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FAMILY LAW—THE REHABILITATION ILLUSION: HOW ALIMONY REFORM IN MASSACHUSETTS FAILS TO COMPENSATE FOR CAREGIVING

INTRODUCTION

When the Massachusetts Legislature unanimously passed the Alimony Reform Act of 2011,¹ the bill was heralded as a “sweeping overhaul,” a long overdue change that would improve the predictability of divorce cases in the Commonwealth.² Senator Gale Candaras, a Democrat who co-sponsored the bill, believed that the legislation was necessary in order to adjust to the changing times; “[the previous] law has not changed in four decades, and the world has changed a thousand times in four decades.”³

However, for all the ways in which the world has changed in the past four decades, there are many ways in which it has not.⁴ When President Kennedy signed the Equal Pay Act in 1963,⁵ women earned just 58.9% of the wages men earned.⁶ Since that time, women’s pay has increased by less than a penny per year.⁷ Fifty years later, women earn

1. See Alimony Reform Act of 2011, ch. 125, 2011 Mass. Acts 574 (codified at MASS. GEN. LAWS ANN. ch. 208, § 34 (West 2012)).

2. See Jack Flynn, *Gov. Patrick OKs ‘Sweeping Overhaul’ of Massachusetts Alimony Laws*, SPRINGFIELD REPUBLICAN (Sept. 26, 2011), http://www.masslive.com/news/index.ssf/2/011/09/gov_patrick_oks_sweeping_overh.html (covering the support of the Alimony Reform Act bill from Senators and the Massachusetts Bar Association).

3. *Id.*

4. See generally INST. FOR WOMEN’S POL’Y RES., STATE-BY-STATE RANKINGS AND DATA ON INDICATORS OF WOMEN’S SOCIAL AND ECONOMIC STATUS, 2010, <http://www.iwpr.org/initiatives/states/state-by-state-rankings-data-2010> (indicating that women make less than men for full-time; year-round employment in every state; low rates of women in managerial or professional occupations; and low number of women-owned businesses); THE OXFORD HANDBOOK OF ECONOMIC EQUALITY 290 (Wiemer Salverda, Brian Nolan & Timothy M. Smeeding eds., 2009) (analyzing world-wide trends in pay inequity: “[s]eparate pay rates for men and women . . . are now illegal, and have been for half a century in the developed world. But the gender pay gap survives universally”).

5. Equal Pay Act of 1963, Pub. L. No. 88–38, 77 Stat. 56. Notably, President Kennedy remarked that working mothers “bear the heaviest burden of any group in our Nation.” John F. Kennedy, Remarks Upon Signing the Equal Pay Act (June 10, 1963), *available at* <http://www.presidency.ucsb.edu/ws/index.php?pid=9267>.

6. Jacqueline A. Berrien, Chair, U.S. Equal Emp’t Opportunity Comm’n, Statement on Equal Pay Day (Apr. 17, 2012), *available at* http://www1.eeoc.gov/eeoc/newsroom/wysk/statement_equal_pay_day_2012.cfm?renderforprint=1.

7. *Id.*

only \$.81 for every dollar that men earn.⁸ Women also still perform the majority of unpaid work, including child care, housework, and other intangible contributions to the home.⁹

When so much inequality still exists, what are the potential effects and dangers of a “sweeping overhaul?”¹⁰ While the Alimony Reform Act is invaluable in providing durational limits for alimony, there are many questions still left unanswered.¹¹ This Note addresses one of those unanswered questions and advocates for amendments to the formal introduction of “rehabilitative alimony,” which provides short term alimony to dependent spouses in order to facilitate re-entry to the workforce.¹² In an Act filled with guidelines, factors, and timetables,¹³ there must also be clarity provided as to what it means to be “rehabilitated.”¹⁴ As it stands now, the statute begins and ends with self-sufficiency.¹⁵

What does Massachusetts mean by self-sufficiency? How will courts know whether a former spouse is rehabilitated? Without a statutory definition of self-sufficiency, Massachusetts is in danger of answering these questions by allowing divorced women to live at a level of mere subsistence while their former husbands enjoy a higher earning capacity achieved through their unpaid labor.

This Note will examine, from a feminist perspective,¹⁶ the failures

8. *Equal Pay*, DEP’T. OF LABOR, <http://www.dol.gov/equalpay/> (last visited May 14, 2014); *Equal Pay for Equal Work? New Evidence on Persistence of the Gender Pay Gap: Hearing before the Joint Econ. Comm.*, 111th Cong. 1, (2009) [hereinafter *Persistence of the Gender Pay Gap*] (statement of Carolyn B. Maloney, Chair, U.S. Representative, N.Y.), available at <http://www.gpo.gov/fdsys/pkg/CHRG-111shrg52911/pdf/CHRG-111shrg52911.pdf>.

9. Catherine Rampell, *Women Lead in Unpaid Work*, N.Y.TIMES ECONOMIX BLOG (March 10, 2011, 2:29 PM), <http://economix.blogs.nytimes.com/2011/03/10/women-lead-in-unpaid-work/>.

10. Flynn, *supra* note 2.

11. See generally Mario C. Capano, *New Alimony Reform Act: Consistency Breeds Confusion*, MASS. LAW. WKLY. (Oct. 20, 2011, 4:57 PM), <http://masslawyersweekly.com/2011/10/20/new-alimony-reform-act-consistency-breeds-confusion/>.

12. MASS. GEN. LAWS ANN. ch. 208, § 48 (2007 & Supp. 2013).

13. *Id.* (alimony calculations and durational limits clearly set according to length of marriage).

14. See Cynthia Starnes, *Divorce and the Displaced Homemaker: A Discourse on Playing with Dolls, Partnership Buyouts and Dissociation Under No-Fault*, 60 U. CHI. L. REV. 67, 98 (1993) (stating that the use of the word “‘rehabilitation’ is an odd word choice, as if a woman were to be classed along with a criminal who, through rehabilitation, might be able to rise from vice to become a sound, productive citizen”).

15. ch. 208 § 48.

16. A feminist perspective is appropriate because the large majority of alimony recipients are women and the large majority of alimony payors are men. The gender lens through which the following analysis is considered reflects the realities of such disparity.

of the Alimony Reform Act to fully consider and compensate women for unpaid contributions provided during the course of a marriage. Specifically, this Note will recommend that Massachusetts adopt an amendment to the Alimony Reform Act that provides clarity to the courts about what it means to be “self-sufficient” and measures that standard by the economic standing of the payor spouse.

In Part II, this Note will review the evolution of alimony laws in the Commonwealth. Particularly, it chronicles alimony’s long standing history in Massachusetts; from a period of great reliance on judicial discretion up to the most recent Alimony Reform movement. Lastly, Part II details the changes the new statutes made, paying particular attention to the newly codified addition of rehabilitative alimony as a statutorily sanctioned alimony option.

Part III then compares interpretations of self-sufficiency in Texas and Tennessee, as polarizing examples of how other jurisdictions have determined whether a recipient spouse can be rehabilitated.¹⁷ Texas promotes independence between the parties over economic parity, requiring only that a former spouse be rehabilitated to meet his/her “minimum reasonable needs.”¹⁸ On the other hand, Tennessee’s legislature has gone to great lengths to make it perfectly clear that both parties’ contributions to the household are highly valued.¹⁹ Tennessee’s equality-based approach ensures that an award of rehabilitative alimony will not result in the economic disadvantage of a spouse who made career sacrifices for caregiving.²⁰ Part III concludes with an examination of the similarities of Massachusetts courts to the Tennessee style of interpreting self-sufficiency prior to alimony reform.

In Part IV of this Note, gender-based obstacles to equal pay are

However, it is acknowledged that the economic sacrifices experienced by caregiving mothers are shared by all caregivers who take time out of careers for family, regardless of gender. For a more detailed discourse on feminist legal theory, see Pamela Laufer-Ukeles, *Selective Recognition of Gender Difference in the Law: Revaluing the Caretaker Role*, 31 HARV. J.L. & GENDER 1, 4 (2008) (“Gender neutrality continues to dominate the legal arena. Recognition of difference is deemed suspect based on the fear of reinforcing problematic and hierarchal stereotypes, thereby undermining headway in women’s equality Ignoring difference ignores those particular attributes of biological and gender role difference that are valuable to society, such as caretaking.”). See generally TRANSCENDING THE BOUNDARIES OF LAW: GENERATIONS OF FEMINISM AND LEGAL THEORY (Martha Albertson Fineman ed., Routledge 2011). Interestingly, Fineman remarks that “[l]aw as a discipline remains a tough terrain for feminist thought” *Id.* at 2.

17. TEX. FAM. CODE ANN. § 8.054 (West 2006 & Supp. 2012); TENN. CODE ANN. § 36-5-121(c)(2) (2010).

18. TEX. FAM. CODE ANN. § 8.054 (West 2006 & Supp. 2012).

19. TENN. CODE ANN. § 36-5-121(c)(2) (2010).

20. *Id.*

critically examined as reasons why rehabilitation should be limited to only those spouses who can achieve economic success equal to their partners. The persistence of the wage gap and contributing factors, such as unequal pay, gendered career choices, unpaid caregiving work, and negative career consequences of mothering, all act against women's ability to earn the same as men.

As a potential solution to the dangers of such an ambiguous standard of rehabilitation, Part IV of this Note recommends that Massachusetts adopt a legislative definition of self-sufficiency that promotes post-divorce financial parity between the spouses. Using Tennessee's rehabilitative alimony statute as an example,²¹ this Note proposes language that could be used to eliminate any confusion resulting from the pressure to make alimony reform more predictable.

