

[16] Chute and Bell, *Crimes, Court and Probation*, 76-78.

As states developed post-conviction procedures to avoid incarceration, they faced legal challenges to judges' authority to suspend sentences. The most prominent case discussing and upholding this judicial power was *People ex rel. Forsyth v. Court of Sessions of Monroe County*.[17] In 1893, New York amended a section of its Penal Code that required courts to impose prescribed sentences by inserting this caveat: "But such court may, in its discretion, suspend sentence, during the good behavior of the person convicted, where the maximum term of imprisonment prescribed by law does not exceed ten years, and such person has never before been convicted of a felony."[18] (This was not a probation statute because no supervision was mandated.) The next year, in *Forsyth*, the district attorney challenged the constitutionality of this provision on the basis that it encroached on the governor's power to grant pardons. The New York Court of Appeals rejected this argument. First, the court suggested there could "be no doubt that the power to suspend sentence after conviction was inherent to all such courts at common law." And because the powers to suspend sentences and grant pardons "are totally distinct and different in their origin and nature," there was no unconstitutional encroachment. "The former was always part of the judicial power; the latter was always a part of the executive power." The 1893 statute was "declaratory of the law as it always existed."[19] The right to suspend sentence was also upheld by the highest courts in Arkansas, California, Maine, New Hampshire, Ohio, Pennsylvania, and South Carolina.[20] Although the reasoning in *Forsyth* and similar cases was later challenged by a U.S. Supreme Court decision to the

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[17] Dressler, *Probation and Parole*, 21.

[18] People ex. Rel. Forsyth v. Court of Sessions of Monroe County, 141 N.Y. 288, 294-95 (Ct. App. N.Y. 1894).

[19] *Forsyth*, 141 N.Y. at 292-95.

[20] Chute and Bell, *Crimes, Court and Probation*, 67.

contrary, the Court's opinion was not binding on state courts or legislatures, which had already moved forward in passing and affirming probation statutes.[21]

With the judicial power to suspend sentence increasingly accepted, reformers considered how to bolster this approach by turning to the Massachusetts model. Boston's use of probation received nationwide and European attention, with probation touted as "an essential part of the criminal mechanism." According to one newspaper account, "[t]his system is one step beyond the simple justice of the criminal courts. Justice here is supplemented by practical humanity." The article then quoted the head of Boston's probation department at length. He devoted much of his commentary to nonsupport, explaining that in those cases "the probation officers are called upon to act as mediators, receiving and paying over to the wife such sums as the Court shall designate, and to see that the agreement is faithfully complied with." Under the watchful eye of a probation officer, he claimed, homes that had been ruled by a "misguided husband or father" became "homes of comfort and happiness, and many young men who have been helped to reform are now good citizens, holding responsible places." An important part of Boston's approach, revealed through additional discussion, was the cooperation of male and female officers, each of whom had specific roles.[22]

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[21] In 1915, U.S. Attorney General T.W. Gregory agitated against indefinite suspension of sentences on the basis that judges used it to thwart the law. He found a test case in the Northern District of Ohio after Judge John M. Killits suspended a young defendant's five-year sentence. Gregory unsuccessfully moved to vacate the suspended sentence. In 1916, the U.S. Supreme Court held that federal judges did not have the inherent or common law right to refuse to impose the law by suspending sentence. The Court found that *Forsyth* and other cases were in error, and it was not persuaded to uphold this power based on longstanding prior practice. *Ex Parte U.S.*, 242 U.S. 27 (1916) (commonly known as the "*Killits Case*"). While the *Killits Case* was technically binding only on federal courts, it did lead some states to pass legislation to ensure judges could continue to suspend sentences. An article published in the *Harvard Law Review* encouraged Congress to pass legislation to permit federal courts to continue exercising this "highly salutary" judicial power, but it took nearly a decade for Congress to pass such legislation. Note, "Suspension of Sentence," *Harvard Law Review* 30, no. 4 (Feb. 1917): 369-72; Dressler, *Probation and Parole*, 22-23; Irving W. Halpern, *A Decade of Probation: A Study and Report* (New York: Robley Press Service, 1937). State courts continued to cite *Forsyth*, including when they upheld the use of probation in nonsupport cases. Martin v. People, 168 P. 1171, 1173 (Colo. 1917). On the contested relationship between pardon and parole, see Carolyn Strange, *Discretionary Justice: Pardon and Parole in New York from the Revolution to the Depression* (New York: New York University Press, 2016).

[22] "'Probation' in Boston: A System Tried in the Courts of that City with Success," *New-York Tribune*, Mar. 27, 1899, 3. For more detail on Boston's approach in this period, see "Keeps People Out of Prison," *Boston Daily Globe*, Sept. 17,

Many states were persuaded to follow the Massachusetts experiment. Vermont, Rhode Island, and New Jersey passed their first probation statutes in 1898, 1899, and 1900, respectively. In 1899, Minnesota and Illinois charted a new path, passing probation laws that applied only to children. Several states, especially in the Midwest and West, followed their lead by enacting juvenile-only probation laws, often in conjunction with founding juvenile courts.[23] In 1901, New York became the fifth state to pass a probation law and the first to limit application to adults, although it added children a few years later.[24] In 1903, California, Connecticut, Michigan, and Portland, Maine also enacted probation statutes.[25] By the end of 1907, thirty-four states had probation laws.[26] Some of the laws specifically provided for probation in nonsupport cases. For instance, New Jersey passed a law titled "Deserting Husbands Placed on Probation," on April 28, 1905.[27] In others, such as Virginia, nonsupport was one of few categories for which adult probation was initially authorized, and the offense continued to be the top supplier of probationers for years.[28]

1899, 36. For another source acknowledging Massachusetts' leading role, see Charlton T. Lewis, "Principles of Reform in Penal Law," *Annals of the American Academy of Political and Social Science* 21, no. 3 (May 1903): 83.

[23] Chute and Bell, *Crimes, Court and Probation*, 73; Herbert H. Lou, *Juvenile Courts in the United States* (Chapel Hill: University of North Carolina Press, 1927), 24-25. For more detail, see Charles L. Chute, "The Development of Probation in the United States," in *Probation and Criminal Justice*, ed. Sheldon Glueck (New York: Macmillan, 1933), 225-49. In contrast to the suspended-sentence background undergirding adult probation, juvenile probation was rooted in the chancery theory of parens patriae, or the state's ability to protect minors. The Illinois Supreme Court, for instance, in discussing the purpose of juvenile probation officers, explained that chancery courts had always appointed guardian ad litems to protect minors appearing in suits, and "[t]he probation officer is practically a guardian ad litem" with "enlarged duties under the statute." *Witter v. Cook County Commissioners*, 100 N.E. 148 (Ill. 1912).

[24] Homer Folks, *Report of the Probation Commission of the State of New York* (Albany: Bandow Printing Company, 1906), 232-33.

[25] Chute and Bell, *Crimes, Court and Probation*, 84.

[26] State Probation Commission, *First Report of the State Probation Commission for the Six Months Ending December 31, 1907, Transmitted to the Legislature February 12, 1908* (Albany: J. B. Lyon Company, State Printers, 1908), 8.

[27] Folks, *Report of the Probation Commission*, 232, 240.

[28] Virginia State Board Charities and Corrections, *Probation Manual with Analysis of the Probation Laws of Virginia* (Richmond: State Board of Charities and Corrections, 1918), 4 (noting that when the Virginia legislature first authorized probation in 1904, it was "to be used chiefly in case of adults who failed to support their children," and was only extended to other adult offenders and children beginning in 1910). See also "Back to the Farm for Jag Artists," *Times*

Not all state legislatures were initially persuaded of the wisdom of probation. In Missouri, a state legislator who proposed a law modeled on Massachusetts's in 1897 was ridiculed by judges and police officers, who seemed to feel threatened by the way the law would transfer some of their own authority to a new type of government officer. Skeptics cast the bill as "nonsensical," and one said he "ran out of adjectives" to convey "its superlative uselessness and ridiculousness." As a practical matter, these opponents questioned who would pay the probation officers, suggesting the proposal seemed intended to "give somebody a nice fat job." As a legal matter, they thought it seemed inappropriate for a judge or jury to rely on information provided by an official without the person being subject to cross-examination. The bill's sponsor and other proponents insisted that the law was designed "to insure to all prisoners 'a fair chance.'" It had been unanimously recommended by a committee appointed by the State Convention of Charities and Corrections, they explained, emphasizing how Massachusetts had saved money through this method.[29]

The "war" over the proposal culminated in the Missouri legislature passing a half measure, which it termed a "parole" law. This law permitted judges to suspend the sentences of convicted offenders, conditioned on their good behavior, but without any government employee tasked with investigation or surveillance. This version of the law was also critiqued before and after passage, including by the judges authorized to use it. They pointed out that the power to suspend sentence could permit unscrupulous or corrupt release from prison and that it infringed on the governor's

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Dispatch (Richmond), Jan. 25, 1912, 10 (listing number of people on probation for various offenses, with nonsupport the most frequent).

[29] "Col. Piper's Bill Is Not Popular," *St. Louis Post-Dispatch*, Feb. 2, 1897, 6; "Probation Bill: Text of Piper's Bill in the Interest of Ex-Convicts," *St. Louis Post-Dispatch*, Feb. 4, 1897, 2.

pardoning power. Nevertheless, this law remained in place and was at least occasionally used to release convicted non-supporters on condition that they give money to their wives.[30]

In most locations where legislatures authorized probation, judges embraced it as a useful tool in their courtrooms. New York City's magistrates recognized many advantages over imprisonment within the first months of trying this method. In their 1901 court report, they listed four significant benefits: (1) "[p]unishment without disgrace, and effective without producing embitterment, resentment or demoralization"; (2) judicial discretion to make the punishment fit the crime; (3) "[p]unishment that is borne solely by the guilty and displacing a system that frequently involved the innocent and helpless"; and (4) punishment "attended by increased revenue to the City and by saving in expense."[31]

In fact, New York City's magistrates found probation "so beneficial" that they applied it in nonsupport cases, despite statutory ambiguity. The 1901 law permitted probation to be ordered by "[t]he justices of the courts having original jurisdiction over *criminal actions*," leaving uncertain whether magistrates—who exercised both criminal and quasi-criminal jurisdiction—could use probation in quasi-criminal nonsupport cases. (On why New York's nonsupport law was quasi-criminal, see previous chapter.) The magistrates explained that they decided to apply probation to nonsupport cases because the preexisting options—requiring the man to post a bond or incarcerating him for up to six months—proved unsatisfactory. Many men could not afford the

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[30] "War on the Parole Bill," *St. Louis Post-Dispatch*, Apr. 13, 1897, 3; "He Doesn't Like the Law," *St. Louis Post-Dispatch*, Oct. 24, 1897, 6; "Year for Abandonment: Judge Moore May Parole Sewell to Support Wife," *St. Louis Post-Dispatch*, Nov. 30, 1906, 2. One unique feature of the Missouri law was that it allowed "parole" of offenders age twenty-five and under for more serious crimes than was permitted for older offenders. Experts writing decades later suggested this feature was adopted from French law, though newspapers do not provide any evidence of European influence. Chute and Bell, *Crimes, Court and Probation*, 68-69; Dressler, *Probation and Parole*, 11-12. This continued to be a contentious issue in the 1910s. A probation law was enacted but repealed within a year. Karl Kimmel, "The Repeat of the Parole and Probation Laws," *St. Louis Post-Dispatch*, Oct. 30, 1913, 14.

[31] New York Board of City Magistrates, *Annual Report of the Board of City Magistrates of the City of New York (First Division) for the Year Ending December 31, 1901* (New York: J. W. Pratt Company, 1902), 15-16.

bond, they explained, and incarceration "in no wise benefitted the wife and children, was an expense to the public, and suspended, for the time being, the productive energy of the husband." The probation law instead "substituted the Probation Officer for the bondsman, and thereby enabled the husband to keep at work and obtained for his family an equitable portion of his earnings." The probation law was "so efficacious" for these cases, they shared, "that some of the magistrates [had] not found it necessary to commit a single [non-support offender] to the Workhouse since October 1st."[32] Court statistics document that the magistrates increasingly relied on probation, especially in nonsupport cases. In 1902, the second most common reason they placed men on probation was a nonsupport conviction.[33]

In the following years, criminal nonsupport cases became the poster-crime for the benefits of adult probation because the benefits seemed so obvious and striking. A detailed newspaper article published in the *Atlanta Constitution* in 1903, intended to introduce readers to probation, provides a representative example. The author praised "the recent general adoption of probation methods by a number of the more important cities and states," explaining to its readers what probation entailed. For children, probation generally attended creation of a juvenile court. For adults, probation "is no new thing, having been worked out as an experiment by Massachusetts." Reports from early adopters showed that probation saved money versus imprisonment, even where the locality paid its probation officers (many used volunteers in these early years). The only specific offense the writer discussed was nonsupport, where probation meant "the husband is sent back to his home and

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[32] *Id*. The magistrates perhaps regretted pointing out their expansive interpretation of the statute because the next year probation in non-support cases was called into doubt by one of the state's Supreme Court Justices. The magistrates therefore drafted a bill to ensure they could continue using probation in nonsupport cases, and a statutory amendment enacted in 1903 expressly authorized this practice. New York Board of City Magistrates, *Annual Report of the Board of City Magistrates of the City of New York (First Division) for the Year Ending December 31, 1902* (New York: J. W. Pratt Company, 1903), 10.

[33] Board of City Magistrates, *1902 Annual Report*, 10-11.

employment under supervision, and, consequently, neither is he kept a burden on the state in prison or are his wife and children thrown upon the public or private charity through the loss of the head of the family." After devoting significant attention and space to the financial savings of probation, the writer concluded that probation advocates need not point only to the economic benefits. Rather, they could rely "upon a much higher humanitarian ground, which would return an offender to his home and employment under supervision with the hope of possibly restoring him to a worthy and self-respecting citizenship."[34]

Groups and individuals with a professional stake in probation also emphasized the method's utility in nonsupport cases when they proposed retaining it and expanding it to other matters. This strategy was apparent in newspaper coverage of New York's 1905 State Probation Commission meeting, during which judges and other experts testified about how probation was operating throughout the state. Speakers explained that probation oversight meant that officers could ensure that men supported their families instead of sending these men to jail, "where they rest in comparative comfort and in idleness while the families eke out a miserable existence at the expense of public charity."[35] Similarly, the Probation Commission's first annual report explained that probation worked "particularly well when applied to two special classes of adults: namely, occasional drunkards, and men who fail to support their families." Probation's success in these cases prompted the Commissioners to recognize potential cost savings in handling other categories of offenders in the same manner. Noting that nearly 40,000 of the just over 100,000 people incarcerated in the state (not including five New York City district prisons) were married, the Commissioners concluded that

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[34] William H. Allen, "The Probation System, Its Great Advantages," *Atlanta Constitution*, July 5, 1903, B4. For another example, see "How to Help the Weak and Erring," *Ogden (UT) Standard*, Feb. 4, 1905, 12 (in discussion of probation in New York City, opening with anecdote about a probation officer reconciling a couple who came to court because of nonsupport).

[35] "Parole Cases of Non-Support," *Democrat and Chronicle* (Rochester), Dec. 13, 1905, 18.

probation could also secure support for these men's families and thereby "accomplish much economy, as well as improve conduct and prevent suffering on the part of innocent wives and children."[36]

Newspapers helped spread the promise of probation by profiling officers who seemed to be performing an excellent service. In 1906, the *Hartford Courant* published a glowing review of its city's first probation officer, Frank Arnold. Instead of jailing non-supporting men at taxpayer expense, the journalist explained, the police court had been sending such matters to Arnold. Arnold retrieved the men's wages from their employers, avoiding the common scenario of the men spending their income on alcohol, and handed the cash over to the wives. This also provided an opportunity for Arnold to note if a "wife does not do her duty to her husband," in which case she was called before the court "to answer for her weaknesses." Through this method, Arnold had disbursed nearly $2,000 in the previous three months. "He has closed the breach that existed in many families and today in Hartford there are many women and children that are now supplied good things to eat and wear because of his endeavors," the writer claimed. Moreover, "some of these men are living happily with their families," had saved money in a bank account, and had stopped drinking liquor.[37]

A similarly enthusiastic report published a few years later about Buffalo's probation system, with special focus on chief probation officer Edward F. Kelly and his staff, captures how probation's rationales and methods permitted officers to intervene beyond merely ensuring the interspousal transference of money. According to this article and many others from the period, probation saved the man, his family, and the taxpayer. Each probationer was required to report to his assigned officer, and "the probation officer is expected to visit the probationer at frequent

[36] State Probation Commission, *1907 Report of the State Probation Commission*, 32-33.

[37] "Probation Officer Doing Good Work," *Hartford Courant*, Aug. 9, 1906, 5.

intervals and to do *whatever seems essential to improve his surroundings and habits*." The writer was optimistic that "[a] person supervised by an intelligent, capable, and sympathetic probation officer has at least the opportunity of saving himself for a decent career." A skilled officer could also "bring the husband and wife together, assist in preserving the home, watch the young man or woman, sufficiently to prevent them from returning to evil associates and render invaluable service not only to the persons themselves but to society at large." These social benefits did not crowd out discussion of financial advantages. "The system rightly exercised saves money to the community at large, by reducing the number of commitments to correctional institutions and relieves the Charity Organization Society of a great burden that has been imposed upon them in the past," the reported continued. In the ten months of that year that had passed, the probation staff had collected the "record-breaking" total of $29,045.21. By contrast, "[i]f the 600 men now on probation were committed to the pen instead, the city and county would be put to an expense of about $7740 per month and the men upon their release from confinement would be 100 per cent more dangerous to the community than at the present time."[38]

It became commonplace for probation proponents to emphasize the collection of support payments as tangible evidence of probation's value. For instance, a Richmond probation officer highlighted the collection of $2,069.35 from those on probation for nonsupport when he reported on his work to the Virginia State Board of Charities in 1911. In his report the next year, the amount was $4,629.42.[39] A Massachusetts probation officer who coauthored a book promoting the method in 1916 implored governors in other states to use probation for nonsupport cases. The previous

[38] "Six Hundred Men on Probation," *Buffalo Evening News*, Oct. 31, 1910, 5.

[39] "Poitiaux's Report," *Times-Dispatch* (Richmond), Oct. 8, 1911, 41; "Annual Report of Probation Work," *Times-Dispatch* (Richmond), Jan. 10, 1913, 9.

year, he reported, his state collected $219,984 for wives and children, whereas the whole probation system cost only $148,000.[40] Other states, especially along the East Coast, recorded similar benefits.[41]

Locations across the country closely tracked probation developments and evaluated whether it would be a good fit locally. An editorial in the *Canebrake Herald* (Uniontown, Alabama) provided its readers with an overview of how probation worked and then asked why an offender's family should rely on public aid during the man's incarceration, "when he could in at least 75 per cent of the cases be reformed and led back to the path of good citizenship by being placed on probation, and be thus rescued from the stigma of being a confirmed prisoner?" After printing a lengthy excerpt from an editorial on the "Progress of the Probation System" from the *Nation*, the Alabama writer concluded: "If the probation system with first offenders is good in Illinois and Colorado, it ought to be good in Alabama and other states."[42]

By 1910, probation was embraced as one of the most attractive penal reform opportunities. Even where nonsupport was not an express focus, the cost savings that probation secured by ensuring support of dependents remained a frequent selling point. In 1909, Congress appointed a special commission to study and reform D.C.'s penal institutions, "to be a pattern for the entire nation." After visiting Baltimore, Pittsburgh, Philadelphia, and New York, and attending the American Prison Congress held in Richmond, Virginia, the commissioners reported favorably on probation. Under probation, they explained, a court could control a man's associations, saloon visits, and other behaviors. One of the "chief advantages" was that a probationer could be forced to act

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[40] Lewis E. MacBrayne and James P. Ramsay, *One More Chance: An Experiment in Human Salvage* (Boston: Small, Maynard & Co., 1916), 167.

[41] For example, Philadelphia reported its probation officers were collecting $250,000 annually and Allegheny reported $125,000. Ward Bonsall, *Hand Book of Social Laws of Pennsylvania* (Philadelphia: George S. Ferguson Co., 1914), 26.

[42] "Obedience to Law," *Canebrake Herald* (Uniontown, AL), Feb. 18, 1909, 4.

appropriately toward his family, whereas imprisonment relieved him of his support obligations and imposed a stigma that made it difficult for him to find employment. "This stigma attaches to his innocent wife and children as well, who often suffer more than the guilty husband or father," the report offered. Finally, probation's costs were worthwhile because they were "overbalanced" by savings accrued from probationers working in "industrial occupation," rather than needing support in public institutions.[43]

Though the uses of probation were discussed nationwide in newspapers, legislative documents, charity publications, and other materials, regional patterns developed in probation's deployment. In the Northeast and Mid-Atlantic, probation was routinely used for adult and child offenders. Of the adults, male probationers were commonly guilty of nonsupport or drunkenness, which were recognized as connected behaviors. For instance, a Baltimore writer explained that most probation cases in that city "come under the head of non-support. A man spends his money for drink and lets his family starve."[44] The typical offense for adult women placed on probation was prostitution.[45] Notably these men and women were not understood as dangerous. Their misconduct was in failing to conform to middle-class gendered norms about respectable behavior, specifically involving their earning or spending of money. It seemed that probation officers could plausibly reform them, without placing society at risk of harm.

In the Midwest and West, probation was centered on children. Although some states in these regions did permit probation for adults, and at least occasionally used probation for men who

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[43] U.S. Congress, Senate, Committee on the District of Columbia, *Report of the Commissioners Appointed to Investigate the Jail, Workhouse, Etc. in the District of Columbia*, 60th Cong., 2d sess., 1909, S. Doc. 648; "A Model Penal System Proposed for District," *Evening Star* (Washington, DC), Jan. 11, 1909, 1.

[44] Frederic J. Haskin, "Criminals Honor Role," *Green Bay Press-Gazette*, May 3, 1916, 6.

[45] Hannah M. Todd, "Probation Work for Women," *Lend a Hand* 11, no. 6 (Dec. 1893): 466; Maude Miner, "Probation Work for Women," *Annals of the American Academy of Political and Social Science* 36, no. 1 (July 1910): 27.

failed to support their families, probation for nonsupport does not seem to have been nearly as commonplace as on the East Coast. Legislators and reformers surely knew that their colleagues in other locations were using probation for nonsupport, as newspapers routinely covered this topic. For example, an article in the *Los Angeles Times* informed readers: "The duty of a probation officer [in New York] consists in the main of handling cases of abandonment and seeing to it that husbands pay their wives the allowance granted the latter by the magistrate. Oftentimes it falls to the lot of the probation officer to have to settle difficulties between husbands and wives."[46] An article in the *San Bernardino County (CA) Sun* explained that probation was successful in nonsupport cases in Chicago, where "[t]he adult probation law makes the court and probation officer a party to the family, as it were."[47] It is not clear why nonsupport probation was less attractive in the Midwest and West. There was not contentious discussion or explicit rejection of this method. The answer may be that these states had better success at adopting laws that permitted imprisonment at hard labor with proceeds to wives, and so legislators had less incentive to experiment with probation for these cases.[48]

Across the nation, the fact that probation so often dealt with intimate, gendered behaviors prompted many courts to perceive value in hiring male and female officers and assigning them

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[46] "Jay Gould as Court Officer," *Los Angeles Times*, Jan. 23, 1909, 2. For an example of a man placed on probation for non-support in California, see "Liberty Price Is Pay Wife $10 a Week," *Santa Ana (CA) Register*, Aug. 4, 1915, 2. For representative coverage of juvenile probation in the Midwest and West, see "Juvenile Court Is Now in Effect," *Lincoln Star*, Mar. 20, 1905, 10; "Probation Officer Is Friend to Erring Boys," *Oakland Tribune*, June 30, 1907, 19; "Probation Officer Needed," *Omaha Daily Bee*, July 12, 1909, 3; "Rooney Has Quit," *Topeka State Journal*, Nov. 4, 1915, 6.

[47] "Husbands on Probation," *San Bernardino County (CA) Sun*, Aug. 20, 1913, 4.

[48] According to a 1912 study on the status of desertion and nonsupport laws, the states that had enacted laws that authorized financial support to dependents if a man was incarcerated at hard labor were disproportionately (though not exclusively) in the Midwest and West: California, Colorado, D.C., Indiana, Maryland, Michigan, New Jersey (for two institutions only), Ohio, Oregon, and Utah. In some of these states, however, evidence suggested no money had actually been transferred pursuant to these laws. William H. Baldwin, *The Present Status of Family Desertion and Non-Support Laws* (address delivered at the National Conference of Charities and Corrections, Boston, MA, June 10, 1911) (New York: J. Kempster Printing Co., 1912): 29-31. See also "For Non-Support: Plan in Prospect Designed for Correction of Men Who Fail to Provide for Families," *Los Angeles Times*, July 6, 1911, I13 (describing new law permitting men guilty of nonsupport to be placed to work on public roads with a per diem to families but also describing a case in which a man was placed on probation and would get a reprieve if he secured work before the next hearing).

distinct roles. In prostitution cases, it seemed strategic to select female officers; proponents believed women accused of vice would be more comfortable interacting with a female officer, who could also serve as a role model. In the juvenile delinquency context, some courts matched children to probation officers by sex, while others thought women's maternal instincts meant they should oversee all children. (Courts also routinely matched children to officers by race and religion.) When it came to handling nonsupport, many locations identified roles for both male and female probation officers. A common approach was for a woman to be responsible for processing new cases in order to create a more welcoming environment for would-be women litigants. There was also an understanding in some courts that women were better able to reconcile couples. Male officers were more often described as performing home visits and transferring money from husband to wife, a function that allowed them to enforce norms of manhood. One consequence of this sex-based division of labor was that women gained greater access to court positions, which was particularly notable during a period when many states still did not allow women to become lawyers.[49] Indeed, women's performance as probation officers was an opening wedge and foundation for women to argue for access to other legal posts, including as judges in family-related cases.[50]

[49] On women's work in juvenile probation, see Knupfer, "Professionalizing Probation Work." On probation for adult women, see Hicks, *Talk with You Like a Woman.* For discussion of racial and religious matching for juveniles on probation, see Thomas D. Eliot, *The Juvenile Court and the Community* (New York: Macmillan, 1914), 50; Bernard Flexner and Roger N. Baldwin, *Juvenile Courts and Probation* (New York: Century, 1914), 86-87, 144.

[50] By the 1910s, women lawyers and others advocating for women's rights pointed to the successful work of female probation officers to suggest that female judges might also be uniquely helpful in family-related courts. Especially in cities on the East Coast, women's first opportunities to join the bench were disproportionately in family or juvenile courts. For examples of this strategy, see "Is Woman Judge Needed in Children's Court," *Brooklyn Daily Eagle*, May 25, 1913, 19; "Man and Woman Judge Needed in Domestic Relations Court," *Brooklyn Daily Eagle*, June 24, 1915, 22. On how women gained access to the judiciary in specialized juvenile and domestic relations courts, see Virginia G. Drachman, *Sisters in Law: Women Lawyers in Modern American History*, 2nd ed. (Cambridge, MA: Harvard University Press, 2001), 229-34.

"MOTHER CONFESSOR" IN EVERY COURT.

New York Judge Favors Woman to Aid Decency and Justice.

By MARGUERITE MOOERS MARSHALL.

dant in each of our 13 Magistrates' Courts in Manhattan and the Bronx."

"Is that the reason for the attacks on the woman probation officer?" I asked.

"That and the fact that there were two incompetent women in one court, who have since been got rid of," said the magistrate dryly.

I wondered, not for the first time, at the male logic which brands as unsuitable for women a profession in which one or two women have failed, entirely forgetting the large numbers of men who fail in every profession.

"We now have only six women pro-

to get hold of the young girls, who are only beginning to do wrong, and to set their feet in the right path. This is some of the work that might be done by women court officials.

What a Woman Can Do.

"Only the other day I had proof of what a woman in the courtroom might do for young girls. A case came before me in the Eighth District Court, which is in this building, but one floor below the Domestic Relations Court. A woman charged another woman with harbor-

in a shop and able to board herself. She told the whole story to the probation

Figure 10: Image depicting reasons it was commonly believed a woman probation officer, or similar court official, would be helpful[51]

It is difficult to know what probationers thought about this supervision, but some evidence suggests they did not regard it as an improvement over alternative sentences. The head of Boston's probation department thought that one indication of probation's success was that "sometimes prisoners on trial are asked by the Judge which they prefer, prison or probation, and they answer

[51] Marguerite Moores Marshall, "'Mother Confessor' in Every Court," *Boston Daily Globe*, Feb. 26, 1915, 29.

'prison.'"[52] An exposé about probation published by the *New-York Tribune* in 1909 may provide the closest possible insight into probationers' experiences in these years. The piece drew from an investigation into New York City's criminal courts conducted by the Page Commission. Named for the group's chairman, state supreme court justice Alfred R. Page, the commission was organized to investigate the inferior criminal courts of New York City. One of the commission's revelations, reported widely by newspapers, was that magistrates had been employing incompetent and corrupt police officers to perform probation work. Though this testimony soon led to a law excluding police from serving in this role, the *New-York Tribune* contributor first cast the prototypical probation officer as "a cross between a magistrate's valet and a member of the Third Section of Russian police." Becoming increasingly dramatic, the writer continued:

> He is a spy and a moral supervisor, a tentacle of justice reaching from the gray courtrooms to the dingy home. He has greater power than the magistrate, for he can send people to jail without charge or trial. He determines guilt to his own personal satisfaction and hauls away the victim with his own muscular arm. Javert [from *Les Misérables*], who made inexorable pursuit of Jean Valjean, lacked such autocratic power.

Though acknowledging that some officers "may possess a high character" and might "'reform' a few criminals," many others clearly did not. It seemed noteworthy to the writer that the probationers, who he noted were mostly men charged with non-support or women charged with prostitution, had not testified. "Javert, but not his victim, was called to the stand."[53]

Skeptical voices like this were an anomaly. Most news coverage, as well as publications and conference proceedings from prison groups, charity organizations, and other interested parties,

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[52] "'Probation' in Boston," 3.

[53] "Does the Remedy Fit the Disease?," *New-York Tribune*, Jan. 10, 1909, C2. On how the Page Commission hearings led to the proposal to only permit civilian (as opposed to police) probation officers, see "City Court Reforms Are Recommended," *New York Times*, Apr. 4, 1910, 6.

praised probation's supposed triumphs. To the extent these observers recognized problems in application, they believed that better training and larger teams of probation staff were the solution.[54]

The Creation of Specialized Courts of Domestic Relations

As reformers refined the application of criminal nonsupport laws by using probation, they also considered the operation of the courts with jurisdiction over these cases. They found these criminal courts, as well as the overall court system in many urban locations, lacking in many respects. Criminal courts were overcrowded, experienced long delays, offered rushed and unfair hearings, and were sometimes corrupt. Because these courts were one of the primary places poor people, including newly arrived immigrants, interacted with the American legal system, many judges, politicians, and social welfare leaders thought court reform would aid in inculcating respect for law and Americanizing litigants.[55]

One major facet of early twentieth-century court reform was reorganization and specialization of courts. Subsets of courts had long focused on particular subjects, such as probate.[56] Progressive Era reformers thought further specialization would secure efficiency and expertise.[57] Most famously, in 1899 they inaugurated a movement for juvenile courts to hear children's

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[54] For a representative example, see Homer Folks, "The Treatment of the Offender," *Annals of the American Academy of Political and Social Science* 36, no. 1 (July 1910): 20-26 ("we have utterly failed in most courts to provide anything like an adequate number of qualified probation officers").

[55] "'Police Court and the Public': This Subject Discussed before the People's Institute," *New-York Tribune*, Dec. 29, 1900, 4; Franklin Matthews, "The Farce of Police Court Justice in New York: Magistrates, Lawyers, Ward Heelers, Professional Bondsmen, Clerks of the Court and Probation Officers join to Make a Mockery of 'The Supreme Court of the Poor,'" *Broadway Magazine* 17, no. 5 (Feb. 1907): 511.

[56] For example, see histories of specialized courts in New York beginning in the seventeenth century. "Courts of New York State," Historical Society of the New York Courts, http://www.nycourts.gov/history/legal-history-new-york/history-new-york-courts.html.

[57] Willrich, *City of Courts*, xxxii-xxxix.

delinquency and dependency cases. The juvenile court idea spread quickly, so that by 1917, all but three states introduced these courts for at least some of their cities.[58]

The push for specialization extended to marital litigation, with New York taking the lead. But it was not obvious to New Yorkers which categories of cases warranted separate treatment. In 1894, New York judges unsuccessfully proposed a "court of domestic relations" with "jurisdiction of all wills, estates, the relations of guardian and ward, the care of lunatics, and divorces."[59] In 1902, the New York divorce bar pushed for a "domestic relations court" to hear only divorce cases. These attorneys did not necessarily perceive family litigation as special. Rather, they saw many types of court specialization as advantageous. One pointed to the efficiency secured when the supreme court (the trial-level court that also heard divorce) created a branch to entertain disputes involving harm caused by a type of railroad easement. Capturing paradigmatic Progressive Era thinking, he opined: "This is the age of progress and expansion and of specialties in jurisprudence, as well as in all the other departments of life." Yet this proposal also did not pass.[60]

Starting around 1905, attention turned to creating specialized courts focused on preventing or addressing nonsupport. Some of the first and most vocal proponents were New York City's Jewish organizations, including United Hebrew Charities (UHC) and the Educational Alliance (EA). Jewish groups had a strong interest in this problem for several reasons. One was reputational; assimilated and financially comfortable Jews worried that the behaviors of new immigrants might stoke anti-Semitism and undermine the tenuous acceptance they had worked hard to secure.

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[58] Anthony M. Platt, *The Child Savers: The Invention of Delinquency* (Chicago: University of Chicago Press, 1977), 10.

