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Recommended Citation
Barbara J. Stark, Psycho-Feminism and Divorce Law: "Oedipus Wrecks", 4 51 (1992)
Available at: https://scholarlycommons.law.hofstra.edu/faculty_scholarship/1204

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PSYCHO-FEMINISM AND DIVORCE LAW: “OEDIPUS WRECKS”

Barbara Stark

In “Oedipus Wrecks,” one of the short films in the anthology “New York Stories,” Woody Allen plays a middle-aged neurotic who takes his nagging mother to a magic show. The magician makes her vanish on stage during the performance and is unable to make her reappear at the end of the act. The hero, relieved but feeling guilty, has reconciled himself to this strange development when to his horror his mother materializes, in monstrously gigantic form, over the New York skyline. She is inescapable—discussing his girlfriend, his job, his diet in front of the whole world. Allen has shown us how an individual may be dominated by obvious but unresolved Oedipal conflicts. This paper will show how divorce functions in a social context similarly dominated by unresolved—and equally obvious, although generally ignored—Oedipal wreckage.

We cannot understand divorce without understanding both its underlying norms and the ways in which we have internalized these norms. As Kahn has observed:

In The Interpretation of Dreams Freud says, “There is at least one spot in every dream at which it is unplumbable—a navel, as it were, that is its point of contact with the unknown.” For the first psychoanalyst, the “navel” of psychic development is identification with the mother. It is “unknown” to him not because it is unknowable but because he is a man, because manhood and the patriarchal culture it creates depend on denying, in myriad ways, the powerful ambivalence that the mother inspires (Kahn, 1985: 88).

International Review of Comparative Public Policy, Volume 4, pages 51-66.
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Those engaged in any aspect of the psychoanalytic critique of patriarchy will be referred to as “psycho-feminists” throughout this paper (Barr and Feldstein, 1989: 1). Psycho-feminists have adopted much of the method, while relentlessly questioning the values of traditional psychoanalysis. They basically agree that the child’s experiences of intimacy establish the patterns for those that follow (Horney, 1939: 18). These patterns (or constructs) are neither innate nor unalterable, but they are unlikely to change until the adult recognizes them for what they are. They reflect the pre-rational, pre-verbal desires of infancy and early childhood.

Psycho-feminists have argued that the sex/gender system is rooted in “that stubborn wordless level of adult feeling which is continuous with infant feeling and with the emotional realm of early childhood” (Dinnerstein, 1977: 39). The infant’s and young child’s relationship with her mother is seen as a major, although certainly not the exclusive, source of gender constructs (Chodorow, 1989: 5). As Rich (1979: 26) has explained: “For motherhood is the great mesh in which all human relations are entangled, in which lurk our most elemental assumptions about love and power.” Women assume responsibility for taking care of children, and men resist doing so, because of these intrapsychic constructs formed during our own infancies and childhoods, when we were cared for by mothers or other women.

Three of these constructs, distinct but related, are particularly relevant to divorce. All derive from the core premise that in cultures where women are exclusively responsible for child-rearing, women are generically perceived and treated as mothers. It may be useful to think of these constructs along a developmental continuum. Later constructs build on earlier ones. The first is rooted in earliest infancy. Psycho-feminists have suggested that women as well as men fear and hate powerful women, because such women too vividly evoke the “helplessness of infancy” and the infant’s perception of an all-powerful mother (Dinnerstein, 1977). The second construct is formed later, when the baby is developing a sense of her own identity separate and distinct from her primary caretaker. Because those primary caretakers are usually women, girl and boy babies have very different experiences at this crucial stage, resulting in gendered dynamics of dominance and submission. The third construct relates to the child’s perception of herself as part of a larger community. Like the largest in a set of Russian dolls, it includes—even as it conceals—the earlier constructs. Assuming a gendered community, the child not only learns and seeks to conform to the social rules for gendered behavior, but internalizes them, assuring their perpetuation.

This is obviously a simplified fragment of a rich and complex theory. While I do not claim any expertise in this area, it seems to me that the psycho-feminist perspective is invaluable for those of us seeking to “unpack” divorce law; that is, to expose and to question its underlying assumptions (Copelon, 1988). The debacle of western divorce cannot be constructively addressed until we
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recognize these constructs. We cannot begin to cope with the monstrous looming “mother” until we look up and acknowledge that she is there. This paper attempts to begin the process. The first section explains the intrapsychic constructs mentioned above. The last section describes some of the ways in which these constructs affect the divorce process as well as its aftermath.

