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In Search of Prince Charming

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In Search of Prince Charming

*Margaret F. Brinig**

Many of the papers in this symposium on critical legal perspectives on entertainment focused on the role of sex in our lives. Many of the papers noted that when sex is confounded with race, exploitation often emerges. This panel's title of "Sex, Lies and Exploitation" explicitly names this interaction.¹ Although each panelist comes from a different perspective, my Commentary attempts to highlight their common ideas about the power wielded in society's sexual interactions by analyzing power on the individual scale.

Professor Plasencia presented a powerful and graphic documentation of digital communication's influence on the sex industry.² Many of the images depicted affluent men exploiting relatively helpless young girls.³ In some images, the sex trade was explicit while in others it was portrayed more subtly as an arranged or mail-order marriage.⁴ Children of color and those from developing countries were at particular risk for victimization.⁵

My response to Professor Plasencia's report is mixed. Like most attendees at the conference, I empathize with the young people involved, who are the same age as my teenage daughters. As a frequent user of the Internet, I know the ease with which one may mistakenly encounter a sexually explicit web site. Such web sites prey upon children at the ages of twelve or thirteen⁶ and rightfully incite anger in most of us.

Professor Plasencia's data of isolated stories drawn from news accounts and websites are not the normal grist for social scientists. Since little information exists on how widespread this behavior is when not facilitated

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1. See Madeline Mercedes Plasencia, *Sexual Prisoners: Internet Sexual Predators and Mail-Order Prisoners*, Speech at The Journal of Gender, Race & Justice Symposium, A Critical Legal Perspective on Entertainment: Sports, Sex, and Identity (Oct. 15-16, 1999) (videotape on file with The Journal of Gender, Race & Justice).

2. See Madeleine Mercedes Plasencia, *Internet Sexual Predators: Protecting Children in the Global Community*, 4 J. GENDER RACE & JUST. 15 (2000).

3. In addition, some examples cited older men exploiting young boys' innocence. For instance, the Oklahoma case Plasencia mentions involves a five-year-old boy and his eleven-year-old sister. See *id.* at 20-21 nn.33-38. In another situation, John Sanger victimized a nine-year-old boy and his twelve-year-old sister. *Id.* at 21 nn.39-41. The *Bowles* case involves a thirteen-year-old boy. *Id.* at 21-22 nn.42-43.

4. This description might fit the story with which Plasencia begins. See *id.* at 22-25 (describing cases of outright child abuse as well as supposed "cross-cultural dating service[s]," *i.e.* mail-order bride services).

5. *Id.* at 24-25 nn.64-70.

6. Plasencia, *supra* note 2, at 24 n.68.

by electronic communication, or the frequency of occurrence before the evolution of the Internet,⁷ we cannot discern trends. In fact, the Department of Justice reported in 1994 that only four percent of rapes involving children under twelve were committed by strangers, and forty-six percent were committed by family members.⁸ Empirical questions aside, it is frightening that children can be reached even where we think they are safest—at home. I am not certain, having read Professor Plasencia's paper, exactly what she wants done about the problem.⁹ Certainly, enforcement of statutory rape laws would seem to help with both the Internet exposure and the broader problem of sexual exploitation of children. In particular, enforcement would aid the youngest women.¹⁰ Enforcement of existing criminal laws also has

7. We know only, for example, that the number of mail-order brides from Asia increased from 34 to 3428 between 1970 and 1983. *Id.* at 24. In this same time period, the number of immigrants to the United States increased dramatically. Of all immigrants to the United States in 1999, about 27.1% (7,161,000/26,449,000) were from Asia. ANGELA BRITTINGHAM, U.S. BUREAU OF THE CENSUS, THE FOREIGN-BORN POPULATION IN THE UNITED STATES 1 fig.1 (1999), available at <http://www.census.gov/prod/2000pubs/p20-519.pdf>. If Plasencia is right, the number of young women immigrants should be greater than that of young men. In fact, according to the Census Bureau, immigration by women from Asia came earlier than for men (men have a higher proportion that arrived after 1990). The ratio of women to men from Asian countries, 52%, approximates the overall percentage, 50.1%, and is lower than the ratio for European immigrants, 2,256,000 women out of 4,247,000, or 53.1%. ETHNIC AND HISPANIC STATISTICS BRANCH, U.S. BUREAU OF THE CENSUS, YEAR OF ENTRY OF THE FOREIGN-BORN POPULATION BY WORLD REGION OF BIRTH AND SEX CURRENT POPULATION SURVEY tbl.3.5 (1999), available at <http://www.census.gov/population/socdemo/foreign/cps1999/tab0305.txt>.

8. PATRICK A. LANGAN & CAROLINE WOLF HARLOW, U.S. DEP'T OF JUSTICE, CHILD RAPE VICTIMS, 1992, *Child Rape Victims, 1992* (1994). Of reported rapes of children ages twelve to seventeen, family members committed 20% and strangers committed 15%. The same table reports that 70% of convicted rapists imprisoned for raping children under twelve had raped family members. The table also indicates that 36% of those who had raped twelve to seventeen-year-olds had raped family members, while 45% had raped acquaintances or friends. *Id.* This data suggests that it is not the Internet, but exploitation within families, that causes the vast majority of the sexually abused children in this country. For an argument that the high rate of divorce may have child abuse as one of its consequences, see Robin Fretwell Wilson, *Children at Risk: The Sexual Exploitation of Female Children After Divorce*, 86 CORNELL L. REV. 251 (2001).

9. Clearly, there are legal and useful things to gain from knowing the age of consent across states and nations. One purely innocent use of such information is academic. See, e.g., Lynn D. Wardle, *Rethinking Marital Age Restrictions*, 22 J. FAM. L. 1, 5-7 (1983). Teenage couples in love might want to know when they can marry as well as whether they can engage in sexual intercourse.

Recent findings show that many young girls' first sexual contact came not from their boyfriends of similar age, but from much older fellows. See David J. Landry & Jacqueline D. Forrest, *How Old Are U.S. Fathers?*, 27 FAM. PLAN. PERSP. 159, 160, 161 (1995). Based on data from the National Maternal and Infant Health Survey, a 1988 national survey of women, the authors found that sixty-five percent of fifteen- to nineteen-year-old mothers had a partner age twenty or older. *Id.* at 161. Half the teen mothers aged fifteen to seventeen had partners who were twenty years old or older, and one in five aged fifteen to seventeen had a partner six or more years older. *Id.*

10. Laura Duberstein et al., *Age Differences Between Minors Who Give Birth and Their Adult Partners*, 29 FAM. PLAN. PERSP. 61, 61-66 (1997) (stating that a possible disincentive to older men fathering children with younger girls may be expanding the reach and effects of statutory rape laws). Senator Joseph Lieberman noted:

One of the dreadful facts that comes out as we go over this problem of teen pregnancies is that a remarkable percentage of the babies born to teenage mothers have been

the virtue of being consistent with the First Amendment and the vibrant international communications system that the Internet creates.