[59] ["Several of the jurists…"], *New York Daily Tribune*, Apr. 30, 1894, 6.

[60] "For Family Trials," *Buffalo Morning Express*, July 10, 1902, 12; "For a Special Divorce Court," *Sun* (Baltimore), July 8, 1902, 1. There were ongoing proposals in New York to separate out divorce cases, which "clogged" the general jurisdiction courts. "Divorce Cases Clog Courts," *Atlanta Constitution*, Jan. 16, 1910, A7. Some cities had separate sessions for divorce hearings. "Divorce Court Opens," *Boston Daily Globe*, Oct. 20, 1903, 4.

Another reason related to immigration patterns. Whereas in some immigrant groups the men traveled ahead of wives and children, Jewish families more often traveled together. That more couples cohabited meant increased chances for marital discord and a greater number of local wives to lodge complaints. And third, Jewish groups did not agree with scientific charity's withholding of support from deserted wives. Jewish charities gave these women private alms, and so the groups' leadership had more incentive to seek alternative, and especially publicly funded, methods of handling the nonsupport problem.[61]

In January 1906, Lee K. Frankel, the Superintendent of UHC, garnered press for his proposal to create a "Matrimonial and Domestic Relations Court" that would handle "all cases of domestic strife." Frankel's envisioned court had jurisdiction over the separations and divorces then available only in the supreme court, which was too expensive for many of New York City's residents. The hope was for the proposed court—dubbed a "matrimonial court of arbitration" in some coverage—to reconcile couples or, if that failed, to separate them affordably, so that they did not end up before a criminal magistrate for a nonsupport hearing. Frankel proposed an unprecedented role for women in this scheme. Under his plan, "grave and revered judges of both sexes shall hear the stories of husband and wife, advise the one or admonish the other, and point out ways of compromise or methods of agreement. … The effect of such an achievement would be fewer divorces, fewer homeless children and less crime."[62]

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[61] On unique characteristics of Jewish immigrants and how this mattered for community organizing and family law, see Igra, *Wives Without Husbands*, 9-21; Geraldine Gudefin, "The Civil and Religious Worlds of Marriage and Divorce: Russian Jewish Immigrants in France and the United States, 1881-1939" (PhD diss., Brandeis University, 2018). This summary also benefits from discussions with Gudefin.

[62] "Matrimonial Court to End Domestic Wars," *New York Times*, Jan. 12, 1906, 6; "Matrimonial Court of Arbitration Proposed by Sociologist," *Indianapolis Star*, Jan. 21, 1906, 7. The "matrimonial court" language harkened to Catholic family tribunals. *See, e.g.*, "The Matrimonial Court: Where Catholics Test the Validity of their Marriage Proposals," *New-York Tribune*, June 25, 1899, 28. The "arbitration" language and approach reflects broader interest in this form of dispute resolution at the time. See Amalia D. Kessler, "Arbitration and Americanization: The Paternalism of Progressive Procedural Reform," *Yale Law Journal* 124, no. 8 (June 2015): 2940-66.

The most prominent speaker for EA, Bernhard Rabbino, had a somewhat different vision. Rabbino, who was trained as a lawyer and a rabbi, had been running an unofficial "court of broken hearts" through EA's Legal Aid Bureau for a few years. There he served as "judge, jury, lawyer for the plaintiff, and lawyer for the defendant all in one," according to a journalist who provided a highly favorable account. Rabbino aimed to settle a range of disputes, so would-be litigants could avoid the courts. Though the service was not limited to Jews, it was designed with their needs in mind. "In Russia the oppressed Jew had not the privilege of righting his grievances in court," the writer explained by way of background. "Here, the privilege is granted, he avails himself of it to the full." Because Jews were so eager to settle their conflicts before local judges, Rabbino and his colleagues perceived they could provide a service by handling some of these issues in-house. For this service, participants paid only five cents. Wage cases were the most common, with domestic difficulties coming second. While some couples sought EA mediation mutually, the organization could also send agents to retrieve the husband, who typically preferred this venue to the criminal court. By acting as "Solomon" and persuading a couple to agree to "certain terms of mutual toleration," Rabbino could prevent the wife from pursuing nonsupport charges. "Solomon and the [magistrate's] court have necessarily two different purposes," the reporter concluded. "The court simply enforces the law; Solomon prevents people from resorting to the process of law."[63]

[63] "Hebrew Court on New York East Side to Check Growing Flood of Lawsuits," *Washington Post*, July 8, 1906, C10. The article also describes how immigration opened new sources of temptation, which for some immigrants led to bigamy and wife desertion. This took on a unique flavor in the Jewish community because unscrupulous rabbis were granting cheap, religious divorces, which Jewish immigrants did not understand were insufficient to render them legally divorced. See also "The 'Court of Broken Hearts': How the Legal Aid Society's Bureau Mends Families," *New-York Tribune*, May 4, 1908, 5. For more on Rabbino's background and his advocacy efforts, see Bernhard Rabbino, *Domestic Relations Court: A Plea for the Preservation of the Home* (New York: Hebrew Standard Press, 1909); Bernhard Rabbino, *Back to the Home: Essays and Papers on the Domestic Relations Court* (Binghamton, NY: Vail-Ballou Press, 1934). On the Educational Alliance in New York City, see S. P. Rudens, "A Half Century of Community Service: The Story of the New York Educational Alliance," *American Jewish Year Book* 46 (Sept. 18, 1944-Sept. 7, 1945): 75-82.

By 1908, EA leaders' thinking had evolved to perceive a benefit to modeling an official city court on their in-house tribunal. This shift in strategy was not limited to New York City. According to an article in the *St. Louis Post-Dispatch*, EA's St. Louis branch had been running an informal court similar to the one in New York City in order to "keep the poor of the Ghetto out of the regular police and divorce courts." The leaders of the St. Louis EA now proposed a formal specialized court as "an outcome of the experiences in [its] Court of Tears." The paper quoted the local EA head as proclaiming:

> We keep up a number of costly courts, for the enforcement of civil rights, and spend tens of thousands to compel the payment of a money debt or send a culprit to prison. But where is the public tribunal whose duty it is to look out for the welfare of the family, to prop the tottering walls of the home, and restore it, if possible, to the functions which God intended it to perform in and for human society?

Rabbino posed similar questions in coverage that was picked up by *Good Housekeeping*. He observed that there were courts to separate couples from each other or from their children, "but where is the court to which a family in discord could appeal, and which could step in, like the high priest of old, and act as an angel of peace?"[64]

Meanwhile, magistrates and some philanthropic groups pushed for the creation of "Abandonment Courts" to handle cases of wife desertion—focused on collecting support money. Proponents of this view did not so much want to change how nonsupport cases were handled but rather to segregate them from other low-level criminal matters. A specialized court would permit efficiency and uniformity, and it would be beneficial to keep "refined and delicate women" from mixing in a courtroom with "the riffraff, vagrants, and what not." Probation officers would be a key

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[64] "Court of Tears Lightens Woes of the Ghetto," *St. Louis Post-Dispatch*, May 21, 1908, 10. On the St. Louis EA, see Walter Ehrlich, *Zion in the Valley: The Jewish Community of St. Louis*, vol. II (Columbia: University of Missouri Press, 1997), 328. On Rabbino's advocacy for a specialized court, see "Court of Broken Hearts," *Atlanta Constitution*, May 5, 1908, 9; "Clearing House of Woe," *Seattle Star*, June 22, 1908, 3; "A Court of Domestic Relations," *Good Housekeeping* 47, no. 1 (July 1908): 55-56. Provocatively, Rabbino later went so far as to propose a court with three judges, "representing the predominating religions." "Court Inquiry Resumed," *New-York Tribune*, Jan. 29, 1909, 5.

component. One magistrate explained that the advantages of the abandonment court would be that "a probation officer attached to each court will become familiar with the cases, the matter will be handled systematically, and persons will have a better opportunity to be heard." Going further, he offered: "The probation system, to my mind, is the best thing in connection with our courts."[65]

Proponents of "matrimonial courts of arbitration," "domestic relations courts," and "abandonment courts" hashed out their overlapping but distinct visions in the Page Commission hearings that began in November 1908. The Page Commission called magistrates, civil court judges, probation officers, and charity and religious groups' leaders for an exhaustive consideration of what reforms might be beneficial. They also consulted prominent experts from other cities, including Harry Olson, Chief Judge of the pathbreaking Municipal Court of Chicago.[66]

A common topic in the Page Commission testimonies, which filled nearly 5,000 transcript pages, was the usefulness of probation for marital reconciliation and securing financial support. Many judges explained that they used probation only or almost only in nonsupport cases. The chief magistrate described the method as "infinitely" better than imprisonment because it secured financial savings and helped many men "become very much more useful and better citizens."[67] Probation officers further emphasized the benefits in the marital context and testified that their work was comprised almost exclusively of such matters.[68]

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[65] Alfred E. Ommen, "Criminal Courts in General: Some Observations by a City Magistrate," *Journal of Social Sciences* 43 (1905): 38, 40-42; "Bills That Failed to Become Law," *Charities and the Commons* 16, no. 16 (July 21, 1906): 457-58; "Municipal Affairs," *New-York Tribune*, Apr. 10, 1907, 4; "An Abandonment Court May Be Created Here," *Brooklyn Daily Eagle*, May 30, 1907, 18; "Monday Club Meets," *Brooklyn Daily Eagle*, Nov. 19, 1907, 3.

[66] New York, *Proceedings of the Commission to Inquire into the Courts of Inferior Criminal Jurisdiction in Cities of the First Class* (Albany: J. B. Lyon, 1909). There are five volumes, which share consistent pagination, so the Volumes are not included in the following citations.

[67] *Id.*, 396.

[68] *Id.*, 484, 605-6, 639, 649, 672, 724, 744, 1408.

More controversially, the witnesses debated the utility of creating separate courts to tackle the overwhelming nonsupport caseload. While Frankel, Rabbino, and other experts from philanthropic organizations largely favored this route, though disagreeing on the details, some judges dismissed the specialized court idea altogether. They pointed to the fact that it would be a hardship for women to travel to a centralized court, rather than going to the closest criminal court. Some judges also admitted that they did not want to serve in such courts themselves.[69] In a line widely quoted in newspapers, President of the Board of City Magistrates Peter T. Barlow suggested that a judge assigned to the proposed nonsupport court "will have to be descended straight from the angels to be able to content the people, and to content himself."[70]

During a Page Commission hiatus, a committee was convened to focus on the specialized court proposal. The committee was headed by the Commissioner of Charities and included sixteen members, drawing magistrates and religious leaders, among others. The committee turned to drafting a proposed bill, an endeavor delegated to Stephen S. Wise, one of America's most prominent rabbis. (In 1935, his daughter Justice Wise (Tulin /Polier) became the first woman appointed to a modified version of the New York City domestic relations court.) By this time, the goals most commonly emphasized were the need to keep wives out of the criminal court environment, to reduce the divorce rate (some dubbed the proposal the "anti-divorce court"), and to

[69] For discussion of pros and cons of specialized domestic relations court, see e.g., *id.*, 1235-36, 1358, 2407-8. "Want Special Court for Domestic Woes," *New York Times*, Jan. 29, 1909, 4.

[70] *Id.*, 2411-12. "Want Special Court for Domestic Woes," 4. This judge was assigned to the specialized "Women's Court" that opened pursuant to the same law that created the Domestic Relations Court. Though he was not publicly opposed to the Women's Court, his private correspondence reveals skepticism. He wrote to the Chief Magistrate that one of his colleagues should not be assigned to the Women's Court because his "attitude has always been of very extraordinary leniency in all cases of prostitution and it is very hard to teach an old dog new tricks." After recommending another colleague instead, Barlow commented that this other magistrate "would be sure to make a favorable impression on anybody coming to see this unique but probably useless institution." Papers of Peter Townsend Barlow, 1884, 1921; Peter T. Barlow to William McAdoo, Nov. 3, 1911, Box 1, folder "Night Court," Schlesinger Library, Radcliffe Institute, Harvard University, Cambridge, MA.

improve how nonsupport was handled because the "magistrates, though best-intentioned, cannot do justice to these cases."[71] When the Page proceedings resumed, committee members testified in favor.[72]

The Page Commission's official report was cautious but positive. They recommended further study, noting that there seemed to be a rise in abandonment and nonsupport cases. Estimates for the prior year were as high as 25,000 cases in Manhattan and the Bronx and more than 6,000 in Brooklyn. Sending the men to workhouses "results frequently in throwing the wife and children on public or private charity, and, likewise in permanently separating the husband and parent from his family." Magistrates did not have time to perform the "delicate task" of reconciling couples, and so some other approach was needed.[73] Newspapers covered the report, raising interest further.[74]

Magistrates continued in their opposition, employing Progressive Era tropes for their own purposes. For instance, one explained that an abandonment court was "unnecessary and wrong in theory." He told a reporter that "[t]o take all cases involving domestic relationships out of both civil and criminal courts [as one version of the plan would do] and arbitrarily create a separate court for

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[71] "Experts Tell Probers Special Session Needs," *Brooklyn Daily Eagle*, Dec. 29, 1908, 2; "Court for Family Jars," *Boston Daily Globe*, Jan. 13, 1909, 7; "For Domestic Relations Court," *New-York Tribune*, Jan. 13, 1909, 8; "Special Family Court Proposed," *Christian Science Monitor*, Jan. 13, 1909, 7; "To Propose Domestic Relations Court," *Buffalo Evening News*, Jan. 13, 1909, 6; "To Close the Family Breach," *New-York Tribune*, Jan. 24, 1909, C3.

[72] "Court Inquiry Resumed," 5.

[73] "Magistrates for Special Sessions," *New York Times*, Feb. 8, 1909, 5. Estimates varied about the nonsupport caseload because of how frequently the cases were handled informally. For instance, one newspaper article reported that around 1,500 people were arraigned on charges of nonsupport and abandonment each year, but there were up to 7,000 "cases of domestic trouble which were not kept on record." "Court Inquiry Resumed," 5. Another stated that there were 12,000 to 15,000 cases of "domestic trouble" before magistrates in a single year. "To Close the Family Breach," C3.

[74] "Abandonment Court May Be Established," *Brooklyn Daily Eagle*, Feb. 7, 1910, 3; "Court for Wife-Deserters," *Nashville Tennessean*, Mar. 17, 1910, 4. Rabbino also continued to bring publicity to the proposal. "Wants Special Tribunal for Domestic Troubles," *New-York Tribune*, Mar. 20, 1910, B2.

their disposal and adjustment would be a most unscientific classification of rights."[75] Magistrates were even more opposed to the simultaneous proposal to create a sex-segregated night court, in which the women's division would primarily hear prostitution cases. One magistrate cast the proposed "women's court" as "unscientific," while another warned that if the chief magistrate could permanently send a colleague to such an undesirable posting (rather than using a rotation system), a disfavored magistrate could be stuck there "just as a policeman is relegated to the suburbs for 'the good of the service.'"[76]

Despite magistrates' aversion to these proposals, the legislature created both a domestic relations court and women's court in May 1910, pursuant to "An Act in Relation to the Inferior Courts of Criminal Jurisdiction of the City of New York."[77] Described by newspapers as "radically [changing] the manner of administering justice," two provisions are most relevant here. First, the law required the creation of domestic relations courts for New York City and Brooklyn, as part of the magistrate court system, to be opened September 1. These tribunals blended aspects of the earlier proposals. Each had jurisdiction over quasi-criminal nonsupport (as the abandonment court proponents envisioned), and they could perform reconciliation work through reliance on probation staffs (somewhat akin to UHC's and EA's proposals). Even before a domestic relation court opened, an article republished in Louisville's *Courier-Journal* gushed that the tribunal would have "adjustment and conciliation as its ground work, the safeguarding of the family its highest aim, and provision for the suffering mothers and children of the community its constant care." The second

[75] "Has Plan for Police Court Improvement," *New-York Tribune*, Apr. 3, 1910, C12.

[76] "To Change Courts to Fit New Law," *New York Times*, June 28, 1910, 2; Joseph E. Corrigan, "Corrigan Speaks Out," *New-York Tribune*, Apr. 23, 1910, 7; "Against Women's Court," *New-York Tribune*, Apr. 27, 1910, 2.

[77] *Laws of the State of New York Passed at the One Hundred and Thirty-Third Session of the Legislature*, vol. II (Albany: J.B. Lyon Co., 1910), 1774.

pertinent change under the 1910 law was that it banned police officers from serving in probation posts.[78]

A couple short months later, newspapers reported that the New York City domestic relations court's opening day went "smoothly," despite a slight hiccup in finding space (as the 1910 law created more courts than there were courtrooms). Though news coverage was positive, it also indicated that the two magistrates assigned to the court did not seem to be key contributors to its operation. One of the magistrates was quoted as saying he "will not listen to disgusting details," and both magistrates decided to adjourn many of the cases to give "the parties a few days to think it all over." The real work of the court was performed by its probation officer, Rose McQuade, who reconciled several couples. After McQuade's intervention, one article described, "[t]he couple sat holding each other's hands in the probation room, and Miss McQuade seemed to be all right."[79]

By the following month, the chief magistrate reported that the domestic relations court was proving to be "a very useful institution," and that the shift from policemen to civilian probation officers was "a great success."[80] When the magistrates published their annual report later that year, they heralded the court's work as the "most successful from the start." The chief magistrate,

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[78] On steps toward passage of the law, see "Magistrates' Courts Will Leave 'Old Rut,'" *Brooklyn Daily Eagle*, Apr. 21, 1910, 3; "Mayor Signs Bill Changing Courts," *New York Times*, May 28, 1910, 3; "To Change Courts to Fit New Law," *New York Times*, June 28, 1910, 2. On coverage of the expected performance of the court, see "Unique Family Tribunal Proposed for New York," *Courier-Journal* (Louisville), May 1, 1910, C1. For similar coverage, see "Domestic Relations Court to Untie Marital Tangles," *Oakland Tribune*, May 1, 1910, 19; Ethel Lloyd Patterson, "New Domestic Relations Court Will Fight the Divorce System," *Des Moines Tribune*, May 9, 1910, 7; "A Domestic Relations Court," *Manchester Guardian*, May 20, 1910, 6. Another aspect of the law that received significant attention was the creation of Women's Courts. Proponents of women's suffrage opposed these tribunals on the ground that they "set up a double standard of morals, which is manifestly unfair." They especially objected to the physical examination that could be ordered for perpetrators. "Suffragettes Start Fight on New Court," *New York Times*, Sept. 2, 1910, 18. That aspect of the Women's Court legal framework was found unconstitutional.

[79] "Suffragettes Start Fight on New Court," *New York Times*, Sept. 2, 1910, 18 (the headline refers to the Women's Court); "Adjusts Family Quarrels," *New-York Tribune*, Sept. 2, 1910, 3; "Court for Abandoned Wives," *Chicago Daily Tribune*, Sept. 2, 1910, 5.

[80] "Mayor Hears of New Courts," *New York Times*, Oct. 14, 1910, 11.

seemingly now proud of the innovation most of his colleagues had fought against, observed: "So far as I know, there is no other example of this kind in any of the large cities of the world."[81]

The chief magistrate's qualification of being alone among "large cities" was likely a nod to his judicial colleagues in Buffalo, who arguably beat New York City to founding the first domestic relations court, depending on how such an institution is defined. While the Page Commission was underway, two of Buffalo's judges had traveled to Chicago, where they learned about the municipal court system that had been created there. At that time, Chicago had specialized courts but none focused on nonsupport or other spousal litigation.[82] In May 1909, the New York legislature authorized Buffalo to create a court system like Chicago's, with both civil and criminal jurisdiction.[83] Buffalo's judges seem to have understood that this law, again like Chicago's, gave them discretion to further subdivide the court system without any legislative involvement. In March 1910, as the New York City proposal was still under discussion, they designated part of the city court as a domestic relations court. The essential building block, one article explained, was hiring a probation officer to handle non-support cases.[84] Though Buffalo's leaders originally pointed to Chicago, as well as D.C., as providing models for this endeavor, they changed their tune after New York City's domestic relations court began attracting acclaim later that year. Buffalonians rushed to cast their own version as "the first tribunal of its kind in the world."[85]

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[81] New York Board of City Magistrates, *Annual Report of the Board of City Magistrates of the City of New York (First Division) for the Year Ending December 31, 1910* (New York: J. W. Pratt Company, 1911), 11, 15-16.

[82] "Admiration Expressed for Chicago Plan," *Buffalo Times*, Nov. 19, 1909, 4. For an excellent treatment of Chicago's court reform, see Willrich, *City of Courts*.

[83] *Laws of the State of New York Passed at the One-Hundred and Thirty-Second Session of the Legislature*, vol. II (Albany: J.B. Lyon Co., 1909), 1624.

[84] "Is a Success," *Buffalo Commercial*, Mar. 10, 1910, 9.

[85] "Wiley Wins Record as Family Peacemaker," *Buffalo Evening News*, Feb. 6, 1911, 13. The D.C. model was technically a juvenile court that had been allocated jurisdiction over nonsupport of wives. An appellate court soon found this jurisdiction to be unlawful and directed childless women to instead sue for maintenance in the general civil court.

Regardless of which New York city was technically first to create a domestic relations court, the important point is that judges, probation officers, and others invested in court reform closely followed these developments and perceived them as exceptionally promising. A prominent component of this coverage focused on the central role played by probation officers, with McQuade attracting much of the attention. A full-page article in Chicago's *Inter Ocean* began by noting that many cities were encountering problems with family desertion which, the headline indicated, was primarily rooted in "the Old Family Argument Growing Out of the Division of the Great American Dollar" (Figure 11). The author then focused on New York City's domestic relations court, whose "blunt slogan," according to the writer, was "bring 'em together." The purpose of this reconciliation, the article made clear, was financial. Using an anecdote to illustrate the court's operation, the writer described how a magistrate placed a man on probation with the duty to pay seven dollars per week or else go to the workhouse. At that point, McQuade, "a fine looking woman with keen, intelligent eyes" rose from her desk to begin her reconciliation efforts. The reporter described her strategy as "clever," detailing how she helped the couple see that living together was more economical. Through McQuade's careful prodding, cheer, and flattery, the couple gradually revealed that the husband's daughters from a prior marriage were the real source of the trouble. The wife left hopeful and the husband "a bit shamefaced," implying that there was a real possibility their marriage would be mended. The article proceeded to detail other broken marriages that McQuade seemed capable of fixing.[86]

"Limits Court's Power: Stafford Decides Jurisdiction in Desertion Cases," *Washington Post*, June 19, 1909, 16. The trial court opinion is available at "West v. U.S.," *Washington Law Reporter* 37, no. 26 (June 1909): 402, *aff'd* 34 App. D.C. 12 (Ct. App. D.C. 1909).

[86] "The Wife Deserters Say," *Inter Ocean* (Chicago), Dec. 18, 1910, 33.

THE INTER OCEAN, SUNDAY MORNING, DECEMBER 10, 1916.

The Wife Deserters Say---

Well, as There Are Forty or More of 'Em in Court Every Day in New York They Say About Everything, but Mostly It's the Old Family Argument Growing Out of the Division of the Great American Dollar.

Judge Harris of the Domestic Relations Court in New York City.

Some typical faces in the Domestic Relations Court.

Types of the wives who are deserted.

A wife who will not go with her husband to New Hampshire.

Figure 11: Images accompanying coverage of Probation Officer Rose McQuade

The publicity surrounding domestic relations courts was boosted by a cadre of women journalists, whom newspapers hired as part of their effort to draw women readers in these years. One of the most famous was syndicated advice columnist Dorothy Dix. In 1912, Dix introduced her readership to the New York City domestic relations court via an interview with McQuade, who was a favorite source and topic for women journalists in this decade. After noting that 3,883 people had been arraigned by the New York City domestic relations court in 1911, its second year of operation,

Dix turned to McQuade for insights. McQuade warned readers that that "[t]he chief source of discord between married people that sends them to our court is the mother-in-law," which was one of her long-running pet theories. McQuade's other observations were more in line with those of other commenters of her day. "The second source of trouble is drinking on the part of the husband and slovenliness on the part of the wife," and "[a] third reason for disagreement in the family is extravagance and shiftlessness." After noting these familial failures, however, she emphasized (as Dix or the editor indicated by the use of all capital letters) that troubled families operated in difficult circumstances: "UNDERNEATH IT ALL IS THE VITAL FACT THAT THE AVERAGE WEEKLY WAGE OF THE MAN ARRAIGNED HERE IS BETWEEN TEN AND TWELVE DOLLARS." Dix elaborated on this point. "Marriage is a business, as well as a sentimental proposition," she explained, "and it goes into bankruptcy if it has not a sufficient financial backing." She concluded with advice for her readers: "Don't marry until you can afford the luxury. So shall you keep out of the divorce court and the domestic relations court. Maybe."[87]

McQuade became something of a celebrity in her own right, dispensing marital advice to journalists and in columns she penned. Some of her words of wisdom were humorous. For instance, in her persistent attacks on mothers-in-law, she advised in language headlining another noted woman journalist's column: "Time for Mother-in-Law to Give Her Advice Is Before Marriage; After That, Silence."[88] Much of her advice was more serious. She spoke against marrying too young, and

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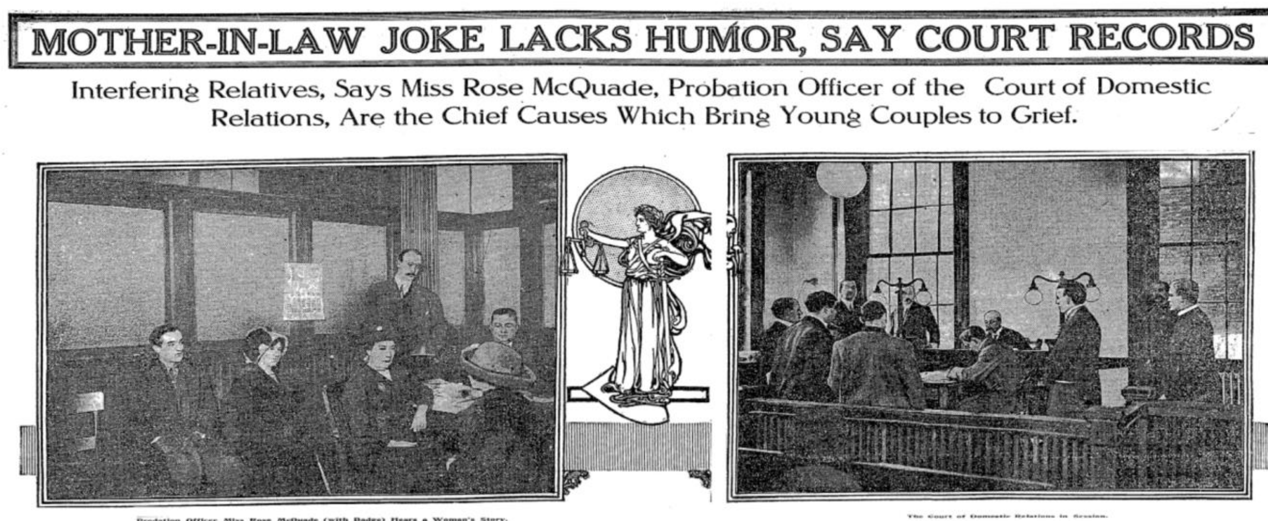
[87] Dorothy Dix, "Cupid and Poverty," *Lincoln Star*, Feb. 17, 1912, 5. Dix (birth name Elizabeth Meriwether Gilmer) began her career as a reporter for the *New Orleans Picayune* before moving to New York. On Dix's background and fame, see Carolyn Kitch, "Women in Journalism," in *American Journalism: History, Principles, Practices*, ed. W. David Sloan and Lisa Mullikin Parcell (Jefferson, NC: McFarland & Company, Inc., 2002), 90-91; Frank Luther Mott, *American Journalism: A History of Newspapers in the United States through 250 Years, 1690-1940* (New York: Macmillan, 1941), 599; Julia Guarneri, *Newsprint Metropolis: City Papers and the Making of Modern Americans* (Chicago: University of Chicago Press, 2017), 212.

[88] Nixola Greely-Smith, "Time for Mother-in-Law To Give Her Advice Is Before Marriage; After That, Silence," *Pittsburgh Press*, Jan. 16, 1912, 16.

showed understanding and empathy about the damage poverty caused to relationships.[89] Most of these articles provided background about domestic relations courts, helping to spread the notion that these tribunals were useful, and that women professionals had an important role to play in them.[90]



MOTHER-IN-LAW JOKE LACKS HUMOR, SAY COURT RECORDS

Interfering Relatives, Says Miss Rose McQuade, Probation Officer of the Court of Domestic Relations, Are the Chief Causes Which Bring Young Couples to Grief.

Figure 12: Headline and images accompanying a story that filled more than half of a page. The text under the photograph on the left reads, "Probation Officer Miss Rose McQuade (with Badge) Hears a Woman's Story." In the picture on the right, no women appear to be present. That caption reads, "The Court of Domestic Relations in Session."[91]

[89] Marguerite Mooers Marshall, "Right Age to Marry Is 21 for Girls and 25 for Man, Says Experienced Probation Officer," *Daily Arkansas Gazette* (Little Rock), Aug. 4, 1915, 4; Nixola Greeley-Smith, "Shall Husband or Wife Open the Pay Envelope? Women Thriftier than Men, Says Expert; When Wage Is Small Wife Should Control," *Fort Wayne Journal-Gazette*, Jan. 26, 1917, 14. For other examples of columns quoting Rose McQuade, see Marguerite M. Marshall, "Record Set by Courts as Peacemakers," *Pittsburgh Press*, Oct. 20, 1911, 15; McQuade also wrote her own columns. Rose McQuade, "Rose McQuade Save Four Homes from Wreck Daily," *Arkansas Democrat* (Little Rock), Jul. 17, 1911, 5.

[90] Though McQuade received the most coverage, many other women probation officers were described as reconciling couples in domestic relations courts. For a Chicago example, see "Marital Splits Patched Up by Court Woman," *Leavenworth Times*, Dec. 20, 1916, 4. Even more commonly, women officers were noted for their work with children or adult women offenders. For representative coverage, see Harriet Ferrili, "Following the Trail of a Probation Officer," *Chicago Daily Tribune*, July 31, 1910, G2; "Woman Probation Officer," *Washington Post*, June 27, 1909, M7; "Young Woman Probation Officer," *Boston Daily Globe*, Aug. 19, 1899, 2; "Clubs to Demand Woman Probation Officer Be Named," *Wichita Daily Eagle*, Mar. 10, 1920, 5.

[91] "Mother-in-Law Joke Lacks Humor, Say Court Records," *New York Times*, Jan. 14, 1912, SM10.

Meanwhile, Chicago considered whether to open a similar court, possibly dominated by women officials. On the same day that the *Inter Ocean* ran the article that introduced McQuade, the *Chicago Tribune* published two remarkably different takes on the desirability of local implementation. In one, the author raised the specter of a female domestic relations court judge two years in the future deciding whether a wife could select her husband's tie, in order to illustrate the preposterousness of such an institution (Figure 13). A column submitted by a woman and printed on the same page argued that a woman should preside over such a court. "Since public sentiment, driven by a sense of human justice, demands a 'court of domestic relations' for the adjustment of difficulties involving women and children, what could be more appropriate than that this court be presided over by some good woman with a logical and judicial mind?" she posed. "How can any man comprehend the complexities involved in affairs of the affections?"[92] The following month, coverage of the proposal ran beside a depiction of a male judge supported by a female probation officer, who towered over a husband. The lengthy headline read: "Can a Court Make Marriage a Success? Ordinary Human Husbands Probably Will Raise Some Commotion When the Court of Domestic Relations Steps in to Inspect the Disposition of Their Pay Checks, But Even So, the Experiment Probably Will Be Made."[93] When Chicago opened a domestic relations court that spring, the judge was a man who promised to consult his wife and daughters to aid in resolution of cases (Figure 14).[94]

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[92] Gene Moran, "Before Chicago's New Court of Domestic Relations, Christmas, 1912: 'Your Honoress, Have These Women the Right to Pick Out My Tie?,'" *Chicago Tribune*, Dec. 18, 1910, 67; Winona S. Jones, "The Court of Domestic Relations," *Chicago Tribune*, Dec. 18, 1910, 67. For more detail on Chicago, see Willrich, *City of Courts*, 136.

[93] Hollis W. Field, "Can a Court Make Marriage a Success?" *Chicago Tribune*, Jan. 22, 1911, 1.

[94] "Judge of New Court of Domestic Relations and Daughters Who Will Aid Him in His Cases," *Chicago Tribune*, Mar. 15, 1911, 3; "Domestic Court to Open April 3: Judge Goodnow, Who Will Preside, Plans to Consult Wife on Cases," *Chicago Tribune*, Mar. 15, 1911, 1.

METROPOLITAN SECTION.
The Chicago Sunday Tribune.

Before Chicago's New Court of Domestic Relations, Christmas, 1912:
"Your Honoress, Have These Women the Right to Pick Out My Ties?"

Why Confine the Work of the New Judiciary Division to Mere Wife Abandonment and Minor Marital Delinquencies—Why Not Bring In the Picturesque and Always Human Family Jar?

By GENE MORGAN.

THE COURT OF DOMESTIC RELATIONS.

Judge of New Court of Domestic Relations
and Daughters Who Will Aid Him in His Cases.