INTRAPSYCHIC CONSTRUCTS

Fear of Powerful Women

The infant’s relationship with her mother effectively establishes the basic terms in which that infant, and all other mother-reared children, view women (Dinnerstein, 1977: 28-34). A mother-reared culture subconsciously sees women from the distorted, dependent, pre-rational perspective of the infant. Because of the equation of “women” and “mothers,” men and women who are the products of exclusive female parenting tend to hate and fear powerful women. In a mother-reared society:

The crucial psychological fact is that all of us, female as well as male, fear the will of women. Man’s dominion over what we think of as the world rests on a terror that we all feel: the terror of sinking back wholly into the helplessness of infancy (Dinnerstein, 1977: 28-34).

While men and women may share this fundamental dread of women, it has very different implications as little girls realize that they are same gender as their mothers and little boys discover that they are not.

Domination and Subordination

In The Bonds of Love, American psychoanalyst Jessica Benjamin (1988) analyzes the common patterns of male domination and female subordination. Like Dinnerstein, she traces much of our gendered behavior to exclusive female parenting. She breaks new theoretical ground, however, with her discussion of “intersubjectivity,” a term she borrows from Jurgen Habermas. Habermas uses the term “intersubjectivity of mutual understanding” to refer to both the individual’s capacity to recognize another as separate and autonomous and the social domain created by that mutual recognition. Intersubjectivity refers to “what happens in the field of self and other” (Benjamin, 1988: 19-20).1 From this perspective the child’s acquisition of relatedness skills may be seen as equal in importance to her acquisition of independence.2 While Benjamin uses intersubjectivity to criticize the intrapsychic bias of psychoanalysis, she stresses it as complementary, rather than in opposition, to the intrapsychic model (Benjamin, 1988: 10, 19).
Benjamin finds her paradigm in Hegel's description of domination, the paradox that "at the very moment of realizing our own independence, we are dependent upon another to recognize it" (Benjamin, 1988: 33). She suggests that children of both sexes confront this paradox when they realize that their primary love object must be renounced and that they must separate from their caretaker. According to Benjamin, the male and female patterns of domination and submission originate in and replicate the separation of each from the original caretaker, who is almost invariably a woman: "Male children achieve their masculinity by denying their original identification or oneness with their mothers ... The premise of [the boy's] independence is to say 'I am nothing like she who cares for me'" (Benjamin, 1988: 75-76). The female-mother's experience complements the male-child's. Just as he refuses to recognize her, she accepts being objectified, and remains willing to recognize him nonetheless. "The classic maternal ideal of motherhood—a paragon of self-abnegation—is only a beautification of [the woman's lack of subjectivity]" (Benjamin, 1988: 78).

The development of a "self" is far more problematic for a girl. Because the mother is the daughter's "mainstay of identity," the daughter fails to distinguish herself from her mother and "becomes unable to distinguish what she wants from what mother wants." This would not necessarily lead to submissiveness if the mother were a subject, but, as Benjamin explains, "[t]o the extent that the mother has sacrificed her own independence, the girl's attempt at independence would represent an assertion of power for which she has no basis in identification" (1988: 78).

Gendered Spheres

Children soon learn that the family is a microcosm and that gender roles in the home correspond to gender roles in the larger community. Even if they are not taught that they are supposed to act and look and feel in accordance with gender stereotypes in their homes, they learn it at their day-care centers and schools, from the television programs they watch, and in the stories they are told. They soon understand their own position in a gendered system. Rubin's paraphrase of Lacan neatly describes the process, "In Lacan's scheme, the Oedipal crisis occurs when a child learns of the sexual rules embedded in the terms for family and relatives. The crisis begins when the child comprehends the system and his or her place in it; the crisis is resolved when the child accedes to it" (Rubin, 1975: 188-189).

At the core of the gendered division of labor is the idée fixe that taking care of other people, especially children, is women's real work. As Chodorow points out, this is a self-perpetuating system:
Because of their child-care responsibilities, women's primary social location is domestic ... Men's location in the public sphere, then, defines society itself as masculine. It gives men power to create and enforce institutions of social and political control, important among these to control marriage as an institution that both expresses men's rights in women's sexual and reproductive capacities and reinforces those rights (Chodorow, 1978: 9).