I. THE ALIMONY EVOLUTION IN MASSACHUSETTS

Although alimony has deep roots in Massachusetts jurisprudence, until recently it was governed by antiquated statutes.²² For more than thirty years, judicial discretion ruled alimony hearings in the Commonwealth.²³ It was not until a few years ago, when the Alimony Reform movement gained momentum, that real changes started to take shape. Large changes came swiftly after. By 2011 Massachusetts was in the throes of a complete overhaul of their alimony system.²⁴

This section will walk through the history of alimony in Massachusetts and what led to the dramatic changes of the 2011 Alimony Reform Act. Section I.A will describe the earliest incarnations of alimony in the Commonwealth, as well as the long-standing 1974 statute, which prompted the reform movement. Section I.B analyzes some of the pre-reform cases that considered the possibility of rehabilitative alimony in Massachusetts, and demonstrates that those cases leaned toward a more equitable interpretation of self-sufficiency. Section I.C describes the objections of the two major reform advocacy groups, Massachusetts Alimony Reform and the Second Wives and Partners Club, as well as the work of the Legislative Task Force assigned with recommending changes. Section I.C also chronicles the success of the Task Force in passing legislation that completely changed alimony

21. *Id.*

22. Charles P. Kindregan, Jr., *Reforming Alimony: Massachusetts Reconsiders Postdivorce Spousal Support*, 46 SUFFOLK U. L. REV. 13, 1, 22-24 (2013) (recounting the evolution of alimony in Massachusetts).

23. *Id.* at 24 ("Between 1974 and 2011 . . . the alimony statute's vagueness caused various judges and lawyers to interpret it differently.").

24. *Id.*

awards throughout the state. Lastly, section I.D breaks down the current statute to analyze the current formulaic approach and recommends a legislative definition of “self-sufficiency.”

A. *Alimony’s Deep Rooted History in Massachusetts*

Alimony has been part of Massachusetts’ history since the state’s inception, anchored in the world’s oldest written constitution in continuous effect.²⁵ The first alimony statute dates back to 1785.²⁶ Since that time, alimony has undergone several statutory revisions, but the statute preceding the Alimony Reform Act of 2011 stood in place for more than three decades.²⁷

The 1974 statute provided broad judicial discretion and simply stated: “Upon divorce or upon a complaint brought in an action at any time after a divorce, whether such a divorce has been adjudged in this commonwealth or another jurisdiction, the court . . . may make a judgment for either of the parties to pay alimony to the other.”²⁸ The statute provided for the basic right to alimony for parties in need by parties with the ability to pay;²⁹ however, the statute did not provide courts with further guidance by defining what kinds of alimony were available or how the amount was to be determined.³⁰ This left judges with an enormous amount of discretion which, as proponents of the Massachusetts Alimony Reform Act would later argue, created unpredictability in alimony rulings.³¹

B. *Rehabilitative Alimony Awards Prior to the Alimony Reform Act*

Even without a direct statutory definition, Massachusetts courts considered rehabilitative alimony a possibility under the 1974 alimony

25. MASS. CONST. pt. II, ch. III, art. V (providing that “[a]ll causes of marriage, divorce, and alimony . . . shall be heard and determined by the governor and council, until the legislature shall, by law, make other provision”); see *John Adams and the Massachusetts Constitution*, MAS.GOV, <http://www.mass.gov/courts/court-info/sjc/edu-res-center/jn-adams/mass-constitution-1-gen.html> (last visited May 14, 2014) (stating that “[t]he 1780 Constitution of the Commonwealth of Massachusetts, drafted by John Adams, is the world’s oldest functioning written constitution.”).

26. Act of Mar. 16, 1786, ch. 69, 1785 Mass. Acts 564.

27. MASS. GEN. LAWS ANN. ch. 208, § 34, amended by Mass. St. 1974, c. 565, effective as amended through March 1, 2012.

28. *Id.*

29. *Id.*

30. *Id.*

31. *Our Primary Legislative Goals*, MASS. ALIMONY REFORM, <http://www.massalimonyreform.org/legislation.html> (last visited May 14, 2014) (stating one of the legislative goals was to “[p]rovide equal and consistent treatment, where the outcome of a [sic] alimony case is not decided by the Russian Roulette selection of the family court judge”).

statute.³² However, courts were cautious to award rehabilitative alimony without direct statutory authority. In the 1987 case *Bak v. Bak*, the Massachusetts Appeals Court was suspicious of the idea of short term alimony to promote self-sufficiency, stating that “[r]ehabilitative alimony is viewed with some circumspection in Massachusetts.”³³

In the 1996 decision *Heins v. Ledis*, the Supreme Judicial Court tried to define a situation in which rehabilitative alimony might be appropriate.³⁴ The court ultimately found that the wife did not need any kind of alimony support, but explored the possibility of rehabilitative alimony generally, stating that “[w]e are aware of the use of ‘rehabilitative alimony,’ in instances where one spouse is not immediately financially independent, but where factors make it relatively certain that financial support is needed only for a temporary period.”³⁵

At the start of the new millennium, Massachusetts courts added an element of equality to the evolving court dialogue on rehabilitative alimony. In *Ross v. Ross*, the court emphasized that rehabilitative alimony could be used to produce economic parity.³⁶ “[Rehabilitative alimony] may be appropriate where a husband and wife of comparable professional and economic status divorce. In these circumstances, a limited term award would permit a spouse who had discontinued a career to resume it, and thereafter each independently could approximate the marital standard of living.”³⁷ By the next decade, public outcry would move the alimony dialogue away from a focus on equality, and toward a goal of financial independence.³⁸

C. *The Rise of the Alimony Reform Movement*

During 2011, special interest groups, attorneys, and politicians alike demanded alimony reform. This subsection will chronicle their efforts, culminating in the passage of the Alimony Reform Act. Two very public proponents of alimony reform were Steven Hitner and his second

32. See *Ross v. Ross*, 734 N.E.2d 1192, 1195-96 (Mass. 2000) (discussing the possibility of limited term alimony under the 1974 statute); *Heins v. Ledis*, 664 N.E.2d 10, 16 n.4 (Mass. 1996) (stating that rehabilitative alimony is only appropriate when it is “relatively certain that financial support is needed only for a temporary period”).

33. *Bak v. Bak*, 511 N.E.2d 625, 633 (Mass. 1987).

34. *Heins*, 664 N.E.2d at 16 n.4.

35. *Id.*

36. *Ross*, 734 N.E.2d at 1195-6.

37. *Id.* (citation omitted).

38. See generally MASS. ALIMONY REFORM, *supra* note 31 (“Lifetime alimony is a violation of civil rights, harming both men and women. End lifetime alimony, now!”).

wife Jeanie Hitner.³⁹ Mr. Hitner was the President of the influential Massachusetts Alimony Reform, a lobbying organization comprised mostly of alimony-paying men.⁴⁰ Mrs. Hitner co-founded the Second Wives and Partners Club.⁴¹ Together this couple and the groups they founded lobbied for legislative amendments to the alimony statute that would bring an end to what they viewed as unjustly long and inconsistent alimony awards.⁴²

The lobbying groups' primary legislative goals included to "[s]upport self-sufficiency and independence for the lower-earning spouse . . . ; continu[e] alimony payments in special cases, and only until no longer needed; [e]nd lifelong alimony dependency, allowing each party . . . to move-on with independent lives; [and] [o]btain retirement rights for alimony payers"⁴³

These groups were joined with equal enthusiasm by a large portion of the Massachusetts legal community. A joint Massachusetts Bar Association and Boston Bar Association alimony task force formed and made the first suggestion of a durational formula for general term alimony and the formal introduction of three additional types of alimony awards: rehabilitative, reimbursement, and transitional.⁴⁴ Following the recommendations of the joint task force, the Legislature's Judiciary Committee established their own task force.⁴⁵

The legislative task force was comprised of fourteen members, including legislators, attorneys, and Steve Hitner, who collaborated to make recommendations to the legislature.⁴⁶ The task force proposal

39. *Id.*

40. *Id.*

41. Jennifer Levitz, *The New Art of Alimony*, WALL ST. J., Oct. 31, 2009, <http://online.wsj.com/news/articles/SB10001424052748703399204574505700448957522?mg=reno64-wsj>; Jess Bidgood, *Alimony in Massachusetts Gets Overhaul, With Limits*, N.Y. TIMES, Sept. 26, 2011, <http://www.nytimes.com/2011/09/27/us/massachusetts-curbs-lifetime-alimony-payments.html>.

42. MASS. ALIMONY REFORM, *supra* note 31. In a statement to the New York Times, Hitner said that "[the old alimony law] put a lot of people in the poorhouse" and that "[i]t made people never able to retire." Bidgood, *supra* note 41.

43. MASS. ALIMONY REFORM, *supra* note 31.

44. MASS. ALIMONY REFORM, *supra* note 31.

45. Press Release, Gale Candaras, State Senator, Candaras and Fernandes File Alimony Reform Measure (Jan. 18, 2011) [hereinafter Press Release], *available at* http://www.massalimonyreform.org/PDFs/Candaras_Fernandes_Alimony-Reform-Press-Release.pdf; *see also WE DID IT!*, MASS. ALIMONY REFORM, <http://www.massalimonyreform.org/> (last visited May 14, 2014).