Professor Tanya Hernandez, like Professor Plasencia, enlivened her presentation by showing us Internet sites illustrating the phenomenon she described.¹¹ Unlike Professor Plasencia, however, she directed her paper to adult behaviors.¹² Professor Hernandez specifically focused on the problems involved when the tourist industry exploits our desire for sex and romance.¹³

Once again, I wonder not only whether this presents gender and race problems any more than any other facet of our lives, but also whether this is something new. Romance is often coupled with a desire for the "exotic."¹⁴ Sometimes, though, the exotic is merely a change of scenery.¹⁵ Just as sex is used to sell cars and jeans, the promise of it haunts vacation destinations as industrialized as Japan¹⁶ as well as much poorer countries like Cuba.¹⁷

fathered by men who are considerably older And there is not much we can do from Washington to deal with that except to . . . try to encourage the States, the local prosecuting attorneys, the district attorneys to be very aggressive in working with the welfare authorities to once again take statutory rape as a serious crime and to prosecute it, understanding that this is done to deter adult men from committing a sexual act that will result in a child born to poverty

141 CONG. REC. S12, 699-700 (daily ed. Sept. 6, 1995) (statement of Sen. Lieberman); *see also* JODIE LEVIN EPSTEIN, CTR. FOR LAW AND SOC. POLICY, STATE TANF PLANS: OUT-OF-WEDLOCK AND STATUTORY RAPE PROVISIONS (1997), <http://www.clasp.org/pubs/teens/tanfpln1.html> (describing the information that states are required to submit to the federal government regarding their plans to deal with issues of out-of-wedlock births and statutory rape, in order for the states to receive Temporary Assistance for Needy Families (TANF) block grants).

11. *See* Tanya Hernandez, *Sex Tourism: Globalization and the Commodification of Women*, Speech at *The Journal of Gender, Race & Justice Symposium, A Critical Legal Perspective on Entertainment: Sports, Sex, and Identity* (Oct. 15-16, 1999) (videotape on file with *The Journal of Gender, Race & Justice*).

12. *See id.*; Tanya Hernandez, *Sex Tourism: Globalization and the Commodification of Women*, 4 J. GENDER RACE & JUST. 25 (2001).

13. *See* Hernandez, *supra* note 12.

14. Surprisingly, however, men report a higher degree of sexual satisfaction when married than when involved with a variety of partners. Linda Waite, *The Importance of Marriage is Being Overlooked*, USA TODAY MAG., Jan. 1, 1999, at 46, 47.

[M]arried men more often said that sex with their wives was extremely pleasurable than cohabiting men or single men indicated that sex with their partners was. The high level of married men's physical satisfaction with their sex lives contradicts the popular view that sexual newness or variety improves sex for men.

Id.

15. *See, e.g.*, HOW STELLA GOT HER GROOVE BACK (1998). In this novel, the "sex tourism" was directed toward a woman who fantasizes about a tropical holiday and the young and exotic men she might find in Jamaica. *Id.*

16. The U.S. Department of State reports that

Japan is a destination country in the international trafficking of women for purposes of sexual exploitation. Brokers in source countries (e.g., the Philippines and Thailand) recruit women and "sell" them to Japanese intermediaries, who in turn coerce them into the sex trade by subjecting them to excessive debts and seizing their passports. Reliable statistics on the number and origin of women trafficked to the country are unavailable,

I also have two rather benign observations. First, much of the behavior—advertising for wives¹⁸ and attracting wives from other locations¹⁹—occurs all the time and frequently uses the same electronic media. For example, in the movie *Love Affair*, the Polynesian island where the central characters fall in love provides a visual and thematic contrast to their daily lives in New York City.²⁰ While it may not meet our individual tastes for good dating or courting, this behavior clearly does not raise concerns for many of us.²¹ Second, it has been socially acceptable for women to leave poor or socially stifling homes for better opportunities that would come only through marriage.²²

This Commentary attempts to weave together some of the strands of

but according to the Ministry of Justice 395 (2.5 percent) of the 15,823 women deported in 1997 were prostitutes.

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP'T OF STATE, JAPAN COUNTRY REPORT ON HUMAN RIGHTS PRACTICES FOR 1998 (Feb. 26, 1999), http://www.state.gov/www/global/human_rights/1998_hrp_report/japan.html.

17. See, e.g., *Sex Tourism a Shame to the World*, SUN-SENTINEL (Ft. Lauderdale, Fla.), Feb. 28, 2000, at 2A, available at LEXIS, Nexis Library, Sun-Sentinel File (“Havana has become a mecca for foreign tourists eager and willing to buy sex, much of it supplied by minors.”).

18. In 1993, the many bachelor farmers of Herman, Minnesota, advertised nationally for women who would be willing to move to the Midwest to become farm housewives. Hundreds arrived for the fair. Robert Franklin, *Fair Time for Romance in Herman*, STAR-TRIB.(Minneapolis, Minn.), July 23, 1994, at 1A.

19. Horace Greeley, editor of the New York Tribune, attacked Indiana for its divorce policies that, he concluded, caused social disintegration. Greeley characterized the state as “the paradise of free-lovers” where men and women could “get unmarried nearly at pleasure.” GLENDA RILEY, *DIVORCE: AN AMERICAN TRADITION* 40-44 (1991). A wife unhappy at her husband’s Indiana divorce wrote that nullification of the divorce decree would “deter that large class of discontented or lecherous pilgrims seeking the Mecca of divorce, who turn their faces towards Indiana.” NELSON M. BLAKE, *THE ROAD TO RENO: A HISTORY OF DIVORCE IN THE UNITED STATES* 119-21 (1962).

20. *LOVE AFFAIR* (Madacy Entertainment 1939).

21. We may have been fascinated with *Who Wants to Marry a Multi-Millionaire?* (Fox television broadcast, Feb. 16, 2000), but most of us concluded that we would not have volunteered as a potential wife and that we thought the whole setup was tacky and offensive. See, e.g., Alan Pergament, *Multi-Millionaire’s Wedding on Fox was No Joke, but Boy, Was It Bizarre*, BUFF. NEWS, Feb. 18, 2000, at 6A, available at LEXIS, Nexis Library, Buffalo News File (“Everyone seemed to think [the show] was a sick statement about our society. But they admitted that they couldn’t turn it off.”).

22. See, e.g., JANE SMILEY, *THE ALL-TRUE TRAVELS AND ADVENTURES OF LIDIE NEWCOMB* (1998) (telling the fictitious story of Lidie Newcomb, a poor young woman from Illinois who married and traveled with her husband to the Kansas Territory, circa 1855); LAURA INGALLS WILDER, *THESE HAPPY GOLDEN YEARS* (HarperTrophy 1971) (describing Wilder’s brief career as a teacher in the late 1800s before marrying farmer Almanzo Wilder); PATRICIA McLANAHAN, *SARAH, PLAIN AND TALL* (1987) (HarperCollins Juvenile Books 1985) (telling a story about a mail-order bride from Maine who travels to the Midwest to marry a widower and raise his children). New England mill girls often left family farms to work in factories because their parents could not afford to keep them and because they might meet someone in the larger towns. See generally THOMAS DUBLIN, *WOMEN AT WORK: THE TRANSFORMATION OF WORK AND COMMUNITY IN LOWELL, MASSACHUSETTS, 1826-1860* (Columbia Press 1979) (exploring the lives of women who worked in the Lowell textile mills between 1826 and 1860).

these divergent papers²³ to demonstrate the positive and legitimate ways we can use these differences in gender, race, and power. It also seeks to illustrate the ways that, as the other panelists have demonstrated, the empowered exploit these differences. I would like to do this in what may perhaps seem a strange context: courtship and marriage.²⁴

For the last several years, I have noticed a puzzling phenomenon in American marriage and divorce. American women primarily file for divorce,²⁵ even though they all too frequently end up in poverty following marital dissolution.²⁶ Yet women are also the prime motivators in getting married as opposed to staying in less binding relationships.²⁷

Assuming that people are not systematically fooled,²⁸ I have thought of

23. See Plasencia, *supra* note 2; Hernandez, *supra* note 12. Meg Baldwin presented a speech entitled *Correctional Gender: Cross-Gender Guarding and the Spectacle of Debasement* at the conference, but I will limit my comments to the written papers submitted by Professors Plasencia and Hernandez. For Professor Baldwin's presentation, see Meg Baldwin, *Correctional Gender: Cross-Gender Guarding and the Spectacle of Debasement*, Speech at *The Journal of Gender, Race & Justice Symposium, A Critical Legal Perspective on Entertainment: Sports, Sex, and Identity* (Oct. 15-16, 1999) (videotape on file with *The Journal of Gender, Race & Justice*).

24. I have written about courtship before. See Margaret F. Brinig, *Rings and Promises*, 6 J.L. ECON. & ORG. 203, 204, 213 (1990) (explaining how, in the late 1930s, the demand for diamond engagement rings developed as an extralegal guarantee of marriage, due to the higher "cost" women paid for premarital sexual intimacy if the engagement was broken, which correlated with the abolishment of the "breach of promise to marry" action in most states, and how the demand for diamond engagement rings has decreased as the "costs" of premarital sex have decreased for women); Margaret F. Brinig & Michael V. Alexeev, *Fraud in Courtship: Annulment and Divorce*, 2 EUR. J.L. & ECON. 45, 45-63 (1995) (noting that people frequently do not reveal everything about themselves in a world in which people search for potential mates, and arguing that lying or misleading about undiscoverable and important facts will justify annulments of marriages).

25. Margaret F. Brinig & Douglas W. Allen, "*These Boots Are Made for Walking*": *Why Most Divorce Filers Are Women*, 2 AM. L. & ECON. REV. 126, 126-27 (2000). Who files for divorce relates to who initiates the divorce. See Sanford L. Braver et al., *Who Divorced Whom? Methodological and Theoretical Issues*, 20 J. DIVORCE & REMARRIAGE 1 (1993). Brinig and Allen found that who files for divorce most closely relates to who eventually gets custody. Brinig & Allen, *supra*, at 146.

26. There are many citations for this point, both inside and outside the legal literature. Probably the most authoritative is Richard R. Peterson, *A Reevaluation of the Economic Consequences of Divorce*, 61 AM. SOC. REV. 528 (1996). For evidence that women choose poverty for themselves and their children to escape really awful marriages, see DEMIE KURZ, *FOR RICHER, FOR POORER: MOTHERS CONFRONT DIVORCE* 13-40 (1995).

27. In a 1999 survey of engaged Louisiana couples, 88% of men said they asked their partner to get married and 82% of women said their partner asked them. But when asked who first broached the subject of getting married, large percentages said they could not remember. Fifty-three percent of the men who remembered said they had raised the subject of marriage first, while 35% of the women said they brought up marriage first. Steven L. Nock et al., National Science Foundation, *Marriage Matters* (1999) (studying the effects of covenant marriage laws in Louisiana and Arizona, which reinstates fault-based divorce rules and requires marital and premarital counseling, as compared to typical marriages, where no-fault divorce rules apply at dissolution) (on file with author).

28. The rationality of human beings is a basic assumption of both micro- and macroeconomics. For example, if there is inflation, people will adjust their spending only momentarily, until they realize that their wages did not really increase relative to prices. See Milton

two possible reasons that explain why both of these observations might hold true. One deals with payoffs from marriage that differ between men and women. The other pertains to different views of courtship and their implications on married life.

Although the expected value²⁹ of the payoff from marriage might be the same for men and women, the variance³⁰ in what they will experience may be different. In other words, both men and women usually hope for health, wealth, and happiness when they seek to marry.³¹ In fact, such good wishes are the staples of toasts at receptions.³² Empirical data show that men receive the first two, health and wealth, whether or not the third good wish, “happiness,” is present.³³ There is a small variance, therefore, in the return men receive from marriage. In a small number of cases, the marriage may be a disastrous mismatch.³⁴ For women, wealth and happiness are tied together, and “happiness” usually is a benefit derived from the increase in the

Friedman, *The Role of Monetary Policy*, 58 AM. ECON. REV. 1, 7-11 (1968); Edmund Phelps, *Money Wage Dynamics and Labor Market Equilibrium*, in MACROECONOMIC FOUNDATIONS OF EMPLOYMENT AND UNEMPLOYMENT AND INFLATION THEORY 124 (Edmund Phelps ed., 1970).

29. Expected value is the probability of something occurring times its value. The expected value of an asset of P currently worth \$100 is calculated as follows:

Suppose we want to know its expected rate in a year. There is an 80% probability that it will have a normal rate of return and be worth \$110. There is a 10% probability that it will do exceptionally well and be worth \$120, and a 10% probability that it will do poorly and be worth only \$105.

$$EV(P) = (.8 \times \$110) + (.1 \times \$120) + (.1 \times \$105) = \$88 + \$12 + \$10.50 = \$110.50$$

JOHN VON NEUMANN & OSKAR MORGENSTERN, *THEORY OF GAMES AND ECONOMIC BEHAVIOR* 81 (John Wiley & Sons 1964).

30. Variance is the sum of the squared deviances from the mean divided by one less than the total number of deviations. A small variance indicates that most people cluster tightly around the average value. A large variance means that the various outcomes are spread widely. For example, if sample A included observations of 1, 2, 3, 4, and 5, and sample B included 2, 3, 3, 4 and 3, the variance in sample A is 2.5, while that of sample B only 0.5. For a discussion of this concept, see STEVEN M. CRAFTON & MARGARET F. BRINIG, *QUANTITATIVE METHODS FOR LAWYERS* 293-95 (1994).

31. Men are more interested than women in the beauty of their spouse. Women, in contrast, value a “good earning capacity” more highly than do men. *What’s Love Got To Do with It*, SATURDAY REV., Sept.-Oct. 1985, at 11, 11. Of the thirteen top characteristics desired in a mate, men listed “physical attractiveness” as the third most important, while it was sixth for women. At the same time, women listed “good earning capacity” eighth to men’s eleventh. Men also listed “desire for children” more highly than did women, eighth to women’s tenth. *Id.*

32. See, e.g., *Food for Thought*, at http://www.thewedguide.com/new_editorials/Food4Thought.htm (last visited May 17, 2001) (describing the phrase “Health, Wealth, and Happiness” as a “traditional toast to newlyweds”).

33. See STEVEN L. NOCK, *MARRIAGE IN MEN’S LIVES* 14 (1999) (“In short, just being married appears to be more beneficial to men than to women, whereas the quality of the actual marriage appears more important to wives than to husbands.”).

34. Gary S. Becker et al., *An Economic Analysis of Marital Instability*, 85 J. POL. ECON. 1141, 1149 (1977) (stating that when the individuals in a relationship have mismatched traits, the chances of dissolution increase).

husband's wealth.³⁵ A man's private wealth, that wealth tied to his earning capacity, usually increases when he marries and particularly grows when he has children.³⁶ A woman's private wealth, which is tied to her earning capacity, frequently decreases when she marries³⁷ and has children.³⁸

Married men live longer,³⁹ have more satisfying sex lives,⁴⁰ participate more in beneficial social organizations,⁴¹ and are physically and mentally healthier⁴² than their single counterparts. They receive these benefits even in

35. See GRACE BARUCH ET AL., *LIFEPRINTS: NEW PATTERNS OF LOVE AND WORK FOR TODAY'S WOMEN* 73 (1983) (stating that there is a "powerful relationship between family income and psychological well-being"); VICTOR FUCHS, *WOMEN'S QUEST FOR ECONOMIC EQUALITY* 58-64 (1988) (describing the relationship between marriage and income for men and women).

36. See NOCK, *supra* note 33, at 66-67 (observing that men's income increased on average by \$4261 after marriage, all other variables being constant). When men become fathers, Nock notes that their "annual income rises by about \$1,705." *Id.* at 77. In general, "[n]ormative marriage [which includes children] appears to be associated with higher earnings for husbands." *Id.*; see also JOAN WILLIAMS, *UNBENDING GENDER* 125 (1999) ("Fathers earn 10 to 15 percent *more* than men without children."); FUCHS, *supra* note 35, at 60 ("[M]arried men earn more than unmarried men at every age."); Linda J. Waite, *Does Marriage Matter?*, 32 *DEMOGRAPHY* 483, 496 (1995) (hypothesizing that marriage may cause men to be more productive at work and that wives may assist husbands directly and indirectly with their work, for example, by taking over household tasks, freeing the husband's time and energy for work).

37. See FUCHS, *supra* note 35, at 59 (stating that married women's earnings "deteriorate[] rapidly as they get older and their home responsibilities increase"); Amy L. Wax, *Bargaining in the Shadow of the Market: Is There a Future for Egalitarian Marriage?*, 84 *VA. L. REV.* 509, 546 (1998) (noting that "women's labor market value is often impaired by marriage"). Women who quit jobs to raise their families earn lower wages than women at comparable stages in their careers that remained in the work force. Those women who leave the labor force "are more likely to be married and to have children than are their counterparts who remain in the work force." Joyce P. Jacobsen, Bureau of Labor Statistics, U.S. Dep't of Labor, *Effects of Intermittent Labor Force Attachment on Women's Earnings*, 118 *MONTHLY LAB. REV.* 14, 14, 16 (1995). See generally Gillian K. Hadfield, *Households at Work: Beyond Labor Market Policies to Remedy the Gender Gap*, 82 *GEO. L.J.* 89 (1993) (discussing the gender gap in wages and its relation to household work in marriage).

38. See FUCHS, *supra* note 35, at 60-61 (stating that mothers earn lower wages, compared to childless women, for three main reasons: interruptions in work force participation for child-bearing and child-rearing; acceptance of lower-paying jobs in exchange for the flexibility necessary to tend their children; and a decreased ability to devote maximum effort to a job due to parenting responsibilities); WILLIAMS, *supra* note 36, at 125 ("[M]others earn 10 to 15 percent *less* than women without [children]."); Lloyd Cohen, *Marriage, Divorce and Quasi-Rents; or, "I Gave Him the Best Years of My Life."*, 16 *J. LEGAL STUD.* 267 (1987) (discussing the relatively rapid decline of women's "value" on the marriage market as a function of age and hypothesizing that when a woman has children, her "value" decreases even more).

39. See Waite, *supra* note 36, at 488-89.

40. See *id.* at 490-92.

41. See NOCK, *supra* note 33, at 130 (describing the ways in which married men "stress social roles that are components of public institutions" such as religious institutions).

42. See Nadine F. Marks, *Flying Solo at Midlife: Gender, Marital Status, and Psychological Well-Being*, 58 *J. MARRIAGE & FAM.* 917, 927 (1996) ("Separated or divorced and never-married men exhibit uniformly less self acceptance, environmental mastery, positive relations with others, and purpose in life" as compared to married men.).

low quality marriages,⁴³ in terms of communication with their spouses, shared experiences with them, or even desire to make them happy. In contrast, women seem to experience these physical and psychological benefits only in high quality marriages.⁴⁴ When they are unhappy in their marriage, women have more physical and emotional problems and consult mental health professionals more frequently than either single or divorced women.⁴⁵ But the wife in a good marriage is happier than any other category of woman.⁴⁶ The most stable of all marriages are those in which the husband perceives the housework and labor force situation as unfair for his wife, as opposed to those in which the husband and wife perceive all divisions of responsibility as fair.⁴⁷ Thus, the woman sees a large variance from the returns of marriage. She may find herself in a disaster, or a mediocre relationship in which she receives few rewards, or a glorious marriage in which the rewards overflow.⁴⁸

Much of the explanation for this gender difference comes from outside the relationships in which the people are involved. Men are socialized to be providers and receive esteem from themselves and others for doing well in their occupations.⁴⁹ The “ideal worker” sought after by employers is

43. NOCK, *supra* note 33, at 14; *see also* Walter R. Gove et al., *Does Marriage Have Positive Effects on the Psychological Well Being of the Individual?*, 24 J. HEALTH & SOC. BEHAV. 122, 128 (1983) (“[I]t appears that marital status is more important for males than for females, while the affective quality of marriage is more important for females than for males.”).

44. *See* NOCK, *supra* note 33, at 14 (discussing the importance of marital happiness for women’s mental and physical health, as compared to married men).

45. *See* Marks, *supra* note 42, at 919 (citing JESSIE BERNARD, *THE FUTURE OF MARRIAGE* (1972), for the proposition that married women were often more likely to exhibit higher rates of mental distress and illness than single women); Martha Livingston Bruce & Kathleen M. Kim, *Differences in the Effects of Divorce on Major Depression in Men and Women*, 149 AM. J. PSYCHIATRY 914, 916 (1992) (examining the relationship between marital disruption and major depressive episodes).

46. *See, e.g.*, Norval D. Glenn, *Marriage on the Rocks*, 21 PSYCHOL. TODAY 20, 22 (1987) (presenting surveys showing not only that marriage no longer makes people as happy as it once did, but also that the difference occurs mainly in loss of happiness for married women).

47. Margaret F. Brinig & Steven L. Nock, *Weak Men and Disorderly Women: Divorce and the Division of Labor*, in *MARRIAGE AND DIVORCE: AN ECONOMIC PERSPECTIVE* (Robert Rowthorn & Anthony Dnes eds., forthcoming 2001).

48. I have only an inkling about the proportions of these possibilities. About 15% of divorces (or 6% of all marriages since 1980) occur within the first three years of marriage (probably disasters). Since about 55% of recent marriages are predicted to survive, that leaves 39% of all marriages in the mediocre category, which result in eventual divorce. (When couples stay together, we do not know for sure whether the marriage is truly happy, but we can surmise that few blissful marriages will end in divorce). My data comes from MARGARET F. BRINIG, *FROM CONTRACT TO COVENANT: BEYOND THE LAW AND ECONOMICS OF THE FAMILY* 145 fig.6.1 (2000) (citing Brinig & Allen, *supra* note 25) and was drawn from all Virginia divorces in 1991.

49. *See* NOCK, *supra* note 33, at 16-17, 40. Thus, modern American young men choose “physical attractiveness” as their third most important characteristic in a prospective wife after compatibility and good communications skills. Young women choose the same first two traits, but list “exciting personality,” “good health,” and “adaptability” before physical attractiveness. Bernice

someone who can work hours that would be impossible without “backup” at home.⁵⁰ Thus, the men who receive promotions, commendations, and high salaries⁵¹ tend to be married and have children. Many of the most successful men have wives who do not work outside the home.⁵² These men are seen as good providers who are stable, responsible, and committed to their jobs.⁵³

Women, in contrast, are socialized to be nurturers and receive much esteem from themselves and others for being good mothers and good wives.⁵⁴ Others also may admire them for doing well in a gainful occupation but will criticize them if their success is at the expense of their family,⁵⁵ particularly if their children’s father becomes the primary caretaker.⁵⁶ Thus,

Kanner, *Ideal Couples and Romance*, 28 *PSYCHOL. TODAY* 46, 51 (1995); cf. Cohen, *supra* note 38, at 268, 303. Specifically, women invest in a marriage early on. As their beauty fades, men are just beginning to contribute in terms of increased earning capacity. This gives the men the incentive to behave opportunistically and divorce them. *Id.*

50. Joan C. Williams, *Gender Wars: Selfless Women in the Republic of Choice*, 66 *N.Y.U. L. REV.* 1559, 1608-18 (1991).

51. NOCK, *supra* note 33, at 66. Married men earn about \$4261 more per year than before they were married, and work a little more than two weeks more per year (controlling for the effect of age). *Id.* at 67. They receive an almost two-point gain in occupational prestige, as calculated by sociologists. *Id.* at 68-69 fig.4.3.

52. WILLIAMS, *supra* note 36, at 27 (“Households of rich men are most likely to conform to the housewife/breadwinner model.”).

53. NOCK, *supra* note 33, at 66.

54. See, e.g., ADRIENNE RICH, *OF WOMAN BORN: MOTHERHOOD AS EXPERIENCE AND INSTITUTION* 110-28 (10th ed. 1986) (discussing the role and social image of motherhood); Carol Sanger, *Separating from Children*, 86 *COLUM. L. REV.* 375, 388-409 (1996) [hereinafter Sanger, *Separating from Children*]; NANCY CHODOROW, *THE REPRODUCTION OF MOTHERING* 7 (1978) (discussing the inherited traits of maternal characteristics); Carol Sanger, *M is for the Many Things*, 1 *S. CAL. REV. L. & WOMEN’S STUD.* 15, 18 (1992) [hereinafter Sanger, *M is for the Many Things*] (discussing the multifaceted role and identity of mothers in the eyes of society and the law).

55. See Sanger, *Separating from Children*, *supra* note 54, at 515 (stating that by working outside the home, thereby separating herself from her children, society sees the working mother as “doing away with the business of being a woman ahead of schedule”). This has been pointed out most forcefully in cases where women lost custody of children because they returned to school, see, e.g., *Ireland v. Smith*, 542 N.W.2d 344 (Mich. Ct. App. 1995) (remanding the trial court’s decision that custody of the child should go to the father when the mother enrolled in college courses and placed the child in day care), or pursued demanding careers, see, e.g., *Burchard v. Garay*, 724 P.2d 486 (Cal. 1986) (The mother was working on a career in nursing.). Fuchs concludes that women’s disproportionate responsibility for childcare provides the most powerful explanation for the difference in men’s and women’s earnings. FUCHS, *supra* note 35, at 62. Although the gap between men’s and women’s wages closed by seven percent between 1980 and 1986, Fuchs explains that the improvement was largely due to the increased percentage of women workers who were born after 1946 and had fewer children. *Id.* at 65-66; see also Donald Cox, *Panel Estimates of the Effects of Career Interruptions on the Earnings of Women*, 22 *ECON. INQUIRY* 386, 403 (1984) (suggesting that for each year out of the labor force, the caretaker permanently loses 1.5% of lifetime earning capacity). See generally Hadfield, *supra* note 37 (addressing the significance of the division of household labor in the economic analysis of the gender gap between men and women in the workplace).

56. Erica Jong stated in 1983: “We long for men to share these tasks with us equally, but not only do they not want to, but we probably do not want to relinquish them. We are as attached to our children as ever. Liberation has not severed the umbilical cord—nor would we want it to.”

“[m]others who fail to separate when conditions call for it—or, the more common occurrence in present times, mothers who separate when conditions do not—are regarded as misguided, selfish, unnatural.”⁵⁷

Although most married American women work for pay outside the home, they work fewer paid hours than their husbands⁵⁸ and frequently seek flexible or seasonal employment.⁵⁹ The most successful women in terms of job prestige and salary are not married or do not plan to have children if they are married.⁶⁰ Most of their work in the household is “women’s work.”⁶¹

FUCHS, *supra* note 35, at 71.

57. Sanger, *Separating from Children*, *supra* note 54, at 377.

58. Therefore, wives will earn less than their husbands. FUCHS, *supra* note 35, at 62; Hadfield, *supra* note 37, at 89; Jacobsen, *supra* note 37, at 14; Joni Hersch, *The Impact of Nonmarket Work on Market Wages*, 81(2) AM. ECON. REV. 157 (1991); Gavin Wright, *Understanding the Gender Gap: A Review Article*, 29 J. ECON. LITERATURE 1153, 1160 (1991).

59. See Brinig & Nock, *supra* note 47. For example, American women must assume flexible employment in order to accommodate their children’s emergencies. See David M. Blau & Philip K. Robins, *Fertility, Employment, and Child-Care Costs*, 26 DEMOGRAPHY 287, 287-98 (1989) (discussing research on the various factors affecting a mother’s choice in employment).

60. FUCHS, *supra* note 35, at 61-64, 66.

61. Brinig & Nock, *supra* note 47. Table 2 reports data from the National Survey of Families and Households, Center for Families and Households at the University of Wisconsin, indicating that the majority of typical household work is performed by wives:

Table 2
Average Hours Spent on Household Tasks by Husbands and Wives

Household Tasks:	Husbands	Wives	N	Sig. T.
1) Preparing Meals	2.05	9.75	4377	.001*
2) Washing Dishes	1.76	6.07	4377	.001*
3) Cleaning House	1.59	8.13	4379	.001*
4) Outdoor Tasks	4.96	1.81	4380	.001*
5) Shopping	1.39	2.81	4380	.001*
6) Washing, Ironing	0.57	4.29	4379	.001*
7) Paying Bills	1.36	1.60	4378	.001*
8) Auto Maintenance	1.84	0.18	4379	.001*
9) Driving Others	1.15	1.39	4372	.001*
Male Tasks (4+8)	6.80	1.99	4375	.001*
Female Tasks (1+2+3+5+6+7+9)	9.87	33.98	4381	.001*

* Paired Samples T-Test (2-tailed) is significant at $p < .001$

Since the emotional success of the marriage has little to do with the man's payoff⁶² and a great deal to do with his wife's,⁶³ it is not surprising that she will frequently be the one to end the relationship in an unhappy marriage even if it has produced material rewards.⁶⁴ Accordingly, the wife usually files for divorce or seeks separation, particularly if she can obtain custody of the children.⁶⁵ Although she is less likely than he to repeat the marriage experience,⁶⁶ she will be happier outside marriage than in an

62. Men who are dissatisfied with marriage may work longer hours, leaving more for women to do. ARLIE HOCHSCHILD, *THE SECOND SHIFT: WORKING PARENTS AND THE REVOLUTION AT HOME* 21 (1989); Allen W. Parkman, *Why Are Married Women Working So Hard?*, 18 INT'L REV. L. & ECON. 41, 41-43 (1998). Men can also take their earning capacity with them upon divorce. LENORE WEITZMAN, *THE DIVORCE REVOLUTION: THE UNEXPECTED SOCIAL AND ECONOMIC CONSEQUENCES FOR WOMEN AND CHILDREN IN AMERICA* 109 (1985). Even if men lose custody of their children at divorce, they still have them to carry on their names, since they are biological fathers of legitimate children. See, e.g., *Mullen v. Mullen*, 49 S.E.2d 349 (Va. 1948) (denying a father custody of his child, who nevertheless retained the father's last name). A divorced father may, however, be very hurt emotionally if the mother receives sole custody. See Robert E. Emery et al., *Child Custody Mediation and Litigation: Parents' Satisfaction and Functioning One Year After Settlement*, 62 J. CONSULTING & CLINICAL PSYCHOL. 124, 126 tbl.1, 127 tbl.2 (1994) (assessing depressive traits in divorced fathers and mothers); Joyce Arditti, *Differences Between Fathers with Joint Custody and Noncustodial Fathers*, 62 AM. J. ORTHOPSYCHIATRY 186, 187 (1992) ("Noncustodial fathers often report feelings of loss and depression that may be related, in part, to unsatisfactory relationships or limited involvement with their children.").

63. Highly educated women who hold outside jobs will divorce more often than women with less education and no job, as they have less to lose in the divorce. Brinig & Allen, *supra* note 25, at 126, 144, 148, 158 tbl.4. See generally Marilyn Manser & Murray Brown, *Marriage and Household Decision-Making: A Bargaining Analysis*, 21 INT'L ECON. REV. 31 (1980) (arguing that bargaining analysis explains household formation because decisions about marriage, fertility, labor supplies, and consumption patterns interact with each other).

64. KURZ, *supra* note 26, at 43. Kurz noted that, based on an interview study she conducted, she believes that "divorce occurs because of the hardships that contemporary marriages cause for women, due to domestic violence, drug abuse, and alcohol abuse, as well as for reasons of personal dissatisfaction." *Id.* at 13.

65. Brinig & Allen, *supra* note 25, at 133. Women more than men seem to bear the burden of their children's suffering by holding themselves responsible for the children's emotional and physical well-being. FUCHS, *supra* note 35, at 69. See generally BARBARA DEFOE WHITEHEAD, *THE DIVORCE CULTURE* 63 (1997) (discussing expert literature of the 1970s).

66. Brinig & Allen, *supra* note 25, at 128. Women with high educational achievement are more likely to remarry. Carmel Chiswick & Evelyn Lehrer, *On Marriage-Specific Human Capital: Its Role as a Determinant of Remarriage*, 3 J. POPULAR ECON. 193, 213 (1990). Women with high earnings also have a greater-than-average likelihood of remarriage. Paul Glick & Sung-Ling Lin, *Remarriage after Divorce: Recent Changes and Demographic Variations*, 30 SOC. PERSP. 162, 179 (1987). If she does not remarry, a divorced woman may well suffer financially. See Greg J. Duncan & Saul D. Hoffman, *A Reconsideration of the Economic Consequences of Marital Dissolution*, 22 DEMOGRAPHY 485, 489-91 (1985) (using longitudinal data to examine the impact of divorce and separation on the economic status of men and women); see also Ross Finnie, *Women, Men, and the Economic Consequences of Divorce: Evidence from Canadian Longitudinal Data*, 30 CANADIAN REV. SOC. & ANTHROPOLOGY 205, 209 (1993) ("[W]omen who have not remarried experience immediate income drops of almost 30 per cent Conversely, women who remarry see their income measures regain the pre-divorce trajectory immediately."); Pamela J. Smock, *Gender and the Short-Run Economic Consequences of Marital Disruption*, 73 SOC. FORCES 243, 251-52 (1994) (stating that although young, minority males that have separated or divorced do not fare well economically, women usually fare far worse economically, probably because of their responsibilities to their children).

emotionally unsatisfying one.⁶⁷ Women may thus seek marriage despite the fact that they may be less successful in finding Prince Charming than their mates are in finding Cinderella.

The alternative explanation, one garnered from unscientific surveys of my students over the years,⁶⁸ is that men and women think differently about the purpose of courtship. Men view courtship as a contest in which they triumph over other suitors.⁶⁹ Dating and courtship are therefore quite distinct from marriage, and the behavior in the early period need not have anything to do with that in marriage when they are free to “be themselves.”

To the women in class, both married and unmarried, courtship entails successively revealing things about themselves to the men involved. They view the activities and the emotions involved with courtship as necessary precursors to what will lie ahead in marriage.⁷⁰ Courtship behavior, therefore, signals what the man will be like as a husband.

Many of these women complained that their husbands changed after they married. Instead of being focused on their wives, they spent time with friends. Instead of being romantic, they wanted to relax in front of the television when they got home from work. Instead of lengthy foreplay, they

67. Clinical studies show a lower prevalence of first-onset major depression for women than for men after divorce. See Bruce & Kim, *supra* note 45, at 916; WHITEHEAD, *supra* note 65, at 184; KURZ, *supra* note 26, at 188-89; BARUCH ET AL., *supra* note 35, at 261. Men tend to get more health, sexual, and economic (wage) benefits from marriage, regardless of the quality of the marriage, than do women. Waite, *supra* note 36, at 483, 488-89, 491, 495. For health benefits, see CHARLOTTE A. SCHOENBORN & MARIE MARANO, CURRENT ESTIMATES FROM THE NATIONAL HEALTH INTERVIEW SURVEY 9-10 (U.S. Dep’t of Health and Human Servs., Series 10, No. 166, 1988) (finding that both married men and women are less likely to be limited in their activities because of health problems, and that married men and women are less likely than single, widowed, or divorced people to report being in fair or poor health). For evidence that women get some psychological benefits from marriage that they do not receive when single, see Marks, *supra* note 42, at 919. However, divorced and separated women got higher marks for personal autonomy and sufficiency as well as personal growth. *Id.* at 921.

68. This is unscientific because the courses in which I ask the question are elective courses in selective law schools. Law students probably do not mirror the general population.

69. For a recent paper that discusses this behavior from an evolutionary psychology perspective, see David M. Buss, *The Evolution of Human Intrasexual Competition: Tactics of Mate Attraction*, 54 J. PERSONALITY & SOC. PSYCHOL. 616 (1988); see also Susan Sprecher et al., *Mate Selection Preferences: Gender Differences Examined in a National Sample*, 66 J. PERSONALITY & SOC. PSYCHOL. 1074, 1074-75 (1994) (affirming previous studies’ conclusions that men prefer mates who are young and physically attractive—traits which signal reproductive value—while women prefer mates with traits such as ambition and status, reflective of the potential for resource acquisition).

70. In the words of other disciplines, this would be akin to the search for any good in a market. The consumer first rates her own characteristics (to predict how well she ought to be able to do), then finds out what characteristics are most important to her, and she searches until the cost of the next search (her beginning the next relationship) exceeds the likely amount the additional benefit of the next potential mate’s “package.” For a non-technical description of this search phenomenon, see PAULA ENGLAND & GEORGE FARKAS, HOUSEHOLDS, EMPLOYMENT AND GENDER 31-42 (1986) (suggesting that individuals seek traits and characteristics they desire in a mate based on the demand and availability of those traits, as well as the desirability of their own traits and characteristics, which the individual may try to change and adapt to make him- or herself more desirable).

were interested almost immediately in intercourse. Many women felt they had been asked to shoulder the emotional work of the relationship and could not even get help with such simple matters as what to fix for dinner. Their husbands, who had been so spontaneously wonderful before marriage, were now much less interesting and more demanding creatures.⁷¹

The men complained that what they had thought of as discerning behavior before marriage they now saw as demanding. They did not see why they should be expected to put on an act for their wives. They found it difficult to figure out what their wives wanted because, they said, their own needs were simple compared to their wives.⁷²

If these differences in perceptions hold true among larger and broader samples than my own, it is no wonder that fifty percent of American marriages begun after 1980 dissolve. It is less clear why women in particular are systematically fooled. Perhaps a good portion of courtship behavior is a fraud.⁷³

While working on another paper, I examined the prevalence of arranged marriages in modern societies. I thought them a phenomenon of the past, and was startled to discover that more than half the world's peoples live in countries where arranged marriages are common, if not ubiquitous.⁷⁴ Arranged, as opposed to love, marriages predominate in India, most Moslem

71. *Id.* at 33.

72. See JOHN GRAY, *MEN ARE FROM MARS, WOMEN ARE FROM VENUS: A PRACTICAL GUIDE FOR IMPROVING COMMUNICATION AND GETTING WHAT YOU WANT IN RELATIONSHIPS* 132-49 (1992) (explaining Gray's understanding of the different emotional needs of men and women). See generally DEBORAH TANNEN, *YOU JUST DON'T UNDERSTAND: WOMEN AND MEN IN CONVERSATION* (1990) (discussing how men and women converse in different styles, and describing the miscommunication that can result).

73. See Brinig & Alexeev, *supra* note 24, at 49-50 (advocating the use of an action for annulment only when a fraud occurs in courtship which is not reasonably discoverable prior to marriage, while discoverable fraud should not be grounds for annulment).

74. *The United Nations Demographic Yearbook* keeps track of data on 205 countries. See *United Nations Statistics Division*, <http://www.un.org/Depts/unsd> (last visited May 18, 2001) (providing statistical evidence in international merchandise trade, national accounts, demography, population, social indicators, gender issues, industry, energy, environment, human settlements, and disability). In 76 of these 205 countries, arranged marriage is a common-enough practice that it is searchable on the Internet. Some, in fact, have web sites for the intended. See, e.g., *Express India*, <http://www.the-hindu.com/11hdline.htm>. (last visited May 18, 2001). Of these 76 countries, I checked the population for 16 which I expected to have large populations (including China, India, Indonesia, Japan, Korea (North and South), Ukraine, South Africa, Pakistan, and Nigeria). As of July 1999, these had a total of 3,003,471,338 of the world's 6,082,966,429 people. Sociologist Steven L. Nock, of the University of Virginia, counts the number of arranged marriages in these countries as 80-90% of all marriages, based on estimates in *The United Nations Demographic Yearbook*. Stephen L. Nock, Presentation at the Olin Foundation Symposium, entitled "Law and Social Norms," at the University of Virginia School of Law, Charlottesville (February 26, 1999). Compare this use of the electronic media for arranging marriages in countries where this is an accepted practice, with the problems regarding Westerners seeking "mail-order brides" which concern Professor Hernandez. The examples she used in her presentation showed at the very least exploitation and at worst forced prostitution of women in developing countries. See Hernandez, *supra* note 11.

countries, and in Sub-Saharan Africa.⁷⁵ They are frequent in China,⁷⁶ Japan,⁷⁷ Korea,⁷⁸ and Vietnam.⁷⁹ In all but the Moslem countries, the modern versions involve a veto power by the couple.⁸⁰ In the Moslem countries and some of the African ones, the custom of arranged marriage involves less consent, at least by the women involved.⁸¹ Most of these marriages involve couples quite disparate in age.⁸²

In the non-Moslem cultures that continue to arrange marriages, highly educated female proponents give two reasons for perpetuating the tradition. One is that the families will choose better than the couples because their

75. See United Nations Statistics Division, <http://www.un.org/Depts/unsd> (last visited May 18, 2001).

76. See Cailian Liao & Tim B. Heaton, *Divorce Trends and Differentials in China*, 23 J. COMP. FAM. STUD. 413, 422 (1992) (stating that while traditional pre-arranged marriages are less common, outside intervention and parental influence still affect young Chinese people's decisions about marriage). As one might predict, instability was highest for those women who were older than twenty-five when they married in arranged marriages. *Id.* at 426. The divorce rate in China is miniscule, however, compared to U.S. standards and was about 0.16% for those surveyed who were educated seven or more years, even lower for those with less education. Chinese couples apparently date following the commitment to marry rather than before. They also know each other for longer periods before marriage than their American counterparts, regardless of marriage type. *Id.* at 417 (citing M.K. WHYTE & W. PARISH, *URBAN LIFE IN CONTEMPORARY CHINA* 77-125 (1984)). The Liao and Heaton article contains a useful discussion of the traditional Chinese attitudes about marriage and the importance of family. See Liao & Heaton, *supra*, at 413-14; see also Xu Xziaohe & Martin King Whyte, *Love Matches and Arranged Marriages: A Chinese Replication*, 52 J. MARRIAGE & FAM. 709, 715, 717, 718, 720 (1990) (finding that the incidence of, and couple's satisfaction with, arranged marriage decreased dramatically over the past sixty years, and that wives especially are more satisfied in love matches).

77. See Kalman D. Applbaum, *Marriage with the Proper Stranger: Arranged Marriage in Metropolitan Japan*, 34 ETHNOLOGY 37, 40 (1995) (describing the *pro nakōdo*, or professional go-between, who introduces people in urban Japan, and maintaining that 25-30% of all marriages in modern Japan are arranged).

78. See LAURA KENDALL, *GETTING MARRIED IN KOREA: OF GENDER, MORALITY, AND MODERNITY* 85-115 (1996) (describing a relatively sympathetic account of Korean arranged marriages).

79. See Steven K. Wisensale, *Marriage and Family Law in a Changing Vietnam*, 20 J. FAM. ISSUES 602, 604 (1999) (observing that between 1958 and 1962 the proportion of arranged marriages did fall in North Vietnam from over 60% to less than 20%, and in 1999 the rate was almost zero).

80. See, e.g., Anju Malhotra, *Gender and Changing Generational Relations: Spouse Choice in Indonesia*, 28 DEMOGRAPHY 549, 553 tbl.1 (1991) (demonstrating that even in Indonesia (which is Moslem), most marriages entered into by people born later than 1953 involve some element of self-choice: 61.1% for women in rural areas, 89.6% for women in urban areas, 86.6% for men in rural areas; and 96.5% for men in urban areas).

81. See, e.g., *id.* Although the tendency toward more choice is increasing in Moslem Indonesia, for example. *Id.* Malhotra states that for urban women born in 1935-1943, 40.5% of the first marriages were arranged solely by the parents, with only 28.2% being arranged by the spouses themselves with parental approval. *Id.* The proportion of marriages arranged solely by parents for those born in 1953 or later is 10.4%; while arranged by the spouses with parents' approval is 61.5%. *Id.*

82. *Id.*

families are not “clouded by love.”⁸³ Another is that the marriages are more stable because the matching maintains homogeneity and assures family support.⁸⁴

The analysis found earlier in this paper suggests that arranged marriages may endure for the first reason—that the parents rather than the individuals make at least the initial choice. If many Western marriages fail because the men and women expect different things from marriage and courtship, having uninvolved (though interested) third parties do the initial searching may ensure compatible couples over the longer haul. To the extent that recent data shows arranged marriages failing more often than “love matches” in China,⁸⁵ one could surmise that failing marriages are those in which the men

83. I quote from a paper written by law student Annette Tsinnajinnie Brown for a seminar at the University of Iowa College of Law, involving Navajo marriage customs:

From the second quarter of this century to the present, the tradition of arranged marriages has been replaced in favor of allowing couples to choose their own spouses. Interestingly, my own observation of the success of these two different marriage processes—if success is measured in longevity—has been that the arranged marriage survives longer than those based on emotion. This does not suggest that an arranged marriage is without affection, rather the initial decision of marriage is made by people whose judgment is not “clouded” by the titillation of love.

Annette Tsinnajinnie Brown, *Perspectives on the Individual, the Family, and Social Institutions* (2000) (unpublished paper, the University of Iowa College of Law) (on file with author).

84. Suhana Rai, a student at George Mason University School of Law, wrote:

There are numerous benefits of arranged marriages that may not always exist in the “love” marriage. The marriage is generally not based on fleeting sexual desires. I believe this is one of [the] primary reasons arranged marriages are more stable than love marriages. The husband and the wife will have similar religious backgrounds, family friends, and cultural values to rely on if their marriage is having problems. In addition, both the husband’s and wife’s families are very supportive of the marriage because they were the ones who arranged it. An arranged marriage is not just a union between a husband and his wife, but also a union between two families.

Suhana Rai, *Perspectives on the Individual, the Family, and Social Institutions*, (1999) (unpublished paper, George Mason University School of Law) (on file with the author); see also Bala Swaminathan, *Love Match and Arranged Marriage* (Feb. 20, 1995), <http://www.cs.wustl.edu/~bs/essays/marriages.html> (describing the family’s role in the mate selection process, but complaining that arranged marriage furthers class differences in Hindu society); Yasmin Alibhai-Brown, *Marriage of Minds Not Hearts*, *NEW STATESMAN & SOC’Y*, Feb. 12, 1993, at 28, 28-29 (discussing Asian marriages generally, and commenting that arranged marriages do have benefits compared to love matches). Alibhai-Brown’s description is a bit different from my student’s, for she says:

Once vetted, it is left to the individual to make the final choice. The couple can get to know each other, and there is no coercion. The woman has the final say and, as parents get increasingly worried about losing their children in this society, they are ever more anxious not to pressurise [sic] them.

Id. at 28; see also CHANCHAL KUMAR CHATTERJEE, *STUDIES IN THE RITES AND RITUALS OF HINDU MARRIAGE IN ANCIENT INDIA* 82-84 (1978) (describing how multiple wooers negotiate for the woman’s hand); USHA M. APTE, *THE SACRAMENT OF MARRIAGE IN HINDU SOCIETY* 37-39, 50-52 (1978) (explaining the process of mate selection in Hindu society).

85. The nonconsensual arranged marriage may also be the reason for the initially large number of divorces very early in marriage in Java (which until the 1960s had the highest divorce rate in the world), and the trend toward self-arranged marriage may account for the decline in the divorce rate since 1970. Gavin W. Jones et al., *Divorce in West Java*, 25 *J. COMP. FAM. STUD.* 395, 397 fig.1,

get the marital payoffs while the women do not.

Men's and women's experiences have been different from the very beginning of relationships. They look at and expect different things of each other. Hypothesizing that this has been a natural phenomenon, attempts to change this behavior will be difficult and laws regulating it are likely to have unexpected consequences.⁸⁶

Major sociological changes that make women's educational and work patterns much more like men's create tensions within this "known" structure of how male/female relationships work. Technology, the beginning point of Professor Plasencia's paper, changes relatively little even though the computers and other machines that have facilitated women's labor force participation have indirectly added to the social change.⁸⁷ Society moves toward that which is larger, better, and faster in multiple arenas and the Internet makes many of these moves possible. As with most good things, however, there is a "dark side" as well, as criminal elements may use technology to help them more efficiently exploit children. In addition, as Professor Hernandez notes, the rich may be able to exploit the poor through advertisements geared towards tourists who look for "exotic" sex.⁸⁸ These observations, while they quibble at points with my co-panelists, are not meant to suggest that the other professors are wrong, just that this "dark side" of our sexuality must be understood in its larger context.

407 (1994). Interestingly, in Java as well as the United States, women initiated divorce more often than men do. *See id.* at 402 (citing Tim Peneliti, *Perkawinan dan perceraian di Jawa Barat [Marriage and Divorce in West Java]* (1988), which states that in 1987, Java wives initiated 34% of divorces, husbands initiated 30%, and that in 28% of cases both spouses initiated divorce).

86. *See* Margaret F. Brinig & Steven M. Crafton, *Marriage and Opportunism*, 23 J. LEGAL STUD. 869, 879 (1994) (studying the effect of change to no-fault divorce upon spousal abuse).

87. *See* Lloyd Cohen, *Rhetoric, the Unnatural Family, and Women's Work*, 81 VA. L. REV. 2275, 2295 (1995) (stating that changing family structures have been influenced by women's increased market labor, which is "primarily a function of economic and technical changes and secondarily a function of weakening social and legal sanctions that protected women's investment in the traditional marriage").

88. *See* Hernandez, *supra* note 12, at 43 (discussing sexually-suggestive tourism advertisements for Jamaica and the Dominican Republic).