The idea of separate spheres for men and women is as ancient as the division of labor in the home. As Held has noted, "a long line of thinkers [including Aristotle, Kant, Hegel, Levi-Strauss, Arendt] have associated the 'public' sphere with the distinctively human, the 'private' with the natural ... the family as focused on particularistic and hence inferior concerns, often in conflict with the superior and more universal concerns of the 'public' sphere" (Held, 1989: 377). The separate spheres dichotomy received fresh impetus from the advent of capitalism, when the means of production were transferred from the self-sustaining farm to the owner's premises (Rifkin, 1980: 92-95). Men went to work in the factories (1980: 92-93). Women, most of whom remained at home with the children, assumed primary responsibility for the household (Mitchell, 1971).

The dichotomy between the domestic sphere and the public, civil world remains profoundly gendered even though women have entered the labor force in unprecedented numbers (Fuchs, 1983: 127). Instead of eradicating gender differences, the stereotyped division of labor is duplicated in the marketplace (Kessler-Harris, 1982; Matthaei, 1982). Although women have attained higher representation in some occupations, there remains a disproportionate concentration of women in certain fields (e.g., clerical, nursing, and, of course, child care), that pay far less than comparable jobs in fields which are dominated by men (Tilly and Scott, 1987: 217). While working in the "pink-collar ghetto" rarely enables a woman to adequately support herself and her children, it usually allows her more flexibility and the possibility of limited hours or at least regular shifts, so that she can still meet her family responsibilities (Taub, 1980: 349; Tilly and Scott, 1987: 2, 3).

Notwithstanding their work outside the home, women still do most of the necessary work within the home as well. As noted in a recent Census Bureau report, "most working women meet the usual demands of housework and family care in addition to their work in the labor force ... many [working women] choose work that will fit around ... their family responsibilities, a complication and impediment to occupational advancement not faced by most men" (Census Bureau Report 7). Considered in conjunction with the historical depreciation of women's work, most divorced women with minor children find it difficult to avoid economic dependence on former husbands or the state.
IMPLICATIONS FOR DIVORCE

The intrapsychic constructs described above—the aversion to powerful women, men's domination and women's submission, and the idea of gendered spheres of activity—play a significant, if indeterminate, part in how we conceptualize divorce. First, we do not like powerful women. Women themselves may well feel ambivalent when they take control of their lives. Moreover, to the extent we still equate "mother" and "wife" (Freud, 1964: 118), a woman who wants a divorce is the psychological equivalent of the mother who abandons; she is a monster. While the husband who leaves his wife is viewed as an irresponsible child—"running away" or "cheating"—the wife who leaves her husband is viewed in an entirely different light. Even though she seeks custody of her actual children, she has left her husband-child and to her community she is a rejecting mother.

Second, and critically, mother-reared cultures persistently refuse to recognize women as subjects. The real focus of the law, as well as the court, is more likely to be the husband's "rights" or the children's welfare than the woman's needs at divorce.

Third, the woman is responsible for, as well as relegated to, the private sphere. It is her job to maintain harmony in the home. It is her fault if the marriage fails and the private sphere breaks apart, even if she has not initiated the divorce. Just as the "all-powerful" mother is expected to satisfy the needs of the infant or child—regardless not only of her own needs but of poverty, illness, even war—the wife-mother is supposed to keep the family together, regardless of circumstances. Fault grounds for divorce, under which "fault" must be established before a divorce can be granted, may serve as a device for shifting this burden (Weitzman, 1985: 16-17). The notion of marital fault itself, however, has always been weighted against women. Few actually benefitted from fault grounds, while many women have had such grounds used against them. I am not suggesting a return to fault grounds for divorce. No-fault divorce is not the problem; the problem is the deep, underlying assumption of female culpability.

These intrapsychic constructs have concrete, profound, and readily apparent consequences for the divorce process itself as well as its aftermath (i.e., post-judgment enforcement of support awards). They affect the ways in which the parties behave toward each other, how they are dealt with by the decision maker, and how they are treated by the law itself. It should be emphasized that I am not suggesting that the patterns described are universal, or that they necessarily manifest themselves as grossly as I outline here. But enough of these patterns are observable, with enough clarity, enough of the time not only to justify their recognition, but to mandate a systemic response.
Negotiation and Mediation

Negotiation and mediation are methods through which parties resolve disputes without formal adjudication (American Bar Association, 1982). In negotiation, the parties attempt to do so by themselves. In mediation, they have the assistance of a third party. Almost all divorces are resolved through negotiation and/or mediation in the United States and France. Sander has succinctly summed up the advantages of an, "open-ended, problem solving process that looks to the future ... flexible ... crafted by the parties themselves ... [and] avoids winner-loser syndrome ... [D]isputants ... have a strong commitment to the result that is reached" (Sander, 1984: xi, xiii).