Figures 13 and 14: Images capturing the perceived importance of gender for domestic relations court judges

Coverage of New York City's and Chicago's domestic relations courts spread across the country. A letter to the editor of the *St. Louis Post-Dispatch* noted their establishment and posed: "Why not one for St. Louis?" He credited these courts with "preventing many divorces, bringing together alienated couples and compelling recreant husbands and wives to reason together and do the right thing." A domestic relations court was "essentially a peace tribunal, a kind of local Hague tribunal for the home."[95] Illustrating the nationwide discussion of this idea, an article published in the *Los Angeles Times* noted that Seattle judges thought all states were probably "coming to the point

[95] EW, "A Domestic Relations Court," *St. Louis Post-Dispatch*, Apr. 14, 1912, 2. For a similar but lengthier account, see "Ministering to Broken Families," *Greenville (SC) News*, Jan. 10, 1912, 6.

where they will have to undertake some such experiment as New York's Court of Domestic Relations."[96]

By the end of the 1910s, domestic relations courts had opened in Boston (1912); Detroit (1913); Philadelphia and Springfield, Massachusetts (1914); Cincinnati and Dayton, Ohio (1915); Richmond (1916); Youngstown and Summit, Ohio (1917); and Norfolk, Lincoln, and Portland, Oregon (1919).[97] Many of the earliest adopters followed New York's lead in delegating only nonsupport matters.[98] Others permitted somewhat broader jurisdiction (often concurrent with other courts, a perennial source of tension and confusion), yet records indicate their tribunals focused primarily on nonsupport. For example, the Chicago court had jurisdiction over a range of unlawful adult-child conduct (such as selling tobacco to children and violating child labor laws) but reported in its first year that nonsupport comprised more than 70 percent of its caseload.[99] Statistics collected over the next decade likewise showed that more than half of that court's docket was nonsupport.[100]

The Detroit court was notable as the first to include divorce jurisdiction. A Detroit judge and his colleagues originally proposed the creation of a court to handle that city's nonsupport cases, after learning about existing models during the 1912 meeting of the National Conference of Charities and Corrections (NCCC), held in Cleveland. Early supporters included a woman probation

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[96] "Coming to It," *Los Angeles Times*, Sept. 7, 1911, II4.

[97] Boushy, "Historical Development of the Domestic Relations Court;" Bernard Flexner, Reuben Oppenheimer, and Katharine F. Lenroot, *The Child, the Family, and the Court: A Study of the Administration of Justice in the Field of Domestic Relations* (Washington, DC: United States Government Printing Office, 1929), 65-67.

[98] Edward F. Waite, "Courts of Domestic Relations," *Minnesota Law Review* 5, no. 3 (Feb. 1921): 161, 164.

[99] William H. Baldwin, "The Court of Domestic Relations of Chicago," *Journal of the American Institute of Criminal Law and Criminology* 3, no. 3 (Sept. 1912): 400; Chicago Court of Domestic Relations, *First Annual Report of Court of Domestic Relations from the Date of Its Organization April 3, 1911, to March 31, 1912* (Chicago: Municipal Court of Chicago, 1912), 17. See also Willrich, *City of Courts*, 133.

[100] Cora M. Winchell, "A Study of the Court of Domestic Relations of the City of Chicago as an Agency in the Stabilization of the Home" (unpublished M.A. thesis, University of Chicago, 1921), 2.

officer, various women's groups, and the local Society for the Prevention of Cruelty to Children.[101] Legislators and elite lawyers soon suggested that the city should create a court that included both nonsupport and divorce jurisdiction. One legislator explained that because nonsupport and divorce were being heard in different courts, a husband often retaliated against his wife's nonsupport proceeding by filing for divorce. But if one court had jurisdiction over both matters, he argued, "this legal dodge could not be resorted to." Still, he was "not prepared to say" how broad the jurisdiction should be. Discussants also speculated that a court with jurisdiction over nonsupport and divorce could cut the divorce rate in half.[102]

The proposal to include divorce in the Detroit domestic relations court became a local flashpoint for a nationwide interprofessional conflict about how lawyers handled divorce. Elite lawyers perceived divorce litigation as, at best, a necessary evil. They recognized that the rising divorce rate and widespread knowledge that divorce grounds were satisfied through perjury reflected poorly on the legal profession. In response, they adopted professional canons that banned advertising for divorce and, in the most extreme jurisdictions, secured criminal laws to punish such solicitations.[103] In Detroit, "prominent judges and jurists" saw the domestic relations court proposal as a way to combat the "divorce trust," in which unscrupulous lawyers "carry on a regular business in bargain-counter divorces." There were so many Detroit lawyers competing for divorce business that they charged fees as low as $25 and guaranteed they could obtain decrees, even as their clients

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[101] "Brings New Ideas for Big Reform," *Detroit Free Press*, June 18, 1912, 1; "Wives to Blame Avers Officer," *Detroit Free Press*, Aug. 9, 1912, 5; "Says Society Has Duty to Children," *Detroit Free Press*, Dec. 9, 1912, 5.

[102] "Cow Is Protected Better than Wife," *Detroit Free Press*, Nov. 23, 1912, 14; "Says Domestic Relations Court in Detroit Would Cut Divorces in Half—Assistant Prosecutor Has Figures," *Detroit Free Press*, Dec. 12, 1912, 6; "The Domestic Relations Court," *Detroit Free Press*, Jan. 28, 1913, 4.

[103] For representative discussion and cases, see "Attorneys—Professional Ethics—Solicitation of Business by Means of Personal Letters," *Harvard Law Review* 32, no. 5 (Mar. 1919): 573; Deneen v. Smith, 66 N.E. 27 (Ill. 1902) (disbarment for divorce advertisements); People v. Taylor, 75 P. 914 (Colo. 1904) (disbarment for divorce advertisements); State v. Giantvalley, 143 N.W. 780 (Minn. 1913) (affirming misdemeanor conviction for divorce advertisements).

resorted to perjury.[104] Though it was not precisely clear how a domestic relations court would address this problem, proponents believed it would be a step in the right direction. Sharing this expectation, non-elite lawyers perceived the proposed court as a threat to their livelihood. According to one article, "[c]ertain attorneys whose names are not revealed are being quoted as saying that the establishment of a court of domestic relations in the city of Detroit is impossible without an amendment to the Michigan constitution," which purportedly banned the creation of any new courts, a contention the writer found to have no basis.[105]

By early 1913, the supporters of a court with both nonsupport and divorce jurisdiction prevailed. Indeed, the court they secured had the broadest jurisdiction of any family-related specialized court in the country. In addition to nonsupport, abandonment, divorce, and alimony, the tribunal was assigned separate maintenance, bastardy, and some offenses adults committed against children (such as contributing to child delinquency, child cruelty, and violations of compulsory education laws). It did not, however, have jurisdiction over juvenile delinquency; the focus was on adult conduct.[106]

The choice of the inaugural judge fell to the governor, who selected Arthur J. Lacy, a promising young lawyer and politician. Lacy had served as the mayor of Clare, Michigan, from age twenty-six to thirty before founding a law practice in Detroit a few years prior to his judicial appointment.[107] Lacy had no relevant background or previous interest in family law or children's issues, but he took his upcoming responsibilities seriously. He began by traveling to other courts to

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[104] "Says Domestic Relations Court in Detroit," 6.

[105] "Why a Constitutional Amendment?," *Detroit Free Press*, Dec. 1, 1912, D4.

[106] Arthur J. Lacy, *The Domestic Relations Court of the County of Wayne: Preliminary Observations* (Detroit: Conway Brief Co., 1913), 1-2.

[107] "Lacy Slated for New Judgeship?," *Detroit Free Press*, Apr. 24, 1913, 6.

learn best practices. Based on these visits, he reported that a probation system was such "a positive necessity, to enable this court to do its work," that to not provide such staff "would be almost an official sin." The courts' very success turned on the availability of probation, Lacy continued, and, pointing to nonsupport collection statistics from multiple cities, he concluded that the use of probation "is the most economical course to pursue."[108]

The divide among Detroiters about the desirability of this institution did not fade after the court's opening. Some were proud of and optimistic about the tribunal. As a representative headline absorbing that perspective proclaimed: "New Court Far in Advance of Any in Country: Domestic Relations Tribunal Only One with Divorce Jurisdiction: Large Staff Needed for New Probation System."[109] Early coverage was promising, claiming that this court was better able to reconcile couples than versions in other cities because of its broader jurisdiction.[110] But the court's power to reconcile couples was precisely what the divorce attorneys had feared. And they had not given up. In the court's first month, the Detroit Lawyers' Club and the Association of the Bar of Detroit anointed a few of their members to test the court's constitutionality.[111] Meanwhile, Lacy carried on, defending the court's legality and performing its usual work, even hearing a divorce case filed against one of the attorneys who was challenging his court.[112]

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[108] Lacy, *Domestic Relations Court*, 5-16.

[109] *Detroit Free Press*, Aug. 13, 1913, 20.

[110] "Many Reconciled in Family Court," *Detroit Free Press*, Sept. 24, 1913, 20; "Detroit's Domestic Relations Court," *Law Student's Helper* 22, no. 5 (May 1914): 9.

[111] "Attack Made on Domestic Cases Court," *Detroit Free Press*, Sept. 28, 1913, 1.

[112] "Thinks Domestic Court Is Valid," *Detroit Free Press*, Sept. 30, 1913, 16; "Lawyer Is Called into Court That He Calls Illegal," *Detroit Free Press*, Jan. 13, 1914, 16.

Though the Michigan Supreme Court heard argument in October 1913, it took until April 1914 to conclude that the domestic relations court was indeed unconstitutional because of how the law creating it applied only to Wayne County. Lacy learned the news, according to one article, while in the middle of attempting to reconcile a couple. He promptly ceased, telling a reporter: "I actually sorrow over the fate of the hundreds of helpless mothers, whose husbands, unless forced to do so by a court will not provide for them or the children."[113] Though the Michigan Supreme Court's decision had been based on a technical aspect of the constitution, the lawyer primarily responsible for the litigation candidly explained that, in his view, the state should not "maintain a 'chief reconciler' in the form of a domestic relations court." If a wife was displeased with the amount of money she received from her husband, it was inappropriate for a court to "presume[] to say how much she should receive." Moreover, he speculated that "[t]he only reconciliations that are really permanent are those which are prompted without the aid of a court." Of course, he quickly clarified, "[t]he legal phase" was based only on constitutionality.[114] All that was left for Lacy to do was to share the results; he claimed that under his watch, most divorce and nonsupport cases culminated in reconciliation.[115] Though Michiganders tried to find a legally and politically viable way to reopen the court, they were unable to do so for decades.[116]

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113 Attorney General v. Lacy, 146 N.W. 871 (Mich. 1914); "End of Family Court a Blow to Many Homes," *Detroit Free Press*, Apr. 18, 1915, 3.

114 "Ousted Domestic Judge and Ouster in Tilt at Dinner," *Detroit Free Press*, May 24, 1914, 1.

115 "Report Shows Work of Dead Divorce Court," *Detroit Free Press*, May 23, 1914, 1; Arthur J. Lacy, "What the Detroit Court of Domestic Relations Accomplished," *American Legal News* 25, no. 9 (Sept. 1914): 5.

116 For coverage of one failed early effort, see "Judge Drafts Bill for New Divorce Court," *Detroit Free Press*, Dec. 21, 1916, 1.

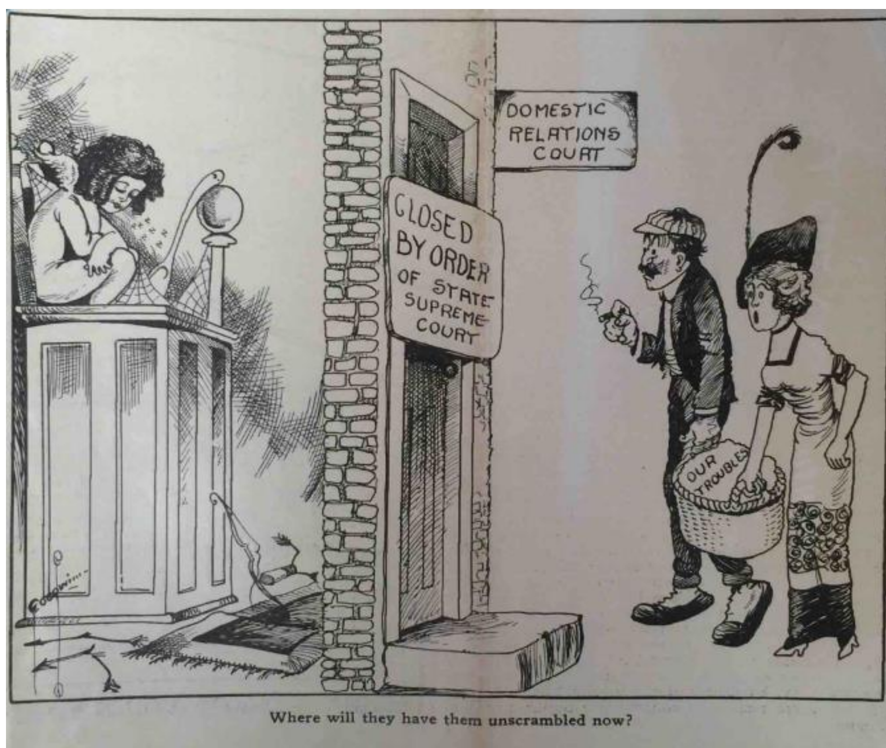

Figure 15: Illustration depicting the supposed harms caused by the closure of the Detroit Domestic Relations Court[117]

Perhaps chastened but not deterred by Michigan's aborted attempt, other states continued to open domestic relations courts. Each was shaped by local politics and personalities. Two additional examples, from Ohio and Virginia, warrant attention because of the subsequent influence of their models and judges.

Ohio created domestic relations courts for many of its cities throughout the 1910s. The earliest and most important opened in Cincinnati in 1914. Ohio was unusual at the time in having never criminalized desertion or abandonment of wives, and in not yet having an adult probation law. Instead, Ohio laws authorized juvenile courts to enter support orders against fathers, backed by the

[117] *Detroit Saturday Night* 8, no. 9 (Apr. 25, 1914): 1; Box 8, Folder 299, Arthur J. Lacy Papers, Bentley Historical Library, University of Michigan, Ann Arbor, MI.

threat of imprisonment in a workhouse.[118] Consequently, when people in Cincinnati began advocating for a domestic relations court, the jurisdiction they envisioned for their tribunal differed from those in other places. They essentially sought to add divorce jurisdiction to the juvenile court, renaming it as a court of domestic relations. Though this proposal was controversial, the legislature enacted it. Challenges to the court's legality followed, likely influenced by some of the same motivations more clearly apparent in Michigan. This time, though, the court survived. Even with its unique jurisdiction, much of the news coverage was remarkably similar to that about other courts. Reporters emphasized spousal reconciliation, with the financial repercussions never far afield. One account quoted the court's first judge, Charles W. Hoffman, as explaining that the court's aim was to effect reconciliations and thereby reduce divorce because "the husband seldom pays the alimony long after the divorce, and the children always suffer." Hoffman remained on the bench for decades and became influential in the NPA.[119]

Because Ohio lacked a criminal nonsupport offense for wives, as well as adult probation, Hoffman and other Ohioans considered other ways to provide investigation and surveillance of disharmonious families. Beginning by at least 1914, Ohioans proposed the creation of a "divorce investigator" position. According to newspaper coverage, a women's suffrage group supported the idea, believing the officer's role would be "to try to mediate and reconcile some couples and lesson the divorce rate." A prosecutor also endorsed the idea because he wished to reduce the rate of

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[118] Some of Ohio's officials did not realize they lacked a criminal nonsupport law that covered wives. On at least two occasions, men convicted of this offense had to hire lawyers to secure their release on the ground that such a law did not exist. "Prisoner Discharged," *Dayton Herald*, Jan. 6, 1899, 1; "Taught the Law," *Akron Beacon Journal*, Jan. 2, 1904, 8.

[119] "Ohio's Family Court," *Women Lawyer's Journal* 3, no. 9 (June 1914): 66; "Legality of the Court of Domestic Relations to Be Subject of Attack," *Cincinnati Enquirer*, Jan. 15, 1915, 7; "Political Gossip," *Cincinnati Enquirer*, Jan. 16, 1915, 2; "Federation of Churches Discusses Morals of City," *Cincinnati Enquirer*, Jan. 12, 1915, 16. In 1918, Hoffman proposed an adult probation law for Ohio. "Probation of Adults Advocated," *Cincinnati Enquirer*, Dec. 21, 1918, 14. On Hoffman's role in the NPA, see further discussion below.

uncontested divorces, as these were understood as likely collusive.[120] In January 1915, the same month Hoffman became a domestic relations judge, a state legislator drafted a bill that would authorize deputy court clerks to conduct divorce investigations, as part of a broader plan to "tighten up the divorce laws."[121] Hoffman decided not to wait on the legislature. While the bill was pending, he assigned a juvenile court probation officer to serve as a divorce investigator. The officer's job was to scrutinize the parties' home and "make a report as to whether or not there be any evidence of collusion." For uncontested cases, Hoffman tapped the juvenile court constable, who had a law license, to take "the side of the noncontestant." Attorneys decried Hoffman's move as lacking legal authority. Nevertheless, Hoffman continued to use this method.[122] Though Hoffman's supposed successes using the investigator were cited by those seeking a statewide bill, the law did not pass.[123]

Ohio's consideration of a "divorce investigator" was likely inspired by how other (mostly Midwestern) states' employed lawyers as "divorce proctors" in these same years. In the nineteenth century, a minority of states had enacted statutes or developed case law that compelled or permitted prosecutors to intervene in divorce cases on the state's behalf, typically only when such suits were undefended or if there was another reason to fear fraud or collusion. Prosecutors' intrusions seem to have been rare, and the primary goal was to protect the integrity of the court.[124] Building on this

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[120] "Susan B. Anthony Club," *Cincinnati Enquirer*, Mar. 11, 1914, 3; "Judges of Conservancy Court," *Cincinnati Enquirer*, Apr. 7, 1914, 2.

[121] "Change in Divorce Methods Proposed in Bill," *Democratic Banner* (Mount Vernon, OH), Jan. 22, 1915, 7.

[122] "Divorce Investigator Named," *Cincinnati Enquirer*, Feb. 2, 1915, 15; "Make Divorce Harder Is Aim of Young Bill," *Chronicle-Telegram* (Elyria, OH), Mar. 19, 1915, 9; "Authority for 'Investigation,'" *Cincinnati Enquirer*, Feb. 3, 1915, 10.

[123] "News Culled in the Capital: What Legislators Are Doing and Other Happenings," *Greenville (OH) Journal*, Apr 15, 1915, 2.

[124] Generally, statutes empowering prosecutors to intervene in divorce were passed alongside legislation that shifted divorce from a legislative to judicial act. See Scott v. Scott, 17 Ind. 309 (1861) (discussing divorce statute that placed duty on prosecuting attorney to intervene in undefended divorce cases); Smythe v. Smythe, 149 P. 516 (Ore. 1915) (discussing statute that required prosecuting attorney to make a defense "so far as it may be necessary to prevent fraud or collusion in such suit, to control the proceedings on the part of the defense, and in case the defendant does not appear therein, or defend against the same in good faith, to make a defense therein on behalf of the state"). Compare Wilcox v. Hosmer,

precedent in the 1910s, a handful of states went further by creating the position of "divorce proctor."[125] Though divorce proctors mostly sought to identify collusion, people in some places expected that the role might be broader (and more akin to probation officers)—to proactively save marriages in a meaningful sense, rather than merely to impede divorces.[126] In some locations there was more than a resemblance between probation officers and divorce proctors; at least one proctor was granted a probation title in order to draw a salary.[127]

Some supporters of the divorce proctor method believed women were ideally suited to this role. For example, an attorney in Wichita, Kansas, explained, "[i]f a woman is possessed of the legal qualifications and the ordinary judgment that the ordinary woman is supposed to have, and then in addition, has the woman instinct to preserve the home, I think it probable that she would make a better divorce proctor than a man."[128] Several locations agreed and appointed women. The most famous was Tiera Farrow, the first woman to serve in the position in Kansas City, Missouri. (Farrow

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83 Mich. 1 (1890) (interpreting statute that allowed prosecuting attorney to intervene in divorce cases in which the couple had children under age fourteen). But see State v. Moore, 207 P. 745 (Nev. 1922) (finding no inherent authority for attorney general to intervene in divorce suit). Earlier in the nineteenth century, some jurisdictions used masters in chancery to conduct factual investigations to ensure valid grounds for divorce, but this role was gradually diminished as lawyers increasingly controlled such cases. Amalia D. Kessler, *Inventing American Exceptionalism: The Origins of American Adversarial Legal Culture, 1800-1877* (New Haven: Yale University Press, 2017), 70, 89-95.

125 St. Louis judges appointed private counsel to investigate some divorce cases on an ad hoc basis before 1910. "Seeks Divorce Rehearing," *St. Louis Post-Dispatch*, Feb. 1, 1907, 16; "Two Judges Put Ban on Divorces 'While You Wait,'" *St. Louis Post-Dispatch*, Feb. 5, 1909, 3.

126 Newspapers indicate the locations with the most active use of divorce proctors were Kansas City, Missouri; the state of Kansas; large cities and counties in Tennessee; and Seattle, Washington. For representative coverage, see "Proctor as Curb on Divorce Evil for Kansas City," *St. Louis Post-Dispatch*, Nov. 8, 1911, 8; "Divorce Proctor to Guard State," *Chicago Daily Tribune*, Feb. 23, 1913, I-20 (reporting on Kansas State). The Tennessee Supreme Court upheld its divorce proctor law against constitutional challenges. Wilson v. Wilson, 134 Tenn. 697 (1916).

127 Courtney Ryley Cooper, "A Man Who Is Casting Out Divorce," *Ladies Home Journal* 31, no. 3 (Mar. 1913): 20.

128 "Proctor Must Be Lawyer," *Wichita Daily Eagle*, Jan 7. 1915, 5. For representative articles on women appointed as divorce proctors, see "Woman Appointed Divorce Proctor," *Corsicana (TX) Daily Sun*, Dec. 28, 1916 (reporting on Pittsburg, KS); "A Woman Divorce Proctor," *Junction City (KS) Daily Union*, Dec. 28, 1916, 1 (reporting on Pittsburg, KS); "Twenty-three-year-old Girl Attorney Lays Blame for Most Divorces to Men," *Buffalo Enquirer*, Aug. 8, 1921, 3 (reporting on Seattle, WA divorce proctor). See also Cynthia Whitaker, "The First Wave of Women Lawyers," *Washington State Bar News* 35, no. 5 (May 1981): 8-13.

had previously garnered press for other firsts. In 1907, she became the first woman elected as the treasurer of Kansas City, Kansas. A few years later, the wife she was representing in a divorce hearing murdered the husband after becoming distraught about a child custody decision. Farrow received glowing press coverage for her defense of the woman, saving her from a first-degree murder conviction, though not winning her full exoneration.) When Farrow became a divorce proctor, newspapers carried descriptions of her role and advice, as well as her writings on marriage.[129] In her autobiography, Farrow claimed to have reconciled many couples and to have proposed creation of a domestic relations court.[130]

Divorce proctors received nationwide press, prompting proposals to introduce such officers elsewhere. In many instances the most vocal opponents were lawyers, who claimed they were sufficiently vigilant about only pursuing meritorious divorce cases and argued that proctors unnecessarily increased litigation costs with no benefit.[131] The majority of states never adopted this

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[129] Nixola Greeley-Smith, "False Romantic Ideals of Married Life Cause of Most Unhappiness in the Home," *St. Louis Post-Dispatch*, Jan. 2, 1917; "Causes of Divorce as Seen by Woman Divorce Proctor," *St. Louis Post*, Dec. 8, 1916, 1; Tiera Farrow, "How the Impossible Ideals of Courtship Wreck the Happiness of Marriage," *Washington Post*, Feb. 4, 1917, SM5. Newspapers had a field day when Farrow obtained a divorce, though she was not a proctor by that point. "Less Divorce Her Slogan, She Gets One," *Times Herald* (Olean, NY), Feb. 5, 1920, 17; "Fights Divorces for Others; Wants One for Herself," *Post-Crescent* (Appleton, WI), Feb. 6, 1920, 9. On the murder trial, see Gerald R. Butters, Jr., "But I'm Only a Woman': Tiera Farrow's Defense of Clara Schweiger," *Kansas History* 25, no. 3 (Autumn 2002): 191-99.

[130] Tiera Farrow, *Lawyer in Petticoats* (New York: Vantage Press, 1953), 112-17. In 1927, she became a judge and was outspoken about discharging women charged with prostitution because of her opposition to the sexual double standard. "Woman Judge Striking at "Double Standard," *News-Journal* (Mansfield, OH), July 6, 1927, 10.

[131] "Attacks new Divorce Plan," *Kansas City (MO) Times*, Oct. 23, 1911, 13; "Lawyers Oppose Office Proctor," *Chattanooga (TN) News*, Apr. 10, 1920, 5.

method of family intervention.[132] Instead, they attempted to reconcile couples by employing probation officers in domestic relations courts.[133]

In 1916, Richmond became the first Southern city to open a domestic relations court. The steps culminating in this tribunal began in 1908, when Richmond hosted the NCCC, giving local residents the opportunity to learn from the biggest names in charity and penal reform efforts. One initial consequence was the formation of the Juvenile Protective Society (JPS).[134] JPS was then largely responsible for the Virginia legislature's decision to authorize cities to create a "Special Session" within their police courts to hear children's cases. Richmond implemented this option in 1912. In 1914, JPS argued that Virginia needed a Juvenile and Domestic Relations Court "to keep up with other States in the salvage and protection of children." Several juvenile probation officers were at the forefront of the advocacy effort. One of the most prominent was James H. Ricks, who was a graduate of the T.C. Williams Law School and had completed postgraduate training at the University of Virginia School of Law. Ricks had been working as a juvenile probation officer for a few years, after leaving a brief law practice. Ricks encouraged members of the local Equal Suffrage League to cast their weight behind the specialized court proposal, explaining that "the most deserving women

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[132] For examples of locations considering passage of divorce proctor laws, see "Divorce Proctor Urged; Would Cut Decrees in Half," *Chicago Daily Tribune*, Jan. 6, 1912, 1; William Hall Moreland, "Five Divorce Remedies," *New York Times*, June 5, 1921, 80; "Proctors in Divorce Cases Urged Instead of Lawyers," *New York Herald Tribune*, Jan. 7, 1931, 3. Secondary literature notes similar positions under other names in Arkansas, Nebraska, West Virginia, and Wisconsin. Charles S. Connolly, "Divorce Proctors," *Boston University Law Review* 34, no. 1 (Jan. 1954): 1-28. See also Note, "The Right of Third Parties to Intervene in Divorce Proceedings," *Harvard Law Review* 39, no. 8 (June 1926): 1090; William H. Smith, "Wisconsin Statute Law, Divorce Counsel Statutes," *Wisconsin Law Review* 6, no. 4 (June 1931): 258-60.

[133] Michigan briefly had a divorce proctor but then created a unique position called a "Friend of the Court." "Montgomery Made Divorce Proctor," *Detroit Free Press*, Feb. 15, 1919, 10; "Divorce Proctor Job Is Abolished," *Detroit Free Press*, Oct. 7, 1920, 14.

[134] For coverage of the NCCC, see stories under main headline, "Problems Confronting Social Workers Discussed Yesterday," *Times Dispatch* (Richmond), May 8, 1908, 5, and especially "Juvenile Court as Makers of Citizens." Later that year, the American Prison Association met in a Richmond synagogue, where some of the most prominent probation proponents discussed their methods. "South Lacking in Prison Work," *Times-Dispatch* (Richmond), Nov. 16, 1908, 1.

were not being reached because many women who were working hard to support their families were too reserved to take their stories of delinquent husbands to the Police Court."[135]

The Virginia legislature authorized the creation of a Juvenile and Domestic Relations Court for large cities in 1914. These tribunals were granted concurrent jurisdiction with other courts over juvenile delinquency, certain harms committed against children, and "[all] prosecutions against men charged with ill-treatment, abuse, abandonment or neglect of their wives."[136] When Richmond's court was organized the following year, the City Council elected Ricks as the judge.[137] In the court's first report, Ricks championed the "wisdom" of combining nonsupport probation work with children's cases, which he claimed "ha[d] been amply proven." Whereas deserving women had "shrunk from the notoriety attendant" upon a police court proceeding, they "now appeal to the law for assistance in making a recreant husband or father live up to his obligations." Under the heading "The Spirit of the Court," he explained that in many cases "through the friendly advice of the probation officers, couples who have been estranged are reconciled," and the officers considered this "the most important part of their work." The financial savings were also impressive, he continued. The three probation officers collected "a grand total of over $25,000." Though Ricks believed this "record speaks for itself," he also claimed that it did not "tell the whole story, or give any adequate idea of the excellent work… [because a] number of cases have been handled

135 "City of Richmond to Have Juvenile Court," *Daily Press* (Newport News, VA), Mar. 24, 1910, 1; "Will Wage Campaign for Wider Support," *Times Dispatch* (Richmond), May 26, 1914, 3; "Want Separate Court for Trial of Children," *Times Dispatch* (Richmond), Dec. 18, 1914, 8. See also Samuel C. Shepherd, Jr., *Avenues of Faith: Shaping the Urban Religious Culture of Richmond, Virginia, 1900-1929* (Tuscaloosa: University of Alabama Press, 2001), 177-80.

136 *First Annual Report of the Juvenile and Domestic Relations Court of the City of Richmond, Virginia, 1916* (Richmond: Wm. Ellis Jones' Sons, Inc., 1917), 3-4.

137 "J. Hoge Ricks Named for Juvenile Court," *Times Dispatch* (Richmond), Dec. 22, 1915, 1; "The Juvenile Court Judge," *Times Dispatch* (Richmond), Dec. 23, 1915, 6. As these headlines indicates, there was far more interest in the juvenile component of the court than the nonsupport cases.

unofficially."[138] Ricks was only twenty-nine years old during his first year on the bench, and he remained in the post until 1956. During those decades, he cofounded the National Conference of Juvenile Court Judges and twice served as president of the NPA.[139]

Figure 16: Judge Ricks, front and center, surrounded by some of the court's probation officers and the court's clerk in 1935[140]

Reformers in other cities also proposed domestic relations courts but were unable to overcome political opposition or state constitutions that made altering court jurisdiction too

[138] Richmond, *First Annual Report*, 5-6, 22. Notably, the most common adult offense that result in probation under this court was domestic violence. Nonsupport was the second largest contributor; the number had recently gone down, which was attributed to Virginia's passage of a prohibition law. Richmond, *First Annual Report*, 21. By the following year, both offenses had reduced further, again attributed to prohibition, and nonsupport had become the most common adult offense handled by the court. *First Annual Report of the Juvenile and Domestic Relations Court of the City of Richmond, Virginia, 1917* (Richmond: Wm. Byrd Press, Inc., 1918), 7.

[139] Ricks also worked closely with Richmond's black community to improve resources for black children and, very controversially, advocated for many years for the city to hire black probation officers to supervise black children. The summary of Ricks's career is based on the author's review of the entire archival collection. Papers of James Hoge Ricks 1916-1956, MSS 85-14, Special Collections, University of Virginia Law Library, Charlottesville, VA. On the closely connected Juvenile and Domestic Relations Court that opened in Norfolk, Virginia, in 1919, see *Juvenile and Domestic Relations Court, Norfolk, Virginia: Fifty Year History, 1919 to 1969* (unpublished book, 1969).

[140] Photograph of Judge James Hoge Ricks with Others, 1935, MSS 85-14, Photograph Collection, Papers of James Hoge Ricks 1916-1956, Special Collections, University of Virginia Law Library.

difficult.[141] People in St. Louis, for instance, proposed the creation of a domestic relations court throughout the 1910s. Under a former juvenile judge's proposal, the court would have had jurisdiction to address child custody, abandonment of wives or children, divorce if children were involved, and various harms committed against children (the juvenile court would continue to be separate and oversee juvenile delinquency).[142] A supportive editorial pointed to a report provided by a woman probation officer in Philadelphia to explain how a probation officer in such a court was "highly efficient in effecting reconciliations and preventing divorces."[143] Other St. Louis proposals suggested expanding the jurisdiction of the juvenile court, as in Ohio, in order to "save a family as a unit, which is manifestly the highest possible service a court can render."[144] Yet time after time, the measure did not pass.[145] In the absence of such an institution, legal officials found unofficial ways to copy other cities' domestic relations tribunals. For instance, the Assistant City Prosecuting Attorney in St. Louis held "a court of Arbitration" in a small room in the back of the police court. He was credited with resolving a number of conflicts, but a reporter concluded from observing him that "a domestic relations tribunal is an urgent need."[146] An article published in 1916 explained that though

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141 For coverage of proposals that did not pass during the 1910s, see "Wants Marital Court," *Sun* (Baltimore), Jan. 16, 1913, 7; "For Family Wars," *Los Angeles Times*, Nov. 2, 1914, II2. Other cities had "unofficial" courts of domestic relations, often at the initiative of a single judge. For discussion of San Francisco, see Helen Dare, "Here Is New Domestic Problem for Judge Graham to Unravel," *San Francisco Chronicle*, Mar. 11, 1911, 7; "Citizens' Committee Strongly Favors the 'Domestic Court,'" *Honolulu Star-Bulletin*, Apr. 17, 1915, 8; "Domestic Relations Court Is Suggested," *Pittsburgh Post-Gazette*, Aug. 12, 1916, 2; "Court of Domestic Relations," *Gazette Globe* (Kansas City, KS), Oct. 18, 1912, 1.

142 "Bill Is Drafted for a Domestic Relations Court," *St. Louis Post-Dispatch*, Jan. 3, 1915, A12B.

143 "An Anti-Divorce Court," *St. Louis Star and Times*, Jan. 7, 1915, 14.

144 "Domestic Relations Court," *St. Louis Post-Dispatch*, June 25, 1915, 14. For other examples, see Norman Sadler, "Domestic Relations Court," *St. Louis Post-Dispatch*, Dec. 15, 1916, 14; "A Court of Domestic Relations," *St. Louis Star and Times*, Jan. 20, 1919, 10; "Activities of St. Louis Women," *St. Louis Star and Times*, Nov. 19, 1920, 19.

145 "Circuit Judges Adopt New Code Lawyers Urged," *St. Louis Post-Dispatch*, Jun. 20, 1915, A6.