46. *See supra* note 45 and sources cited therein. As Mr. Hitner described the task force experience, "[n]obody compromised on this Compromise means people gave things up. We came up with a solution, the way the system was designed to work." Christina P. O'Neill, *Alimony for the Real World*, MASS. LAW. J. (Nov. 2011), *available at* <http://www.massbar.org/publications/lawyers-journal/201>

focused on clear definitions and durational limits for four types of alimony.⁴⁷ The proposal also terminated general alimony at retirement, ended alimony when the recipient spouse cohabitated with a new partner, and created a new list of factors to consider when determining an alimony order.⁴⁸

Massachusetts Bar Association President, Denise Squillante, who sat on the task force, was a powerful champion for the new bill. At a legislative hearing, Attorney Squillante stated:

Families should no longer have to . . . be faced with confusing and obsolete laws, which exacerbate[] conflict, ultimately hurting families. . . . While providing for some predictability, this bill is flexible and comprehensive enough to give judges a critical opportunity to craft decisions that will be in the best interest of families.⁴⁹

Arguments such as these were highly convincing to the Legislature, and the Alimony Reform Act was unanimously passed by both the Massachusetts Senate and House of Representatives.⁵⁰ On September 26, 2011 the new alimony reform was signed in to law, relatively unchanged from the task force's proposals.⁵¹ The law was celebrated across the state. Headlines read "*Alimony Reform in Mass. Ends Pay Until Death*"⁵² and "*Gov. Patrick OKs 'Sweeping Overhaul' of Massachusetts Alimony Laws.*"⁵³ Groups such as Massachusetts Alimony Reform joyously exclaimed "We did it!"⁵⁴

However, not everyone was equally excited about the changes to alimony reform. Wendy Murphy, a law professor at New England Law of Boston, was concerned about the potential effects that the law could have on women who sacrificed time out of their careers for their

1/novem

ber/alimony-for-the-real-world.

47. See Press Release, *supra* note 45.

48. See Press Release, *supra* note 45.

49. Mass. Bar Ass'n, *MBA Leaders Urge Passage of Alimony Reform Act*, MASS. LAW. J. (June 2011), <http://www.massbar.org/publications/lawyers-journal/2011/june/mba-leaders-urge-passage-of-alimony-reform-act>.

50. S. 665, 187th Gen. Ct. (Mass. 2011), available at <https://malegislature.gov/Bills/187/Senate/S665>; H.R. 3617, 187th Gen. Ct. (Mass. 2011), available at <https://malegislature.gov/Bills/187/House/H3617>.

51. Bidgood, *supra* note 41.

52. Cheryl Wetzstein, *Alimony Reform in Mass. Ends Pay Until Death*, WASH., Sept. 26, 2011, <http://www.washingtontimes.com/news/2011/sep/26/alimony-reform-in-massachusetts-ends-pay-until-dea/>.

53. Flynn, *supra* note 2.

54. MASS. ALIMONY REFORM, *supra* note 31.

families.⁵⁵ Professor Murphy voiced her concern to the New York Times, stating “[i]t’s arbitrary to have cutoff periods that effectively make it harder for . . . opportunity loss to be valued in the divorce.”⁵⁶ She was also concerned that the rigid guidelines would replace judicial discretion entirely, saying: “I’m worried that the hard lines that have been drawn will become the rule.”⁵⁷

Attorney Gerald Nissenbaum, a divorce lawyer from Boston and “former president of the International Academy of Matrimonial Lawyers, called the bill ‘mean-spirited and Draconian’ because the limits it puts on alimony are ‘too strict.’”⁵⁸ Like Professor Murphy, Attorney Nissenbaum was concerned that the reform would be detrimental to spouses who made sacrifices in a marriage.⁵⁹ Moreover, Attorney Nissenbaum believed that the wording of the bill needed to be clarified, stating: “[w]hether you like the bill or not, it should be done in a way where the language is clear, the terms are clear, and designed in a way to avoid a lot of litigation.”⁶⁰

D. *Current Alimony Laws in Massachusetts*

While attorneys continue to debate the clarity of the terms included in alimony reform, one thing is clear: the new law creates major changes for alimony in Massachusetts. As the Task Force recommended, the statute now recognizes four different types of alimony: general term, rehabilitative, reimbursement, and transitional.⁶¹ Across all types of alimony, the legislature focused on two factors: retirement and length of the marriage.⁶² Alimony is generally defined as “payment of support from a spouse, who has the ability to pay, to a spouse in need of support for a reasonable length of time.”⁶³

In contrast to the very broad grant of judicial discretion in the 1974

55. Bidgood, *supra* note 41.

56. Bidgood, *supra* note 41.

57. Bidgood, *supra* note 41.

58. Martine Powers, *Legislation Overhauls Bay State Alimony Laws*, BOS. GLOBE, Sept. 26, 2011, http://www.boston.com/news/local/massachusetts/articles/2011/09/26/legislation_overhauls_bay_state_alimony_law.

59. *Id.*

60. *Id.*

61. MASS. GEN. LAWS ANN.ch. 208, § 48 (2007 & Supp. 2013).

62. *Id.*

63. *Id.* That reasonable length of time appears to be largely dictated by the length of the marriage. Length of marriage, for purposes of alimony distribution, is determined by “the number of months from the date of legal marriage to the date of service of a complaint or petition for divorce.” *Id.* However, the court has the discretion to increase the length of marriage to include economic partnerships that began during cohabitation prior to legal marriage. *Id.*

version,⁶⁴ general term alimony is now distributed based on a tiered system for marriages lasting less than twenty years.⁶⁵ The statute terminates general term alimony payments upon the remarriage of the recipient or the death of either spouse, and, in notable addition, the cohabitation of the recipient spouse with a new partner for longer than three months, or when the payor spouse attains full retirement age.⁶⁶ Alimony awarded for any initial length of time is modifiable by either party upon a showing of a material change in circumstance.⁶⁷

When general term alimony is not awarded, the courts still have three other options for short term support. Reimbursement alimony is most appropriate as a type of repayment for economic (or noneconomic) investments made by one spouse for the benefit of another, when the marriage lasted for less than five years.⁶⁸ Transitional alimony, on the other hand, is not a form of repayment, but is rather an intermediary tool to help recipient spouses adjust to a new lifestyle or location following a divorce of a marriage lasting less than five years.⁶⁹

Reimbursement and transitional alimony compensate for contributions to a marriage that does not exceed five years.⁷⁰ Rehabilitative alimony is unique. Unlike reimbursement and transitional alimony, rehabilitative alimony may be awarded for a marriage lasting more than five years.⁷¹ Rehabilitative alimony is also unlike reimbursement and transitional alimony because the recipients are presumably not self-sufficient at the time the award is made.⁷² Rehabilitative alimony is not awarded to compensate recipients for their contributions in a marriage; instead, it is focused on the goal of making a dependent spouse become a “self-sufficient” spouse.⁷³ Short term

64. ch. 208, § 34, *as amended by* Mass. St. 1974, c. 565, effective as amended through March 1, 2012.

65. *Id.* § 48. For example, marriages of less than five years are eligible for general term alimony for a maximum number of one-half the number of months of the marriage. *See* MASS. GEN. LAWS ANN.ch. 208, § 49 (2007 & Supp. 2013) for a complete listing of alimony durations by length of marriage. However, it should be noted that recipient spouses from marriages of any length of time do retain a right to petition the court to deviate from these time limits in the interest of justice. *Id.* § 49(b). Any deviations must be made upon written findings of the court supported by clear and convincing evidence. *Id.* § 49(f)(2); *see also id.* § 53(e).

66. *Id.* § 49(a), (d), (f).

67. *Id.* § 49(d).

68. *Id.* § 48 (for example, when a recipient spouse enabled the payor spouse to complete education or job training).

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

payment is awarded here so that the recipient spouse may re-enter the workforce or complete job training and may begin to move from economic dependence on his/her former spouse to self-sufficiency.⁷⁴

As with general term alimony, rehabilitative alimony is terminated upon the remarriage of a recipient spouse and is modifiable based on a material change in circumstance.⁷⁵ Rehabilitative alimony is not intended to last longer than five years.⁷⁶ However, it may be extended provided that the recipient spouse demonstrates “compelling circumstances . . . that unforeseen events prevent the recipient spouse from being self-supporting at the end of the term . . . the court finds that the recipient tried to become self-supporting; and the payor is able to pay without undue burden.”⁷⁷

The statute provides the courts with guidance when making their determinations as to which form of alimony is most appropriate in a given case.⁷⁸ The most relevant considerations for rehabilitative alimony awards include: the age and health of the parties, employability of the parties (including potential employability through additional training), economic and non-economic contributions during the marriage, and lost economic opportunity as a result of the marriage.⁷⁹ Even with these statutory guidelines, it still remains unseen how the courts will apply them when it comes to determining whether a rehabilitative alimony recipient is “self-sufficient.”

II. SOUTHERN SELF-SUFFICIENCY: A STUDY IN INTERPRETATIONS

Determining when an alimony recipient is eligible for rehabilitative alimony can be tricky business. Jurisdictions vary greatly in their interpretations of “self-sufficiency,”⁸⁰ and consequently, provide rehabilitative alimony or general term alimony in very different situations.⁸¹ Section A will compare two interpretations at opposite ends of the spectrum: Tennessee uses a standard of post-divorce economic parity while Texas promotes only the achievement of minimum

74. *Id.*

75. *Id.* § 50.

76. *Id.* § 50 (b).

77. *Id.* Notably, rehabilitative alimony may also begin upon the termination of a child support award. *Id.* § 53 (g).

78. *Id.* § 53.

79. *Id.* § 53(a).