To the extent that the law is "male," negotiation may permit women to avoid or minimize the official imposition of male values (West, 1987). It not only reduces judicial participation but enforcement is likely to be less of a problem because compliance is generally greater with an agreement the parties have devised themselves (Menkel-Meadow, 1985). Similarly, negotiation allows women to limit the utilization of the adversarial, reductionist methods which infuse legal culture. Women usually opt for some form of negotiation or mediation. Gilligan (1982), among others, has suggested that they are more skilled at and more comfortable with negotiation than they are with outright conflict. Catharine MacKinnon has remarked that "it makes a lot of sense that [women] should want to negotiate, since we lose conflicts" (Dubois et al., 1985: 27).

But reducing the law's role in the process leaves more to be determined by the gendered intrapsychic constructs described above. Because these are norms which women, too, have internalized, they may be more comfortable with these constructs than they are with a more formal process. They do not necessarily benefit, however. As Williams has noted, "[The] failure of rights discourse does not logically mean that informal systems will lead to better outcomes" (Williams, 1988: 56, 61).

Women are typically more "risk-adverse" during the divorce process than men. They are usually well aware of their relative lack of power and what are often for them intolerably high stakes. This makes women not only more inclined to choose negotiation, but more likely to capitulate within its framework. Most women will freely bargain away support and property, for example, in exchange for greater control over custody and visitation (Weitzman, 1985). The negotiation is skewed even before factoring in the domination/submission dynamic, clearly a consideration in a context where women are always negotiating against men (Lerman, 1984: 57; Woods, 1985: 432).

Negotiation does not take the parties' intrapsychic constructs of gender into account. Rather, it assumes a rough equality of bargaining power. As Mnookin and Kornhauser explain in their famous *Yale Law Journal* article, "Bargaining in the Shadow of the Law: The Case of Divorce".
There may well be cases in which one spouse (stereotypically the husband) is highly sophisticated in business matters, while the other spouse is an innocent lamb being led to the slaughter. But married couples more typically have similar educational and cultural backgrounds, and most individuals perceive very well their own financial interests and needs at the time of divorce (1979: 993).

While private ordering may facilitate richer, more personalized discussion, it impedes the recognition of gendered constructs as such. Indeed, as a "private" process, it encourages the parties to see themselves more as individuals than as members of subordinate or dominant groups. Because legally there is no precedential value to settlements, successful articulation of her concerns by one woman does little for the next. Negotiation does not purport to establish normative weight for such concerns. While the parties may be satisfied with the outcome, their expectations are likely to have been gendered as well. The process, its results, and its assessment all take place as much in the shadow of the giant "mother" as in the "shadow of the law."

Judicial Determinations

If the parties are unable to resolve their differences, the task falls to the court. Judges have an extraordinary amount of discretion in divorce cases. Its purpose is to permit the court to consider all aspects of the marital situation (Freed and Walker, 1984: 413-418, 445-447, 450) and to compensate for the lack of "messy richness" (Hyman, 1987: 873) in the legal system. The court is allowed, at least in theory, to recognize women's own perceptions of their needs (West, 1987). In practice, however, the increased scope of the court's authority is prejudicial to women. At least 39 states have task forces investigating the impact of gender bias in the courts. All nine which have published reports to date have found that "gender bias detrimental to women permeates every aspect of marital dissolution and child support" (Schafran, 1990: 186).