146 Marguerite Martyn, "Common Sense Justice Dispensed in St. Louis' Odd New Unofficial Court for 'Clothesline Rows,'" *St. Louis Post-Dispatch*, Dec. 6, 1914, 1.

"St. Louis as yet is without a Court of Domestic Relations… it has an organization which closely corresponds to it in the corps of probation officers who handle" cases from the criminal courts.[147]

Based on a study of trial courts across the country in 1919, legal expert Reginald Smith concluded that domestic relations courts—which remained primarily on the "criminal side of the court"—provided machinery that was helpful in securing support for wives and children. A wife participating in a criminal case need not hire a lawyer because a court clerk assisted her in completing newly simplified forms to initiate suit, the probation department ("an indispensable adjunct of every domestic relations court") collected necessary evidence and, depending on location, a probation officer (informally) or a government prosecutor represented the wife's interests during the trial, which was typically quick. Whereas civil orders in other courts "inevitably" led to the additional cost and delay of contempt litigation to secure payments, criminal suits meant a probation officer was tasked with overseeing collection and initiating summary proceedings for noncompliance. Conciliation was also a possibility in many of these institutions. The expert thus predicted that this type of court "will undoubtedly in a short time extend itself into every large city. It almost completely solves the problem of denial of justice of desertion, abandonment, [and] non-support."[148]

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[147] "Restoring Peace to Broken St. Louis Homes," *St. Louis Post-Dispatch*, Feb. 20, 1916, B4. In the early 1920s, women's groups, religious organizations, and civil court judges (joined by a woman probation officer who had moved there from Cincinnati, and prodded by a visit from Hoffman) were finally able to band together to create a so-called domestic relations court, but it was just part of the civil court system and had jurisdiction over divorce. "How a Domestic Relations Court in St. Louis Would Work," *St. Louis Star and Times*, Jan. 27, 1921, 17; "Court of Domestic Relations Recommended by Judges," *St. Louis Post-Dispatch*, Feb. 13, 1921, 21; "Court Suggestions by Visiting Judge," *St. Louis Post-Dispatch*, Apr. 18, 1921, 14; "Printing of Divorce News Leads to More Suits, Gareshe Asserts," *St. Louis Star and Times*, June 8, 1921, 3.

[148] Reginald Heber Smith, *Justice and the Poor* (New York: Carnegie Foundation, 1919), 76, 78-80, 82.

Figure 17: Syndicated comic strip by pioneering newspaper cartoonist Bud Fisher, indicating widespread knowledge that domestic relations courts were available to enforce men's support duties and had the power to incarcerate offenders[149]

The National Probation Association and the Expansion of Family Courts

In years that overlapped with the spread of domestic relations courts, probation officers formulated a distinct professional identity that built on their work in these tribunals. On June 17, 1907, fourteen probation officers, who were in Minneapolis to attend the annual meeting of the NCCC, met separately at a church to discuss the formation of a National Association of Probation Officers. The leader of the effort was Timothy D. Hurley, a lawyer who had served as the chief probation officer in Chicago's juvenile court on assignment from the city's law department. Other attendees showed the national scope of the endeavor, coming from Minneapolis, Denver, Atlanta, Milwaukee, New Britain (Connecticut), Newark, Omaha, and San Francisco. Notably, New York was not represented. The attendees included at least one woman, who was from Denver. Over the next few years, the group elected probation staff as its officers and continued meeting during the annual NCCC.[150]

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[149] "Mutt and Jeff," reprinted in *Florence (SC) Morning News*, July 3, 1936, 7.

[150] John J. Gascoyne, "The Judge and the Probation Officer," in *The Progress of Probation, Annual Report and Proceedings of the Eighth Annual Conference of the National Probation Association*, ed. Charles L. Chute (Albany: National Probation Association, 1916), 110, 112 (describing first meeting). Chute and Bell, *Crime, Court and Probation*, 112, includes a footnote reading:

When the probation officers met during the NCCC's 1909 meeting in Buffalo, there were several important developments. Attendance grew to one hundred people. The group adopted bylaws, which notably opened membership to "judges, probation officers, representatives of probation commissions or associations, parole officers and any other persons interested in probation or the treatment of delinquents." The new slate of officers reflected this shift. Homer Folks, of the New York State Probation Commission, became president. As vice president, the group selected William De Lacy, the judge of the Washington, D.C. juvenile court. Roger N. Baldwin, chief probation officer of the juvenile court in St. Louis, became secretary-treasurer.[151] In 1911, the group renamed itself the National Probation Association (NPA), and in 1913 it began holding independent conferences. The NPA was headquartered in New York City, contributing to that city's dominance in influencing the priorities of probation professionals.[152]

From its early years, the NPA showed significant interest in specialized domestic relations courts and the handling of nonsupport cases, and many of its officers and members were domestic relations probation officers and judges.[153] Newspaper coverage of the NPA's 1912 meeting, for instance, described a talk by Buffalo probation officer Edwin J. Cooley on the helpfulness of courts

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"Minutes of the first meeting of the National Probation Officers' Association, MSS, in the National Probation and Parole Association Library." After extensive correspondence with archivists, this collection could not be located.

[151] Chute and Bell, *Crime, Court and Probation*, 113. Baldwin later became one of the founders of the American Civil Liberties Union, where he served as executive director until 1950. "Roger Baldwin, 97, Is Dead; Crusader for Civil Rights Founded the A.C.L.U.," *New York Times,* Aug. 27, 1981, D18.

[152] Chute and Bell, *Crime, Court and Probation*, 114; Will C. Turnbladh, "Building the NPPA," *Focus* 31, no. 6 (Nov. 1952): 161-62.

[153] The NPA first focused on juvenile courts but soon expanded to domestic relations courts, too. See, e.g., "Juvenile Court Work," *Nashville American*, June 12, 1910, 8; "Will Look Over Reform Plants [*sic*]," *Duluth News Tribune*, Apr. 12, 1912, 18. Probation officers also promoted stronger nonsupport laws. "Bill Will Take Care of Deserted Families," *Atlanta Constitution*, Aug. 3, 1913, C5.

of domestic relations with probation to address nonsupport.[154] During the 1915 conference, NPA executive director Charles Chute advocated probation for rural areas to "prevent the neglect of children, … drunkenness, and cases of nonsupport."[155] During the NPA's annual conference in 1916, the first year for which full records are available, the presidential address described domestic relations courts as "an outgrowth of probation" and, touting such courts' benefits, suggested: "Any community which has not established a domestic relations court is neglectful of its welfare."[156] That year the NPA also created a "Committee on Courts of Domestic Relations," one of only four permanent committees at that time, and enshrined a focus on domestic relations courts in its bylaws.[157] NPA leaders perceived domestic relations courts and probation as deeply intertwined. For instance, when Cooley, who had become NPA President and the Chief Probation Officer of New York City, delivered his presidential address, he referred to courts of domestic relations as "essentially probation courts." He further declared: "The probation work in the family courts is really the heart of the probation service in any system."[158]

When speaking to audiences outside the NPA, Cooley and other probation leaders pointed to probation officers' ability to secure financial support for dependents—in both nonsupport and other matters—to emphasize the value and effectiveness of their profession. In a full-page spread published in the *New York Tribune*, Cooley told readers, "[i]t costs $396.56 a year per capita for

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154 "Dances of Strenuous Kind," *Cincinnati Enquirer*, June 15, 1912, 11.

155 "Probation for Counties," *Sun* (Baltimore), May 12, 1915, 5.

156 Frank E. Wade, "President's Address," in *The Progress of Probation, Annual Report and Proceedings of the Eighth Annual Conference of the National Probation Association*, ed. Charles L. Chute (Albany: National Probation Association, 1916), 18.

157 On committee, see *id.*, 4, 9, 115. For bylaws, see *id.*, 132.

158 Edwin J. Cooley, "Tendencies and Developments in the Field of Probation," in *Social Service in the Courts, Annual Report and Proceedings of the Fourteenth Annual Conference of the National Probation Association* (Albany: National Probation Association, 1920), 19, 31; Edwin J. Cooley, "The Administrative Versus the Treatment Aspects of Probation," *id.*, 103, 110.

prison care in New York and only $22.64 for probation care." Moreover, "[m]en on probation support themselves and their families and they are productive factors in the community," rather than their families becoming "a burden on the public."[159] Cooley received another opportunity to promote New York's successes with probation in a multipage spread published by *Woman's Home Companion* in 1925. There he focused on probation for nonsupport under the headline "Mending Broken Families." According to Cooley, in a recent year the New York City Magistrates Courts investigated 7,352 nonsupport cases, placed 15,000 "families" on probation, and oversaw the payment of over $2 million from husbands and fathers to their dependents. Touting the by-now standard lines on probation's advantages, he explained: "Not only does probation save human souls; it saves the public's dollars, too." A man "made to work" to support his family, under the watchful eye of a probation officer, "gradually regained his former manliness and ambition."[160]

While trumpeting their successes in domestic relations courts, as well as in juvenile courts where probation officers were also essential, NPA leaders turned their attention to combining and expanding these specialized courts' jurisdiction. This effort was most prominently led by Cincinnati judge Hoffman, who had served as the chair of the NPA's Committee on Courts of Domestic Relations since its creation. In 1917, Hoffman and his committee proposed the creation of "family courts" with jurisdiction over criminal desertion and nonsupport, juvenile delinquency, and divorce.[161] Proponents argued that combining these matters would reduce jurisdictional overlap and

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[159] "Getting Back to the Straight and Narrow Path; One Slip No Longer Makes a Confirmed Criminal," *New York Tribune*, Oct. 17, 1920, 79.

[160] Edwin J. Cooley, "Mending Broken Families," *Woman's Home Companion* (Mar. 1925): 4, 52-156. These arguments became more compelling in the heat of perceived crime waves. Advocates emphasized the sizable proportion of uncontroversial and lucrative nonsupport cases to deflect criticism from probation's alleged role in keeping dangerous criminals on the streets. For examples, see "Defense of Probation," *New York Times*, Aug. 6, 1922, 85; State Probation Commission, *Probation: Do You Know That* (Albany: Division of Probation—Department of Correction, 1928).

[161] Charles W. Hoffman, "Report of the Committee on Courts of Domestic Relations," in *Social Problems of the Courts, Annual Report and Proceedings of the Ninth Annual Conference of the National Probation Association*, ed. Charles L. Chute (Albany: National Probation Association, 1917), 82-86 (they also proposed jurisdiction over adoption, but this was a less

ensure deep, rehabilitative treatment by probation officers across family-related conflict.[162] The merger was further justified by the belief that these issues were related because marital discord was a prime contributor to juvenile delinquency. Supporters reasoned that if probation officers could intervene in marital disputes to reconcile couples or, failing that, at least secure adequate support payments, many instances of juvenile misconduct could be averted.[163]

Bringing divorce into a court with nonsupport and juvenile delinquency jurisdiction also seemed to provide a path to ease the use of probation into the divorce context.[164] Probation or like methods had already been making inroads. In addition to the divorce proctor method, some judges borrowed probation officers from the local juvenile court to informally assist in custody determinations and other aspects of divorce proceedings.[165] Pointing to these efforts and noting the usefulness of probation in criminal nonsupport, NPA members envisioned probation officers performing valuable services in divorce: attempting reconciliations, investigating home life, and

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prominent component.) See also Charles W. Hoffman, "Developments in Family Court Work," in *Social Treatment of the Delinquent, Annual Report and Proceedings of the Fifteenth Annual Conference of the National Probation Association*, ed. Charles L. Chute (New York: National Probation Association, 1921), 55-58 (describing NPA efforts in 1918, 1919, and 1920); "Asks Wider Courts to Avert Divorces: National Probation Group Urges Tribunals that Can Keep the Family Intact," *New York Times*, Apr. 26, 1928, 15.

[162] Hoffman, "Developments in Family Court Work," 55; Charles L. Chute, "Probation and Suspended Sentence," *Journal of the American Institute of Criminal Law and Criminology* 12, no. 4 (Feb. 1922): 558, 563-64.

[163] National Probation Association, *A Standard Juvenile Court Law, Prepared by the Committee on Standard Juvenile Court Laws of the National Probation Association* (New York: National Probation Association, 1926), 4, 12-13. See also Charles W. Hoffman, "The Effect of Increasing Divorce on Family Life," *Current History* 30, no. 5 (Aug. 1929): 876, 881.

[164] Probation supervision was already commonplace in juvenile courts. Judges and commenters typically justified supervision of children under the chancery doctrine of *parens patriae*. Ellen Ryerson, *The Best-Laid Plans: America's Juvenile Court Experiment* (New York: Hill and Wang, 1978), 63-71.

[165] "Woman, Divorce Arbiter," *Detroit Free Press*, June 14, 1910, 7 (reporting on judge asking juvenile court probation officer to investigate a "family's affairs" to assist him in determining custody upon a couple's divorce); "Name Divorce Investigators," *Lincoln Star,* June 22, 1929, 4 (reporting on two juvenile probation officers receiving appointments as "divorce investigators").

overseeing alimony payments.[166] Hoffman and fellow committee members emphasized there should be "an immediate effort … to obtain probation forces" to investigate divorce grounds and home conditions and to supervise "the homes and children after the [divorce] decree is granted."[167] The move to extend probation into the divorce context was also self-interested, at it would increase domestic relation judges' authority and probation officers' employment prospects. Moreover, it brought probation into high profile conversations about the rising divorce rate and the legal system's inability to deter and process these cases appropriately.[168]

The NPA fully embraced Hoffman's "family court" proposal. In 1920, the Committee on Courts of Domestic Relations (under new leadership) renamed itself "the Committee on Family Courts." Proclaiming themselves in agreement on "the big principles and general propaganda" concerning family courts, they turned to "more concrete phases of the problem," by which the largely meant procedure.[169] Other NPA leaders spread the view outside the organization. For instance, when executive director Chute published a piece on probation in the *American Institute on Criminal Law and Criminology* in 1921, he observed: "No report upon probation today would be complete without mention of probation in the Domestic Relations, or, as it is beginning to be called, the Family Court." Chute described "a national movement on foot, which has the backing of the

[166] Edward F. Waite, "Social Aspects of Minneapolis Courts," *Minnesota Law Review* 6, no. 4 (Mar. 1922): 259, 269 (suggesting the "pitiful inefficiency" shown in collecting alimony could be improved by probation).

[167] Charles W. Hoffman, "Courts of Domestic Relations," in *The Social Work of the Courts, Annual Report and Proceedings of the Tenth Annual Conference of the National Probation Association*, ed. Charles L. Chute (Albany: National Probation Association, 1918), 138.

[168] See, e.g., Hoffman, "Effect of Increasing Divorce," 876 (using divorce rate as a hook to explain benefits of family courts and probation).

[169] Mary E. Paddon, "Report of the Committee on Courts of Domestic Relations," in Chute, *Fourteenth Annual Conference*, 73-74.

National Probation Association, to develop the family court everywhere. It will mean the handling of all family difficulties, not excepting divorce, in a social and preventative fashion."[170]

Family court advocates encountered fierce opposition. Juvenile-focused discussants feared the proposed merger would harm the functioning of juvenile courts by reintroducing the criminal posture and tone they had worked hard to minimize and by diverting precious resources to resolve marital conflicts.[171] These fears were physically encapsulated in the architecture of the family court New York City created more than a decade later (Figure 18). The law creating that court, which is discussed further in the next chapter, dictated that the children's and adults' divisions of the tribunal "shall, so far as practicable, be located conveniently next to each other, and where possible adjacent to each other, but the respective buildings shall be separated from each other where practicable except that they may connect by a passageway or bridge."[172]

[170] Chute, "Probation and Suspended Sentence," 558, 563-64.

[171] National Probation Association, *Standard Juvenile Court Law*, 4, 12-13; National Probation Association, *A Standard Juvenile Court Act, Suggested Draft, Prepared by a Committee of the National Probation Association* (New York: National Probation Association, 1943): 13-14 (noting objection to combining divorce jurisdiction with juvenile cases because the former "may take too large a part of the court's time and facilities" and observing it was difficult "to give the juvenile court sufficient jurisdiction over adults to protect children, but to avoid giving it the aspect of a criminal court").

[172] *Annual Report of the Domestic Relations Court of the City of New York, 1933* (New York: Beacon Press, 1934), 33-36 and appendix.

Figure 18: Photograph of the bridge between the adult division of the New York City family court (constructed in 1937) and the preexisting children's court[173]

In addition to practical concerns, legal experts emphasized the complexity of combining criminal nonsupport, divorce, and juvenile delinquency because of how these matters arose under distinct areas of law. An editorial in the *Journal of the American Judicature Society* explained that the "real difficulty" was that the "ordinary state judicial system" already assigned the three components of the family court to separate judicial branches and levels. The "problems of the family … cut across the arbitrary lines which we create between civil and criminal jurisdiction and between inferior and general jurisdiction." This "rigid and awkward system" would, in many states, require an amendment to the state constitution or other politically unfeasible prerequisites to place the three types of cases

[173] Photograph by author, May 12, 2017. The buildings are now part of Baruch College, 135 East 22nd Street, New York City.

in one court.[174] Similarly, Reginald Smith, the legal expert previously noted for praising the benefits of criminal domestic relations court machinery, recognized it would be difficult to incorporate other domestic disputes into these tribunals because "[t]here is a gulf, fixed by history and tradition, between civil and criminal matters that will not easily be bridged." To the extent some places were able to broaden their domestic relations courts, this typically meant civil matters were accredited into criminal jurisdiction because "the domestic relations courts have proved more effective and more capable than their civil predecessors."[175]

Political and professional considerations also proved impediments. Richmond judge Ricks told fellow NPA members about the hurdles Virginia's Children's Code Commission faced in attempting to follow the NPA's family court model. Though the Commission successfully secured a law authorizing juvenile and domestic relations courts in smaller cities in the state, it did not even attempt some other reforms. For instance, the Commission decided not to change the name of such institutions from "juvenile and domestic relations court" to "family court" because they feared a renaming would raise opposition in the legislature. "The legislators seem to have an intense aversion towards establishing an entirely new court," Ricks observed, "though that feeling does not seem to extend to the enlargement of an existing court." Also for strategic reasons, the Commission decided not to propose moving divorce and alimony to these specialized courts because they expected such a move would "arouse such strong opposition from the lawyers generally that the passage of the bills would be jeopardized."[176]

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[174] "Editorial," *Journal of the American Judicature Society* 3, no. 3 (June 1919): 3, 4.

[175] Smith, *Justice and the Poor*, 75, 82.

[176] James Hoge Ricks, "Report of the Committee on Family Courts," in *The Social Service of the Courts, Proceedings of the Sixteenth Annual Conference of the National Probation Association* (New York: National Probation Association, 1922), 119, 121-26. For another example of lawyers impeding the creation of a family court, see "'Attorneys' Stand Firm against Family Court," *Star Tribune* (Minneapolis), Dec. 12, 1920, 23.

Some jurisdictions unable to place divorce within family courts nevertheless imported probation techniques into divorce litigation.[177] These inroads may have succeeded because they did not directly challenge lawyers' control over divorce proceedings. For example, Michigan, still lacking a specialized domestic relations court, enacted a law in 1920 that permitted the use of probation for men who failed to pay alimony in divorce and separation cases.[178] Hennepin County, Minnesota, which also lacked a specialized court, authorized its probation office to participate in divorce litigation involving children in 1929; officers were tasked with investigating custody, collecting support payments, and supervising visitation.[179] And in Chicago, where the domestic relations court lacked jurisdiction over divorce, the Chief Probation Officer of the Municipal Court noted that courts handling divorce and separate maintenance were "constantly calling on my department for investigations in their divorce cases, and to get the men to make payments without putting them in jail."[180]

Amidst this experimentation, by the mid-1920s, visions of the ideal or at least achievable family court splintered. The family court concept was like a "child born prematurely," the chairwoman of the NPA's Committee on Family Courts offered in 1925, "for no one seemed quite prepared for the event, neither the public, nor the court personnel, nor the child herself." Even after years of development, confusion remained. Continuing the metaphor, she noted: "the child has no given name, at least her parents disagree; her nurses, acting as probation officers, are untrained and

[177] According to Hoffman, probation officers were superior to divorce proctors because the latter could make "no contribution to legal and scientific theory as applied to domestic problems." Hoffman, "Effect of Increasing Divorce," 876, 881.

[178] Charles L. Chute, "Annual Report of the Treasurer," in Chute, *Fourteenth Annual Conference*, 10.

[179] "Two County Workers Struggle with Big Divorce Load," *Star Tribune* (Minneapolis), Feb. 16, 1950, 1 (recounting earlier developments).

[180] Hoffman, "Developments in Family Court Work," 57.

underpaid; her duties are undefined and her future usefulness to social service still undetermined."[181] A U.S. Children's Bureau publication attempting to summarize the terrain in 1929 identified "at least" five "different types of organization" for institutions labeled "domestic relations court" or "family court," and each contained its own variation.[182] Reviewing the Children's Bureau's efforts to make sense of these widely varying approaches, one commentator observed: "Cogs and wheels there are in plenty, wheels within wheels, not always connecting, many gears, which do not always mesh."[183]

Conclusion

The mixed success of the NPA proposal led to variation in the dozens of domestic relations and family courts that were reformed or founded in the 1920s and 1930s.[184] Despite this variation, the common ingredients remained jurisdiction over criminal nonsupport and the use of probation. Still, even as criminal domestic relations court spread, and in some places swallowed other jurisdiction, proponents recognized that these institutions were not panaceas. Criminal laws and courts brought stigma and were unfairly harsh in certain circumstances. Criminal courts also had to comply with procedural rules that impeded flexibility that might otherwise permit more effectual methods. Thus, reformers began to seek alternatives that would retain the most useful components

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[181] Mary Edna McChristie, "Report of the Committee on Family Courts," in *The Development of Juvenile Courts and Probation, Annual Reports and Proceedings of the Nineteenth Annual Conference of the National Probation Association* (New York: National Probation Association, 1925), 106.

[182] Flexner et al., *Child, the Family, and the Court*, 15-17.

[183] Reuben Oppenheimer, "Domestic Relations Court – A Study in Americana," *Social Service Review* 4, no. 1 (Mar. 1930): 17, 21.

[184] A U.S. Children's Bureau publication attempting to summarize the terrain in 1929 identified "at least" five "different types of organization" for institutions labeled "domestic relations court" or "family court," and each contained its own variation. Flexner et al., *Child, the Family, and the Court*, 15-17.

of criminal domestic relations courts—probation staff to oversee each step, backed by the threat of incarceration—yet revert to a civil regime.

Chapter Six
"Novel and ingenious": "Civil" Family Courts and Child Support Enforcement

The criminalization of nonsupport, followed by its treatment in specialized courts staffed by probation officers, profoundly changed the extent to which the state could intervene in family financial decisions and other behaviors. Though courts had welcomed and indeed sought opportunities to enforce men's breadwinner duties for generations, it was the turn to criminal law that injected a team of court staff to facilitate support proceedings from start to finish.

Yet by the 1930s, criminal law began to lose some of its luster because of procedural and practical disadvantages compared to civil law. While unwilling to give up probation-style interventions or incarceration, reformers began considering how to modify the criminal approach. In 1933, New York charity leaders persuaded the state legislature to create a "family court" that was cast as "civil," even though it continued to rely on a probation staff and permitted civil incarceration as well as selective use of criminal law. New Yorkers also found a workaround to address the need for extradition. They developed a civil reciprocal enforcement statute; if enough states passed similar legislation, court personnel in a breadwinner's state and a dependent's state could cooperate to secure and transfer payments. By the mid-1950s, every state joined this endeavor. Reciprocal enforcement required extensive involvement by court staff, a marked departure from the civil options available in the decades prior to criminalization. Because state employee participation and oversight had been normalized in criminal cases, most observers did not find this development problematic. With this machinery in place, civil suits became the most frequent method of enforcing support duties, yet all states retained criminal law for deterrence and to punish the most egregious offenders.

As the 1950s progressed, family court dockets became weighted toward civil matters because of the move to civil nonsupport and incorporation of divorce jurisdiction. Probation departments,

never funded to the level proponents advised, were so overburdened that they evolved into collection bureaus with no rehabilitative role. Meanwhile, the continuing evolution in gender norms and a rise in the number of support cases for nonmarital children caused a shift in focus—from awards for wives or families to "child support." States also increasingly permitted family courts to handle "bastardy" cases in the same manner as support for marital children, which changed societal understandings and stereotypes about the courts' clientele.

The Return to "Civil" Support Enforcement

Social, economic, and legal developments coalesced by the early 1930s to partially undermine the attractiveness of treating nonsupport as a crime. Widespread unemployment during the Great Depression raised awareness that the harshness of criminal law might be unfair or counterproductive.[1] Women's increasing political and economic power prompted questions about whether severe sanctions were appropriate when husbands failed to support their wives.[2] Meanwhile, lawyers condemned state-level criminal procedure's "red tape" and "loopholes" for causing delays.[3] Compounding the pessimistic take on criminal enforcement in New York, an investigation into New York City's magistrate criminal court system (of which the domestic relations court remained part)

[1] "Domestic Court's Data Lays Strife to Lack of Work," *Brooklyn Daily Eagle*, Sept. 27, 1931, 4.

[2] Arthur Stringer, "It Is the Man Who Pays and Pays: Modern Woman Is Civilization's Gate-crasher, Receives More and Gives Less, Breaks Laws, and Depends on Sex-Charm to Evade Justice," *Hartford Courant*, Dec. 26, 1926, C5. Similar sentiments about wives as "gold diggers" prompted challenges to alimony law and common law marriage. Ariela R. Dubler, "In the Shadow of Marriage: Widows, Common Law Wives, and the Legal Construction of Marriage" (diss., Yale University, 2003), 158-59; Brian L. Donovan, "Alimony Panic, Gold Diggers, and the Cultural Foundations of Early Twentieth-century Marriage Reform in the United States," *Journal of Family History* 42, no. 2 (Apr. 2017): 111-27.

[3] "O'Brien Drafts Bill to Merge 2 Courts," *New York Times*, Mar. 24, 1933, 7 (litigants in domestic relations courts "were poor and could not afford the delays caused by the present red tape"). See also Note, "American Law Institute Drafts Code for Uniform Laws in the States," *New York State Bar Association Bulletin* 2, no. 2 (Feb. 1930): 112; Henry Epstein, "Reforms in Criminal Law: Statutes Enacted at the Special Session of the N.Y. Legislature," *New York State Bar Association Bulletin* 3, no. 8 (Oct. 1931): 451.

revealed widespread corruption.[4] Throughout these years, the National Probation Association (NPA), still headquartered in New York City, provided further impetus for reform by publicizing the benefits of the "family court" model, in which a single tribunal had jurisdiction over nonsupport, juvenile delinquency, and divorce—a combination not possible in a criminal court.[5]

By the late 1920s, the New York Charity Organization Society (NYCOS) and other social welfare leaders began to advocate handling nonsupport as a "social" rather than criminal problem. They hoped the change would facilitate rehabilitation and reduce "unnecessary stigma."[6] In order to accomplish this result, they lobbied the legislature to remove the domestic relations court from the magistrates courts.[7] The effort gained traction by 1930, with newspaper coverage reporting that NYCOS leaders believed that in courts overseeing nonsupport cases, "[t]he process should not be a criminal process, the court is not really a criminal court. It is a great social welfare agency."[8] The chief magistrate agreed with the proposal, explaining to a reporter that "[t]he family squabbles that appear in the family court to be straightened out are not criminal cases, but social service cases."[9] The leader of an organization focused on desertion, which had been created during the original push

[4] "Magistrates Urge Sweeping Reforms," *New York Times*, Dec. 30, 1931, 1; "Seabury Describes Abuses in Magistrates' Courts Through Politics and Proposes Reforms," *New York Herald Tribune*, Mar. 28, 1932, 8. There was dissatisfaction with inferior criminal courts in other locations, too. Alan Johnstone, Jr., "Suggestions for Reform in Criminal Procedure," *Annals of the American Academy of Political and Social Science* 125, no. 1 (May 1926): 94.

[5] On the NPA's family court proposal, see previous chapter.

[6] Committee on Criminal Courts of the Charity Organization Society of the City of New York, *Proposed Changes in Family Court*, Nov. 3, 1928, Box 110, Courts Committee Folder, CSSA Archives, Columbia University. See also "Magistrates Urge Sweeping Reforms," 1; "Charities Bureau Urges Passage of Family Court Bill," *Brooklyn Daily Eagle*, Mar. 7, 1932, 6.

[7] Jonah H. Goldstein, "The Family in Court," in *Year Book of the National Probation Association, 1932 and 1933*, ed. Charles L. Chute (New York: National Probation Association, 1933), 168.

[8] "Special Felony Court Is Urged by Charity Unit," *New York Herald Tribune*, Feb. 24, 1930, 4 (the title refers to a different proposal). For discussion of support by other charity groups, see "Separate Family Court Advocated by Board of Brooklyn Charities," *New York Herald Tribune*, Feb. 22, 1931, A5.

[9] "Corrigan Seeks Shift in Family Courts," *New York Times*, Sept. 25, 1930, 21. Other magistrates agreed. "Urges Single Court for Family Cases," *New York Times*, Nov. 4, 1932, 21.

to criminalize nonsupport, took a slightly different view. Though he agreed the domestic relations court should be removed from the magistrate court system, he thought it should be "a new socialized family court, with civil, criminal, and equity jurisdiction."[10]

In 1933, the New York City mayor ordered that a bill be drafted to create a "single tribunal with jurisdiction over all matters of a quasi-criminal nature, affecting parents and children." The envisioned court would not handle divorce and separation because "such matters were not criminal and secondly because they should be handled by a high elective judicial office," he explained. The mayor expected that the change would save a substantial amount of money through more efficient administration.[11]

The resultant bill that charity reformers proposed drew from the NPA family court model but departed in significant ways. The recommended court would have two parts: an adult division (still focused on nonsupport) and a children's division (for juvenile delinquency and some offenses committed against children).[12] According to press coverage, the only notable objection to the scheme came from the State Department of Correction, which was displeased by how the draft bill denied it oversight of the court's probation officers.[13] The governor signed the Domestic Relations Court Act, citing support by charity organizations and the bar and suggesting the probation aspect could be amended later. The new tribunal confusedly reversed the typical terminology; the overall

[10] Charles Zunser, "Court Reform Urged," *New York Times*, Mar. 25, 1930, 24.

[11] "O'Brien Drafts Bill to Merge 2 Courts," *New York Times*, Mar. 24, 1933, 7.

[12] Clarence M. Lewis, "New Domestic Relations Court of New York City," *New York State Bar Association Bulletin* 5, no. 10 (Dec. 1933): 484-90; *Annual Report of the Domestic Relations Court of the City of New York, 1933* (New York: Beacon Press, 1934), 33-36 and appendix. Charles Zunser, "The New Domestic Relations Court of New York: How Does it Work?," *Jewish Social Service Quarterly* 14, no. 4 (June 1938): 372, 375.

[13] "Argue on Creation of Domestic Court," *New York Times*, Apr. 27, 1933, 8.

institution was called the "Domestic Relations Court," with the nonsupport component titled the "Family Court" division.[14]

After passage, commenters explained that one goal of the Family Court division was to lessen the tribunal's reputation as only serving poor people. The statute removed the public charge requirement for eligibility, allowed judges to grant more generous awards ("a fair and reasonable sum"), and absorbed jurisdiction over nonpayment of alimony. As one proponent explained, the public charge requirement was "a relic of the old days." Still, if a poor person did not seek support, a charitable association or public official retained the right (drawn from the poor law) to file on the person's behalf to protect taxpayers. Obligors submitted both types of payments through a Support Bureau.[15]

The Domestic Relations Court Act also went further than simply transferring jurisdiction over nonsupport into a new tribunal; it included a dramatic change in the options available to enforce men's support duties. While retaining criminal nonsupport, the law additionally authorized judges to enter support orders following civil proceedings. Moreover, judges had the authority to transform matters initially designated as civil into criminal actions or vice versa whenever they believed doing so would be advantageous. State-level criminal procedure protections—such as the right to cross-examine witnesses—remained obligatory only when the court proceeded under the law denominated "criminal." This gave judges significant discretion. In the words of a New York lawyer reviewing the changes, the 1933 law sought "to create elasticity of procedure and punishment."[16]

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[14] "Signs Bill to Help Mortgage Holders," *New York Times*, Apr. 28, 1933, 5.

[15] Zunser, *New Domestic Relations Court*, 378; *Annual Report of the Domestic Relations Court, 1933*; Lewis, "New Domestic Relations Court," 491.

[16] Lewis, "New Domestic Relations Court," 484, 491.

Crucially, the court could use incarceration and probation under both the civil and criminal paths. If a person failed to comply with a civil support order, the court could "commit [him] to jail for a term not to exceed twelve months," in other words for contempt of court. Or, it could find a defendant "guilty of non-support" and "punish [him] by imprisonment in jail for not exceeding twelve months." Under both options, the court retained the discretion to release the person early on probation in furtherance of "the best interests of the family and the community."[17] This meant the court's contempt power and criminal sentencing power were virtually identical to each other and to previous practice. As one supporter trumpeted, the court could "deal with recalcitrant persons as heretofore."[18] Despite its literal retention of criminal jurisdiction, as well as a civil option modeled on the criminal approach, officials and observers identified the court as "civil." In the language of the court's first annual report: "The most outstanding change is the fundamental shift in the character of jurisdiction from criminal to civil." Adjustments to vocabulary added to the civil feel; for instance, "respondent" replaced "defendant."[19]

Proponents and court staff recognized and welcomed the strategic reinforcement of so-called civil law with retained criminal powers. In explanatory publicity materials, social welfare leaders who had helped draft the law cast their blending of civil and criminal components as "novel and ingenious." The legislation removed the family court from the criminal system and rendered its procedure "*almost* entirely a Civil One," a pamphlet explained. Yet "[w]hile the procedure in future will be chiefly civil," it continued,

> the Power to Proceed under Criminal Procedure is Retained as it must be—for, on last analysis, if a husband refuses to obey the orders of the court to support his wife,

[17] The court also had the power to hear certain criminal family conflicts (including domestic violence) *if* the parties were already before it for a nonsupport matter. *Annual Report of the Domestic Relations Court, 1933*, 33-36.

[18] Zunser, *New Domestic Relations Court*, 377-78.

[19] *Annual Report of the Domestic Relations Court, 1933*, 33-36 and appendix.

> the only effective way of dealing with him is to send him to jail. To impose a civil judgment upon him that is uncollectible is an empty gesture.[20]

A decade into the court's operation, one of its judges explained to employees that though the court was "deemed to be essentially a court of civil jurisdiction," it "savors of the criminal law."[21] In short, the new court design blended civil and criminal components in a manner far more explicit and strategic than any previous family tribunal had done. State involvement—primarily through probation oversight, centralized collection and disbursement of payments, and the threat or reality of incarceration—was now a key ingredient in civil support enforcement.

The first New York Court of Appeals case probing the civil-criminal blend two years later offered almost no discussion, deferring to the legislature's removal of such cases from the criminal court system as dispositive evidence of civil character. After acknowledging "there seemed to be some confusion" about whether certain proceedings under the Domestic Relations Court Act were civil or criminal, the court held: "We now say that these proceedings are no longer of a criminal nature as they have shifted to the civil side of the courts."[22]

New York's strategic melding of civil and criminal components became influential.[23] In 1943, the NPA praised New York City as having "among the most progressive" and "best nonsupport

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[20] Committee on Criminal Courts of the Charity Organization Society of the City of New York, *The New Domestic Relations Court Law: Some of Its Principal Features*, June 1, 1933, Box 114, Domestic Relations Folder, CSSA Archives, Columbia University.

[21] W. Bruce Cobb, *Functions and Procedures of the Domestic Relations Court: Inservice Training Course* (New York: Division of War Training, 1944), 2.

[22] In re Kane v. Necci, 198 N.E. 613 (N.Y. 1935) (involving stepparent liability for indigent children). Subsequent cases relied on *Kane* without providing deeper analysis. People v. Rogers, 248 A.D. 141 (Sup. Ct. App. Div. NY 1936). New York practice resources still cite *Kane* in explaining that jail terms for nonpayment of child support are of a "civil nature." Callaghan's Family Court Law & Practice NY, 1 N.Y. Fam. Ct. Law & Prac. § 6:4 (2017).

[23] For sample positive coverage, see "Successful Conciliation," *Montana Butte Standard*, Sept. 22, 1936, 4; "An Efficient Family Court," *Minneapolis Star*, Nov. 21, 1936, 12.

laws in the country."[24] Reflecting this view, a Miami family court judge speaking at an NPA conference suggested that "[t]he best thought seems to favor making such courts civil in nature" in order to "escape from the technicalities of the criminal courts." Civil contempt offered these courts speed and other procedural advantages, he observed, yet the courts should retain criminal powers to use when civil methods fail.[25] In 1949, the NPA credited and followed New York's approach when crafting a model nonsupport law.[26]

A Civil Alternative to Extradition

Though the relabeling of criminal nonsupport as civil solved some problems, a substantial weakness remained: how to efficiently handle desertion across state lines. Since criminal law remained on the books, extradition remained available. In practice, however, the cost undermined the utility. As the Miami family court judge observed in his 1942 NPA talk, the expense of pursuing "such a fugitive is frequently greater than the amount to be collected."[27] Similarly, the Brooklyn District Attorney estimated that it would cost $600,000 per year to extradite all deserting husbands, whereas the entire annual extradition budget was between $5,000 and $6,000. Extradition might be a complete waste, as there was no guarantee the men would then support their dependents.[28]

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[24] National Probation Association, *A Standard Juvenile Court Act, Suggested Draft, Prepared by a Committee of the National Probation Association* (New York: National Probation Association, 1943), 14, 28. It would be valuable for future historical studies to trace and compare other states' approaches in greater depth. Initial findings indicate that strategic fluidity between criminal law, civil law, and contempt was common but sometimes followed other patterns. E.g., Petition of Kelley, 197 N.E. 861 (Mass. 1935) (affirming finding of contempt in course of criminal prosecution for nonsupport).

[25] Walter H. Beckham, "One Court for Family Problems," in *Social Defenses Against Crimes, Proceedings of the Thirty-Sixth Annual Conference of the National Probation Association*, ed. Charles L. Chute (New York: National Probation Association, 1942), 80, 81-83.

[26] National Probation and Parole Association, *A Standard Juvenile Court Act* (New York: National Probation and Parole Association, 1949), 37-40.

[27] Beckham, "One Court for Family Problems," 86.

[28] Judith Crist, "Reciprocal Laws in All States Urged to Curb Wife Deserters," *New York Herald Tribune*, Sept. 26, 1948, A5; Katherine Blanck, "Woman A.D.A. Fights for Abandonment Law," *Brooklyn Daily Eagle*, June 5, 1941, 7.

Extradition was also legally complex. Questions arose about whether a man was a "fugitive from justice," as required for the Extradition Clause to apply, if he left his wife for a legitimate, temporary reason (such as looking for work) and only later decided not to return to her.[29] Finally, nonsupport cases became tied up in broader disputes about whether extradition was discretionary.[30]

In 1941, Grace Clyde Seaman, the Assistant District Attorney responsible for the Abandonment Bureau in Brooklyn, turned her attention to finding an alternative to extradition. She first proposed a federal criminal law, which she envisioned would be heard in children's divisions within federal courts.[31] After several years of publicizing this approach to no avail, Seaman and her colleagues developed a new idea: civil reciprocal laws enforced in family courts.[32] For a civil suit to be pursuable when litigants were in different states, the legislatures needed to expressly provide this jurisdiction to the family courts. Moreover, to be worthwhile, states needed to agree in advance that they would cooperate regardless of whether their own court had jurisdiction over the provider or the dependents. Passage of compatible reciprocal enforcement laws could achieve this goal.[33]

The New York legislature led the effort to create a reciprocal enforcement web when it passed such legislation in 1948. This early iteration was tacked onto the 1933 Domestic Relations Court Act but, recognizing that this approach made it difficult for other states to copy and thereby impeded reciprocity, the legislature repealed and replaced it with a standalone act the next year: the

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[29] "Texas Refusal on Extradition Termed Illegal," *Austin Statesman*, Feb. 24, 1925, 1.

[30] "Renew Extradition Row," *New York Times*, May 28, 1938, 3. On resistance to extradition on public policy grounds, see Christopher N. Lasch, "Rendition Resistance," *North Carolina Law Review* 92, no. 1 (Dec. 2013): 149; Eric W. Rise, "Crime, Comity and Civil Rights: The NAACP and the Extradition of Southern Black Fugitives," *American Journal of Legal History* 55, no. 1 (Jan. 2015): 119.

[31] "Mother's Plight Cited in Move for New Court," *Brooklyn Daily Eagle*, Feb. 15, 1944, 4.

[32] "Dewey Signs Bill to Nip Runaway Husbands," *Brooklyn Daily Eagle*, Apr. 8, 1948, 3.

[33] Crist, "Reciprocal Laws in All States."

Uniform Support of Dependents Law (USDL).[34] The USDL adopted core parts of the Domestic Relations Court Act, such as judicial discretion to award "a fair and reasonable sum," the involvement of a state attorney to represent the dependent, and oversight by probation officers. The innovative portion provided that the family court could now apply the law when petitioner, respondent, or both were in the state. Although the USDL did not carry over the Domestic Relations Court Act's option of transforming civil suits into criminal petitions (likely because experience showed reverting to criminal law was rarely necessary), it provided that a respondent who willfully failed to comply with a court order or probation should be punished in the same manner as for noncompliance in other cases. For many states, this included civil contempt imprisonment. Thus, the USDL maintained the probation surveillance and incarceration powers of earlier criminal nonsupport laws but within a civil framing. Moreover, the statute clarified it was "an additional or alternative civil remedy" that should not "affect or impair any other remedy, civil or criminal."[35]

New York's civil reciprocal law received nationwide attention, including from the Council of State Governments, and was soon adopted in other states.[36] As more states joined, the law gained momentum with the promise of wider reciprocity. In contrast to the options that predated criminalization, the USDL provided a strong and procedurally clear mechanism for interstate enforcement.[37]

Meanwhile, the Commissioners on Uniform State Laws had begun reevaluating the Uniform Act of 1910, prompted, by their own account, by an article published in *Cosmopolitan* magazine in

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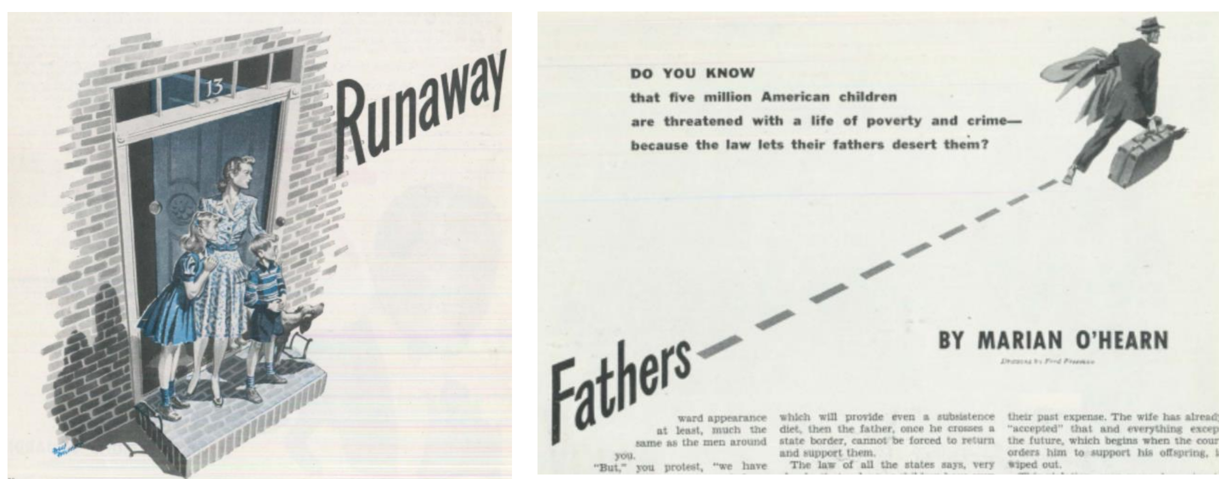
[34] Harold V. McCoy, "Uniform Support of Dependents Law," *St. John's Law Review* 24, no. 1 (Nov. 1949): 162, 163-65.

[35] N.Y. 1949 § 807. See also Vincenza v. Vincenza, 197 Misc. 1027 (N.Y. Dom. Rel. Ct. 1950) (discussing relationship between 1933 Domestic Relations Court Act and USDL).

[36] Clarence Woodbury, "What to Do about Runaway Husbands," *Minneapolis Star*, Aug. 22, 1949, 12.

[37] See generally McCoy, "Uniform Support of Dependents Law."

1942. The Commissioners recognized that no state had enacted the Uniform Act for decades and that adopting states had modified it beyond the point of it actually providing uniformity. Thus, the Commissioners considered how to revise the law to fit new circumstances and to settle lingering questions about applicability to dependents not likely to become public charges. They suggested "the better view" was that the criminal statutes should "supplement civil remedies against the husband or father."[38]


Runaway Fathers

DO YOU KNOW
that five million American children
are threatened with a life of poverty and crime—
because the law lets their fathers desert them?

BY MARIAN O'HEARN

ward appearance at least, much the same as the men around you.
"But," you protest, "we have

which will provide even a subsistence diet, then the father, once he crosses a state border, cannot be forced to return and support them.
The law of all the states says, very

their past expense. The wife has already "accepted" that and everything except the future, which begins when the court orders him to support his offspring, is wiped out.

Figure 19: Images from the *Cosmopolitan* article that inspired the Commissioners on Uniform State Laws to revisit the desertion issue[39]

The Commissioners' discussions in the following years reveal that they still conceived of the solution to interstate enforcement as coming from criminal law. They were deeply troubled, however, by the application of criminal law to mid-century families. While their 1910 predecessors envisioned that extradition would bring a husband back to a home where he previously lived with his wife and possibly lead to a reconciliation, the Commissioners of the 1940s thought extradition

[38] On the original desertion law drafted by this group, see Chapter 4. See also Albert J. Harno, "Report of Uniform Torts and Criminal Law Acts Section on Uniform Desertion and Non-Support Act," in *Handbook of the National Conference of Commissioners on Uniform State Laws and Proceedings of the Fifty-Second Annual Conference* (Baltimore: Lord Baltimore Press, 1942), 234-35.

[39] Marian O'Hearn, "Runaway Fathers," *Cosmopolitan* 112 (Jan. 1942): 30-31, 72.

meant removing a man from a good job and sending him to a state where he perhaps never lived. The wife could, one discussant worried, "go to any of the forty-seven states that she chooses, and make that man a criminal in the state of her choice." Aside from providing too much power to the wife, they thought this scenario might not pass constitutional muster. Furthermore, once in the wife's state, the man would be imprisoned at public expense, helping no one. But if the Commissioners instead created a framework in which a man was prosecuted wherever he was located, that setup incentivized him to forum shop for the state with the weakest law. Unable to identify a clear path forward, they cycled through several drafts.[40]

By their 1949 meeting, the Commissioners had learned about the USDL, which had already been passed in twelve states, raising their interest in a law that included civil enforcement components, too. In 1950, the Commissioners released the Uniform Reciprocal Enforcement of Support Act (URESA). URESA contained both criminal and civil machinery to facilitate enforcement of substantive laws already on the books in adopting states (in contrast to the USDL, which included both substantive law and reciprocity).

The Criminal Enforcement section of URESA was brief and focused on easing extradition by outlining the requirements and procedures. The most innovative provision permitted extradition of a person who was not a fugitive from justice, thus extending extradition to more scenarios than required under the Constitution's Extradition Clause and requiring proof on fewer points.[41] As the most prominent promoter of URESA later explained, the drafters retained the criminal approach

[40] National Conference of Commissioners on Uniform State Laws, *Proceedings in Committee of the Whole: Uniform Desertion and Non-Support Act* (1948).

[41] National Conference of Commissioners on Uniform State Laws, *Proceedings in Committee of the Whole: Model Reciprocal Non-Support Act and Uniform Non-Support Act* (1949); National Conference of Commissioners on Uniform State Laws, *Proceedings of the Committee as a Whole: Uniform Reciprocal Enforcement of Support Act* (1950).

because they were uncertain whether civil suits would cover all situations, and they anticipated that "the *threat* of extradition might be a powerful weapon in the case of shiftless and slippery obligors."[42]

URESA's Civil Enforcement portion was far lengthier, covering complex choice of law issues and detailed procedural prescriptions. The URESA framework imposed duties on both initiating and responding states to exchange paperwork, hold appropriate hearings, and accept, track, and transmit payment. The court with jurisdiction over the obligor could require the person to make regular payments to a clerk or probation department and to report to the same regularly. URESA also allowed states or localities to pursue reimbursement of expenditures made on behalf of a dependent. Punishment for noncompliance followed ordinary rules for contempt of court, which could include incarceration.[43]

Forty-eight states and several U.S. territories adopted either URESA or USDL (which were interchangeable for purposes of states being able to cooperate with each other) by 1955, greatly boosting recovery of support under civil law approaches.[44] Civil law now seemed clearly superior to criminal in most situations. A representative newspaper article summed up the benefits of the civil reciprocal regime: "No criminal action, no extradition, no loss of job."[45] Several cities reported

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[42] William J. Brockelbank, *Interstate Enforcement of Family Support (The Runaway Pappy Act)* (New York: Bobbs-Merrill Co., 1960), 15, 21.

[43] Commissioners on Uniform State Laws, *Uniform Reciprocal Enforcement of Support Act*.

[44] N.Y. Congress, Joint Legislative Committee on Interstate Cooperation, *Report of the Joint Legislative Committee on Interstate Cooperation*, 1955, leg. doc. 63, 281. Although the procedures did not always work smoothly, state officials began holding annual meetings to work through problems and draft amendments. *Id.*, 286-98.

[45] James Clayton, "Absent Fathers Court Headache," *Washington Post*, Nov. 4, 1956, D16.

upturns in the number of cases and amount collected.[46] New York City recorded a surge, attributed to the reciprocal laws, from $473,468 in 1953 to $747,346 in 1954.[47]

Heightened collections helped justify the costs associated with running the civil reciprocal system. The Assistant U.S. Attorney responsible for these matters for D.C. expected that URESA would permit him to handle around 90 percent of nonsupport cases as more "efficient" civil matters. Though he estimated the larger caseload would require ten people, he reasoned that "the cost of staff to handle the cases might be balanced" by reducing welfare rolls.[48] In this way, the public purpose of support enforcement buttressed the retention of prosecutorial involvement within a so-called civil scheme.[49] Aiding the prosecutorial staff, some courts repurposed probation officers as filers of contempt petitions.[50]

After all states had passed reciprocal laws, an account celebrated how cooperation under civil law "left runaway fathers with no place to hide," yet offered the option of jail when needed. "While desertion is a crime in every State, the machinery for extraditing and trying a runaway father on criminal charges is cumbersome and rarely invoked," the article explained. "The great advantage of the new system is that it operates under civil, rather than criminal, procedures."[51] Similarly, a family law expert at Columbia Law School observed that the "launch" of interstate enforcement

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[46] N.Y. Congress, Joint Legislative Committee, *Report of the Joint Legislative Committee*, 282-85.

[47] *Id.*, 281-82.

[48] Clayton, "Absent Fathers Court Headache," 238.

[49] Newspaper coverage in some states reported that URESA assigned responsibility for administering the law to state attorneys without a commensurate increase in resources. See Percy Hamilton, "'URESA' Ends Refuge for Runaway Fathers," *Pensacola News Journal*, Apr. 1, 1962, 36.

[50] For evidence of this role, see "Fathers Cited for Contempt," *Decatur (IL) Herald*, Aug. 8, 1947, 3; Furtado v. Furtado, 402 N.E. 2d 1024, 1033 (Mass. 1980) (dismissing defendant's argument that probation officer's role in filing contempt "complaint" for nonsupport constituted unauthorized practice of law).

[51] Louis Cassels, "Running Fathers Can't Hide Now," *Los Angeles Times*, Nov. 6, 1957, A2.

had, by 1953, "already made the felony proceeding (abandonment) virtually obsolete."[52] These developments likely help explain the turn to the more civil-sounding terminology "child support," which entered the lexicon in 1939, grew dramatically in the 1950s, and surpassed "nonsupport" by around 1960.[53]

parade

Afraid to go back home and "face the music," Mr. A (seated) tells his story to Judge Libby E. Sachar (right) at a private hearing. Standing beside . . . him, PARADE'S Karl Kohrs listens.

A net to catch Runaway Dads!

A tough new law makes them support their families, but gives them a break, too . . . !

THE LAW is catching up with runaway husbands. Until last year, any man fed up with supporting his wife and kids could shrug off the whole business.

All he had to do was pack a suitcase and move to another state.

So long as he stayed there, only a criminal indictment and extradition could bring him home. That is slow, clumsy, and expensive. It

stand for "Uniform Support of Dependents Law." This neat bit of legislation should eventually end a situation which American courts have branded a national disgrace.

Literally thousands of husbands have fled to other states. Many of them were outright deserters. But others have fled from unbearable family situations. (Some husbands have become fugitives and common criminals in the eyes of the law because they refused to remain

ginia, Puerto Rico and the Virgin Islands.

To see how the USDL works, I recently sat in on several desertion hearings, through the joint cooperation of the husbands and wives involved and of two judges: Dudley F. Sicher of the Domestic Relations Court in New York City, and Libby E. Sachar (in picture above), of the Domestic Relations Court in Elizabeth, N. J.

Always Held in Private

Figure 20: Photograph and article about court hearings to enforce support obligations[54]

A series of legal attacks on USDL's and URESA's intermingling of civil and criminal components failed. In the first USDL case to reach a state supreme court, the Kentucky Supreme Court upheld the propriety of using public funds to pay prosecutors to represent wives in "private

[52] Letter from Walter Gellhorn to J. Howard Rossbach, Apr. 23, 1953, Box 19, Walter Gellhorn Papers, Rare Book and Manuscript Library, Columbia University.

[53] Black's Law Dictionary (10th ed. 2014) identifies 1939 as the earliest "child support" usage, though a few earlier examples were identified. For example, see "'Child-Support' Law Interpreted," *San Francisco Chronicle*, May 3, 1913, 20. On the use of this terminology in later decades, see Google Ngrams on file with author.

[54] Karl Kohrs, "A Net to Catch Runaway Dads!" *Parade*, Nov. 5, 1950 (this image is from the reprint in the *Oakland Tribune*).

lawsuits" for civil support because it saw "no apparent reason" to distinguish these suits from analogous criminal cases. Both types of proceedings, the court reasoned, shared the same objective: "to coerce the husband or father to comply with an obligation which otherwise would fall on the public generally."[55] In other words, the public purpose justified reliance on criminal-style personnel, even when the proceedings were "civil." After a series of legislative refinements and court cases, states reached uniformity in providing the assistance of a state attorney "closely akin to the prosecuting attorney," regardless of whether the beneficiary parent and child received public assistance.[56] Judges justified this result on the basis that "[t]he collection of child support ultimately benefits the State," even when it is disbursed to a private party.[57]

Despite recognizing parallels between the civil and criminal suits, courts hearing USDL and URESA appeals relied on the civil label to dismiss men's procedural objections. Judges denied claims that defendants had constitutional rights to jury trials and to confront witnesses against them.[58] In 1956, the New York Court of Appeals characterized reciprocal support statutes as "quasi-criminal in nature" but held criminal Due Process inapplicable on the basis that the proceedings were held in "civil court" and did not apply fines or penalties (instead relying on contempt). The U.S. Supreme Court summarily dismissed the case "for want of a substantial federal question."[59]

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[55] Duncan v. Smith, 262 S.W.2d 373, 377 (Ky. 1953).

[56] Arkansas Office of Child Support Enforcement v. Terry, 985 S.W.2d 711, 714-17 (Ark. 1999) (As a technical matter, the custodial parent assigns her rights to the state agency, even though the collected money "will ultimately pass from the State" to her.).

[57] *Terry*, 985 S.W. at 716. See also Haney v. Oklahoma, 850 P.2d 1087, 1091 (Okla. 1993) ("the State has a pecuniary interest in child-support enforcement regardless of whether or not the custodial parent is [a welfare] recipient").

[58] Brockelbank, *Interstate Enforcement of Family Support*, 25-26 (noting lawyers' confusion regarding the criminal versus civil nature of URESA and discussing failed legal challenges). See also R. D. Hursh, Annotation, "Construction and Application of State Statutes Providing for Reciprocal Enforcement of Duty to Support Dependents," *American Law Reports 2d* 42 (1955): 768. The civil character of URESA suits also meant subsequent criminal actions were not res judicata. State v. Greenberg, 109 A.2d 669, 673 (N.J. 1954).

[59] Landes v. Landes, 135 N.E.2d 562 (N.Y. 1956), *cert. denied*, 352 U.S. 948 (1956). Other challenges to denial of criminal procedures were dismissed because relevant protections had not yet been recognized or incorporated against the states.

Thus, under the reciprocal statutes, defendants faced state personnel and powers typical of the criminal context, but without criminal procedure protections.

While reciprocal statutes improved civil enforcement, observers recognized value in maintaining criminal law. The most prominent group to express this view was the American Law Institute, which met beginning in 1956 to draft the Model Penal Code (MPC), with the goal of standardizing and modernizing state laws.[60] In an outline of the issues the drafters faced, they included: "Is it justifiable to preserve criminal non-support, despite general belief that civil (and social service-type) proceedings are preferable, in order to keep the prosecutors in the business as legal aid for indigent wives?"[61] While the question oversimplified the purpose and consequences of criminal nonsupport laws, it captured a key component. Criminal law brought state-employee assistance to wives who could not afford lawyers.

The MPC drafters concluded that "ideally" nonsupport would be pursued as a civil matter but that there were "important reasons" not to abandon the criminal option. First, criminal law involved prosecutors in the process. "While this is not a desirable role for prosecutors in commercial transactions," they acknowledged, "it may be very important" for indigent dependents living far from legal aid offices. Second, criminal law provided extradition, although URESA made this less necessary. And finally, criminal law contributed deterrence. They speculated that the existence of

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E.g., Smith v. Smith, 270 P.2d 613, 621 (Cal. Dist. Ct. App. 1954) (dismissing Fifth Amendment challenges to URESA proceedings).

[60] See generally Paul H. Robinson and Markus D. Dubber, "The American Penal Code: A Brief History," *New Criminal Law Review* 10, no. 3 (Summer 2007): 319-41.

[61] American Law Institute, "Memorandum to Council," in *Model Penal Code Council Draft 8, Article 207: Sexual Offenses and Offenses Against the Family* (Philadelphia: American Law Institute, 1956), ix.

criminal law could both sway individual men's decisions and "reinforce the moral disapproval" attached to nonsupport.[62]

The blended civil-criminal approach was further bolstered by federal law. Congress had long resisted reformers' attempts to draw the federal government into family support enforcement and had even caused D.C. to be the last jurisdiction to adopt a reciprocal law.[63] Yet in the 1950s, Congress slowly began cooperating in the development of a complex federal-state partnership to collect child support. Three elements are most relevant in this decades-long collaboration. First, the federal government introduced or helped spread novel techniques to coerce enforcement, such as revoking professional, occupational, recreational, and drivers' licenses; denying passport applications; and intercepting federal tax refunds.[64] Second, Congress added a federal criminal law in 1992, which applies when a parent fails to pay an amount greater than $5,000 over state lines for a year.[65] And third, Congress bolstered interstate enforcement by changing federal law and by using its spending power to incentivize states to adopt the Uniform Interstate Family Support Act (UIFSA), a modified version of URESA.[66] Overall, federalization made support enforcement more frequent and effective, in large part by refining and enhancing the blended civil-criminal machinery innovated by

[62] American Law Institute, "Comments to Section 207.16 – Non-Support," in *Model Penal Code*, 255-62.

[63] Cassels, "Running Fathers Can't Hide."

[64] Most scholars date major federal involvement to the 1970s. For a particularly helpful overview, see Ann Laquer Estin, "Sharing Governance: Family Law in Congress and the States," *Cornell Journal of Law and Public Policy* 18, no. 2 (Spring 2009): 267. For an account that begins earlier, see Daniel L. Hatcher, "Child Support Harming Children: Subordinating the Best Interests of Children to the Fiscal Interests of the State," *Wake Forest Law Review* 42, no. 4 (Winter 2007): 1041.

[65] Kathleen A. Burdette, "Making Parents Pay: Interstate Child Support Enforcement after United States v. Lopez," *University of Pennsylvania Law Review* 144, no. 4 (Apr. 1996): 1469 (also discussing ongoing difficulties in interstate enforcement).

[66] See generally Margaret Campbell Haynes and Susan Friedman Paikin, "'Reconciling' FFCCSOA and UIFSA," *Family Law Quarterly* 49, no. 2 (Summer 2015): 331-57.

states.[67] Ironically, the federal involvement reformers sought unsuccessfully for so many years now prevents the meaningful experimentation at the local and state levels that identified the practices federal law enshrined.

The Shift to "Civil" Family Courts

As states refined their civil support options, rendering criminal law more a background threat, family courts appeared primarily or exclusively "civil." Some locations broadened or replaced existing family courts to include civil nonsupport matters through legislative change or judicial interpretation,[68] while others included these laws in creating specialized courts for the first time.[69] Where constitutional requirements made combining civil and criminal jurisdiction difficult, lawmakers now included only the civil cases.[70] It was unnecessary to retain criminal nonsupport cases in reformed family courts, one expert reasoned, because "the use of the criminal law approach is all but disappearing." And, in the new civil-dominant scheme, it would be beneficial to exclude criminal matters. "We want to do our best to keep out the penal law atmosphere," the expert explained, "with all the formal trappings of jury trials and the rest."[71]

Another influential shift was the transfer of divorce litigation. Attention to the treatment of divorce overflowed in the wake of a post-WWII divorce wave, which merged with ongoing concerns

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[67] On the federal government's current role in child support enforcement, see Elizabeth G. Patterson, "Civil Contempt and the Indigent Child Support Obligor: The Silent Return of Debtor's Prison," *Cornell Journal of Law and Public Policy* 18, no. 1 (Fall 2008): 98-101.

[68] Freeman v. Freeman, 76 So.2d 414 (La. 1954) (construing court's jurisdiction over "all cases of desertion or non-support of children" to apply to "civil" cases newly brought under URESA).

[69] As of 1950, domestic relations courts existed in around thirty large cities and statewide in a few jurisdictions, leaving many opportunities to open different types of tribunals. Theodore Fadlo Boushy, "The Historical Development of the Domestic Relations Court" (PhD diss., University of Oklahoma, 1950), 20.

[70] F. H. Gregor, "Domestic Relations Court," *Texas Bar Journal* 15, no. 3 (Mar. 1952): 101.

[71] Gellhorn to Rossbach.

about the fraud and collusion used to satisfy fault grounds.[72] Pointing to juvenile courts (still more common and uncontroversial than adult-focused domestic relations courts) or revisiting the NPA's 1917 proposal for unified family courts, legal leaders proposed family courts with divorce jurisdiction.[73] Though continuing to encounter pushback,[74] this time they met with more success in moving divorce to family courts.[75] By 1960, divorce almost fully eclipsed criminal nonsupport as the primary motivation for promoting family courts.[76]

Meanwhile, probation officers slowly disappeared from marital litigation. Some latecomers to probation never applied the method to family cases, while others phased it out for budgetary reasons.[77] Probation officer functions were curtailed, with the rehabilitative goals and methods eliminated. A 1953 memorandum prepared by a social work leader, who was serving as director of a juvenile delinquency project for the U.S. Children's Bureau, captures some of the reasoning behind these changes:

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[72] J. Herbie DiFonzo, *Beneath the Fault Line: The Popular and Legal Culture of Divorce in Twentieth-Century America* (Charlottesville: University Press of Virginia, 1997), 112-37; Lynne Carol Halem, *Divorce Reform: Changing Legal and Social Perspectives* (New York: Free Press, 1980), 220; Katherine L. Caldwell, "Not Ozzie and Harriet: Postwar Divorce and the American Liberal Welfare State," *Law & Social Inquiry* 23, no. 1 (Winter 1998): 1, 27-30.

[73] For a juvenile-court-inspired example, see Quentin Johnstone, "Family Courts," *University of Kansas City Law Review* 22, no. 1 (1953-1954): 18. For an NPA-influenced example, see Charles L. Chute, "Divorce and the Family Court," *Law and Contemporary Problems* 18, no. 1 (Winter 1953): 49.

[74] Caldwell, "Not Ozzie and Harriet," 31-37; Brigitte M. Bodenheimer, "The Utah Marriage Counseling Experiment: An Account of Changes in Divorce Law and Procedure," *Utah Law Review* 7, no. 4 (Fall 1961): 443.

[75] Herndon Inge, Jr., "Domestic Relations Court in Mobile County," *Alabama Law Review* 9, no. 1 (Fall 1956): 26 (describing domestic relations court founded primarily to handle divorce).

[76] "Family Courts: A Symposium," *Tennessee Law Review* 27, no. 3 (Spring 1960): 357 (reporting on first meeting of A.B.A.'s new Family Law Section, during which discussants supported creation of family courts to handle divorce, with no mention of criminal nonsupport). Nine states never combined divorce and other domestic relations matters into a unified court; the continued separation causes racial and class differences in the resolution of disputes. Dale Margolin Cecka, "Inequity in Private Child Custody Litigation," *CUNY Law Review* 20, no. 1 (2016): 203, 211-12.

[77] For example, Kentucky lacked a probation department responsible for nonsupport cases, prompting a defendant to argue that the USDL could not be applied to him because of its apparent reliance on probation enforcement. The Kentucky Court held that the lower court could direct a clerk to perform necessary probation functions. *Duncan*, 262 S.W.2d at 376.

> It appears to me that non-support is a civil action. How can a person be placed on probation as the result of a civil action? … [P]robation officers are now used primarily to insure payment. This is a great waste of money and skill. We could use a less expensive and less qualified type of personnel to do this work….[78]

Following this logic, support collection and disbursement were increasingly handled by court bureaucrats who only oversaw payments, rather than providing rehabilitative treatment.[79]

In 1959, the NPA endorsed flexibility in family court employee titles, apparently not perceiving this move as a threat to probation employment or else joining a foregone conclusion. In its modified model Family Court Act, the NPA explained that it used the vague word "assistants," rather than "probation officers," to "permit[] each court to adopt a title that seems most appropriate."[80] The result was that court positions were filled by officials who did not have training or professional identities as probation officers.[81] Some probation tasks fell by the wayside, and others were outsourced to other professionals. Family courts could refer litigants to therapists, for instance.[82] And lawyers jumped in to fill other gaps, such as representing children's interests in divorce and custody disputes in the much-troubled role of *guardian ad litem*.[83] Though some locations

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[78] Letter from Bertram M. Beck to Allen T. Klots, July 31, 1953, Box 19, Walter Gellhorn Papers, Rare Book and Manuscript Library, Columbia University.

[79] J. Leonard Hornstein, "Interrelated Roles in Child Support Enforcement," *Juvenile & Family Court Journal* 36, no. 3 (Fall 1985): 111, 113 (main task of "probation officers" or "intake specialists" in child support cases is to oversee collection of support money).

[80] Committee on the Standard Family Court Act of the National Probation and Parole Association, "Standard Family Court Act," *National Probation & Parole Association Journal* 5, no. 2 (Apr. 1959): 99, 113. The modern organization erased its involvement in family courts from its institutional memory. "History," National Council on Crime & Delinquency, http://www.nccdglobal.org/about-us/history.

[81] Elizabeth MacDowell, "Reimagining Access to Justice in the Poor People's Courts," *Georgetown Journal on Poverty Law & Policy* 22, no. 3 (Spring 2015): 495-96 (describing modern family court staff and arguing that their discretion leaves litigants "vulnerable to the infiltration of bias").

[82] See "Family Courts Urged," *Boston Globe*, June 29, 1967, 10.

[83] This was not a new role, but institutional changes and the growing divorce rate made it more significant. See generally Dale Margolin Cecka, "Improper Delegation of Judicial Authority in Child Custody Cases: Finally Overturned,"

retain probation officers for criminal nonsupport matters to this day, these cases are such a tiny portion of litigation that probation is hardly noticeable in modern family courts.[84]

Family Courts Today

Today family courts hear more than five million cases per year, most commonly including child support, child custody, and divorce. These suits comprise over ten percent of state court dockets, which means that family-related litigation is many Americans' most direct and important contact with the legal system.[85] Despite family courts' obvious importance, scholars, practitioners, and litigants have long found that these tribunals suffer from poor resources, meager access to counsel, low-status judges, and inadequate procedures.[86] There is also widespread agreement that modern child support enforcement is flawed. Discussants argue that support orders are unrealistic and even harmful for many low-income and minority families. Once parents fall behind, interest and fees can make it nearly impossible for them to comply.[87] In many states, child support debtors are

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University of Richmond Law Review 52, no. 1 (2017): 181; Amy Halbrook, "Custody: Kids, Counsel and the Constitution," *Duke Journal of Constitutional Law & Public Policy* 12, no. 2 (Spring 2017): 179.

[84] Virginia's Judicial System, "The Juvenile and Domestic Relations District Court," (PDF file, http://www.courts.state.va.us/courts/jdr/jdrinfo.pdf), 2, 9.

[85] Robert C. LaFountain et al., National Center for State Courts, *Examining the Work of State Courts: An Overview of 2015 State Court Caseloads* (2016), http://www.courtstatistics.org/~/media/microsites/files/csp/ewsc%202015.ashx, 3, 10 (statistic excludes traffic cases). Around 30 percent of domestic relations matters are support suits or closely related paternity cases. *Id.* at 10. On variations in modern family court jurisdiction, see Barbara A. Babb, "Reevaluating Where We Stand: A Comprehensive Survey of America's Family Justice Systems," *Family Court Review* 46, no. 2 (Apr. 2008): 230.

[86] Jane C. Murphy and Jana B. Singer, *Divorced from Reality: Rethinking Family Dispute Resolution* (New York: New York University Press, 2015); Deborah Chase & Peggy Fulton Hora, "The Best Seat in the House: The Court Assignment and Judicial Satisfaction," *Family Court Review* 47, no. 2 (Apr. 2009): 209, 212-13.

[87] Leslie Joan Harris, "Questioning Child Support Enforcement Policy for Poor Families," *Family Law Quarterly* 45, no. 2 (Summer 2011): 157; Tonya L. Brito, David J. Pate, and Jia-Hui Stefanie Wong, "'I Do for My Kids': Negotiating Race and Racial Inequality in Family Court," *Fordham Law Review* 83, no. 6 (May 2015): 3027; Tonya L. Brito, "Fathers Behind Bars: Rethinking Child Support Policy Toward Low-Income Noncustodial Fathers and Their Families," *Journal of Gender, Race, and Justice* 15, no. 3 (Spring 2012): 669-71.

subject to civil contempt incarceration, and many languish in jail for up to a year, without any of the protections afforded in criminal cases. Though no precise data is available, there are estimates that thousands of men suffer this consequence each year.[88] All states and the federal government also maintain full-fledged criminal nonsupport laws. These laws provide a criminal backbone—deterrence, stigma, extradition, and the possibility of criminal conviction—to the purported civil scheme.[89]

Conclusion

For nearly two centuries, judges, legislators, and other interested parties have sought to maintain the family as a privatized site of dependency. In pursuit of this goal, lawmakers modernized and broadened the usefulness of an array of options for wives and children to secure support, including the doctrine of necessaries, separation agreements, separate maintenance orders, alimony, poor law, and criminal law. They also looked beyond legal doctrine, to the courts and personnel tasked with enforcing these laws. While the remedies and procedures that lawmakers crafted surely left many dependents without adequate support, the overall trajectory demonstrates sustained effort and innovation. In the face of perpetually evolving social, economic, and legal developments,

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[88] The Supreme Court has approved of this approach, taking for granted that such incarceration is "civil." Turner v. Rogers, 564 U.S. 431 (2011). See also Elizabeth Cozzolino, "Public Assistance, Relationship Context, and Jail for Child Support Debt," *Socius* 4 (2018): 1, 2, 13; Elizabeth G. Patterson, "Turner in the Trenches: A Study of How Turner v. Rogers Affected Child Support Contempt Proceedings," *Georgetown Journal on Poverty Law & Policy* 25, no. 1 (Fall 2017): 80 (around fifteen percent of South Carolina's jail population was being held for child support contempt). See also Lynne Haney, "Incarcerated Fatherhood: The Entanglements of Child Support Debt and Mass Imprisonment," *American Journal of Sociology* 124, no. 1 (July 2018): 28.

[89] For a list of current statutes, see "Criminal Nonsupport and Child Support," National Conference of State Legislatures, http://www.ncsl.org/research/human-services/criminal-nonsupport-and-child-support.aspx. See also Teresa A. Myers, National Conference of State Legislatures, *Courts Uphold Criminal Penalties for Failure to Pay Child Support* (2008), http://www.ncsl.org/research/human-services/archive-case-in-brief-courts-uphold-criminal-pen.aspx; Steven Cook and Jennifer Noyes, *The Use of Civil Contempt and Criminal Nonsupport as Child Enforcement Tools: A Report on Local Perspectives and the Availability of Data* (May 2011), https://www.irp.wisc.edu/wp/wp-content/uploads/2018/06/Task7A-CS2009-11-Report-Cook-Noyes.pdf, 12-13.

lawmakers and other stakeholders sought to reform marital dissolution laws and pertinent institutions in order to balance the interests of wives, husbands, creditors, and taxpayers.

Appendix

The following are representative notices husbands posted in newspapers to avoid liability for wives' purchases. Sometimes these posts were mixed in sections advertising goods for sale and other times with legal notices or standing alone wherever the editor found space. That these notices exist demonstrates that many husbands understood their wives could make purchases on their credit in the normal course. Searches of newspaper databases indicate significant geographic variation in how frequently husbands used this method. Most examples identified were in California and Kansas newspapers, and there were far more in the Midwest and West generally than in other regions. The owners of boarding houses and ships posted similar notices to avoid liability for purchases made by boarders or crew.

Notice to the Public.

Notice is hereby given to the public that I will not be responsible for any debts contracted by my wife, Mrs. Lizzie Owens. She has deserted me and left her home without provocation and I will in no wise be responsible for any debts she may contract.

H. R. OWEN.

Fort Scott (KS) Weekly Monitor, July 9, 1885, 8.

Notice to the Public.

From and after this date I will not be responsible for any debts whatever, contracted by my wife, Mrs. L. Pettit, she having left my bed and board. And further I notify the public that she has no authority to collect any debt or debts due to me, or to dispose of any of my stock in trade.

B. PETTIT.

BUTTE, July 3, 1888. tf

Butte (MT) Daily Post, July 3, 1888, 1.

Notice.

I hereby notify the public that frem this day on I will not be responsible for any bills or debts contracted by my wife, Mrs. Lena Freklek.

FRED FREKLEK.

Leavenworth (KS) Times, June 14, 1892, 4.

Notice

To whom it may concern:

I will not be held responsible for any debts, whatever, contracted by my wife, Mrs. Cora Leininger.

31) DANIEL LEININGER.

Wellington (OH) Enterprise, Aug. 2, 1893, 8.

NOTICE—To all whom it may concern: I will not be responsible for any debts contracted by my wife, she having left my home without any just cause.

(Signed) B. E. FRY.

July 7, 1899.

Oakland (CA) Tribune, July 13, 1899, 7.

LEGAL NOTICES.

I WILL NOT BE RESPONSIBLE FOR ANY debts contracted by my wife, Sabina Cunningham, on and after this date.

JAMES CUNNINGHAM.

February 19th, 1900.

I WILL NOT BE RESPONSIBLE FOR ANY debts contracted by my wife, Mrs. Minnie Hertz, on and after this date, Feb. 19.

SAMUEL HERTZ.

San Francisco Examiner, Feb. 21, 1900, 12.

Bibliography

Archival Collections

Barlow, Peter Townsend. Papers. Schlesinger Library, Radcliffe Institute, Harvard University, Cambridge.

Bolin, Jane M. Papers. Schomburg Center for Research in Black Culture, Manuscripts, Archives, and Rare Books Division, New York.

Chute, Charles. Papers. Columbia Rare Book & Manuscript Library, New York.

Community Service Society Archives. Columbia Rare Book & Manuscript Library, New York.

Dunham, Lawrence B. Papers. Rockefeller Archive Center, Sleepy Hollow, New York.

Folks, Homer. Papers. Columbia Rare Book & Manuscript Library, New York.

Gellhorn, Walter. Papers. Columbia Rare Book & Manuscript Library, New York.

Lacy, Arthur J. Papers. Bentley Historical Library, University of Michigan, Ann Arbor, Michigan.

Panken, Jacob. Papers. Wisconsin Historical Society, Division of Library, Archives and Museum Collections, Madison.

Polier, Justine Wise. Papers. Schlesinger Library, Radcliffe Institute, Harvard University, Cambridge.

Potter, Frances Boardman Squire. Papers. Schlesinger Library, Radcliffe Institute, Harvard University, Cambridge.

Reynolds, Bertha. Papers. Sophia Smith Collection, Smith College, Northampton, Massachusetts.

Ricks, James Hoge. Papers. Special Collections, University of Virginia Law Library, Charlottesville, Virginia.

Government Documents

Annual Report of the Domestic Relations Court of the City of New York, 1933. New York: Beacon Press, 1934.

Department of Commerce and Labor Bureau of the Census. "Marriage and Divorce, 1867-1906." Washington, DC: Government Printing Office, 1909.

First Annual Report of the Juvenile and Domestic Relations Court of the City of Richmond, Virginia, 1916. Richmond: Wm. Ellis Jones' Sons, Inc., 1917.

N.Y. Congress. Joint Legislative Committee on Interstate Cooperation. *Report of the Joint Legislative Committee on Interstate Cooperation*. 1955. Leg. Doc. 63.

New York Board of City Magistrates. *Annual Report of the Board of City Magistrates of the City of New York (First Division) for the Year Ending December 31, 1901*. New York: J. W. Pratt Company, 1902.

———. *Annual Report of the Board of City Magistrates of the City of New York (First Division) for the Year Ending December 31, 1902*. New York: J. W. Pratt Company, 1903.

———. *Annual Report of the Board of City Magistrates of the City of New York (First Division) for the Year Ending December 31, 1910*. New York: J. W. Pratt Company, 1911.

New York State Probation Commission. *First Report of the State Probation Commission for the Six Months Ending December 31, 1907, Transmitted to the Legislature February 12, 1908*. Albany: J. B. Lyon Company, State Printers, 1908.

Probation: Do You Know That. Albany: Division of Probation—Department of Correction, 1928.

Proceedings of the Commission to Inquire into the Courts of Inferior Criminal Jurisdiction in Cities of the First Class. Vols. I-V. Albany: J. B. Lyon, 1909.

Second Annual Report of the Juvenile and Domestic Relations Court of the City of Richmond, Virginia, 1917. Richmond: Wm. Byrd Press, Inc., 1918.

U.S. Congress. Senate. Committee on the District of Columbia. *Report of the Commissioners Appointed to Investigate the Jail, Workhouse, Etc. in the District of Columbia*. 60th Cong., 2d sess., 1909. S. Doc. 648.

Virginia State Board of Charities and Corrections. *Probation Manual with Analysis of the Probation Laws of Virginia*. Richmond: State Board of Charities and Corrections, 1918.

Wright, Carroll, D. *Marriage and Divorce in the United States, 1867 to 1886*. Washington, DC: Government Printing Office, 1897.

State Statutory Compilations and Federal Laws

35 Cong. Rec. H6940, H6942. June 17, 1902.

Acts and Laws of the State of Connecticut in America. New London: Timothy Green, 1784.

Acts of the General Assembly of the State of South Carolina Passed at the Sessions of 1864-65. Columbia: Julian A. Selby Printers, 1866.

Acts of the State of Tennessee Passed by the Forty-Seventh General Assembly. Nashville: Albert B. Tavel, 1891.

Clark et al. *The Code of the State of Georgia*. Atlanta: Franklin Steam Printing House, 1867.

The Code of Iowa, Passed at the Session of the General Assembly of 1850-1, and Approved 5th February, 1851 (Iowa City: Palmer & Paul, 1851), 220.

A Collection of All Such Acts of the General Assembly of Virginia. Richmond: Samuel Pleasants, Jun. and Henry Pace, 1803.

The Colonial Laws Massachusetts, Reprinted from the Edition of 1660. Boston: Rockwell & Churchill, 1889.

Commissioners of the Code. *The Penal Code of the State of New York*. Albany: Weed, Parsons, & Co., 1865.

Denny, A. F. *The General Statutes of the State of Missouri*. Jefferson, MO: Emory S. Foster, 1866.

Dunlap, James. *The General Laws of Pennsylvania*. Philadelphia: T & J Johnson, 1847.

Geyer, Henry S. *A Digest of the Laws of Missouri Territory*. St. Louis: Joseph Charless, 1818.

Hardin, Charles. *The Revised Statutes of the State of Missouri*. Jefferson, MO: James Lusk, 1856.

Hurd, Harvey. *The Revised Statutes of the State of Illinois, 1893*. Chicago: Chicago Legal News Co., 1893.

Laws of the General Assembly of the State of Pennsylvania. Harrisburg: Singerly & Myers, 1867.

Laws of the State of Indiana. Indianapolis: Carlon & Hollenbeck, 1881.

Laws of the State of New York Passed at the Eighty-Fourth Session of the Legislature. Albany: Munsell & Rowland, 1861.

Laws of the State of New York Passed at the Eighty-Third Session of the Legislature. Albany: Weed, Parsons, and Co., 1860.

Laws of the State of New York Passed at the Fifty-Sixth Session of the Legislature. Albany: E. Croswell, 1833.

Laws of the State of New York Passed at the Ninety-Fourth Session of the Legislature. Vol. 1. Albany: Argus Co, 1871.

Laws of the State of New York Passed at the One Hundred and Fifth Session of the Legislature. Vol. 1. Albany: Weed, Parsons, and Co., 1882.

Laws of the State of New York Passed at the One Hundred and Fourth Session of the Legislature. Vol. II. Albany: Weed, Parsons, and Co., 1881.

Laws of the State of New York Passed at the One Hundred and Thirty-Second Session of the Legislature. Vol. II. Albany: J.B. Lyon Company, 1909.

Laws of the State of New York Passed at the One Hundred and Thirty-Third Session of the Legislature. Vol. II.

Albany: J.B. Lyon Company, 1910.

Laws of the State of New York, Passed at the One Hundred and Twenty-Seventh Session of the Legislature. Vol. 1 Albany: J. B. Lyon Company, 1904.

Laws of the State of New York Passed at the Sessions of the Legislature Held in the Years 1785, 1786, 1787, and 1788 Inclusive. Albany: Weed Parsons & Company, 1886.

Laws of the State of New-York Passed at the Sixty Seventh Session of the Legislature. Albany: C. Van Benthuysen and Co., 1844.

Laws of the Territory of Michigan, vol. 1. Lansing: W.S. George & Co., 1871.

The Laws of Wisconsin, Except City Charters and their Amendments. Vol. 1. Madison: Democrat Printing Co., 1885.

The Laws of Wisconsin Passed at the Annual Session of the Legislature of 1882. Madison: David Atwood, 1882.

Local Acts of the Legislature of the State of Michigan Passed at the Regular Session of 1881. Lansing: W.S. George & Co., 1881.

Pollard, John Garland. *Code of Virginia as Amended to Adjournment of General Assembly, 1904*. Vol. 1. St. Paul: West Publishing Co., 1904.

Public Laws of the State of North Carolina Passed by the General Assembly at its Session 1868-69. Raleigh: M.S. Littlefield, 1869.

Purdon, John. *A Digest of the Laws of Pennsylvania*. Philadelphia: M'Carty & Davis, 1824.

Purdon, John, and George M. Stroud. *A Digest of the Laws of Pennsylvania*. 7th ed. Philadelphia: Thomas Davis, 1847.

Revised Laws of the State of California, Penal Code. Sacramento: D.W. Gelwicks, 1871.

The Revised Statutes of the State of Connecticut. Hartford: H.S. Parsons and Co., 1849.

The Revised Statutes of the State of Missouri, 1889. Vol. II. Jefferson City: Tribune Printing Co., 1889.

The Revised Statutes of the State of New-York. Vol. II. Albany: Packard and Van Benthuysen, 1829.

The Revised Statutes of the State of New York. 5th ed. Vol. III. Albany: Banks & Brothers, 1859.

Scheinkman, Alan D. *West's McKinney's Forms Matrimonial and Family Law* § 3:95 (Mar. 2017).

Stroud, George. *Purdon's Digest: A Digest of the Laws of Pennsylvania*. 7th ed. Philadelphia: James Kay, Jun. & Brother, 1852.

U.S. Const. amend. XVIII.

U.S. Const. art. IV, § 1.

U.S. Const. art. IV, § 2, cl. 2.

Wagner, David. *The Statutes of the State of Missouri*. Vol 1. St. Louis: W. J. Gilbert, 1870.

Wedgwood, William. *The Constitution and Revised Statutes of the State of Maine*. Portland: Sanborn & Carter, 1843.

Williams, James M. *The Revised Statutes of the State of Ohio*. 3rd ed. Cincinnati: H. W. Derby & Co, 1884.

Newspapers and Periodicals

Afro-American (Baltimore)

Akron Beacon Journal

Akron Evening Times

Albany (OR) Democrat

American Farmer

American Israelite (Cincinnati)

Anaconda (MT) Standard

Arena (Boston)

Arizona Republic (Phoenix)

Arkansas Democrat (Little Rock)

Arthur's Home Magazine

Asbury Park (NJ) Press

Asheville (NC) Citizen-Times

Atlanta Constitution

Austin Statesman / Austin American-Statesman

Bench and Bar

Boston Globe / Boston Daily Globe

Boston Post

Brooklyn Daily Eagle

Brooklyn Life

Buffalo Commercial

Buffalo Enquirer

Buffalo Evening News

Buffalo Morning Express

Buffalo Review

Buffalo Times

Buffalo Weekly Express

Butte (MT) Daily Post

Butte (MT) Miner

Camden Daily Telegram

Canebrake Herald (Uniontown, AL)

Chattanooga (TN) News

Chautauquan Weekly Newsmagazine (Meadville, PA)

Chicago Daily Tribune / Chicago Tribune

Chicago Defender

Christian Advocate

Christian Science Monitor

Christian Secretary

Christian Union

Chronicle-Telegram (Elyria, OH)

Cincinnati Enquirer

Coffeyville (KS) Daily Journal

Contemporary Review

Corsicana (TX) Daily Sun

Courier-Journal (Louisville)

Critic and Literary World

Daily Arkansas Gazette (Little Rock)

Daily Democrat (Huntington, IN)

Daily Press (Newport News, VA)

Dayton Herald

Decatur (IL) Herald

Democrat and Chronicle (Rochester)

Democratic Banner (Mount Vernon, OH)

Des Moines Tribune

Detroit Free Press

Detroit Saturday Night

Duluth News Tribune

Emporia (KS) Daily Republican

Evening Star (Washington, DC)

Evening World (New York)

Family Magazine

Florence (SC) Morning News

Fort Scott (KS) Weekly Monitor

Fort Wayne Daily News

Fort Wayne Journal-Gazette

Fort Wayne Sentinel

Free Lance (Fredericksburg, VA)

Freeman (Indianapolis)

Gazette Globe (Kansas City, KS)

Good Housekeeping

Grand Forks (ND) Herald / Grand Forks Daily Herald

Green Bay Press-Gazette

Greenville (OH) Journal

Greenville (SC) News

Harper's Bazaar

Hartford Courant

Honolulu Star-Bulletin

Hutchinson (KS) News

Huntsville (AL) Gazette

Indianapolis Journal

Indianapolis Star

Inter Ocean (Chicago)

Junction City (KS) Daily Union

Kansas City (MO) Times

Leavenworth (KS) Times

Lincoln Star

London Reader

Los Angeles Herald

Los Angeles Times

Maine Farmer (Augusta)

Manchester Guardian

Massachusetts Ploughman and New England Journal of Agriculture

Minneapolis (KS) Messenger

Minneapolis Star / Minneapolis Star Tribune / Star Tribune (Minneapolis)

Moberly (MO) Weekly Monitor

Montana Butte Standard

Montana Post (Virginia City)

Morning Democrat (Davenport, IA)

Nashville American

Nashville Tennessean

New York Freeman

New York Herald Tribune / New York Herald

New York Observer and Chronicle

New York Sun

New York Times / New York Daily Times

New York Tribune /New-York Daily Tribune

New-York World

News Democrat (Uhrichsville, OH)

News-Journal (Mansfield, OH)

News-Palladium (Benton-Harbor, MI)

Oakland (CA) Tribune

Ogden (UT) Standard

Omaha Daily Bee

Oregonian (Portland)

Ottawa Journal

Parade

Pensacola News Journal

Philadelphia Inquirer

Pittsburgh Daily Commercial

Pittsburgh Daily Post

Pittsburgh Post-Gazette

Pittsburgh Press

Pittston (PA) Gazette

Post-Crescent (Appleton, WI)

Quad-City Times (Davenport, IA)

Radical (Bowling Green, MO)

Reading (PA) Times

Representative (Fox Lake, WI)

Richmond (IN) Item

Richmond (VA) Planet

Richmond (VA) Times

Saint Paul Globe

Salina (KS) Daily Union

Salt Lake Herald

Salt Lake Herald-Republican

Salt Lake Telegram

Salt Lake Tribune

San Bernardino County (CA) Sun

San Francisco Call

San Francisco Chronicle

Santa Ana (CA) Register

Seattle Post-Intelligencer

Seattle Republican

Seattle Star

Sedalia (MO) Weekly Bazoo

South-Western Presbyterian (New Orleans)

St. Louis Enquirer

St. Louis Post-Dispatch / St. Louis Dispatch

St. Louis Republican

St. Louis Star and Times

State Ledger (Topeka)

Sun (Baltimore)

Thibodaux (LA) Sentinel

Times (Philadelphia)

Times-Democrat (New Orleans)

Times Dispatch (Richmond)

Times Herald (Olean, NY)

Times-Tribune (Scranton, PA)

Topeka Daily Capital

Topeka Plaindealer

Topeka State Journal

Virginian-Pilot (Norfolk)

Visalia (CA) Times-Delta

Washington Post

Watchman and Southron (Sumter, SC)

Wellington (OH) Enterprise

Western North Carolina Times (Hendersonville)

Wichita Daily Eagle

Wilkes-Barre (PA) Times Leader

Windsor (MO) Review

Wisconsin State Journal

Women's Wear

Wood River Times (Hailey, ID)

Workingman's Advocate (New York)

Xenia (OH) Daily Gazette

Yakima (WA) Herald

Youth's Companion

Published Primary Sources

"1,800 Deserted Wives." *Charities and Commons* 22 (Sept. 18, 1909): 838.

"Address of Fred G. Pettigrove." *Lend a Hand: A Record of Progress* 11, no. 6 (Dec. 1893): 455-59.

"Advancement of Money for Necessaries to Deserted Wife." *Albany Law Journal* 24, no. 2 (July 9, 1881): 31-32.

"Alimony as a Debt of a Bankrupt." *Central Law Journal* 49, no. 23 (Dec. 8, 1899): 454.

American Law Institute. *Model Penal Code Council Draft No. 8, Article 207: Sexual Offenses and Offenses*

Against the Family. Philadelphia: American Law Institute, 1956.

AMS. "Liability of Husband, in Absence of Decree of Divorce or Separation, to Reimburse Wife or Her Estate for Money Expended by Her for Her Support after Separation." *American Law Reports* 117 (1938): 1181.

"Attorneys—Professional Ethics—Solicitation of Business by Means of Personal Letters." *Harvard Law Review* 32, no. 5 (Mar. 1919): 573.

Baldwin, William H. "The Canadian Extradition Treaty and Family Deserters." *Journal of the American Institute of Criminal Law and Criminology* 12, no. 2 (Aug. 1921): 199-212.

———. "The Court of Domestic Relations of Chicago." *Journal of the American Institute of Criminal Law and Criminology* 3, no. 3 (Sept. 1912): 400-6.

———. "Family Desertion and Non-Support Laws." *Charities* 14, no. 3 (Apr. 15, 1905): 660.

———. *Family Desertion and Non-Support Laws*. New York: James Kempster Printing, 1904.

———. "Is It Lawful to Bring a Man Back to Pennsylvania by Extradition on the Charge of Desertion under the Act of March 13, 1903, for the Purpose of Proceeding against Him under the Act of April 13, 1867?" *Journal of the American Institute of Criminal Law and Criminology* 4, no. 1 (May 1913): 20-29.

———. *The Present Status of Family Desertion and Non-Support Laws* (address delivered at the National Conference of Charities and Corrections, Boston, MA, June 10, 1911). New York: J. Kempster Printing Co., 1912.

"Bankruptcy—Provable Debts—Arrears of Alimony." *Harvard Law Review* 14, no. 2 (June 1900): 153.

Barbour, Oliver L. *A Treatise on the Practice of the Court of Chancery*. 2nd ed. Vol. II. New York: Banks & Brothers, 1875.

Barrows, Isabel C., ed. *Proceedings of the New York State Conference of Charities and Correction*. Albany: J. B. Lyon Company, 1904.

Beale, Joseph H., Jr. "Constitutional Protection of Decrees for Divorce." *Harvard Law Review* 19, no. 8 (June 1906): 586-97.

———. "Contempt of Court, Criminal and Civil." *Harvard Law Review* 21, no. 3 (Jan. 1908): 161-74.

Berger, Henry. "Extra-Territorial Effect of Decree for Divorce on Constructive Service." *American Law Review* 45, no. 4 (July-Aug. 1911): 564-86.

"Bills That Failed to Become Law." *Charities and the Commons* 16, no. 16 (July 21, 1906): 457-58.

Bishop, Joel Prentiss. *New Commentaries on Marriage, Divorce, and Separation*. Vol. 1. Chicago: T. H.

Flood & Company, 1891.

Bodenheimer, Brigitte M. "The Utah Marriage Counseling Experiment: An Account of Changes in Divorce Law and Procedure." *Utah Law Review* 7, no. 4 (Fall 1961): 443-77.

Bonsall, Ward. *Hand Book of Social Laws of Pennsylvania*. Philadelphia: George S. Ferguson Co., 1914.

Brandt, Lilian. *Five Hundred and Seventy-Four Deserters and Their Families*. New York: Charity Organization Society, 1905.

Brayman, M. *Revised Statutes of the State of Illinois*. Springfield, IL: William Walters, 1845.

Brockelbank, William J. *Interstate Enforcement of Family Support (The Runaway Pappy Act)*. New York: Bobbs-Merrill Co., 1960.

Brown, Goodwin, ed. *Proceedings of the Inter-State Extradition Conference, Held at the Rooms of the Association of the Bar of the City of New York, August 23d, 24th and 25th, 1887*. Albany: Argus Company, 1887.

Browne, Irving. *Humorous Phases of the Law*. San Francisco: S. Whitney, 1876.

Browne, William. "Law of Marriage and Divorce." *Yale Law Journal* 11, no. 7 (May 1902): 340-53.

C. "Divorce—Alimony." *Central Law Journal* 71, no. 11 (Sept. 16, 1910): 191-95.

Carret, Mary. "Does the Protestant Church Uphold and Strengthen Ties of Family?" *Unitarian Review and Religious Magazine* 18, no. 6 (Dec. 1882): 530.

"The Catholic Doctrine on Marriage." *American Catholic Quarterly Review* 8, no. 31 (July 1883): 31.

Chicago Court of Domestic Relations. *First Annual Report of Court of Domestic Relations from the Date of Its Organization April 3, 1911, to March 31, 1912*. Chicago: Municipal Court of Chicago, 1912.

Chute, Charles L. "Divorce and the Family Court." *Law and Contemporary Problems* 18, no. 1 (Winter 1953): 49-65.

———. "The Development of Probation in the United States." In *Probation and Criminal Justice*, edited by Sheldon Glueck, 225-49. New York: Macmillan, 1933.

———. "Probation and Suspended Sentence." *Journal of the American Institute of Criminal Law and Criminology* 12, no. 4 (Feb. 1922): 558-65.

———, ed. *The Progress of Probation, Annual Report and Proceedings of the Eighth Annual Conference of the National Probation Association*. Albany: National Probation Association, 1916.

———, ed. *Social Defenses Against Crimes, Proceedings of the Thirty-Sixth Annual Conference of the National Probation Association*. New York: National Probation Association, 1942.

———, ed. *Social Problems of the Courts, Annual Report and Proceedings of the Ninth Annual Conference of the National Probation Association*. Albany: National Probation Association, 1917.

———, ed. *Social Service in the Courts, Annual Report and Proceedings of the Fourteenth Annual Conference of the National Probation Association*. Albany: National Probation Association, 1920.

———, ed. *The Social Service of the Courts, Proceedings of the Sixteenth Annual Conference of the National Probation Association*. New York: National Probation Association, 1922.

———, ed. *Social Treatment of the Delinquent, Annual Report and Proceedings of the Fifteenth Annual Conference of the National Probation Association*. New York: National Probation Association, 1921.

———, ed. *The Social Work of the Courts, Annual Report and Proceedings of the Tenth Annual Conference of the National Probation Association*. Albany: National Probation Association, 1918.

———, ed. *Year Book of the National Probation Association, 1932 and 1933*. New York: National Probation Association, 1933.

Claghorn, Kate Holloday. "The Italian Under Economic Stress." *Charities* 12, no. 18 (May 1904): 501.

Cobb, W. Bruce. *Functions and Procedures of the Domestic Relations Court: Inservice Training Course*. New York: Division of War Training, 1944.

Comment, "According Full Faith and Credit to Foreign Modifiable Alimony Decrees." *University of Chicago Law Review* 26, no. 1 (Autumn 1958): 136-50.

Committee on the Standard Family Court Act of the National Probation and Parole Association. "Standard Family Court Act." *National Probation & Parole Association Journal* 5, no. 2 (Apr. 1959): 99-160

"Conference on Family Desertions: Law to Make Desertion of Wife and Children a Felony Is Advocated in New York." *Charities* 10, no. 19 (May 9, 1903): 483-86.

"Constitutional Law—Bankruptcy—Alimony." *Yale Law Journal* 9, no. 8 (June 1900): 370.

Cooley, Edwin J. "Mending Broken Families." *Woman's Home Companion* (Mar. 1925): 4, 152-53, 156.

Cooper, Courtney Ryley. "A Man Who Is Casting Out Divorce." *Ladies Home Journal* 31, no. 3 (Mar. 1913): 20.

"Coram Nobis." *American Lawyer* 12, no. 1 (Jan. 1904): 1.

"A Court of Domestic Relations." *Good Housekeeping* 47, no. 1 (July 1908): 55-56.

Cummings, John. *Poor-Laws of Massachusetts and New York*. New York: Macmillan, 1895.

"Current Topics." *Albany Law Journal* 57, no. 6 (Feb. 1898): 81-84.

Day, L. B. "The Development of the Family Court." *Annals of the American Academy of Political and Social Science* 136, no. 1 (Mar. 1928): 105-11.

"Deserted Wives." *Charities* 5, no. 14 (Sept. 1900): 1-3.

"Detroit's Domestic Relations Court." *Law Student's Helper* 22, no. 5 (May 1914): 9-11.

Devine, Edward. "The Breaking Up of Families." *Charities Review* 10, no. 10 (Dec. 1900): 461.

"Divorce—Alimony—Avoidance by Subsequent Marriage." *Yale Law Journal* 12, no. 8 (June 1903): 510-11.

"Divorce—Counsel Fees—Allowance to Wife." *Yale Law Journal* 15, no. 7 (May 1906): 376.

"The Divorce Cases." *Southern Law Review* 1, no. 10 (Mar. 1902): 771-80.

"Dower—Divorce—Estoppel—Alimony." *Central Law Journal* 32, no. 8 (Feb. 20, 1891): 163-68.

"Dr. Woolsey on Divorce." *Catholic World* 35, no. 205 (Apr. 1882): 11.

"Editorial." *Journal of the American Judicature Society* 3, no. 3 (June 1919): 3-4.

Edwards, Percy. "Judicial Discretion in Divorce." *Central Law Journal* 42, no. 21 (May 22, 1896): 439-42.

Eliot, Ada. "Deserted Wives." *Charities Review* 10, no. 8 (Oct. 1900): 346-48.

Eliot, Thomas D. *The Juvenile Court and the Community*. New York: Macmillan, 1914.

Epstein, Henry. "Reforms in Criminal Law: Statutes Enacted at the Special Session of the N.Y. Legislature." *New York State Bar Association Bulletin* 3, no. 8 (Oct. 1931): 451-56.

"Extradition of Deserting Husbands." *Charities* 14, no. 9 (May 27, 1905): 773-74.

"Family Courts: A Symposium." *Tennessee Law Review* 27, no. 3 (Spring 1960): 357-79.

"Family Desertion Resolutions." *Charities* 10, no. 20 (May 16, 1903): 488.

Farrow, Tiera. *Lawyer in Petticoats*. New York: Vantage Press, 1953.

Flexner, Bernard, and Roger N. Baldwin. *Juvenile Courts and Probation*. New York: Century, 1914.

Flexner, Bernard, Reuben Oppenheimer, and Katharine F. Lenroot. *The Child, the Family, and the Court: A Study of the Administration of Justice in the Field of Domestic Relations*. Washington, DC: United States Government Printing Office, 1929.

Folks, Homer. *Report of the Probation Commission of the State of New York*. Albany: Bandow Printing Company, 1906.

———. "The Treatment of the Offender." *Annals of the American Academy of Political and Social Science* 36, no. 1 (July 1910): 20-26.

Foss, Helen. "The Genus Deserter: His Singularities and Their Social Consequences—A Study of Local Fact and Interstate Remedies." *Charities* 10, no. 18 (May 2, 1903): 459.

Freedman, Abraham. "Imprisonment for Debt." *Temple Law Quarterly* 2, no. 4 (July 1928): 330-65.

"Full Faith and Credit Clause in Respect of Alimony Instalments." *Central Law Journal* 71, no. 4 (July 29, 1910): 55-56.

Halpern, Irving W. *A Decade of Prohibition: A Study and Report.* New York: Robley Press Service, 1937.

Harno, Albert J. "Report of Uniform Torts and Criminal Law Acts Section on Uniform Desertion and Non-Support Act." In *Handbook of the National Conference of Commissioners on Uniform State Laws and Proceedings of the Fifty-Second Annual Conference*. Baltimore: Lord Baltimore Press, 1942.

Hart, W. O. "Uniformity of Legislation." *American Lawyer* 15, no. 12 (Dec. 1907): 559.

Heath, Julian. "Work of the Housewives League." *Annals of the American Academy of Political and Social Science* 48, no. 1 (July 1913): 121-26.

Hitchcock, Henry. "Modern Legislation Touching Marital Property Rights." *Journal of Social Science* 13 (Mar. 1881): 12-35.

Hoffman, Charles W. "The Effect of Increasing Divorce on Family Life." *Current History* 30, no. 5 (Aug. 1929): 876-82.

"How a Wife Gets Her Pocket Money." *American Film Institute Catalog* (June 1903). ProQuest AFI Catalog (1746369193).

Huffcut, Ernest. "The National Congress on Uniform Divorce Laws." *Independent* 61, no. 3026 (Nov. 29, 1906): 1265-66.

Humphreys, Harrie M. "Remarriage of the Wife a Ground for the Reduction of Alimony." *Central Law Journal* 35, no. 25 (Dec. 16, 1892): 480-82.

Hursh, R. D. Annotation, "Construction and Application of State Statutes Providing for Reciprocal Enforcement of Duty to Support Dependents." *American Law Reports 2d* (1955): 768.

"Husband and Wife—Actions for Separate Maintenance—Allowance of Attorney's Fees." *Yale Law Journal* 21, no. 4 (Feb. 1912): 332-33.

"Husband and Wife—Attorney's Fees—Husband's Liability." *Yale Law Journal* 19, no. 1 (Nov. 1909): 55.

"Husband and Wife—Contracts Between Husband and Wife—Validity of Separation Agreements." *Harvard Law Review* 24, no. 4 (Feb. 1911): 323-24.

"Husband and Wife—'Desertion.'" *Yale Law Journal* 24, no. 6 (Apr. 1915): 518-19.

"Husband and Wife—'Family Expense Statutes'—Lease." *Central Law Journal* 53, no. 12 (Sept. 20, 1901): 222.

"Husband and Wife—Rights of Wife Against Husband and in His Separate Property—Right to Be Reimbursed for Necessaries." *Harvard Law Review* 25, no. 5 (Mar. 1912): 473.

"Husband's Duty to Reimburse Wife for Expenditures for Necessaries." *Harvard Law Review* 24, no. 4 (Feb. 1911): 306-7.

Inge, Herndon, Jr. "Domestic Relations Court in Mobile County." *Alabama Law Review* 9, no. 1 (Fall 1956): 26-30.

Johnstone, Alan, Jr. "Suggestions for Reform in Criminal Procedure." *Annals of the American Academy of Political and Social Science* 125, no. 1 (May 1926): 94-96.

Johnstone, Quentin. "Family Courts." *University of Kansas City Law Review* 22, no. 1 (1953-1954): 18-22.

Juvenile and Domestic Relations Court, Norfolk, Virginia: Fifty Year History, 1919 to 1969. Unpublished book, 1969.

Kahn, Alfred J. *A Court for Children: A Study of the New York City Children's Court.* New York: Columbia University Press, 1953.

Kelly, Jonathan. "Right to Alimony After Divorce." *American Law Register* 33, no. 1 (Jan. 1885): 1-21.

Lacy, Arthur J. *The Domestic Relations Court of the County of Wayne: Preliminary Observations*. Detroit: Conway Brief Co., 1913.

———. "What the Detroit Court of Domestic Relations Accomplished." *American Legal News* 25, no 9 (Sept. 1914): 5.

La G., R. E. "Personal Liability of Married Woman for Domestic or Household Services." *American Law Reports* 36 (1925): 389.

Levy, Leo, and Harold Visotsky. "The Quality of Urban Life: An Analysis from the Perspective of Mental Health." In *Urban America: Goals and Problems*, compiled by the Subcommittee on Urban Affairs of the Joint Economic Committee, Congress of the United States, 100-7. Washington, DC: Government Printing Office, 1967.

Lewis, Charlton T. "Principles of Reform in Penal Law." *Annals of the American Academy of Political and Social Science* 21, no. 3 (May 1903): 77-83.

Lewis, Clarence M. "New Domestic Relations Court of New York City." *New York State Bar Association Bulletin* 5, no. 10 (Dec. 1933): 484-94.

"Liability of Wife for Diamond Stud Worn by Husband." *American Lawyer* 5, no. 12 (Dec. 1897): 564-65.

Lisle, John. "The Bases of Divorce." *Journal of the American Institute of Criminal Law and Criminology* 4, no. 1 (May 1913): 30-46.

Loeb, Isidor. *The Legal Property Relations of Married Parties: A Study in Comparative Legislation*. New York: Columbia University Press, 1900.

Long, Joseph. *A Treatise on the Law of Domestic Relations*. St. Paul: Keefe-Davidson Company, 1905.

Lou, Herbert H. *Juvenile Courts in the United States*. Chapel Hill: University of North Carolina Press, 1927.

MacBrayne, Lewis E., and James P. Ramsay. *One More Chance: An Experiment in Human Salvage*. Boston: Small, Maynard & Co., 1916.

Machen, Lewis H. "The Duty of the State to Diminish Divorce." In *Report of the Nineteenth Annual Meeting of the Virginia State Bar Association*, edited by John B. Minor. Richmond: Richmond Press, 1907.

"Marriage—Divorce—Right to Remarry." *Law Student's Helper* 17, no. 1 (Jan. 1909): 22.

"Married Woman—Liability for Family Necessaries." *Central Law Journal* 13, no. 16 (Sept. 30, 1881): 259.

Mathews, W. G. "Alimony as a Provable Debt in Bankruptcy Proceedings." *Virginia Law Register* 5, no. 6 (Oct. 1899): 365-72.

Matthews, Franklin. "The Farce of Police Court Justice in New York: Magistrates, Lawyers, Ward Heelers, Professional Bondsmen, Clerks of the Court and Probation Officers join to Make a Mockery of 'The Supreme Court of the Poor.'" *Broadway Magazine* 17, no. 5 (Feb. 1907): 511.

McAdam, David. *The Act to Abolish Imprisonment for Debt and to Punish Fraudulent Debtors, Commonly Called 'The Stilwell Act.'* New York: E G. Ward, 1880.

McCoy, Harold V. "Uniform Support of Dependents Law." *St. John's Law Review* 24, no. 1 (Nov. 1949): 162-66.

McMahon, Charles A. "Agreement for Separation Between Husband and Wife." *American Law Review* 17, no. 1 (Jan.-Feb. 1883): 74-79.

Miner, Maude. "Probation Work for Women." *Annals of the American Academy of Political and Social Science* 36, no. 1 (July 1910): 27-36.

"Modification of Provisions for Alimony after Judgment." *Albany Law Journal* 60, no. 26 (Dec. 1899): 408.

Moore, John Bassett. *Treatise on Extradition and Interstate Rendition*. Boston: Boston Book Company, 1891.

Munson, C. LaRue, and William D. Crocker. "The Divorce Question in the United States." *Yale Law Journal* 18, no. 6 (Apr. 1909): 387-98.

Munson, F. Granville. "Some Aspects of the Nature of Permanent Alimony." *Columbia Law Review* 16, no. 3 (Mar. 1916): 217-30.

Murphy, D. D. "The Divorce Problem and Recent Decisions of the United States Supreme Court." *American Lawyer* 14, no. 11 (Nov. 1906): 499.

National Conference of Commissioners on Uniform State Laws. *American Uniform Desertion Act*. Williamsport, PA: Railway Printing Company, 1910.

———. *Report of the Committee on Marriage and Divorce with First Tentative Drafts of Acts on the Subjects of Marriages and Licenses to Marry and Relation to Family Desertion and Non-Support*. Philadelphia: Press of Allen, Lane & Scott, 1909.

———. *Report of the Committee on Marriage and Divorce with Second Tentative Drafts of Acts on the Subjects of Marriages and Licenses to Marry and Relation to Family Desertion and Non-Support*. Williamsport, PA: Railway Print, 1910.

———. *Proceedings in Committee of the Whole: Uniform Desertion and Non-Support Act* (1948).

———. *Proceedings in Committee of the Whole: Model Reciprocal Non-Support Act and Uniform Non-Support Act* (1949).

National Congress on Uniform Divorce Laws, Philadelphia, 1906. *Proposed Uniform Statute Relating to Annulment of Marriage and Divorce Submitted to the Full Committee on Resolutions to the Divorce Congress*. Harrisburg: *s.n.*, 1906.

National Probation and Parole Association. *A Standard Juvenile Court Act, Prepared by a Committee of the National Probation and Parole Association*. New York: National Probation and Parole Association, 1949.

———. "Standard Family Court Act." *National Probation & Parole Association Journal* 5, no. 99 (1959).

National Probation Association. *A Standard Juvenile Court Law, Prepared by the Committee on Standard Juvenile Court Laws of the National Probation Association*. New York: National Probation Association, 1926.

———. *A Standard Juvenile Court Act, Suggested Draft, Prepared by a Committee of the National Probation Association*. New York: National Probation Association, 1943.

"Needy Families in Their Homes." *Charities* 9, no. 1 (July 5, 1902): 17-18.

"New Alimony Law." *American Lawyer* 12, no. 10 (Oct. 1904): 430.

Note, "American Law Institute Drafts Code for Uniform Laws in the States." *New York State Bar Association Bulletin* 2, no. 2 (Feb. 1930): 112.

Note, "Contracts of Separation Between Husband and Wife." *Harvard Law Review* 15, no. 2 (June 1901): 147-48.

Note, "Divorce Law—U.S. Supreme Court Decisions." *North Carolina Law Journal* 2, no. 3 (July 1901): 91-96.

Note, "The Domicile of a Wife." *Harvard Law Review* 28, no. 2 (Dec. 1914): 196-98.

Note, "The Extra-Territorial Force of a Decree by a Court of Equity." *Harvard Law Review* 23, no. 5 (Mar. 1910): 390-91.

Note, "Husband and Wife, Liability of Husband, Debts Contracted by Wife." *Yale Law Journal* 21, no. 6 (Apr. 1912): 522-23.

Note, "Husband and Wife. Suit for Alimony without Divorce. Assigning Sum in Gross or Specific Property as Alimony." *Virginia Law Register* 7, no. 3 (July 1901): 219-21.

Note, "Jurisdiction in Divorce Proceedings." *Harvard Law Review* 15, no. 1 (May 1901): 66-67.

Note, "Nature of Criminal Contempt." *Harvard Law Review* 25, no. 4 (Feb. 1912): 375-77.

Note, "The 'New Woman' in Court." *Harvard Law Review* 10, no. 3 (Oct. 1896): 177-78.

Note, "Recovery of Money Loaned to Person Having No Legal Capacity to Contact." *Harvard Law Review* 25, no. 8 (June 1912): 725.

Note, "Revision of Alimony Decrees." *Harvard Law Review* 26, no. 5 (Mar. 1913): 441-42.

Note, "The Right of Husband to Sue Wife for Alimony." *Harvard Law Review* 25, no. 6 (Apr. 1912): 556-58.

Note, "The Right of Third Parties to Intervene in Divorce Proceedings." *Harvard Law Review* 39, no. 8 (June 1926): 1090-93.

Note, "Scope and Extent of Statutes Making Wife Liable for Family Expenses." *Central Law Journal* 56, no. 22 (May 1903): 429.

Note, "Subrogation and Volunteers." *Harvard Law Review* 13, no. 4 (Dec. 1899): 297.

Note, "Suspension of Sentence." *Harvard Law Review* 30, no. 4 (Feb. 1917): 369-72.

"Notes of Cases." *American Lawyer* 5, no. 1 (Jan. 1897): 15.

O'Hearn, Marian. "Runaway Fathers." *Cosmopolitan* 112 (Jan. 1942): 30-31, 72.

"Ohio's Family Court." *Women Lawyer's Journal* 3, no. 9 (June 1914): 66.

Ommen, Alfred E. "Criminal Courts in General: Some Observations." *Journal of Social Science* 43 (Sept. 1905): 38-51.

Oppenheimer, Reuben. "Domestic Relations Court – A Study in Americana." *Social Service Review* 4, no. 1 (Mar. 1930): 17-22.

Pingrey, D. H. "Liability of Wife for Family Expenses." *Central Law Journal* 33, no. 10 (Sept. 4, 1891): 186.

Putney, Albert H. "Divorce Tenth Subject- Domestic Relations: Chapter II." *Popular Law Library* 4 (1908): 237-42.

Rabbino, Bernhard. *Back to the Home: Essays and Papers on the Domestic Relations Court.* Binghamton, NY: Vail-Ballou Press, 1934.

———. *Domestic Relations Court: A Plea for the Preservation of the Home*. New York: Hebrew Standard Press, 1909.

"A Recent Decision of Interest to Women." *Women Lawyers' Journal* 1, no. 2 (Aug. 1911): 9.

"Reduction of Alimony." *American Lawyer* 5, no. 5 (May 1897): 203-4.

"Refusal to Pay Alimony Punished as Contempt." *Harvard Law Review* 30, no. 5 (Mar. 1917): 518-19.

"Remarriage Affecting Payment of Alimony." *Ohio Legal News* 5, (Feb 7, 1898): 124-26.

Richmond, Mary E. "Proper Treatment of Idle or Drinking Men and Their Neglected Families: 'Married Vagabonds.'" *Charities Review* 4, no. 8 (June 1, 1895): 401-2.

"Right of Husband to Alimony." *Albany Law Journal* 55, no. 2 (Jan. 1897): 25.

Robinson, Ira. "Alimony Without Divorce." *Virginia Law Review* 2, no. 2 (Nov. 1914): 134-39.

Rodgers, William C. *A Treatise on the Law of Domestic Relations*. Chicago: T.H. Flood & Co, 1899.

RPD. "Civil Liability of Fathers for Necessaries Furnished to Child Taken from Home by Mother." *American Law Reports* 32 (1924): 1466.

Sawtelle, Lelia Robinson. "What Support A Wife May Claim from Her Husband." *Chautauquan* 13, no. 4 (July 1891): 517.

Schorr, Alvin L. "The Family Cycle and Income Development." *Social Security Bulletin* 29, no. 2 (Feb. 1966): 14-25.

Schouler, James. *A Treatise on the Law of the Domestic Relations*. Boston: Little, Brown and Company, 1895.

Scoles, Eugene. "Enforcement of Foreign 'Non-Final' Alimony and Support Orders." *Columbia Law Review* 53, no. 6 (June 1953): 817-25.

"Shall Women Pay Alimony?" *Law Student's Helper* 21, no. 4 (Apr. 1913): 16-18.

Smith, Reginald Heber. *Justice and the Poor*. New York: Carnegie Foundation, 1919.

———. *Justice and the Poor*. New York: Carnegie Foundation, 1924.

Squire, Frances. *The Ballingtons.* Boston: Little, Brown and Company, 1905.

Stevenson, Morton. "Duty of Wife to Follow Domicile of Husband." *Central Law Journal* 53, no. 14 (Oct. 4, 1901): 264-68.

Stewart, David. "Divorced Person's Right and Capacity to Marry." *American Law Review* 20, no. 5 (Sept.-Oct. 1886): 718-26.

Stimson, Frederic J. *American Statute Law*. Boston: Charles C. Soule, 1886.

Stinson, Alvah L. *Woman under the Law*. Boston: Hudson Printing Company, 1914.

Swett, Sophie. "The Separate Maintenance." *Youth's Companion* 78, no. 35 (Sept. 1, 1904): III.

Thomson, J. C. "Imprisonment for Debt in the United States." *Juridical Review* 1, no. 4 (1889): 357-68.

Todd, Hannah M. "Probation Work for Women." *Lend a Hand* 11, no. 6 (Dec. 1893): 466-71.

"The Treatment of the Criminal." *Charities* 15, no. 12 (Dec. 23, 1905): 406-07.

Turnbladh, Will C. "Building the NPPA." *Focus* 31, no. 6 (Nov. 1952): 161-62.

Uniform Reciprocal Enforcement of Support Act: National Conference of Commissioners on Uniform State Laws (1950).

Vance, W. R. "The Parent's Liability for Necessaries Furnished His Minor Child." *Virginia Law Register* 6, no. 9 (Jan. 1901): 585-98.

Vernier, Chester G. *American Family Laws*. Vol. II, *Divorce and Separation*. Stanford: Stanford University Press, 1932.

———. *American Family Laws*. Vol. III, *Husband and Wife*. Stanford: Stanford University Press, 1935.

Virtue, Maxine Boord. *Family Cases in Court: A Group of Four Court Studies Dealing with Judicial Administration*. Durham: Duke University Press, 1956.

Wade, Edward. *Code Relating to the Poor in the State of New York*. Albany: Weed, Parsons and Company, 1870.

Wade, Frank E. "Family Desertion and Non-Support Laws." *Charities* 14, no. 4 (Apr. 22, 1905): 682.

Waite, Edward F. "Courts of Domestic Relations." *Minnesota Law Review* 5, no. 3 (Feb. 1921): 161-71.

———. "Social Aspects of Minneapolis Courts." *Minnesota Law Review* 6, no. 4 (Mar. 1922): 259-70.

Waldman, Morris D., Monroe M. Goldstein, and National Conference of Jewish Charities. *Family Desertion: Report of the Committee on Desertion (National Desertion Bureau).* Cleveland: National Conference of Jewish Charities, 1912.

"West v. U.S." *Washington Law Reporter* 37, no. 26 (June 1909): 402.

Will, Arthur P. *Standard Encyclopædia of Procedure*. Vol. VII. Los Angeles: L. D. Powell Co., 1913.

William H. Smith, "Wisconsin Statute Law, Divorce Counsel Statutes," *Wisconsin Law Review* 6, no. 4 (June 1931): 258-60.

Williams, Edmund Randolph. "Alimony." In *American and English Encyclopædia of Law,* vol. II, edited by David S. Garland and Lucius P. McGehee. 2nd ed. Long Island: Edward Thompson Co., 1896.

Williams, Elisabeth Dexter. *Colonial Women of Affairs: Women in Business and the Professions in America Before 1776*. Boston: Houghton Mifflin, 1931.

Winchell, Cora M. "A Study of the Court of Domestic Relations of the City of Chicago as an Agency in the Stabilization of the Home." Unpublished M.A. thesis, University of Chicago, 1921.

WRM. "Right of Husband to Recovery Alimony Independent of an Action for Divorce." *Michigan Law Review* 10, no. 5 (Mar. 1912): 402-5.

Zunser, Charles. "The New Domestic Relations Court of New York: How Does It Work?" *Jewish Social Service Quarterly* 14, no. 4 (June 1938): 372-79.

Sources Located on Ancestry.com

Belgium. West Flanders. "Geboorten [births]." *Civil Registration 1797-1900*. Online database. *Ancestry.com*.

Episcopal Diocese of New York. *A New Parish Register*, edited by Rev. Charles W. Hayes. 8th ed. New York: Gen. P. E. S. S. Union and Book Society, 1870. *Ancestry.com*.

Florida. Dade County. 1930 U.S. census, population schedule. National Archives microfilm publication T626, roll 309. Database with images. *Ancestry.com*.

List of United States Citizens arriving in Miami, Florida, from Havana, Cuba, on April 16, 1926, on the *S.S. Seneca*. Records of the Immigration and Naturalization Service, 1787-2004. Database with images. *Ancestry.com*.

New Jersey. Essex County. 1910 U.S. census, population schedule. National Archives microfilm publication T624, roll 876. Database with images. *Ancestry.com*.

New York. Bronx County. 1915 state census, population schedule. New York State Archives, Albany. Database with images. *Ancestry.com*.

New York. New York County. Death certificates. *Extracted Death Index, 1862-1948*. Online database. *Ancestry.com*.

New York. New York County. 1870 U.S. census, population schedule. National Archives microfilm publication M593, roll 997. Database with images. *Ancestry.com*.

New York. New York County. 1900 U.S. census, population schedule. National Archives microfilm publication T623, roll 1117. Database with images. *Ancestry.com*.

New York. New York County. 1910 U.S. census, population schedule. National Archives microfilm publication T624, roll 996. Database with images. *Ancestry.com*.

New York. New York County. 1920 U.S. census, population schedule. National Archives microfilm publication T625, roll 1207. Database with images. *Ancestry.com*.

New York. New York County. Marriage certificates. *Extracted Marriage Index, 1866-1937*. Online database. *Ancestry.com*.

Trow City Directory Company. *New York City Directory, 1889-90*. New York: Trow's Printing and Bookbinding Company, 1889. *Ancestry.com*.

St Luke's New Kentish Town (London, England). "Church of England Births and Baptisms, 1813-1917." London Metropolitan Archives P90/LUK/001. Database with images. *Ancestry.com*.

Woodlawn Park North Cemetery and Mausoleum (Miami, Florida). Grave markers. *Find A Grave Index, 1600s-Current*. Online database. *Ancestry.com*.

Secondary Sources

Abramovitz, Mimi. *Regulating the Lives of Women: Social Welfare Policy from Colonial Times to the Present*. Boston: South End Press, 1988.

Abrams, Kerry. "Citizen Spouse." *California Law Review* 101, no. 2 (Apr. 2013): 407-44.

———. "Family History: Inside and Out." Review of *Inside the Castle: Law and the Family in 20th Century America*, by Joanna L. Grossman and Lawrence M. Friedman. *Michigan Law Review* 111, no. 6 (Apr. 2013): 1001-20.

———. "Immigration Law and the Regulation of Marriage." *Minnesota Law Review* 91, no. 6 (June 2007): 1625-709.

Agnew, Elizabeth N. *From Charity to Social Work: Mary E. Richmond and the Creation of an American Profession*. Urbana: University of Illinois Press, 2004.

Appleton, Susan Frelich. "Leaving Home? Domicile, Family, and Gender." *U.C. Davis Law Review* 47, no. 5 (June 2014): 1453-519.

Ayers, Edward L. *Southern Crossing: A History of the American South, 1877-1906*. Oxford: Oxford University Press, 1996.

Babb, Barbara A. "Family Courts Are Here to Stay, So Let's Improve Them." *Family Court Review* 52, no. 4 (Oct. 2014): 642-47.

———. "Reevaluating Where We Stand: A Comprehensive Survey of America's Family Justice Systems." *Family Court Review* 46, no. 2 (Apr. 2008): 230-57.

Baker, Katharine K. "Homogeneous Rules for Heterogeneous Families: The Standardization of Family Law When There Is No Standard Family." *University of Illinois Law Review* 2012, no. 2 (Spring 2012): 319-71.

Bardaglio, Peter W. *Reconstructing the Household: Families, Sex, and the Law in the Nineteenth Century South*. Chapel Hill: University of North Carolina Press, 1995.

Basch, Norma. *Framing American Divorce: From the Revolutionary Generation to the Victorians*. Berkeley: University of California Press, 1999.

———. *In the Eyes of the Law: Women, Marriage, and Property in Nineteenth Century New York*. Ithaca: Cornell University Press, 1982.

———. "Relief in the Premises: Divorce as a Woman's Remedy in New York and Indiana, 1815-1870." *Law and History Review* 8, no. 1 (Spring 1990): 1-24.

———. "When One and One Make Two." Review of *Man and Wife in America: A History*, by Hendrik Hartog. *Reviews in American History* 29, no. 1 (Mar. 2001): 72-77.

Batlan, Felice. *Women and Justice for the Poor: A History of Legal Aid, 1863-1945*. New York: Cambridge University Press, 2015.

Baum, Lawrence. *Specializing the Courts*. Chicago: University of Chicago Press, 2011.

Bickel, Alexander M., and Benno C. Schmidt. *History of the Supreme Court of the United States*. Volume IX, *The Judiciary and Responsible Government, 1910-21*. New York: Macmillan, 1984.

Bix, Brian. *Oxford Introductions to U.S. Law: Family Law*. Cary, NC: Oxford University Press, 2013.

Blake, Nelson Manfred. *The Road to Reno: A History of Divorce in the United States.* New York: Macmillan, 1962.

Boushy, Theodore Fadlo. "The Historical Development of the Domestic Relations Court." PhD diss., University of Oklahoma, 1950.

Branscombe, Martha. *The Courts and the Poor Laws in New York State, 1784-1929*. Chicago: University of Chicago Press, 1943.

Bridges, Khiara M. *The Poverty of Privacy Rights*. Stanford: Stanford University Press, 2017.

Brito, Tonya L. "Fathers Behind Bars: Rethinking Child Support Policy Toward Low-Income Noncustodial Fathers and Their Families." *Journal of Gender, Race, and Justice* 15, no. 3 (Spring 2012): 617-73.

———. "The Welfarization of Family Law." *University of Kansas Law Review* 48, no. 2 (Jan. 2000): 229-84.

Brito, Tonya L., David J. Pate, and Jia-Hui Stefanie Wong, "'I Do for My Kids': Negotiating Race and Racial Inequality in Family Court." *Fordham Law Review* 83, no. 6 (May 2015): 3027-52.

Burdette, Kathleen A. "Making Parents Pay: Interstate Child Support Enforcement after United States v. Lopez." *University of Pennsylvania Law Review* 144, no. 4 (Apr. 1996): 1469-528.

Butler, Cheryl Nelson. "Blackness as Delinquency." *Washington University Law Review* 90, no. 5 (2013): 1335-97.

Butters, Gerald R., Jr. "'But I'm Only a Woman': Tiera Farrow's Defense of Clara Schweiger." *Kansas History* 25, no. 3 (Autumn 2002): 191-99.

Caldwell, Katherine L. "Not Ozzie and Harriet: Postwar Divorce and the American Liberal Welfare State." *Law & Social Inquiry* 23, no. 1 (Winter 1998): 1-53.

Canaday, Margot. "Heterosexuality as a Legal Regime." In *Cambridge History of Law in America*, edited by Michael Grossberg and Christopher Tomlins, 442-71. Cambridge: Cambridge University Press, 2008.

Capen, Edward Warren. "The Historical Development of the Poor Law of Connecticut." Diss., Columbia University, 1905.

Carbone, June, and Naomi Cahn. "The Triple System of Family Law." *Michigan State Law Review* 2013, no. 4 (Winter 2013): 1185-229.

Carbone, June. "The Futility of Coherence: The ALI's *Principles of the Law of Family Dissolution*, Compensatory Spousal Payments." *Journal of Law & Family Studies* 4, no. 1 (2002): 43-78.

Carnes, Mark C., and Clyde Griffen. *Meanings for Manhood: Constructions of Masculinity in Victorian America*. Chicago: University of Chicago Press, 1990.

Carroll, Fred. *Race News: Black Journalists and the Fight for Racial Justice in the Twentieth Century*. Urbana: University of Illinois Press, 2017.

Case, Mary Anne. "Enforcing Bargains in an Ongoing Marriage." *Washington University Journal of Law & Policy* 35 (Winter 2011): 225-60.

Cecka, Dale Margolin. "Improper Delegation of Judicial Authority in Child Custody Cases: Finally Overturned." *University of Richmond Law Review* 52, no. 1 (2017): 181-210.

———. "Inequity in Private Child Custody Litigation." *CUNY Law Review* 20, no. 1 (2016): 203-35.

Celello, Kristin. *Making Marriage Work: A History of Marriage and Divorce in the Twentieth-Century United States*. Chapel Hill: University of North Carolina Press, 2009.

Chase, Deborah, and Peggy Fulton Hora, "The Best Seat in the House: The Court Assignment and Judicial Satisfaction." *Family Court Review* 47, no. 2 (Apr. 2009): 209-38.

Chavez-Garcia, Miroslava. "In Retrospect: Anthony M. Platt's *The Child Savers: The Invention of Delinquency*." *Reviews in American History* 35, no. 3 (Sept. 2007): 464-81.

Chester, Ronald. *Unequal Access: Women Lawyers in a Changing America*. South Hadley, MA: Bergin & Garvey Publishers, 1985.

Chunn, Dorothy E. *From Punishment to Doing Good: Family Courts and Socialized Justice in Ontario, 1880-1940*. Toronto: University of Toronto Press, 1992.

Chused, Richard H. "Married Women's Property Law: 1800-1850." *Georgetown Law Journal* 71, no. 5 (June 1983): 1359-425.

Chute, Charles Lionel, and Marjorie Bell. *Crime, Courts and Probation*. New York: Macmillan, 1956.

Clapp, Elizabeth J. *Mothers of All Children: Women Reformers and the Rise of Juvenile Courts in Progressive Era America*. University Park: Pennsylvania State University Press, 1998.

Cohen, Amy J. "The Family, the Market, and ADR." *Journal of Dispute Resolution* 2011, no. 1 (2011): 91-126.

———. "Trauma and the Welfare State: A Genealogy of Prostitution Courts in New York City." *Texas Law Review* 95, no. 5 (Apr. 2017): 915-91.

Coleman, Peter J. *Debtors and Creditors in America: Insolvency, Imprisonment for Debt, and Bankruptcy, 1607-*

1900. Madison: State Historical Society of Wisconsin, 1974.

Collins, Kristin A. "Administering Marriage: Married-Based Entitlements." *Vanderbilt Law Review* 62, no. 4 (May 2009): 1085-167.

———. "Federalism's Fallacy: The Early Tradition of Federal Family Law and the Invention of States' Rights." *Cardozo Law Review* 26, no. 5 (Apr. 2005): 1761-865.

Connolly, Charles S. "Divorce Proctors." *Boston University Law Review* 34, no. 1 (Jan. 1954): 1-28.

Cook, Steven, and Jennifer Noyes. *The Use of Civil Contempt and Criminal Nonsupport as Child Enforcement Tools: A Report on Local Perspectives and the Availability of Data*. May 2011. https://www.irp.wisc.edu/wp/wp-content/uploads/2018/06/Task7A-CS2009-11-Report-Cook-Noyes.pdf.

Cooper, Melinda. *Family Values: Between Neoliberalism and the New Social Conservatism*. New York: Zone Books, 2017.

Cott, Nancy F. *The Bonds of Womanhood: "Woman's Sphere" in New England, 1780-1835*. New Haven: Yale University Press, 1997.

———. "Divorce and the Changing Status of Women in Eighteenth-Century Massachusetts." *William & Mary Quarterly* 33, no. 4 (Oct. 1976): 586-614.

———. *The Grounding of Modern Feminism*. New Haven: Yale University Press, 1987.

———. "Marriage Crisis and All That Jazz." In *Domestic Tensions, National Anxieties: Global Perspectives on Marriage, Crisis, and Nation*, edited by Kristin Celello and Hanan Kholoussy. New York: Oxford University Press, 2016.

———. *Public Vows: A History of Marriage and the Nation*. Cambridge, MA: Harvard University Press, 2000.

Coyne, Patrick M. "The History of Alimony in Pennsylvania: A Need for Further Change." *Duquesne Law Review* 28, no. 4 (Summer 1990): 709-25.

Cozzolino, Elizabeth. "Public Assistance, Relationship Context, and Jail for Child Support Debt." *Socius* 4 (2018): 1-25.

Currie, David P. "The Constitution in the Supreme Court: Full Faith and the Bill of Rights, 1889-1910." *University of Chicago Law Review* 52, no. 4 (Fall 1985): 867-902.

Davis, Rebecca L. *More Perfect Unions: The American Search for Marital Bliss.* Cambridge, MA: Harvard University Press, 2010.

Dayton, Cornelia Hughes. *Women before the Bar: Gender, Law, and Society in Connecticut, 1639-1789*. Chapel Hill: University of North Carolina Press, 1995.

DiFonzo, J. Herbie. *Beneath the Fault Line: The Popular and Legal Culture of Divorce in Twentieth-Century America*. Charlottesville: University Press of Virginia, 1997.

———. "Coercive Conciliation: Judge Paul W. Alexander and the Movement for Therapeutic Divorce." *University of Toledo Law Review* 25, no. 3 (Summer 1994): 535-75.

Dinner, Deborah. "The Divorce Bargain: The Fathers' Rights Movement and Family Inequalities." *Virginia Law Review* 102, no. 1 (Mar. 2016): 79-152.

Donovan, Brian L. "Alimony Panic, Gold Diggers, and the Cultural Foundations of Early Twentieth-century Marriage Reform in the United States." *Journal of Family History* 42, no. 2 (Apr. 2017): 111-27

———. *Respectability on Trial: Sex Crimes in New York City, 1900-1918*. Albany: State University of New York Press, 2016.

Drachman, Virginia G. *Sisters in Law: Women Lawyers in Modern American History*. 2nd ed. Cambridge, MA: Harvard University Press, 2001.

Dressler, David. *Practice and Theory of Probation and Parole*. New York: Columbia University Press, 1959.

Dubler, Ariela R. "Governing Through Contract: Common Law Marriage in the Nineteenth Century." *Yale Law Journal* 107, no. 6 (Apr. 1998): 1885-920.

———. "In the Shadow of Marriage: Widows, Common Law Wives, and the Legal Construction of Marriage." Diss., Yale University, 2003.

———. "Wifely Behavior: A Legal History of Acting Married." *Columbia Law Review* 100, no. 4 (May 2000): 957-1021.

Edwards, Laura F. *Gendered Strife and Confusion: The Political Culture of Reconstruction*. Urbana: University of Illinois Press, 1997.

Ehrlich, Walter. *Zion in the Valley: The Jewish Community of St. Louis*. Vol. II. Columbia: University of Missouri Press, 1997.

Estin, Ann Laquer. "Family Law Federalism: Divorce and the Constitution." *William & Mary Bill of Rights Journal* 16, no. 2 (Dec. 2007): 381-432.

———. "Sharing Governance: Family Law in Congress and the States." *Cornell Journal of Law and Public Policy* 18, no. 2 (Spring 2009): 267-335.

Ewin, Elizabeth. *Immigrant Women in the Land of Dollars: Life and Culture on the Lower East Side, 1890-1925*. New York: Monthly Review Press, 1985.

Feigenson, Neal R. "Extraterritorial Recognition of Divorce Decrees in the Nineteenth Century." *American Journal of Legal History* 34, no. 2 (Apr. 1990): 119-67.

Fineman, Martha Albertson. *The Neutered Mother, the Sexual Family, and Other Twentieth Century Tragedies*. New York: Routledge, 1995.

Fisher, George. *Plea Bargaining's Triumph: A History of Plea Bargaining in America*. Stanford: Stanford University Press, 2003.

———. "Plea Bargaining's Triumph." *Yale Law Journal* 109, no. 5 (Mar. 2000): 857-1086.

Foner, Eric. *Reconstruction: America's Unfinished Revolution, 1863-1877*. New York: Perennial Library, 1989.

Fox, Sanford J. "Juvenile Justice Reform: An Historical Perspective." *Stanford Law Review* 22, no. 1 (Nov. 1969): 1187-239.

Friedman, Lawrence. "Crimes of Mobility." *Stanford Law Review* 43, no. 3 (Feb. 1991): 637-58.

———. "A Dead Language: Divorce Law and Practice before No-Fault." *Virginia Law Review* 86, no. 7 (Oct. 2000): 1497-536.

———. "Rights of Passage: Divorce Law in Historical Perspective." *Oregon Law Review* 63, no. 4 (1984): 649-69.

Friedman, Lawrence M., and Robert V. Percival. "Who Sues for Divorce? From Fault Through Fiction to Freedom." *Journal of Legal Studies* 5, no. 1 (Jan. 1976): 61-82.

Funk, Kellen. "'Let No Man Put Asunder': South Carolina's Law of Divorce, 1895-1950." *South Carolina Historical Magazine* 110, no. 3/4 (July-Oct. 2009): 134-53.

Gettis, Victoria. *The Juvenile Court and the Progressives*. Urbana: University of Illinois Press, 2000.

Ginzberg, Lori. Review of *Man and Wife in America: A History*, by Hendrik Hartog. *Journal of the History of Sexuality* 10, no. 2 (Apr. 2001): 330-32.

Glasbeek, Amanda. *Feminized Justice: The Toronto Women's Court, 1913-34*. Vancouver: UBC Press, 2009.

Glendon, Mary Ann. "Matrimonial Property: A Comparative Study of Law and Social Change." *Tulane Law Review* 49, no. 1 (Nov. 1974): 21-83.

Goldstein, Bluma. *Enforced Marginality: Jewish Narratives on Abandoned Wives*. Berkeley: University of California Press, 2007.

Golia, Julia A. "Courting Women, Courting Advertisers: The Woman's Page and the Transformation of the American Newspaper, 1895-1935." *Journal of American History* 103, no. 3 (Dec. 2016): 606-28.

Goluboff, Risa. *The Lost Promise of Civil Rights*. Cambridge, MA: Harvard University Press, 2007.

———. *Vagrant Nation: Police Power, Constitutional Change, and the Making of the 1960s*. New York: Oxford University Press, 2016.

Goodman, Philip, Joshua Page, and Michelle Phelps. *Breaking the Pendulum: The Long Struggle over Criminal Justice*. Oxford: Oxford University Press, 2017.

Goodwin, Joanne L. *Gender and the Politics of Welfare Reform: Mothers' Pensions in Chicago, 1911-1929*. Chicago: University of Chicago Press, 1997.

Gordon, Linda. *Heroes of Their Own Lives: The Politics and History of Family Violence—Boston, 1880-1960*. New York: Penguin Books, 1989.

———. *Pitied But Not Entitled: Single Mothers and the History of Welfare*. New York: Free Press, 1994.

Gordon, Robert W. "Critical Legal Histories." *Stanford Law Review* 36, no. 1/2 (Jan. 1984): 57-125.

Gregor, F. H. "Domestic Relations Court." *Texas Bar Journal* 15, no. 3 (Mar. 1952): 101-2, 128-30.

Griswold, Robert L. *Family and Divorce in California, 1850-1890: Victorian Illusions and Everyday Realities*. Albany: State University of New York Press, 1982.

———. "Law, Sex, Cruelty, and Divorce in Victorian America, 1840-1900." *American Quarterly* 38, no. 5 (Winter 1986): 721-45.

Grossberg, Michael. *Governing the Hearth: Law and the Family in Nineteenth-Century America*. Chapel Hill: University of North Carolina Press, 1985.

———. "Institutionalizing Masculinity: The Law as a Masculine Profession." In *Meanings for Manhood: Constructions of Masculinity in Victorian America*, edited by Mark C. Carnes and Clyde Griffen, 133-51. Chicago: University of Chicago Press, 1990.

———. "'A Protected Childhood': The Emergence of Child Protection in America." In *American Public Life and the Historical Imagination*, edited by Wendy Gamber, Michael Grossberg, and Hendrik Hartog, 213-39. Notre Dame: University of Notre Dame Press, 2003.

Grossman, Joanna L., and Lawrence M. Friedman. *Inside the Castle: Law and the Family in 20th Century America*. Princeton: Princeton University Press, 2011.

Guarneri, Julia. *Newsprint Metropolis: City Papers and the Making of Modern Americans*. Chicago: University of Chicago Press, 2017.

Gudefin, Geraldine. "The Civil and Religious Worlds of Marriage and Divorce: Russian Jewish Immigrants in France and the United States, 1881-1939." PhD diss., Brandeis University, 2018.

Halbrook, Amy. "Custody: Kids, Counsel and the Constitution." *Duke Journal of Constitutional Law & Public Policy* 12, no. 2 (Spring 2017): 179-211.

Halem, Lynne Carol. *Divorce Reform: Changing Legal and Social Perspectives*. New York: Free Press, 1980.

Halley, Janet, and Kerry Rittich. "Critical Directions in Comparative Family Law: Genealogies and Contemporary Studies in Family Law Exceptionalism." *American Journal of Comparative Law* 58, no. 4 (Fall 2010): 753-76.

Halley, Janet. "What Is Family Law? A Genealogy, Part I." *Yale Journal of Law and the Humanities* 23, no. 1 (Winter 2011): 1-109.

———. "What Is Family Law? A Genealogy, Part II." *Yale Journal of Law and the Humanities* 23, no. 2 (Summer 2011): 189-293.

Hampson, Christopher. "The New American Debtors' Prisons." *American Journal of Criminal Law* 44, no. 1 (Fall 2016): 1-48.

Haney, Lynne. "Incarcerated Fatherhood: The Entanglements of Child Support Debt and Mass Imprisonment." *American Journal of Sociology* 124, no. 1 (July 2018): 1-48.

Hansen, Drew D. Note, "The American Invention of Child Support: Dependency and Punishment in Early American Child Support Law." *Yale Law Journal* 108, no. 5 (Mar. 1999): 1123-53.

Harris, Leslie Joan. "The Basis for Legal Parentage and the Clash between Custody and Child Support." *Indiana Law Review* 42, no. 3 (Summer 2009): 611-38.

———. "Questioning Child Support Enforcement Policy for Poor Families." *Family Law Quarterly* 45, no. 2 (Summer 2011): 157-72.

Hartog, Hendrik. *Man and Wife in America: A History*. Cambridge, MA: Harvard University Press, 2000.

———. "Pigs and Positivism." *Wisconsin Law Review* 1985, no. 4 (July 1985): 899-935.

Hasday, Jill Elaine. "The Canon of Family Law." *Stanford Law Review* 57, no. 3 (Dec. 2004): 825-900.

———. *Family Law Reimagined*. Cambridge, MA: Harvard University Press, 2014.

———. "Intimacy and Economic Exchange." *Harvard Law Review* 119, no. 2 (Dec. 2005): 491-530.

Hatcher, Daniel L. "Child Support Harming Children: Subordinating the Best Interests of Children to the Fiscal Interests of the State." *Wake Forest Law Review* 42, no. 4 (Winter 2007): 1029-86.

Haynes, Margaret Campbell, and Susan Friedman Paikin. "'Reconciling' FFCCSOA and UIFSA." *Family Law Quarterly* 49, no. 2 (Summer 2015): 331-57.

Hicks, Cheryl D. *Talk with You Like a Woman: African American Women, Justice, and Reform in New York, 1890-1935*. Chapel Hill: University of North Carolina Press, 2010.

Historical Society of the New York Courts. "Courts of New York State."

http://www.nycourts.gov/history/legal-history-new-york/history-new-york-courts.html.

Hoganson, Kristin L. *Fighting for American Manhood: How Gender Politics Provoked the Spanish-American and Philippine-American Wars*. New Haven: Yale University Press, 1998.

Hornstein, J. Leonard. "Interrelated Roles in Child Support Enforcement." *Juvenile & Family Court Journal* 36, no. 3 (Fall 1985): 111-14.

Hummer, Patricia M. *The Decade of Elusive Promise: Professional Women in the United States, 1920-1930*. Ann Arbor: UMI Research Press, 1979.

Hunter, Tera W. *To 'Joy My Freedom: Southern Black Women's Lives and Labors after the Civil War*. Cambridge, MA: Harvard University Press, 1997.

Huntington, Clare. *Failure to Flourish: How Law Undermines Family Relationships*. New York: Oxford University Press, 2014.

———. "Postmarital Family Law: A Legal Structure for Nonmarital Families." *Stanford Law Review* 67, no. 1 (Jan. 2015): 196-240.

Igra, Anna R. "Likely to Become a Public Charge: Deserted Women and the Family Law of the Poor in New York City, 1910-1936." *Journal of Women's History* 11, no. 4 (Winter 2000): 59-81.

———. "Male Providerhood and the Public Purse: Anti-Desertion Reform in the Progressive Era." In *The Sex of Things: Gender and Consumption in Historical Perspective*, edited by Victoria de Grazia, 188-211. Berkeley: University of California Press, 1996.

———. "Marriage as Welfare." *Women's History Review* 15, no. 4 (Sept. 2006): 601-10.

———. *Wives Without Husbands: Marriage, Desertion, & Welfare in New York, 1900-1935*. Chapel Hill: University of North Carolina Press, 2007.

Jacobs, Meg. *Pocketbook Politics: Economic Citizenship in Twentieth-Century America*. Princeton: Princeton University Press, 2007.

Katz, Elizabeth. "How Automobile Accidents Stalled the Development of Interspousal Liability." *Virginia Law Review* 94, no. 5 (Sept. 2008): 1213-58.

———. "Judicial Patriarchy and Domestic Violence: A Challenge to the Conventional Family Privacy Narrative." *William & Mary Journal of Women and the Law* 21, no. 2 (Winter 2015): 379-471.

Katz, Michael B. *In the Shadow of the Poorhouse: A Social History of Welfare in America*. New York: Basic Books, 1986.

Kearney, Benet. "Challenges to Marital Unity: Spousal Testimony and Married Women's Property Acts in Nineteenth-Century New York." *Georgetown Journal of Gender & Law* 10, no. 3 (Fall 2009): 957-78.

Kelsey, Allison Elizabeth. "How the Other Nine-Tenths Lived: Interpreting the Working Class Experience in Philadelphia, 1870-1900." Master's thesis, University of Pennsylvania, 1997.

Kessler, Amalia D. "Arbitration and Americanization: The Paternalism of Progressive Procedural Reform," *Yale Law Journal* 124, no. 8 (June 2015): 2940-66.

———. "Deciding Against Conciliation: The Nineteenth-Century Rejection of a European Transplant and the Rise of a Distinctively American Ideal of Adversarial Adjudication." *Theoretical Inquiries in Law* 10, no. 2 (July 2009): 423-83.

———. *Inventing American Exceptionalism: The Origins of American Adversarial Legal Culture, 1800-1877*. New Haven: Yale University Press, 2017.

Kessler-Harris, Alice. *In Pursuit of Equity: Women, Men, and the Quest for Economic Citizenship in 20th-Century America*. Oxford: Oxford University Press, 1982.

———. *Out to Work: A History of Wage-Earning Women in the United States*. Oxford: Oxford University Press, 1982.

Kitch, Carolyn. "Women in Journalism." In *American Journalism: History, Principles, Practices*, edited by W. David Sloan and Lisa Mullikin Parcell, 87-96. Jefferson, NC: McFarland & Company, Inc., 2002.

Klarman, Michael J. *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality*. New York: Oxford University Press, 2004.

Klebaner, Benjamin Joseph. "Poverty and Its Relief in American Thought, 1815-61." *Social Service Review* 38, no. 4 (Dec. 1964): 382-99.

———. "Some Aspects of North Carolina Public Poor Relief, 1700-1860." *North Carolina Historical Review* 31, no. 4 (Oct. 1954): 479-92.

Knupfer, Anne Meis. "Professionalizing Probation Work in Chicago, 1900-1935." *Social Service Review* 73, no. 4 (Dec. 1999): 478-95.

———. *Reform and Resistance: Gender, Delinquency, and America's First Juvenile Court*. New York: Routledge, 2001.

Kohler-Hausmann, Julilly. *Getting Tough: Welfare and Imprisonment in 1970s America*. Princeton: Princeton University Press, 2017.

Kuby, William. *Conjugal Misconduct: Defying Marriage Law in the Twentieth-Century United States*. New York: Cambridge University Press, 2018.

———. "Till Disinterest Do Us Part: Trial Marriage, Public Policy, and the Fear of Family Decay in the United States, 1900-1930" *Journal of the History of Sexuality* 23, no. 3 (Sept. 2014): 383-414.

Ladd-Taylor, Molly. *Mother-Work: Women, Child Welfare, and the State, 1890-1930*. Urbana: University of Illinois Press, 1994.

LaFountain, Robert C., et al., National Center for State Courts. *Examining the Work of State Courts: An Overview of 2015 State Court Caseloads*. 2016. http://www.courtstatistics.org/~/media/microsites/files/csp/ewsc%202015.ashx.

Lasch, Christopher N. "Rendition Resistance." *North Carolina Law Review* 92, no. 1 (Dec. 2013): 149-235.

Lay, Norvie L. "Community Property: Its Origin and Importance to the Common Law Attorney." *Journal of Family Law* 5, no. 1 (Spring 1965): 51-62.

Leach, William. *Land of Desire: Merchants, Power, and the Rise of a New American Culture*. New York: Pantheon Books, 1993.

———. "Transformations in a Culture of Consumption: Women and Department Stores, 1890-1925." *Journal of American History* 71, no. 2 (Sept. 1984): 319-42.

Lebsock, Suzanne. *The Free Women of Petersburg: Status and Culture in a Southern Town, 1784-1860*. New York: Norton, 1984.

Lefkowitz, Alison. *Strange Bedfellows: Marriage in the Age of Women's Liberation*. Philadelphia: University of Pennsylvania Press, 2018.

Leonard, Thomas. "Protecting Family and Race: The Progressive Case for Regulating Women's Work." *American Journal of Economics and Sociology* 64, no. 3 (July 2005): 757-91.

Lui, Adonica Y. "The Machine and Social Policies: Tammany Hall and the Politics of Public Outdoor Relief, New York City, 1874–1898." *Studies in American Political Development* 9, no. 2 (Fall 1995): 386-403.

MacDowell, Elizabeth L. "Reimagining Access to Justice in the Poor People's Courts." *Georgetown Journal on Poverty Law & Policy* 22, no. 3 (Spring 2015): 473-543.

Mack, Kenneth W. *Representing the Race: The Creation of the Civil Rights Lawyer*. Cambridge, MA: Harvard University Press, 2012.

Mann, Bruce. *Republic of Debtors: Bankruptcy in the Age of American Independence*. Cambridge, MA: Harvard University Press, 2002.

May, Elaine Tyler. *Great Expectations: Marriage and Divorce in Post-Victorian America*. Chicago: University of Chicago Press, 1980.

May, Martha. "The 'Problem of Duty': Family Desertion in the Progressive Era." *Social Service Review* 62, no. 1 (Mar. 1988): 40-60.

Mayeri, Serena. "Foundling Fathers: (Non-)Marriage and Parental Rights in the Age of Equality."

Yale Law Journal 125, no. 8 (June 2016): 2292-393.

McCurry, Stephanie. "Book Review." Review of *Man and Wife in America: A History*, by Hendrik Hartog, and four other books. *Signs* 30, no. 2 (Winter 2005): 1659-70.

McLennan, Rebecca M. *The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776-1941*. New York: Cambridge University Press, 2008.

Mennel, Robert M. *Thorns & Thistles: Juvenile Delinquents in the United States, 1825-1940*. Hanover, NH: University Press of New England, 1973.

Mink, Gwendolyn. *The Wages of Motherhood: Inequality in the Welfare State, 1917-1942*. Ithaca: Cornell University Press, 1995.

Minow, Martha. "'Forming Underneath Everything that Grows:' Toward a History of Family Law." *Wisconsin Law Review* 1985, no. 4 (July-Aug. 1985): 819-98.

Mintz, Steven, and Susan Kellogg. *Domestic Revolutions: A Social History of American Family Life*. New York: Free Press, 1988.

Mnookin, Robert H., and Lewis Kornhauser. "Bargaining in the Shadow of the Law: The Case of Divorce." *Yale Law Journal* 88, no. 5 (Apr. 1979): 950-97.

Mott, Frank Luther. *American Journalism: A History of Newspapers in the United States through 250 Years, 1690-1940*. New York: Macmillan, 1941.

Muncy, Robyn. Creating a Female Dominion in American Reform, 1890-1935. New York: Oxford University Press, 1991.

Murphy, Jane C., and Jana B. Singer. *Divorced from Reality: Rethinking Family Dispute Resolution*. New York: New York University Press, 2015.

Murray, Melissa. "Strange Bedfellows: Criminal Law, Family Law, and the Legal Construction of Intimate Life." *Iowa Law Review* 94, no. 4 (May 2009): 1253-313.

Myers, John E. B. *Child Protection in America: Past, Present, and Future*. New York: Oxford University Press, 2006.

Myers, Teresa A., National Conference of State Legislatures. *Courts Uphold Criminal Penalties for Failure to Pay Child Support*. 2008. http://www.ncsl.org/research/human-services/archive-case-in-brief-courts-uphold-criminal-pen.aspx.

O'Hear, Michael M. "'Some of the Most Embarrassing Questions': Extraterritorial Divorces and the Problem of Jurisdiction Before *Pennoyer*." *Yale Law Journal* 104, no. 6 (Apr. 1995): 1507-30.

O'Neill, William L. *Divorce in the Progressive Era*. New York: New Viewpoints, 1973.

Odem, Mary E. *Delinquent Daughters: Protecting and Policing Adolescent Female Sexuality in the United States,*

1885-1920. Chapel Hill: University of North Carolina Press, 1995.

Olsen, Frances E. "The Family and the Market: A Study of Ideology and Legal Reform." *Harvard Law Review* 96, no. 7 (May 1983): 1497-578.

———. "The Myth of State Intervention in the Family." *University of Michigan Journal of Law Reform* 18, no. 4 (Summer 1985): 835-64.

Oren, Laura. "No-Fault Divorce Reform in the 1950s: The Lost History of the 'Greatest Project' of the National Association of Women Lawyers." *Law and History Review* 36, no. 4 (Nov. 2018): 847-90.

Ownby, Ted. *American Dreams in Mississippi: Consumers, Poverty, & Culture, 1830-1998*. Chapel Hill: University of North Carolina Press, 1999.

Patterson, Elizabeth G. "Civil Contempt and the Indigent Child Support Obligor: The Silent Return of Debtor's Prison." *Cornell Journal of Law and Public Policy* 18, no. 1 (Fall 2008): 95-141.

———. "Turner in the Trenches: A Study of How Turner v. Rogers Affected Child Support Contempt Proceedings." *Georgetown Journal on Poverty Law & Policy* 25, no. 1 (Fall 2017): 75-114.

Pascoe, Peggy. *What Comes Naturally: Miscegenation Law and the Making of Race in America*. New York: Oxford University Press, 2009.

Pearson, Susan J. *The Rights of the Defenseless: Protecting Animals and Children in Gilded Age America.* Chicago: University of Chicago, 2011.

"Peckham, Rufus Wheeler Jr." In *Biographical Encyclopedia of the Supreme Court*, edited by Melvin I. Urofsky, 395. Washington, DC: CQ Press, 2006. http://library.cqpress.com/scc/bioenc-427-18168-979452.

Peiss, Kathy. *Cheap Amusements: Working Women and Leisure in Turn-of-the-Century New York*. Philadelphia: Temple University Press, 1986.

Penningroth, Dylan C. "African American Divorce in Virginia and Washington, D.C., 1865-1930." *Journal of Family History* 33, no. 1 (Jan. 2008): 21-35.

Peterson del Mar, David. *What Trouble I Have Seen: A History of Violence against Wives*. Cambridge, MA: Harvard University Press, 1996.

Phillips, Roderick. *Putting Asunder: A History of Divorce in Western Society*. Cambridge: Cambridge University Press, 1988.

Platt, Anthony M. *The Child Savers: The Invention of Delinquency*. Chicago: University of Chicago Press, 1977.

———. *The Child Savers: The Invention of Delinquency*. 40th anniversary ed. New Brunswick: Rutgers

University Press, 2009.

Pleck, Elizabeth. *Domestic Tyranny: The Making of American Social Policy against Family Violence from Colonial Times to the Present*. New York: Oxford University Press, 1987.

Prager, Susan. "The Persistence of Separate Property Concepts in California's Community Property System, 1849-1975." *UCLA Law Review* 24, no. 1 (Oct. 1976): 1-82.

Quigley, William P. "Five Hundred Years of English Poor Laws, 1349-1834: Regulating the Working and Nonworking Poor." *Akron Law Review* 30, no. 1 (Fall 1996): 73-128.

———. "The Quicksands of the Poor Law: Poor Relief Legislation in a Growing Nation, 1790-1820." *Northern Illinois University Law Review* 18, no. 1 (Fall 1997): 1-98.

———. "Reluctant Charity: Poor Laws in the Original Thirteen States." *University of Richmond Law Review* 31, no. 1 (1997): 111-78.

Quinn, Mae C. "Revisiting Anna Moscowitz Kross's Critique of New York City's Women's Court: The Continued Problem of Solving the 'Problem' of Prostitution with Specialized Criminal Courts." *Fordham Urban Law Journal* 33, no. 2 (Jan. 2006): 665-726.

Ranney, Joseph A. "Anglicans, Merchants, and Feminists: A Comparative Study of the Evolution of Married Women's Rights in Virginia, New York, and Wisconsin." *William & Mary Journal of Women and the Law* 6, no. 3 (Spring 2000): 493-559.

Reilly, Marie T. "In Good Times and in Debt: The Evolution of Marital Agency and the Meaning of Marriage." *Nebraska Law Review* 87, no. 2 (Fall 2008): 373-419.

Riesenfeld, Stefan A. "The Formative Era of American Public Assistance Law." *California Law Review* 43, no. 2 (May 1955): 175-233.

Riley, Glenda. *Divorce: An American Tradition*. New York: Oxford University Press, 1991.

———. "Legislative Divorce in Virginia, 1803-1850." *Journal of the Early Republic* 11, no. 1 (Spring 1991): 51-67.

Rise, Eric W. "Crime, Comity and Civil Rights: The NAACP and the Extradition of Southern Black Fugitives." *American Journal of Legal History* 55, no. 1 (Jan. 2015): 119-47.

Robinson, Paul H., and Markus D. Dubber. "The American Penal Code: A Brief History." *New Criminal Law Review* 10, no. 3 (Summer 2007): 319-41.

Ross, Ellen. *Love and Toil: Motherhood in Outcast London, 1870-1918*. New York: Oxford University Press, 1993.

Rothman, David J. *Conscience and Convenience: The Asylum and Its Alternatives in Progressive America*. Boston: Little, Brown, 1980.

———. *The Discovery of Asylum: Social Order and Disorder in the New Republic*. Rev. ed. New Brunswick: Aldine Transaction, 2008.

Rudens, S. P. "A Half Century of Community Service: The Story of the New York Educational Alliance." *American Jewish Year Book* 46 (Sept. 18, 1944-Sept. 7, 1945): 73-86.

Ryerson, Ellen. *The Best-Laid Plans: America's Juvenile Court Experiment*. New York: Hill and Wang, 1978.

Salmon, Marylynn. *Women and the Law of Property in Early America*. Chapel Hill: University of North Carolina Press, 1986.

Scheible, Sheryl L. "Defining 'Support' under Bankruptcy Law: Revitalization of the 'Necessaries' Doctrine." *Vanderbilt Law Review* 41, no. 1 (Jan. 1988): 18-27.

Schlossman, Steven L. *Transforming Juvenile Justice: Reform Ideals and Institutional Realities, 1825-1920*. DeKalb: Northern Illinois University Press, 2005.

Schneider, Eric C. *In the Web of Class: Delinquents and Reformers in Boston, 1810s-1930s*. New York: New York University Press, 1992.

Schwartzberg, Beverly. "'Lots of Them Did That': Desertion, Bigamy, and Marital Fluidity in Late-Nineteenth-Century America." *Journal of Social History* 37, no. 3 (Spring 2004): 573-600.

Shepherd, Samuel C., Jr. *Avenues of Faith: Shaping the Urban Religious Culture of Richmond, Virginia, 1900-1929*. Tuscaloosa: University of Alabama Press, 2001.

Siegel, Reva B. "Home as Work: The First Woman's Rights Claims Concerning Wives' Household Labor, 1850-1880." *Yale Law Journal* 103, no. 5 (Mar. 1994): 1073-217.

———. "The Modernization of Marital Status Law: Adjudicating Wives' Rights to Earnings, 1860-1930." *Georgetown Law Journal* 82, no. 7 (Sept. 1994): 2127-211.

———. "'The Rule of Love:' Wife Beating as Prerogative and Privacy." *Yale Law Journal* 105, no. 8 (June 1996): 2117-207.

Simon, Jonathan. *Poor Discipline: Parole and the Social Control of the Underclass, 1890-1990*. Chicago: University of Chicago Press, 1993.

Skocpol, Theda. *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States*. Cambridge, MA: Harvard University Press, 1992.

Smith, Judith E. *Family Connections: A History of Italian and Jewish Immigrant Lives in Providence, Rhode Island, 1900-1944*. Albany: State University of New York Press, 1985.

Snell, James G. "Courts of Domestic Relations: A Study of Early Twentieth Century Judicial Reform in Canada." *Windsor Yearbook of Access to Justice* 6 (1986): 36-60.

Sobie, Merril. *The Creation of Juvenile Justice: A History of New York's Children's Laws*. Albany: New York Bar Foundation, 1987.

Soifer, Aviam. "Federal Protection, Paternalism, and the Virtually Forgotten Prohibition of Voluntary Peonage." *Columbia Law Review* 112, no. 7 (Nov. 2012): 1607-39.

Solum, Lawrence B. "Procedural Justice." *Southern California Law Review* 78, no. 1 (Nov. 2004): 181-321.

Somkin, Fred "The Strange Career of Fugitivity in the History of Interstate Extradition." *Utah Law Review* 1894, no. 3 (Summer 1984): 511-31.

Speth, Linda. "The Married Women's Property Acts, 1839-1856: Reform, Reaction, or Revolution?" In *Women and the Law: The Social Historical Perspective*, edited by D. Kelly Weisberg, 69-91. Cambridge, MA: Schenkman Publishing Company, Inc, 1982.

Spinak, Jane. "Romancing the Court." *Family Court Review* 46, no. 2 (Apr. 2008): 258-74.

Stanley, Amy Dru. "Beggars Can't Be Choosers: Compulsion and Contract in Postbellum America." *Journal of American History* 78, no. 4 (Mar. 1992): 1265-93.

———. *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation*. New York: Cambridge University Press, 1998.

Stansell, Christine. *City of Women: Sex and Class in New York, 1789-1860*. New York: Knopf, 1986.

Stein, Edward. "Past and Present Proposed Amendments to the United States Constitution Regarding Marriage." *Washington University Law Quarterly* 82, no. 3 (Fall 2004): 611-686.

Stoever, Jane K. "Enjoining Abuse: The Case for Indefinite Domestic Violence Protection Orders." *Vanderbilt Law Review* 67, no. 4 (May 2014): 1015-98.

Strange, Carolyn. *Discretionary Justice: Pardon and Parole in New York from the Revolution to the Depression.* New York: New York University Press, 2016.

Strauss, Gregg. "The Positive Right to Marry." *Virginia Law Review* 102, no. 7 (Nov. 2016): 1691-766.

Suk, Jeannie. *At Home in the Law: How the Domestic Violence Revolution Is Transforming Privacy*. New Haven: Yale University Press, 2009.

Tanenhaus, David S. *Juvenile Justice in the Making.* New York: Oxford University Press, 2004.

Tani, Karen M. *States of Dependency: Welfare, Rights, and American Governance, 1935-1972*. New York: Cambridge University Press, 2016.

tenBroek, Jacobus. "California's Dual System of Family Law: Its Origin, Development, and Present Status: Part I." *Stanford Law Review* 16, no. 2 (Mar. 1964): 257-317.

Thomas, Mason P., Jr. "Child Abuse and Neglect, Part I: Historical Overview, Legal Matrix, and Social Perspectives." *North Carolina Law Review* 50, no. 2 (Feb. 1972): 293-349.

Thornbrough, Emma Lou. "American Negro Newspapers, 1880-1914." *Business History Review* 40, no. 4 (Jan. 1966): 467-90.

Tiffin, Susan. *In Whose Best Interest: Child Welfare Reform in the Progressive Era.* Westport, CT: Greenwood Press, 1982.

Trattner, Walter I. *From Poor Law to Welfare State: A History of Social Welfare in America*. 6th ed. New York: Free Press, 1999.

———. "Homer Folks, the 'Boodle Board,' and Section 647." *Journal of American History* 52, no. 1 (June 1965): 89-100.

Trost, Jennifer. *Gateway to Justice: The Juvenile Court and Progressive Child Welfare in a Southern City*. Athens: University of Georgia Press, 2005.

"Unified Family Courts and the Child Protection Dilemma." *Harvard Law Review* 116, no. 7 (May 2003): 2099-122.

"The Unnecessary Doctrine of Necessaries." *Michigan Law Review* 82, no. 7 (June 1984): 1767-925.

VanBurkleo, Sandra F. *Gender Remade: Suffrage, Citizenship, and Statehood in the New Northwest, 1879-1912*. New York: Cambridge University Press, 2015.

Virginia's Judicial System. "The Juvenile and Domestic Relations District Court." PDF file, http://www.courts.state.va.us/courts/jdr/jdrinfo.pdf.

Walkowitz, Daniel J. *Working with Class: Social Workers and the Politics of Middle-Class Identity*. Chapel Hill: University of North Carolina Press, 1999.

Warbasse, Elizabeth Bowles. *The Changing Legal Rights of Married Women, 1800-1861*. New York: Garland Publishing, 1987.

Ward, Geoff. *The Black Child Savers: Racial Democracy and Juvenile Justice.* Chicago: Chicago University Press, 2012.

Watkins, Sallie A. "The Mary Ellen Myth: Correcting Child Welfare History." *Social Work* 35, no. 6 (Nov. 1990): 500-3.

Waugh, Joan. *Unsentimental Reformer: The Life of Josephine Shaw Lowell.* Cambridge, MA: Harvard University Press, 1997.

Weinstein, James. "The Federal Common Law Origins of Judicial Jurisdiction: Implications for Modern Doctrine." *Virginia Law Review* 90, no. 1 (Mar. 2004): 169-300.

Welke, Barbara Young. *Recasting American Liberty: Gender, Race, and the Railroad Revolution, 1865-1920*.

New York: Cambridge University Press, 2001.

Whitaker, Cynthia. "The First Wave of Women Lawyers." *Washington State Bar News* 35, no. 5 (May 1981): 8-13.

Willrich, Michael. *City of Courts: Socializing Justice in Progressive Era Chicago*. New York: Cambridge University Press, 2003.

———. "Home Slackers: Men, the State, and Welfare in Modern America." *Journal of American History* 87, no. 2 (Sept. 2000): 460-89.

Witt, John Fabian. *The Accidental Republic: Crippled Workingmen, Destitute Widows, and the Remaking of American Law*. Cambridge, MA: Harvard University Press, 2004.

———. "From Loss of Services to Loss of Support: The Wrongful Death Statutes, the Origins of Modern Tort Law, and the Making of the Nineteenth-Century Family." *Law and Social Inquiry* 25, no. 3 (July 2000): 717-55.

Younger, Judith T. "Marital Regimes: A Story of Compromise and Demoralization, Together with Criticism and Suggestions for Reform." *Cornell Law Review* 67, no. 1 (Nov. 1981): 45-102.

Zelizer, Viviana A. *The Social Meaning of Money*. Princeton: Princeton University Press, 1997.