80. *See generally* Mary Frances Lyle & Jeffrey L. Levy, *From Riches to Rags: Does Rehabilitative Alimony Need to Be Rehabilitated?*, 38 FAM. L.Q. 3, 14-15 (2004) (discussing examples of self-sufficiency in alimony statutes throughout the country).

81. *Id.* at 12-19 (comparing statutory approaches, such as broad judicial discretion and specific bars from receiving support).

reasonable needs. Section B focuses on the similarities between Tennessee's interpretation and the decisions of the Massachusetts courts before alimony reform and makes the observation that they are less likely to do so now, without a statutory amendment defining self-sufficiency.

A. *The Unequal Application of "Self-Sufficiency"*

Rehabilitative alimony is common, and can be found across most jurisdictions in the United States.⁸² However, there are stark differences in what these jurisdictions hope to achieve through a rehabilitative alimony award. Statutes vary from bare minimum survival to assuring post-divorce equality.⁸³ This Section will examine statutes in Texas and Tennessee to analyze the spectrum of interpretations of "self-sufficiency" and the impact of those interpretations.

1. Texas: The Lone Divorcée State

In Texas, independence reigns over family court. There is a rebuttable statutory presumption against maintenance⁸⁴ and a strong preference to award short term alimony over longer, general term alimony awards.⁸⁵ The result is an interpretation of self-sufficiency that is akin to mere subsistence.⁸⁶ While Texas does not use the label "rehabilitative" in its statute, it is clear that the application meets the traditional definition of rehabilitative alimony (short term alimony that ceases when the recipient becomes self-supporting).⁸⁷

In all Texas alimony awards, the maintenance order is limited "to the shortest reasonable period that allows the spouse seeking maintenance to earn sufficient income to provide for the spouse's *minimum reasonable needs*"⁸⁸ The rehabilitation period is brief, generally limited to no more than five years for marriages that last as long as nineteen years.⁸⁹ The only exceptions are major obstacles to

82. *See id.* at 12-16 (discussing rehabilitative alimony in numerous jurisdictions throughout the U.S.).

83. *Compare* TEX. FAM. CODE ANN. § 8.054 (West 2006 & Supp. 2012), *with* TENN. CODE ANN. § 36-5-121(c)(2) (2010).

84. TEX. FAM. CODE ANN. § 8.053(a). An alimony-seeking spouse may overcome this presumption by "exercise[ing] diligence in (1) earning sufficient income. . . or (2) developing the necessary skills." *Id.*

85. *Id.* § 8.054.

86. *Id.* § 8.053.

87. *Id.*; David H. Kelsey & Patrick P. Fry, *The Relationship Between Permanent and Rehabilitative Alimony*, 4 J. AM. ACAD. MATRIMONIAL LAW 1, *2 (1988).

88. § 8.054 (emphasis added).

89. *Id.* § 8.054(a)(1).

employment, such as physical or mental disabilities, duties as the custodian of a child, or other “compelling impediment[s] to earning sufficient income to provide for the spouse’s minimum reasonable needs.”⁹⁰

Neither the legislature nor Texas case law provides a bright-line definition of “minimum reasonable needs.”⁹¹ However, some case interpretations paint a grim picture. In *Carlin v. Carlin*, a former wife was denied a motion to extend her alimony award for failure to establish an incapacitating disability that prevented her from supporting herself through appropriate employment.⁹²

During the marriage, the wife developed rheumatoid arthritis, which was the original basis for her three-year alimony award.⁹³ It was the wife’s burden to prove that her disability continued to prevent her from seeking employment, in order to extend her alimony.⁹⁴ At the time of the trial, she was employed part-time as a bookkeeper, making six dollars an hour.⁹⁵ At trial, she testified that: “[T]he main reason I haven’t sought work was because of my mother, and since I’ve sought to put her in a nursing home I haven’t felt comfortable just leaving her all the time.”⁹⁶ She also testified that because of her arthritis: “I don’t think I would be able to hold down a full time [job] 5 days a week . . . for a whole year.”⁹⁷

The reviewing court held that “the trial court abused its discretion in ruling that [the wife’s] spousal maintenance should continue.”⁹⁸ The court reasoned that while there was evidence that the wife was suffering from arthritis, she was not “incapacitated” because she was able to drive, cook, clean, and provide for her ailing mother.⁹⁹ The wife in the *Carlin* case suffered from a painful degenerative disease, made six dollars an hour part-time, and cared for her elderly mother.¹⁰⁰ Despite all these factors, Texas found that she was not incapacitated enough to continue to receive alimony.¹⁰¹ In Texas, financial independence is the ultimate goal

90. *Id.* § 8.054(2).

91. *In re Marriage of Hale*, 975 S.W.2d 694, 698 (Tex. App. 1998) (“[d]eciding what the minimum reasonable need is for a particular individual or family is a fact-specific determination . . . ” and should be made on a case-by-case basis).

92. 92 S.W.3d 902, 911 (Tex. 2002).

93. *Id.* at 903.

94. *Id.*

95. *Id.* at 909.

96. *Id.* at 910.

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

for post-divorce proceedings.

The Texas courts have not ruled out the possibility that minimum wage may constitute self-sufficiency in some circumstances,¹⁰² despite the fact that minimum wage jobs are not adequate to meet many minimum reasonable needs.¹⁰³ At least ten million people in this country work and are below the U.S. poverty line.¹⁰⁴ Yet, in *Gordon v. Gordon*, rehabilitative alimony was awarded to a fifty-year-old woman who was out of the workforce for twenty years.¹⁰⁵ She made \$15,000 annually, in comparison to the \$100,000 her husband was making.¹⁰⁶ The wife had a master's degree in business, which she forewent utilizing in order to be a caregiver for their two children, including a diabetic child who required frequent doctors appointments.¹⁰⁷ Despite her long absence from the workforce and the significant difference between the parties' earning capacities, the court still affirmed a mere three-year award.¹⁰⁸

It's unfair to expect a fifty-year-old woman, absent from the workforce for twenty years and caring for a diabetic child, to close an \$85,000 spousal income gap in three years. Through this holding, Texas courts reiterated the goal for alimony awards: the recipient to meet her own "minimum reasonable needs."¹⁰⁹ Texas courts upheld independence over economic parity.

2. Tennessee: Clarity for Caregivers

At the other end of the self-sufficiency spectrum is the state of Tennessee. Tennessee is an example of a state that has corrected its path to prevent caregiving from becoming a marital liability.¹¹⁰ In earlier case law, Tennessee courts upheld an interpretation of self-sufficiency that left both parties similarly situated economically. For example, in

102. *In re Marriage of Hale*, 975 S.W.2d at 698 ("We are unwilling to hold that minimum wage is adequate in every case."). Notably, this is a different statement than ruling that minimum wage is inadequate for self-sufficiency.

103. Chris Isidore, *Not Getting by on Minimum Wage*, CNN MONEY (Sept. 27, 2011, 9:39 AM), http://money.cnn.com/2011/09/27/news/economy/minimum_wage_jobs/index.htm ("About 20% of American adults who have jobs are earning only \$10.65 an hour or less Even at 40 hours a week, that amounts to less than \$22,314, the poverty level for a family of four.").

104. Bill Quigley, *Working and Poor in the USA*, CTR. FOR CONST. RTS., <http://ccrjustice.org/working-and-poor-usa>.

105. No. 14-10-01031-CV, 2011 WL 5926723, at *3-4 (Tex. App. Nov. 29, 2011).

106. *Id.*

107. *Id.*

108. *Id.* at *9.

109. *Id.* at *5.

110. Lyle & Levy, *supra* note 80, at 19-27.

Aaron v. Aaron,¹¹¹ the court found that “[t]he combined talents and efforts of the Aarons enabled them to enjoy a relatively high standard of living.”¹¹² The court held that the wife could not be rehabilitated because “the real need of the spouse seeking support is the single most important factor” and that “the amount of alimony should be determined so ‘that the party obtaining the divorce [is not] left in a worse financial situation than he or she had before . . . the divorce.’”¹¹³ The court explained its interpretation by stating that “[w]hile alimony is not intended to provide a former spouse with relative financial ease, we stress that alimony should be awarded in such a way that the spouses approach equity.”¹¹⁴

This parity-based approach to alimony was reiterated in the 2000 case, *Crabtree v. Crabtree*, where the court answered the question: how do we know whether a spouse can be “rehabilitated”?¹¹⁵ The answer was that “the parties’ standard of living should be the measuring stick by which and against which a court determines whether or not an individual can be rehabilitated.”¹¹⁶ However, shortly after that ruling, the tide turned in Tennessee.

Tennessee went through a period that resulted in rulings that were far from equitable. In *Goldberg v. Goldberg*, the court referred to the parties’ relative earning capacity and standard of living as factors to be given only “marginal relevance” as to rehabilitation.¹¹⁷ Instead, the new focus was “whether the obligee spouse can earn enough money to be self-sufficient, even if at a level far below the parties’ former standard of living and even if the earning capacity of the obligor spouse is far greater.”¹¹⁸

This ruling caused uproar from groups such as the Tennessee Women’s Political Caucus and the Tennessee Bar Association.¹¹⁹ Through the lobbying efforts of these groups, the Tennessee alimony

111. 909 S.W.2d 408 (Tenn. 1995).

112. *Id.* at 409.

113. *Id.* (citing *Shackleford v. Shackleford*, 611 S.W.2d 598, 601 (Tenn. Ct. App. 1980)).

114. *Id.* at 411.