The questions confronting the trial judge, such as the valuation of woman's "contribution" to the marriage, are concededly problematic. What should be included? Is the wife's work comparable to wage labor, such as that of childcare providers, nurses, cleaners? The difficulties of determining a "fair" value of women's work become insurmountable, however, when the calculation is made by a male judge. As a boy, the judge presumably achieved his independence by denying the subjectivity of his mother and "refusing to recognize her" as a human being with needs of her own (Benjamin, 1988). How can he be expected to impartially recognize the needs of the "mother" standing before him? In this psychologically loaded context, discretion permits the judge's own bias, reflecting his own place in the patriarchy, to serve as the unexamined predicate for his decision (Bartlett and Stack, 1986: 25). Divorce
is governed not by law, but quite literally by the men who comprise the vast majority of family court judges.11

Women judges may make some difference if their experiences enable them not only to understand and empathize with the needs of the women whom they judge, but to transcend their own internalized constructs of gender (Johnston and Knapp, 1977: 675). Female judges are still a small and self-selected elite. Having maneuvered and acquired power within a male-dominated system, female judges have necessarily assimilated some of its values in the process. They are further constrained by the notion of judicial “neutrality,” which some consider a preemptive device of the dominant discourse.

Custody of Children

The gendered intrapsychic constructs described above are reinforced and perpetuated when divorce leaves women with more parental responsibility and men with less. Yet most women passionately oppose joint custody and most men are reluctant to assume equal responsibility for child care. This is hardly surprising, in view of the urgency and force of intrapsychic constructs in this context. It is through the custodial, intimate nurturing of children that gendered intrapsychic constructs replicate themselves. The constructs of “woman-as-mother” discussed above inevitably influence and often determine custody arrangements.

They help explain our otherwise mysterious acceptance of a post-divorce gender-based division of labor. Feminists have exhaustively described the inequities of this division of labor during a marriage (Hochschild and Machung, 1989), but women may tolerate some unfairness in order to keep the marriage together. As Levi-Strauss acutely observed, “The sexual division of labor is nothing else than a device to institute a reciprocal state of dependency between the sexes” (1969: 347-348). But at divorce there is no longer any justification for this “reciprocal state of dependency.”

Nor can the woman’s post-divorce child-care responsibilities be explained by economic considerations alone. Although the husband is almost always the higher wage-earner, his higher wages rarely benefit the family much after divorce (Weitzman, 1985). It is not only his financial obligation to support his children that keeps him from taking care of them.

Intrapsychic constructs of “woman-as-mother” suggest several explanations for the post-divorce persistence of the gender-based division of labor. First, women worry that men cannot (or will not) take care of children properly (i.e., as women would). We expect women to be “naturally” good at mothering because it is their role, the quintessential private sphere activity. In fact, women usually have plenty of practice. Little girls begin imitating their mothers and other women early, usually between the ages of two and four, preparing...
themselves for life in a gendered world. They soon learn to place high values on “connectedness” and to practice interpersonal and nurturing skills by playing “house” and playing with dolls (Gilligan, 1982: 24-63).

As a corollary, women have had few options besides sole physical custody for assuring their children’s safety and well-being. Although nurturing children is one area in which women’s abilities are recognized (Hooks, 1984: 139), they have little input in creating enforceable standards for the post-divorce welfare of their children. In theory, this should not be difficult. If nurturing is truly learned behavior, for example, joint custody could be conditioned upon ongoing “remedial” training for parents with inadequate skills (Shalleck, 1991).

A major impediment to such programs is the “legal tenet that the state should refrain from crossing the threshold of the home of the functioning family, especially where the upbringing of children [is] concerned” (Glendon, 1990: 291). Another significant factor is women’s historically marginal role in the law-making process, generally regarded as “public sphere” activity from which women have for the most part been excluded.

Again, however, while recognizing the importance of social and political factors, intrapsychic constructs of domination and submission help explain the failure to even look to feminine standards as a societal norm in this context. Men—including family court judges and especially including ex-husbands—refuse to take orders from women. Indeed, as Benjamin (1988) has explained, this refusal is the foundation for their sense of masculine independence. When a father assumes custodial responsibility, he does so on his own terms, which may well be to the child’s detriment. We expect a woman, especially a mother, to put the interests of the children above her own (Chesler, 1986). Because men reject this ethic of self-sacrifice, this denial of their own “subjectivity,” it is not likely to become part of the law.

Although joint custody raises troubling questions for most of us, it becomes increasingly appealing as gender roles become more fluid and the costs of exclusive female parenting continue to accrue. Exclusive female parenting impoverishes women and impedes their development as autonomous, “subjective” selves. Sole female custody after divorce reinforces children’s gender stereotypes and misogyny, usually leaving them poor as well (Corcoran, Duncan, and Hill, 1984: 244). It deprives men of strong nurturing relationships with their children, and often leads them to incur financial obligations toward two or more households, jeopardizing their own finances as well as the welfare of those dependent on them.