115. See 16 S.W.3d 356, 358 (Tenn. 2000), *superseded by statute*, TENN. CODE ANN. § 36–5–121(c)(2) (referring to the statutory guidelines for determining the form and length of a support award).

116. *Robertson v. Robertson*, No. E2000-01698-COA-RM-CV, 2000 WL 1211314, at *2 (Tenn. Ct. App. Aug. 25, 2000), *aff’d*, 76 S.W.3d 337 (Tenn. 2002).

117. *Goldberg v. Goldberg*, No. M2001-01442-COA-R3-CV, 2003 WL 132460, at *5 (Tenn. Ct. App. Jan. 16, 2003).

118. *Id.*

119. Lyle & Levy, *supra* note 80, at 25.

laws were amended to correct the court's interpretation that rehabilitative alimony could result in large wealth disparities between the parties.¹²⁰ The court in *Wisner v. Wisner*, commented on this return to equity:

[I]n an apparent response to the difficulties presented by the *Crabtree* and *Robertson* decisions, Tennessee's legislature substantially revised the alimony statutes

. . . .

. . . [T]he parties' standard of living during the marriage and the post-divorce standard of living for the other spouse, while certainly not the only consideration, were adopted by the Legislature as the basic "measuring sticks" in alimony decisions with respect to an economically disadvantaged spouse.¹²¹

As Tennessee laws now stand, there is a very clear articulation of the state's esteem for the unpaid contributions of caregivers. The preamble to the alimony laws states:

Spouses have traditionally strengthened the family unit through private arrangements whereby one (1) spouse focuses on nurturing the personal side of the marriage, including the care and nurturing of the children, while the other spouse focuses primarily on building the economic strength of the family unit. This arrangement often results in economic detriment to the spouse who subordinated such spouse's own personal career for the benefit of the marriage. It is the public policy of this state to encourage and support marriage, and to encourage family arrangements that provide for the rearing of healthy and productive children who will become healthy and productive citizens¹²²

Specifically, the statute defines rehabilitation in terms of equity between the parties, stating that the legislature's purpose was for:

[A] spouse, who is economically disadvantaged relative to the other spouse, [to] be rehabilitated, whenever possible, by the granting of an order for payment of rehabilitative alimony. To be rehabilitated means to achieve, with reasonable effort, an earning capacity that will permit the economically disadvantaged spouse's standard of living after the divorce to be reasonably comparable to the standard of living enjoyed during the marriage, or to the post-divorce standard

120. TENN. ECON. COUNCIL ON WOMEN, ACHIEVING AN EQUALLY GENDERED GOVERNMENT: THE ECONOMIC IMPACT OF WOMEN'S POLITICAL PARTICIPATION IN TENNESSEE 32 (2007), available at <http://www.tn.gov/sos/ecw/Achieving%20an%20Equally%20Gendered%20Government.pdf>.

121. 339 S.W.3d 1, 16-17 (Tenn. Ct. App. 2010).

122. TENN. CODE ANN. § 36-5-121(c)(1) (2010).

of living expected to be available to the other spouse, considering the relevant statutory factors and the equities between the parties.¹²³

In Tennessee, if rehabilitation is not feasible or would result in an economic disadvantage to one party, then the court may grant the equivalent of general term alimony.¹²⁴ This provides greater clarity for the Tennessee courts when deciding whether or not a recipient may be rehabilitated.¹²⁵ Without similar language, Massachusetts courts cannot easily discern when rehabilitative alimony should be awarded and when general term alimony would be more appropriate.

B. *Alimony Reform in Massachusetts, a Predictable Cost*

Prior to the Alimony Reform movement, Massachusetts rulings looked more like Tennessee than Texas. In *Ross v. Ross*, the wife left the workforce to care for the couples' two daughters. During the marriage the husband's income exceeded \$500,000.¹²⁶ The judge in this case considered an award of rehabilitative alimony stating that "[s]uch an award may be appropriate where a husband and wife of comparable professional and economic status divorce. In these circumstances, a limited term award would permit a spouse who had discontinued a career to resume it, and thereafter each independently could approximate the marital standard of living."¹²⁷ However, the judge declined to award rehabilitative alimony in that case because the wife's potential earning capacity was between \$15,000 and \$20,000 per year and would be insufficient to provide for herself and her children in the manner to which they had become accustomed.¹²⁸

In *Kowalska-Davis v. Davis*, decided just weeks before the Reform Act took effect, the Massachusetts Appeals Court affirmed an award for permanent alimony, despite the husband's argument that the wife was "underemployed."¹²⁹ The court took into consideration the wife's age at the time the divorce, and noted "her absence from the workforce for over eleven years, and her limited future opportunities,"¹³⁰ although the wife

123. *Id.* § 36-5-121(d)(2).

124. *Id.* § 36-5-121(d)(3).

125. See *Edwards v. Edwards*, No. W2011-02305-COA-R3-CV, 2012 WL 6197079, at *11 (Tenn. Ct. App. Dec. 12, 2012) (appeal to provide rehabilitative alimony denied, although wife had a master's degree, in part because "[w]ife is nearing retirement age with neither retirement funds nor the earning ability possessed by Husband").

126. *Ross v. Ross*, 734 N.E.2d 1192, 1194 (Mass. 2000).

127. *Id.* at 1195-6.

128. *Id.* at 1196.

129. See *Kowalska-Davis v. Davis*, No. 10-P-2191, slip op. at 2 (Mass. App. Ct. Feb. 27, 2012).

130. *Id.*

held an MBA and previously worked as a marketing director.¹³¹

Now, it is less certain that the courts in Massachusetts would come to a similar decision. The clear objective of the Massachusetts Bar Association and the legislature is to make alimony more predictable.¹³² But predictability should not come at the cost of economic justice.

III. A LITTLE DEARER THAN HIS HORSE:¹³³ ACKNOWLEDGING CAREGIVING WORK WHILE MAINTAINING AUTONOMY

The cost of predictable alimony statutes cannot be to create a windfall for spouses who worked outside of the home, and a failure to compensate for caregiving spouses. Given the life-long career and financial consequences that women face for being parents,¹³⁴ Massachusetts is in need of an interpretation of rehabilitative alimony that prevents punishing mothers.

This Section recommends that the Massachusetts legislature amend the Alimony Reform Act to explicitly address the contributions made by caregivers and to create a standard of “self-sufficiency” that approximates the payor spouse’s post-divorce standard of living. Section A will recommend specific language for the Massachusetts legislature to use in such an amendment, using the successful Tennessee statute as an example. Section B will describe the economic factors that make it imperative that the rehabilitative alimony statute ensure mothers are not left financially crippled after their marriage. Section C will address the concerns for payor spouses and clarify the non-punitive nature of this amendment. Lastly, Section D will discuss the ways in which predictability in the court may be maintained by clarifying the standard by which recipient spouses will be considered rehabilitated.

A. *Amending the Great Alimony Reformation: A Recommendation for the Massachusetts Legislature*

Massachusetts must expand its legislation to provide the courts with absolute certainty that contributions to the marriage and home are highly

131. *Id.* at 2 n.6.

132. Flynn, *supra* note 2.

133. Lord Alfred Tennyson, *Locksley Hall*, in *THE WORKS OF ALFRED TENNYSON: LOCKSLEY HALL AND OTHER POEMS* 41, 46 (referring to the relationship between husband and wife, “[s]omething better than his dog, a littler dearer than his horse”).

134. See generally KARINE MOE & DIANNA SHANDY, *GLASS CEILINGS AND 100-HOUR COUPLES: WHAT THE OPT-OUT PHENOMENON CAN TEACH US ABOUT WORK AND FAMILY* 52-55 (Univ. of Ga. Press 2010) (discussing the career long consequences of being “mommy tracked”).

valued. The current language is not sufficient. Considerations for non-economic contributions to the home and career sacrifices are folded into a laundry list of factors for the assignment of alimony.¹³⁵ Those considerations are still unclear, particularly in comparison with the guidelines set out in other areas of the Act.¹³⁶ Moreover, without more statutory guidance, rehabilitative alimony awards are susceptible to a wide range of interpretations, defeating the legislative goal of predictability for divorce cases.

Looking at the missteps of other jurisdictions, the need for a statutory amendment is clear.¹³⁷ Without a statutory definition of self-sufficiency, Massachusetts is in danger of falling prey to the same mistakes. This Section recommends an amendment that plainly articulates the importance of unpaid caregiving. Tennessee provides an excellent model, and Massachusetts would be wise to adopt similar language, such as:

Massachusetts recognizes the value of unpaid caregiving work in the home, both to the family that is nurtured and to the Commonwealth as a whole. Such caregiving often results in the economic detriment to the spouse who subordinated his or her own personal career for the benefit of the marriage. With these sacrifices in mind, a spouse, who is economically disadvantaged relative to the other spouse, should be rehabilitated, whenever possible, by the granting of an order for payment of rehabilitative alimony. To be rehabilitated means to achieve, with reasonable effort, an earning capacity that will permit the economically disadvantaged spouse's standard of living after the divorce to be reasonably comparable to the standard of living enjoyed during the marriage, or to the post-divorce standard of living expected to be available to the other spouse, considering the relevant statutory factors and the equities between the parties.¹³⁸

The importance of this recommendation goes beyond predictability for the courts; it articulates a legislative appreciation for the role that caregiving plays in producing a functional state. The community value of parenting is widespread:¹³⁹

135. MASS. GEN. LAWS ANN. ch. 208, § 34 (2007 & Supp. 2013).

136. *Id.* § 50. For example, the timetables for determining general term alimony are unprecedented in their clarity and detail.

137. *See supra* Part II.A.2 (chronicling the outcry over subsistence level rehabilitation awards in Tennessee).

138. Largely modeled after TENN. CODE ANN. § 36-5-121(d)(2) (2010).

139. *See, e.g.*, NANCY FOLBRE, VALUING CHILDREN: RETHINKING THE ECONOMICS OF THE FAMILY 13-16 (an examination of the economic value of children, describing the circular flow exchange among households, businesses, and government, and noting: "If parents were

Parents who raise happy, healthy, and successful children create an especially important public good. Children themselves are not the only beneficiaries. Employers profit from access to productive workers. The elderly benefit from Social Security taxes paid by the younger generation . . . Fellow citizens gain from having productive and law-abiding neighbors.¹⁴⁰

Economists term these societal benefits “positive externalities”—benefits enjoyed by all members of the community in addition to the individual parent’s decision to provide care.¹⁴¹ By adopting language such as that recommended above, the Commonwealth will be able to support the positive externality of caregiving without failing to acknowledge that economics for women are often not the same as for men.

B. *Women’s Rights Backlash: The Illusion Which Works an Injustice*

The women’s rights movement of the 1960s and 1970s brought thousands of new, working women into the workforce.¹⁴² Undeniably, women have enjoyed a larger share in the country’s marketplace over the past fifty years.¹⁴³ However, one of the dangers accompanying this unprecedented achievement is the assumption that women and men are now similarly situated economically.¹⁴⁴ This section sets out to dispel this misconception that may cause economic injury to caregivers in Massachusetts.

Prior to the Alimony Reform Act, Massachusetts courts were

unable or unwilling to raise children, the households that buy and sell services in the marketplace would eventually dwindle and disappear”).

140. NANCY FOLBRE, *THE INVISIBLE HEART: ECONOMICS AND FAMILY VALUES* 50 (The New Press 2001).

141. *Id.*

142. Mitra Toossi, *A Century of Change: the U.S. Labor Force, 1950-2050*, MONTHLY LAB. REV. (May 2002), <http://www.bls.gov/opub/mlr/2002/05/art2full.pdf>.

143. *Female Power*, THE ECONOMIST (Dec. 30, 2009), <http://www.economist.com/node/15174418>; MOE & SHANDY, *supra* note 135, at 12 (“Let’s be clear at the outset: women have always worked, just not always for pay.”).

144. See, e.g., ANN CRITTENDEN, *THE PRICE OF MOTHERHOOD: WHY THE MOST IMPORTANT JOB IN THE WORLD IS STILL THE LEAST VALUED* 13 (Metropolitan Books 2001) (“One of the misleading impressions left in the wake of the women’s movement is that it swept away women’s traditional lives, like a sandstorm burying the artifacts of an ancient civilization . . . The truth, as always, is far more complicated.”); MOE & SHANDY, *supra* note 135, at 45-55 (discussing the career-long consequences of being “mommy tracked”).

When young women graduate from college today, they expect that they will enter into the labor market on the same terms as men. They expect to be able to hold the same jobs as men, and to earn similar salaries as well. . . . In fact, women experience the labor market differently from men, in both explicit and tacit ways, and these differences in experiences have dramatic effects on women’s economic position.

MOE & SHANDY, *supra* note 135, at 45.

suspicious of rehabilitative alimony; in part for fear that it could not bring equality to the parties.¹⁴⁵ In *Zildjian v. Zildjian*, decided in 1979, the judge surmised that rehabilitative alimony could be possible for couples with “comparable professional and economic status.”¹⁴⁶ However, the court was still suspicious: “[t]he phrase ‘rehabilitative alimony’ has a certain attraction, for it suggests an equality of economic opportunity between the sexes. But such an equality may be illusory in a concrete case, and under such circumstances an attempt to apply the notion may work an injustice.”¹⁴⁷

In many ways, economic equality between men and women remains illusory.¹⁴⁸ There is ample evidence of real barriers to women’s economic success. In the United States, women and men are still not paid the same wage for the exact same work.¹⁴⁹ For women of color, the wage gap grows: from \$0.81 cents on the dollar to a startling \$0.68 cents for African-American women, and a horrifying \$0.59 for Hispanic women.¹⁵⁰ On average, over her lifetime, a woman will earn between \$700,000 to \$2,000,000 less than a man with a comparative level of education.¹⁵¹

While the new alimony statutes do take into consideration factors such as occupation, vocational skills, employability, and the contributions of the parties as homemakers to the family unit,¹⁵² it is unlikely that the courts will be able to pursue predictability while also fully addressing issues of gender equality. In part, this is because gender inequalities are hard to identify. Gender discrimination in the work place often goes unnoticed because it looks “normal.”¹⁵³ Among the

145. See *supra* Part II.B.

146. 391 N.E.2d. 697, 705 (Mass. App. Ct. 1979).

147. *Id.* at 706.

148. THE OXFORD HANDBOOK OF ECONOMIC INEQUALITY 290-312 (Wiemer Salverda, Brian Nolan & Timothy M. Smeeding eds., 2009) (analyzing world-wide trends in pay inequity: “[s]eparate pay rates for men and women . . . are now illegal, and have been for half a century in the developed world. But the gender pay gap survives universally”).

149. Latifa Lyles, *Women of Color: An Economic Snapshot*, (WORK IN PROGRESS) OFFICIAL BLOG OF THE U.S. DEP’T OF LAB. (Nov. 16, 2013), <http://social.dol.gov/blog/women-of-color-an-economic-snapshot/>.

150. *Id.*

151. *What Are the Costs of the Wage Gap?*, THE WAGE PROJECT, <http://www.wageproject.org/files/costs.php> (last visited May 14, 2014) (stating that a woman who graduates high school will make \$700,000 less over her lifetime, a woman who graduates college will make \$1,200,000 less than a college educated man over her lifetime, and that a professional school graduate will make \$2,000,000 less than her male counterparts over her lifetime).

152. MASS. GEN. LAWS ch. 208, § 34 (2007 & Supp. 2013).

153. For example, “although sexual harassment law has provided some protection for women in the workplace, the sexual objectification of women in the broader culture has increased significantly and is being increasingly internalized by girls and women.” CARRIE N.

Fortune 500 companies, only 18 are led by women CEOs—that is just 3.6%.¹⁵⁴ Women don't just lag at the top of the business world; women are underrepresented at the managerial level across all sectors.¹⁵⁵

According to economists, “[n]ot only do women earn less for similar work, they also do more work for no pay at all.”¹⁵⁶ Unpaid work includes child care, cooking and cleaning, services that would cost families tens of thousands of dollars if they had to pay another person to perform them.¹⁵⁷ Additionally, the kind of work that women are more likely to participate in tends to be underpaid.¹⁵⁸ Elementary education, special education, social work, and child and family studies are ranked among the lowest paying college degrees in the United States.¹⁵⁹

There are those who argue that low paying work, like unpaid caregiving work, is a choice.¹⁶⁰ But even completely autonomous choices are not made in a vacuum. McArthur grant recipient and feminist economist, Nancy Folbre, accounts for the over-representation of women in caregiving roles in part because of societal pressure. “[S]ocial norms have an important impact on women’s preferences, whether or not biological differences also come into play. Women are strongly encouraged to adopt feminine values of care for others, whether they

BAKER, *THE WOMEN’S MOVEMENT AGAINST SEXUAL HARASSMENT* 191 (Cambridge Univ. Press 2008).

154. Bianca Bosker, *Fortune 500 List Boasts More Female CEOs Than Ever Before*, HUFFINGTON POST, May 7, 2012, http://www.huffingtonpost.com/2012/05/07/fortune-500-female-ceos_n_1495734.html.

155. *State-by-State Rankings and Data on Indicators of Women’s Social and Economic Status, 2010*, INST. FOR WOMEN’S POLICY RESEARCH, available at <http://www.iwpr.org/initiatives/states/state-by-state-rankings-data-2010> (showing low rates of women in managerial or professional occupations, in every state).

156. Catherine Rampell, *Women Lead in Unpaid Work*, N.Y. TIMES ECONOMIX, (March 10, 2011, 2:29 PM), <http://economix.blogs.nytimes.com/2011/03/10/women-lead-in-unpaid-work/>; MOE & SHANDY, *supra* note 135, at 63 (“[M]arried mothers who work full-time do two-thirds of the housework and child care, and this approximately 1.8 times as much as full-time employed married men.”).

157. Investopedia, *The Economics of Stay-at-Home-Moms*, FORBES (May 10, 2011, 11:55 AM), <http://www.forbes.com/sites/investopedia/2011/05/10/the-economics-of-stay-at-home-moms/> (“While it’s not an exact science, the calculator provided at Salary.com is a nice starting point for figuring out the currency value of a stay-at-home mom.”) (citing *2013 What’s a Mom Worth Infographics*, SALARY.COM, <http://www.salary.com/2013-mom-infographics/> (last visited May 14, 2014)).

158. Nancy Folbre, *Why Girly Jobs Don’t Pay Well*, N.Y. TIMES ECONOMIX BLOG, (Aug. 16, 2010, 6:00 A.M.), <http://economix.blogs.nytimes.com/2010/08/16/why-girly-jobs-dont-pay/>.

159. *Id.*

160. Hilary Lips, WomensMedia, *Beware Those Who Blame Gender Pay Gap on Women’s Choices*, FORBES (Apr. 12, 2011, 5:50 PM), <http://www.forbes.com/sites/womensmedia/2011/04/12/beware-those-who-blame-womens-choices-for-gender-pay-gap/>.

prefer them or not.”¹⁶¹

Moreover, in the absence of government subsidies for child rearing,¹⁶² many mothers are forced to choose between paying for expensive child care,¹⁶³ which is often difficult to secure,¹⁶⁴ and taking time out of their careers to care for their children. “One of the worst kept secrets of the past two decades is the quiet exodus of highly trained women from corporations and the leading professional firms.”¹⁶⁵ In recent years the number of college-educated, married mothers of infants in the labor force fell steeply, as did the number of married women with professional degrees and children under eighteen.¹⁶⁶

Unfortunately, even a small absence from the workforce can affect a woman’s earning capacity for the rest of her career.¹⁶⁷ “Women who have interrupted their careers for whatever reason return to work at salaries that lag behind those of their female counterparts who remained in the workforce continuously. A Center for Work-Life Policy study found that, overall, employed women who took time off suffered an 18 percent wage penalty.”¹⁶⁸ More highly educated, higher-earning women are more adversely affected by taking time out.¹⁶⁹ All women are affected as Folbre has examined in her work, “[i]n an economy in which rewards are increasingly based upon performance in paid employment,

161. Nancy Folbre, *Reader Response: ‘Womanly’ Jobs and Low Pay*, N.Y.TIMES ECONOMIX BLOG (August 18, 2010, 1:22 PM), <http://economix.blogs.nytimes.com/2010/08/18/reader-response-womanly-jobs-and-low-pay/>; FOLBRE, *supra* note 139, at 32-33 (“One of the few surveys asking mothers how they actually felt found about 20 percent reported that they received little pleasure from [child rearing]—which, it is important to note, is not the same as saying they regretted having undertaken it.”).

162. Nordic countries, for example, provide subsidized child care and “studies show that these policies lead to increases in female employment.” MOE & SHANDY, *supra* note 135, at 80.

163. “In the United States, a parent of an infant can expect to pay anywhere from \$4,020 to \$14,225 per-year for full-time center-based care” MOE & SHANDY, *supra* note 135, at 76.

164. The United States is experiencing a serious shortage of licensed child care slots. “[T]he National Child Care Resource and Referral Agency reports that the working mothers of 11.3 million children under the age of five regularly use some kind of child care. At the same time, only 10.8 million legally operating slots exist, including those for school-age children.” MOE & SHANDY, *supra* note 135, at 74.

165. CRITTENDEN, *supra* note 144, at 28.

166. MOE & SHANDY, *supra* note 135, at 2 (citing that participation for college educated mothers of infants fell from 71% in 1997 to 63% in 2005, and that participation for mothers with professional degrees and children under eighteen fell from two-thirds to around half from 1998 to 2005).

167. MOE & SHANDY, *supra* note 135, at 127-28 (discussing that wage penalties for caretaking trail women through their working lives).

168. MOE & SHANDY, *supra* note 135, at 127-28.

169. FOLBRE, *supra* note 139, at 13-16.

the costs and risks of parenthood are going up.”¹⁷⁰

It can fairly be said that women who become mothers put their careers and economic security at risk in ways that do not apply to fathers.¹⁷¹ Folbre’s research supports this conclusion:

[M]otherhood tends to lower women’s earnings even if they don’t take much time out from paid work. The more children a woman has, the less she earns, even if she works the same amount of time and remains with one employer for the same length of time as a childless woman. . . . What is interesting is that the numbers show exactly the opposite effect for fathers: having children increases men’s earnings.¹⁷²

During the economic decline of the past five years, the effect on working men has received widespread attention.¹⁷³ However, the newest evidence reveals that it is actually working women who will be the most vulnerable in the years to come. In *The Myth of the Male Decline*, Stephanie Coontz, family studies expert, analyzes the truth behind the hype, arguing that although “[w]omen’s real wages have been rising for decades, while the real wages of most men have stagnated or fallen. But women’s wages started from a much lower base, artificially held down by discrimination.”¹⁷⁴ The ongoing recovery from The Great Recession seems to be similarly misrepresented.

As of June 2012, men regained 46.2% of the jobs they lost since the start of the recession and women have regained 38.7% of the jobs they lost.¹⁷⁵ Across industries, women have either lost proportionately more jobs or gained proportionately fewer jobs than men in the recovery.¹⁷⁶ Quick recovery is unlikely for women. Women are over-represented in fields found in the public sector, which has steadily contracted during the recovery.¹⁷⁷ Fields that employ more men, such as

170. FOLBRE, *supra* note 140, at 33.

171. See generally MOE & SHANDY, *supra* note 135, at 52-53 (recounting interviews with mothers who took short periods off from work at the birth of their children, but who were nevertheless “mommytracked” and denied access to the workload they were previously carrying).

172. FOLBRE, *supra* note 140, at 34-35 (citing that “married mothers who work full-time do two-thirds of the housework and child care . . . approximately 1.8 times as much as full-time employed married men.”); see also CRITTENDEN, *supra* note 144, at 25 (discussing that mothers experience higher absentee rates for taking time off to care for a sick child).

173. *Female Power*, *supra* note 14.

174. Stephanie Coontz, *The Myth of Male Decline*, N.Y. TIMES, Sept. 29, 2012, http://www.nytimes.com/2012/09/30/opinion/sunday/the-myth-of-male-decline.html?smid=fb-share&_r=1&.

175. *Id.*

176. *Id.*

177. *Id.*

construction and information, continue to grow.¹⁷⁸

These barriers to women's, and especially mothers', economic success are unlikely to change in the immediate future. Systemic policy changes, such as federal paid maternity leave, are unlikely to take place when women are still so underrepresented at decision-making tables. Women make up a mere 26% of senior leadership roles across all government agencies.¹⁷⁹ Women also represent only 26% of federal judgeships.¹⁸⁰ These numbers are still better than the "record high" 18.5% representation of women in U.S. Congress.¹⁸¹ Studies show that it will take until the year 2085 to close the leadership gap.¹⁸²

Given the reality of women's economic standing and political underrepresentation, it seems illogical to base rehabilitative alimony awards on assumptions that self-sufficiency is universally obtainable within a few short years of re-training. With an amendment, Massachusetts could assure that rehabilitative alimony is reserved for only those women who are well situated to achieve a version of self-sufficiency equal to her former partner's.

C. *Replacement Costs and Reparations: The Cost of Caregiving*

One may wonder why a former husband, post-divorce, should be made to compensate his ex-spouse for the collateral damage of a sexist society. The answer is that a sexist society not only injures women, it privileges men.¹⁸³

178. *Id.*

179. WHITE HOUSE PROJECT, BENCHMARKING WOMEN'S LEADERSHIP (2009), available at http://www.ncrw.org/sites/ncrw.org/files/benchmark_wom_leadership.pdf.

180. Kim DeVigil, *Women's College Releases Results of National Leadership Study*, U. DENV. (Nov. 1, 2012), <http://www.du.edu/ascend/news-womens-college-releases-results-of-national-leadership-study.html>.

181. *Women in the U.S. Congress 2014*, CTR. FOR AM. WOMEN AND POLITICS., http://www.cawp.rutgers.edu/fast_facts/levels_of_office/documents/cong.pdf (last visited May 14, 2014).

182. DeVigil, *supra* note 180.

183. Male privilege, like white privilege, class privilege, and heteronormativity, are all part of the effects of a persistent patriarchy. See generally ALLAN G. JOHNSON, *THE GENDER KNOT: UNRAVELING OUR PATRIARCHAL LEGACY 5* (Temple Univ. Press 1997) (discussing in depth the existence of patriarchy and finding the presence of patriarchy as "[a] society is patriarchal to the degree that it [promotes male privilege by being] *male-dominated, male-identified, and male-centered*"). Male privilege is far reaching. As law professor and feminist theorist Catharine MacKinnon observed:

Men's physiology defines most sports, their needs define auto and health insurance coverage, their socially designed biographies define workplace expectations and successful career patterns, their perspectives and concerns define quality in scholarship, their experiences and obsessions define merit, their objectification of life defines art, their military service defines citizenship, their presence defines family, their inability to get along with each other—their wars and rulerships—

In marriages, men not only receive male privilege generally, but they also receive direct benefits from the unpaid work of their spouses.¹⁸⁴

Regardless of whether or not a woman has chosen to forgo career activities to care for her family,¹⁸⁵ the value of the benefit to a non-caregiving spouse is not adequately compensated for post-divorce.¹⁸⁶ Even with the equitable division of assets in Massachusetts,¹⁸⁷ the opportunity costs to women are nowhere accounted for.¹⁸⁸ A lawyer who has forgone an hourly rate of \$150 to raise a family may receive half of her husband's retirement account, but she has lost the seniority, earning capacity, and other intangibles like professional status. Divorced women are at a higher risk of poverty as they age.¹⁸⁹

Language such as the amendment proposed in this Note recognizes the value of caregiving—not just to the payor spouse, but to the entire Commonwealth.¹⁹⁰ It is not meant as a punitive measure for non-caregiving husbands, so much as a legal mechanism for remedying part of the disparity divorced mothers face.¹⁹¹

defines history, their image defines god.

CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW*, 36 (Harvard University Press 1987).

184. FORBES, *supra* note 158 (finding that a non-caregiving spouse who received the benefit of the average 94.7 hours per week of unpaid work by stay at home mothers would need to pay \$112,962 for those services in the marketplace)).

185. *But see* FOLBRE, *supra* note 139 (“[s]ocial norms have an important impact on women’s preferences. . .”).

186. MOE & SHANDY, *supra* note 135, at 131(citing that many researchers estimate that women suffer a decrease in their post-divorce standard of living by as much as one-third).

187. MASS. GEN. LAWS ANN. ch. 208, § 32 (2007 & Supp. 2013) (providing factors to consider for equitable division of marital assets).

188. Ann Laquer Estin, *Maintenance, Alimony, and the Rehabilitation of Family Care*, 71 N.C. L. REV. 721, 747 (1993) (“[L]ong-term costs of caregiving are effectively ignored in the present system. The usual response to long-term costs is a rehabilitative maintenance award that subsidizes the costs of retraining, but is not designed to compensate fully the long-term losses that result for a period of caregiving.”).

189. For example, see data from the Social Security Administration: “20 percent of divorced women aged 65 or older live in poverty, compared with 18 percent of never-married women and 15 percent of widowed women.” Barbara A. Butrica & Karen E. Smith, *The Retirement Prospects of Divorced Women*, 72 SOC. SECURITY BULL. No. 1 (2012), available at <http://www.ssa.gov/policy/docs/ssb/v72n1/v72n1p11.html>.

190. *See* FOLBRE *supra* note 140 and the societal benefits of “positive externalities” that provide benefits to communities as a whole.

191. Even if the proposed amendment were meant to hold one individual accountable for the wrongs of many, the United States does have some legal history of using reparations as a means for justice. *See generally* Alfred L. Brophy, *Reconsidering Reparations*, 81 IND. L.J. 811 (2006) (a historical overview of legislative reparation in American history and a proposal to relax the relationship between wrongdoer and payor); David C. Gray, *A No-Excuse Approach to Transitional Justice: Reparations as Tools of Extraordinary Justice*, 87 WASH. U. L. REV. 1043 (2010) (an argument for abandoning interpretations of reparations as special

D. *Predicting Parity: An Argument for a Legislative Definition of “Self-Sufficiency”*

Leaving the measure by which rehabilitative alimony awards will be determined unanswered is counter-productive to the legislative goal of increased case predictability. Without legislative guidance, judges may vary widely as to when a recipient-spouse has been rehabilitated. Firstly, judges may disagree as to what the goal of a rehabilitative alimony award is. Lobbyists, the Massachusetts Bar Association, and politicians¹⁹² clamored for predictability, but does a vague standard of self-sufficiency really meet that goal?

As legal scholars have lamented, “[i]f we do not know what we are trying to accomplish by giving the wife alimony, we will not easily be able to decide whether it should be granted in a particular case, or, if so, in what amount”¹⁹³ And in Massachusetts, with the new introduction of four different types of alimony, judges may not easily decide which type of alimony should be awarded. Since rehabilitative alimony has no limitations as to what length the marriage must have been to qualify, unlike reimbursement or transitional alimony, nearly any marriage may result in a rehabilitative alimony award.¹⁹⁴

If rehabilitative alimony is based on financial need there is still the difficulty of deciding how that need would be satisfied. As critics of the need-based theory of alimony rightly point out, “there is no clear definition of what level of support satisfies ‘need.’ Decisions variously conflate need with subsistence, with a middle-class lifestyle, or with the prior marital standard of living.”¹⁹⁵ An amendment defining self-sufficiency as the post-divorce standard of living of the other partner would take the guesswork out of judicial ruling on need satisfaction.

Furthermore, in the definition of rehabilitative alimony, the legislature suggests that methods of rehabilitation may include reemployment, completion of job training, or education.¹⁹⁶ However, with slow job growth and women becoming re-employed more slowly

cases of ordinary justice, or as solely retrospective or solely prospective in nature. The author “argues that ‘I didn’t do it’ is a non sequitur in debates about reparations where the fundamental question is ‘How do we make it right?’”).

192. See *supra* Part II.B.

193. David H. Kelsey & Patrick P. Fry, *The Relationship Between Permanent and Rehabilitative Alimony*, 4 J. AM. ACAD. MATRIMONIAL LAW 1, 4 (1988) (citing HOMER H. CLARK, JR., THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES 441 (1968)).

194. MASS. GEN. LAWS ch. 208, § 48 (2007 & Supp. 2013).

195. Emily M. May, *Should Moving In Mean Losing Out? Making A Case to Clarify the Legal Effect of Cohabitation On Alimony*, 62 DUKE L.J. 403, 413 (2012).

196. ch. 208, § 48.

than men,¹⁹⁷ the feasibility of rehabilitation through these means is less than certain. Résumé gaps are red-flags for many potential employers, and technology changes may make some skills obsolete.¹⁹⁸ A Work-Life Center survey found that only three-quarters of highly qualified women who wanted to re-enter the workforce were able to do so successfully.¹⁹⁹ As the Displaced Homemakers Network opined, “[t]he saddest sight is the middle aged woman who has been convinced she should go back to school and emerges two or four years older, a well-educated unemployable.”²⁰⁰

Even if mothers are able to find re-employment, the possibility that divorced women may wind up joining the working poor makes self-sufficiency potentially elusive.²⁰¹ Women who have taken time out of their careers to have and/or raise children will receive less in social security,²⁰² and are less likely to have put savings aside for retirement.²⁰³ The unsettling result could be divorced women who have been “rehabilitated” but are unable to retire. Thanks to factors such as the wage gap,²⁰⁴ the “mommy-penalty,”²⁰⁵ and the difficulty of re-entering the workforce during the worst recession in decades,²⁰⁶ it is more likely that a “rehabilitated” spouse will not be able to earn enough income to retire at the traditional age. Women already constitute a higher percentage of the working poor than men.²⁰⁷ Women and their children make up 26.3% of the 5.3 million families living below the poverty level.²⁰⁸

197. See *supra* Part III.B.

198. MOE & SHANDY, *supra* note 135, at 151.

199. MOE & SHANDY, *supra* note 135, at 151 (also noting that in 2004 the U.S. economy was much better than present, and that of the respondents who did return to work, nearly two-third changed industries and nearly one-half became unemployed).

200. Starnes, *supra* note 14, at 98.

201. Starnes, *supra* note 14, at 98 (“[I]n a worst-case scenario, rehabilitative maintenance may merely delay a homemaker’s descent into poverty.”).

202. For an in-depth analysis of the social security system and how it fails to compensate for unpaid caregiving, see GENDER AND SOCIAL SECURITY REFORM: WHAT’S FAIR FOR WOMEN? (Neil Gilbert ed., 2006).

203. HEALTH POLICY: CRISIS AND REFORM 303 (Carroll Estes et al. eds., 6th ed. 2013) (“Women in Medicare have on average lower incomes, fewer assets, and less generous retirement coverage than men.”).

204. *Persistence of the Gender Pay Gap*, *supra* note 8.

205. MOE & SHANDY, *supra* note 135, at 127-28 (discussing that wage penalties for caretaking trail women through their working lives).

206. MOE & SHANDY, *supra* note 135, at 151.

207. U.S. BUREAU OF LAB. STAT., A PROFILE OF THE WORKING POOR, 2010 (March 2012) 1, available at <http://www.bls.gov/cps/cpswp2010.pdf> (“working poor” defined as “persons who spent at least 27 weeks in the labor force . . . but whose incomes still fell below the official poverty line”).

208. *Id.*

The Legislature would be wise to prevent more working mothers from adding to this statistic and to make it clear to the courts when a recipient can and cannot be rehabilitated. By adopting the proposed amendment, the legislature can better ensure predictability by giving courts the necessary framework by which to determine who the best candidates for rehabilitative alimony are, and how the courts will know that they have successfully achieved self-sufficiency.

CONCLUSION

In his second inaugural speech, President Obama recognized the inequalities that American women continue to face. “For our journey is not complete until our wives, our mothers, and daughters can earn a living equal to their efforts.”²⁰⁹ Likewise, the journey of alimony reform in Massachusetts is not complete until the state legislature demands that self-sufficiency for women is measured by the equal economic standing between two former spouses.

The world is not changing as fast as we might hope. Labor, such as caregiving for one’s own family, remains uncompensated. Women are still paid less than men for the same work.²¹⁰ The careers that have the highest concentration of female workers are still among the least lucrative.²¹¹ Women are still underrepresented in the highest levels of management, and overrepresented among the world’s poor.²¹² Rehabilitative alimony must account for these realities.

The Massachusetts legislature must make clear that punishing women for their roles as caregivers is unacceptable.²¹³ In the context of a statewide rally for predictability, the legislature must adopt language that gives the courts full reign to balance that goal while valuing caregiving. The feasibility of an award for rehabilitative alimony must be measured by the economic status of the payor spouse. Only in situations where the parties can achieve relatively equal status should rehabilitative alimony be appropriate.

By using parity as a measuring stick, rehabilitative alimony can

209. *Obama’s Second Inaugural Speech*, N.Y. TIMES, Jan. 21, 2013, http://www.nytimes.com/2013/01/21/us/politics/obamas-second-inaugural-speech.html?pagewanted=3&_r=0.

210. *See supra* Part III.B.

211. *See supra* Part III.B.

212. *See supra* Part III.B.

213. As another author penned twenty years ago, “[p]retending that rehabilitative maintenance can ‘repair’ a ‘damaged’ woman by turning back the clock and giving her the career opportunities she had before her marriage is a cruel, if convenient, illusion.” Starnes, *supra* note 14, at 98-99. This author would add that failing to ensure that rehabilitative alimony is only awarded in cases of economic parity would be the ultimate illusion.

continue to be used as a tool for gaining independence, without sacrificing one of the parties' economic well being or predictability. Independence won at the expense of one party is not independence at all; it is simply an illusion.

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