For society, exclusive post-divorce female parenting contributes to the growth of an underclass (Stetson, 1987: 99-100; Weitzman, 1985: 323), and to the exclusion of nurturing values from a public sphere that desperately needs them. Partly because of their disproportionate responsibility for child care, women lack the money, status, and power necessary for meaningful access to, and participation in, the public sphere. Those for whom nurturing values are
most important are unable to promote them in a political context, to our collective detriment (Ruddick, 1989). In short, we have ample incentives to overcome our own ambivalence, our own internalized ideas of gender, and begin to analyze and address the intrapsychic constructs that underlie post-divorce custody arrangements.

Support

Compliance with the support provisions of divorce judgments, which are almost invariably in favor of women and directed against their higher earning husbands, is notoriously poor (Glendon, 1977: 276-79; Weitzman, 1985: 262). Why do otherwise law-abiding men disobey court orders requiring them to support their former wives and children? What are the operative intrapsychic constructs here? How are they reflected in and reinforced by the law?

First, it is the woman, rather than the state, who initiates support enforcement proceedings. Gendered dynamics of domination and submission, as well as our aversion to powerful women, lead to sympathy for men resisting the control of women. Popular culture is replete with images of alimony harpies pursuing hapless former husbands (Ehrenreich, 1983: 107). In some countries, the state assumes the role of guarantor, albeit to a limited degree. If support is not paid under the French “maintenance advance” system, for example, the state provides the custodial parent with child support while it seeks to enforce the support order against the husband (Glendon, 1988: 89). Compliance is somewhat higher under this arrangement. While acting as guarantor may well spur the state to greater efforts against delinquent husbands, the fact that it is the state, rather than a woman, that is seeking payment not only legitimates support but may weaken the husband’s resistance to it. Submitting to the state is less psychologically loaded than submitting to a woman.

Second, as discussed above, the mother is usually granted physical custody of the children while the father is granted visitation. Even if he had close relationships with his children while he was living with them, the father’s new role imposes constraints. Dubus (1988: 27) poignantly describes one father’s dilemma in “The Winter Father”:

He saw that, in his eight years as a father, he had been attentive, respectful, amusing; he had taught and disciplined. But no; not now: when they were too loud in the car or they fought, he held onto his anger, his heart buffeted with it, and spoke calmly, as though to another man’s children, for he was afraid that if he scolded as he had before, the day would be spoiled, they would not have the evening at home, the sleeping in the same house, to heal them; and they might not want to go with him the next day or two nights from now or two days.
Men may be particularly inept at dealing with the troubling ambiguities of the situation (Gilligan, 1982: 39). Because visitation is often awkward and even painful (Wallerstein and Kelly, 1980: 1536), the visits usually taper off (Furstenberg and Harris, 1990). Although the correlation between visitation and support is problematic (McIsaac, 1988), the less of a relationship a man has with his children, the less likely he is to be aware of their needs and the less likely he is to contribute to their support (Areen, 1985: 676; Chambers, 1979: 108-109).

Gendered dynamics of dominance and submission are similarly operative here. A mother-reared man expects a woman to provide him with psychological support and a refuge from the pressures of breadwinning. This is the *quid pro quo* for his financial support. After divorce, his wife no longer "recognizes" him. Indeed, he may no longer even have access to his former home, or, if he does, only upon her terms. He feels completely justified in stopping payments from which he no longer derives any benefit, especially because he not only has to pay for his own housing, but has to cope with housekeeping—*her* job—as well. In short, from the male point of view, he is being required to keep up his end of the bargain (to provide financial support) while his former wife is allowed to walk away from hers (to provide emotional support and a comfortable home).

Ignoring support orders is often the only effective way for a former husband to dominate his former wife. In doing so, he affirms his independence by refusing to recognize her as a person with needs, just as he refused to recognize his mother (Benjamin, 1988). Withholding support, or torturing the supported spouse with late or sporadic payments, violates the law. It seems no worse to the husband, however, than the wife's legally condoned behavior, which violates norms deeply rooted in intrapsychic constructs and deeply ingrained in our culture. While formally repudiating these norms, male judges are apt to be empathetic (Schafran, 1990: 114-115).

**CONCLUSION**

How can we begin to generate alternatives to the divorce and post-divorce scenarios which I have described? I suggest a two-step approach. First, we must identify the intrapsychic constructs which underlie divorce. Lawyers, judges, and litigants must stop ignoring the enormous "mother" towering above us. This kind of analysis has limited impact, however, unless it is expressed in a social context and actually made a part of the law structuring domestic relations. The second step of my proposal may be understood as the politicized form of the first. Woody Allen's resolution of his Oedipal angst is classic—he marries a woman just like his mother. He accepts and perpetuates the status quo. If we are not content to do the same, if we no longer want to be tyrannized by the monstrous "mother," we must rethink exclusive female parenting.
Divorce law is both a part and a function of the transformative process (Olsen, 1984: 3) through which our conceptions about parenting roles are already being altered (Stacey, 1990). Change becomes possible when we recognize and articulate the ways in which we subconsciously conform to the precepts of a system that oppresses us all (Bartlett, 1990: 876). Change becomes real when we apply these insights in our own laws and our own lives.

ACKNOWLEDGMENTS

I am most grateful to Louis Henkin, Nadine Taub, Susan Goodman, Hannah Levin, Andrea Remez, and Jonathan Hyman. Thanks also to Karin Clough, Elisabeth Donnovin, Mart Cizek and Stacey Nordquist for their research assistance. This paper revisits some of the themes developed in a longer paper, “Divorce Law, Feminism, and Psychoanalysis: In Dreams Begin Responsibilities,” University of California at Los Angeles Law Review 1991, 38:1483-1532.

NOTES

1. This is not a completely new focus for psycho-feminists (Horney, 1939: 9). Glendon, similarly, has argued that family laws in the United States and Western Europe suggest that “dependency is somehow degrading, and implicitly deny the importance of human intersubjectivity” (Glendon, 1990: 297).

2. This resonates with Gilligan's ground-breaking criticism of Kohlberg's theory of moral development (Gilligan, 1982: 24-63). Scott has criticized Gilligan's formulations as "ahistorical, defining woman/man as a universal, self-reproducing binary opposition" (Scott, 1988: 40).

3. For development of the proposition that "maternal power in the nursery defines gender so as to foster patriarchal power in the public world," see Kahn (1985). Noddings (1984) argues that there are biological and material bases for mothering. Chodorow has been criticized by psychoanalyst and historian Peter Loewenberg, among others, for "ignoring biological reality" (Kurzweil, 1989: 172).

4. In their thoughtful and comprehensive analysis of the history of women's work in France and England, Tilly and Scott (1987: 7-8) have reassessed the idea that capitalism precipitated a "sharp break in women's experience from the household to the workplace."

5. For descriptions of married women's lack of subjectivity, see Heilbrun (1979: 175); and Silver (1974: 81).

6. I am not suggesting that children's welfare is in any sense adequately addressed at divorce (Minow, 1986: 1). Courts and legislatures are more likely to focus on it, however, at least rhetorically.

7. Olsen has described the "glorification" of the private sphere (1983: 1499-1500).

8. "No official count is kept of mediated divorces, but by 1988 approximately 120 programs were operating in the U.S. and some states have made it mandatory, at least in the first instance" (Brannigan, 1990).

9. Some feminists have argued that these are "male" methods (Foster, 1986; Rifkin, 1980). Many believe that the law is "inherently patriarchal" (Gallop, 1985; Olsen, 1984: 5, n. 13).

10. Freeman (1984) has pointed out the pertinence to family law of Max Weber's observation that law intended to protect the weak must be "confined by rules."
11. For a succinct history of the gender bias in the courts' task force movement, see Schafran (1990: 183-186). Mnookin (1975: 226) has cogently described the specific problems of deciding custody.

12. In their classic, *Beyond the Best Interests of the Child*, Goldstein, Freud, and Solnit (1973) support the proposition that it would be desirable for the custodial parent (usually the mother) to have control over the circumstances under which the child is raised.

13. These, too, of course, incorporate intrapsychic constructs.


15. Freed and Walker (1984: 491-492) prepared a table showing states which allow—but do not compel—wage assignments, income deductions, or direct payment to court for support. An exception to this general rule in the United States would be the assignment by a mother receiving welfare of her right to seek support to an agency.

**REFERENCES**


Psycho-Feminism and Divorce Law


References for Women and the Market: