# Concepts of fairness in marriage and divorce

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## Abstract

Discourses of fairness are bound up with Western ideals of companionate marriage. They are also central to the ways people talk about their approaches to divorce, especially in relation to the division of property and finances. How fairness is understood within marriage, however, is gendered, with husbands more likely to take equity-based and wives equality-based approaches. In this paper I discuss previous research on how fairness is understood within marriage, and compare this with data from a study of people going through divorce proceedings in England and Wales. I suggest that some, but not all, understandings about fairness are carried over from marriage into divorce, and note that in many ways English and Welsh divorce law supports a particular conception of fairness that redresses objectively unfair divisions of labour within the marital relationship.

## Keywords: divorce marriage fairness sharing equality equity

## Introduction

The Western ideal of companionate marriage contains within it ideas about fairness in relation to contributions and benefits, and in particular about mutual caring and sharing (Gager & Hohmann-Marriott 2006). Unlike pre-modern contractually-based marriages, in which much of this was spelled out formally (Illouz 2012), these ideals around sharing are implied, taken for granted even though underlying understandings of what constitutes fairness may not be shared by the parties involved. Traditionally, fairness within companionate marriage was conceptualised in terms of gender ideologies based on husband and wife operating in and being responsible for separate spheres, with the man earning the money and the woman, where financially viable, keeping the home (Gager & Hohmann-Marriott 2006; Hochschild 1989; Thompson 1993). More recently, as married women have entered the workplace in larger numbers, fairness is considered to be more a matter of equal or equivalent contributions to family finances and household maintenance overall. Within companionate marriage, discourses of fairness, however conceived, are strong, even when objective conditions and distributions vary. Equality within a relationship is seen as involving both parties getting rewards commensurate with their contributions, however these are interpreted. Spouses feel comfortable within their relationships when they feel not just that they are rewarded but that they are receiving the rewards they deserve (Pillemer et al. 2008).

Similarly, during divorce, discourses of fairness and the intention to treat the other spouse fairly are also prevalent, even in cases when the eventual distribution of assets is unequal. Although the relationship between the spouses is drastically changed, both parties are likely to claim, and, indeed, to believe themselves, that they only want to be fair to the other, or to have their ‘fair share’ of assets. How fairness is understood, however, varies considerably from person to person and is underpinned by a variety of positions, some of which appear to be retained from the couple’s previous conceptions within marriage. In this paper I examine the ways in which fairness is understood in marriage and in divorce, in an attempt to unpick some aspects of the notion of fairness within and beyond family life.

I will be using two quite different sources to underpin my discussion. The first is the literature in fairness in marriage, most of which focuses on the sharing of household tasks, leisure time and childcare between couples. The second is data from a retrospective online ethnography (Kozinets 2010) of an online, UK-based, divorce support website, Wikivorce ([www.wikivorce.com](http://www.wikivorce.com)). This study was originally focused on understanding the development of the site as an online community of practice and examining the learning taking place there (Paechter 2012a; b). Considerable data was collected, however, on the way people involved in divorce understand fairness, and it is these data that are analysed here.

Set up in 2007 as a social enterprise, Wikviorce initially consisted of a wiki outlining the divorce process and a series of linked asynchronous forums in which people were encouraged to post questions about the legal and financial aspects of divorce, plus a blogging space and chat rooms. Fieldwork focused on its first nine months of operation, when the membership was relatively small (around 6000 at the end of 2007) and the community still developing. Permission to conduct it was obtained from the site’s owner, and the fact that Wikivorce was being researched was signalled by a notice on the front page with a link to an article about the study in the site’s zine, as well as to my university webpage. I also maintain an occasional research blog in the Wikivorce blogging space. All participants are made anonymous, through additional pseudonyms and a conscious attempt not to link together too many posts by one person together in writing up. I am myself a long-standing user of the site: the implications of my position as a partially insider researcher are discussed elsewhere (Paechter 2012a; c)

In order to familiarise myself with the site as a whole I conducted an analytical reading of all the postings on the site during March-December 2007. I read all the forum entries for the whole of this period, taking notes, which I treated as field notes. I did this by working through all the threads in a particular topic-based section, starting with the first thread in the section and continuing thread by thread. This allowed me both to make the familiar strange, by reading thread posts sequentially rather than in the order they appeared on the site, and to select particular threads that could be analysed in more detail, using traditional progressively focused coding techniques. I was also able, through this process, to identify a group of 81 potential virtual key informants. 42 of these individuals were then followed up (using links from their profiles), tracking and analysing both their blog entries and their 2007 forum posts. This smaller group was chosen by the simple method of working through the whole cohort of 81 in alphabetical order by username, and stopping when data saturation had been reached. This dual approach to the site content allowed the community to be investigated both through the lens of the forum ‘conversation’ and from the point of view of the contributing individual. The data presented here comes from the forum and blog posts of those 42 individual members, who were at various stages of separation and divorce.

It is important to be aware that, while coming from a range of geographical, ethnic and social class backgrounds, with considerable variation in affluence, the ‘respondents’ in this study are not necessarily fully representative of people undergoing divorce in the UK. For some of them, the divorce process itself was relatively free of acrimony, with participation in Wikivorce mainly focused on gaining emotional support. However, overall Wikivorce membership tends to reflect the more contested end of the divorce spectrum, in which property, arrangements for children, and child support payments may all be in dispute. In this paper I am going to focus on how people understood fairness in relation to the division of property, as revealed in their blog and forum postings. In these, especially as some of the arguments were relatively rapidly resolved, it is likely that the Wikivorce population is more reflective of divorcing couples more widely than, for example, it is with respect to disputes over children.

## Fairness in marriage

Most of the research into how cohabiting heterosexual couples (married or otherwise) understand fairness focuses on time spent on housework, leisure, and, where appropriate, childcare. A central puzzle in this research is that while women on average do about two-thirds of the housework, even when working full-time, they generally claim to regard this division as fair (Baxter 2000; Carriero 2011; Dixon & Wetherell 2004; Taylor et al. 2010). Research in this area has therefore focused both on establishing and confirming this statistic in different populations and marital situations, and on exploring how women and their partners come to an understanding of fairness that permits such a distortion of the objective situation (Baxter 2000; Carriero 2011; Claffey & Mickelson 2009; Dixon & Wetherell 2004; Hochschild 1989; Lachance-Grzela & Bouchard 2010; Taylor et al. 2010; van Hooff 2011). Although fairness with regard to household labour is not directly analogous to that regarding the distribution of goods after divorce, it is a useful comparison because the research in this area unpacks some of the discourses around fairness in everyday family life, some of which carry over into divorce.

Gager ( 2008) argues that, between couples, fairness can be understood in terms of either equity or equality models. In an equity model, individuals take out benefits in proportion to their overall contributions; a greater contribution permits a greater proportion of the ‘proceeds’, and contributions take a variety of forms, including financial. In an equality, model, on the other hand, each partner is conceived of as contributing and benefitting equally, with contributions calculated in terms of hours put in, without regard to what those hours are spent doing or the money that accrues from them. In this context, an equity perspective, Gager argues, suggests that a person making greater contributions in other ways, (for example by having a higher earning job) can, in effect, ‘buy themself out’ of housework (Hochschild 1989; Lachance-Grzela & Bouchard 2010). An equality perspective, on the other hand, would ignore the monetary value of contributions but would instead consider the balance between work (paid and unpaid) and free time for each partner.

Gager (2008) suggests, however, that these perspectives are taken up differentially between men and women. She found that men are more likely to see fairness in terms of equity, while women are concerned with equality. Women, therefore, expect their husbands to work the same number of total (paid and unpaid) hours as they do, irrespective of earnings. Men, on the other hand, not only include greater financial contributions as part of their share, but also, when making their calculations, tend to ignore the time spent by wives in paid work, thus undervaluing wives’ overall contribution. Husbands, therefore, adopt a perspective on fairness that allows many of them to justify the avoidance of household labour on the basis that they are making a higher contribution in other areas, while simultaneously minimising the extra contribution being made by their wives. Furthermore, Gager and Hohmann-Marriott (2006) argue that, because they hold an equality-based view of fairness, wives are more likely to compare their contributions directly to those of their husbands, making it, in theory, easier to recognise unfairness. Husbands, by contrast, are more likely to compare their efforts to those of same-sex friends, or even to the bogeyman figure of the ‘do-nothing dad’ (Dixon & Wetherell 2004: 180). Gager and Hohmann-Marriott (2006) argue that this is due to the increasing participation of women in the workforce and the consequent erosion of legitimacy of gender-based divisions of labour. They suggest that:

Under the egalitarian ideal of marriage – that marital partners share equally the benefits and responsibilities of marriage – wives’ increasing participation in paid labor without a change in the performance of household work by husbands leads to changed perceptions, primarily among wives who are overburdened, that the gender-based division of household labor is unfair (Gager & Hohmann-Marriott 2006: 9)

However, the overwhelming finding of the research in this area is that most wives, while being able to see that they are doing considerably more household labour than their husbands, tell researchers that overall the situation is still a fair one. There seem to be a number of reasons for this.

Dryden (1999) found, in research with married couples in the UK, that, although some of the women she interviewed did feel that their husbands should do more, their attempts to change things fell on deaf ears (Mannio & Deutsch 2007). She argues that for a woman to try to address imbalances in household labour can be to endanger the marriage (Baxter 2000; Gager 2008). Faced with such an alternative, it may well be in many wives’ interests not to challenge the status quo. Taylor et al (2010) point out that the cognitive dissonance involved in denying unfairness, whilst acknowledging doing more work, may be necessary for women with few alternatives to staying in their marriages. Because the cultural ideal of companionate marriage includes a discourse of fairness between participants, it may be that the only way to maintain a sense that the marriage is truly companionate is to rationalise an unfair situation and find ways of explaining the arrangements as being fair after all. Hochschild (1989) argues that in order to mask inequalities around the distribution of work in the home, ‘couples sometimes develop “family myths” – versions of reality that obscure a core truth in order to manage family tension’ (19). Such myths allow couples to maintain discourses of fairness in the face of manifest inequality of contribution (Jamieson 1999; Taylor et al. 2010).

One way in which discourses of fairness are left unchallenged within marriage is to value male-labelled and female-labelled tasks differentially, giving higher value to those traditionally done by men. Given that most households, even when both spouses work full-time, still maintain a relatively traditional division of labour (Mannio & Deutsch 2007; Nordenmark & Nyman 2003; Nyman 1999; Thompson 1993; van Hooff 2011), this is not hard to do. This is particularly the case because tasks usually carried out by women, such as cleaning, laundry and tidying, are endlessly repeated and so to an extent invisible, and therefore not always counted in couples’ calculations of fairness (Dixon & Wetherell 2004) whereas those traditionally carried out by men, such as car maintenance, DIY jobs and heavier gardening work, take up more time on fewer occasions, and are far more obtrusive (Baxter 2000; Dixon & Wetherell 2004; Gager & Hohmann-Marriott 2006; Gaspar & Klinke 2009; Nordenmark & Nyman 2003).

Beyond the differential valuing of household tasks, other ways of rationalising unequal contributions are also called into play in defence of the companionate marriage ideal. Van Hooff (2011) found that even in dual-earner couples without children it was women who did most of the daily household labour; this was explained by both members as being due to such things as her higher standards of cleanliness, her greater expertise, or the need to compensate for the additional stress of his job (this last included a couple who both worked full-time, in the same profession, at the same level). Time spent on childcare can also be factored into the equation in different ways. Gager (2008) found that some couples she interviewed were reluctant to count childcare as ‘work’ at all, on the grounds that it was enjoyable and therefore part of leisure time. This is echoed by other researchers, who found that childcare was not always counted by husbands as part of their wives’ work. Nordenmark and Nyman (2003), for example, interviewed one man who viewed all the time his wife spent not in paid work as her ‘free time’, even though she was looking after the children and doing other household tasks for much of it. Nyman (1999) also found that women who officially had equal shares in surplus family income tended to spend theirs on essential items for the children, such as clothing, while their husbands financed personal hobbies. This equation of the parent who takes most care of the children with a wider, parent-and-children unit is frequently reflected in the arrangements made for property in divorce, as we shall see later, though at that point, the other parent, usually the man, frequently takes a rather different view of the matter.

Discourses of fairness are also cut across by other discourses which can make objectively unfair situations appear to be reasonable, even to the worse off party. In particular, discourses of love and caring affect wives, who may see housework as a way of showing caring to their husbands and children, as an expression of their love for them (Bianchi et al. 2012; Dixon & Wetherell 2004). Complementary to this, several researchers have found that what really matters to many women is not how much household labour their husband does, but that he does some traditionally female-labelled tasks. Again, the carrying out of these tasks, even occasionally, because they are perceived as betokening a husband’s caring, may mitigate a wife’s sense that the overall arrangement is unfair to her (Baxter 2000).

This emphasis on caring on the part of many women is partly related to issues of power. Several researchers have suggested that women’s additional marital labour is connected to their relative powerlessness, partly as a result of traditional gender ideologies and partly because of their lower earnings (Lachance-Grzela & Bouchard 2010; Taylor et al. 2010; Thompson 1993; van Hooff 2011). Nyman (1999) argues, for example, that differential access to household spending power in the couples she studied was controlled by the husbands despite an ongoing discourse of equality. Other authors point out that the overall process of negotiation includes attempts by wives to preserve their husbands’ masculinity in the face of challenge, especially where the wife is the main earner (Hochschild 1989). Mannio and Deutsch (2007) found that, as a woman’s earnings increased, she did less housework, up until the point at which she earned more than her husband, after which she took on more tasks. Similarly, Legerski and Cornwall (2010), in a study of unemployed steelworkers, found that the wives held back from pushing their husbands to do more in the home, out of concern for their mental health, even though they themselves were frequently working full-time. Legerski and Cornwall describe these wives as ‘“held hostage by their caregiving responsibilities’ (466).

As we have seen, however, these understandings and rationalisations are put in place, and act, to maintain the ideal of companionate marriage overall and to protect the individual partnership from being threatened by the wife feeling that she is being unjustly treated. When marriages fail, however, the ideal of the companionate marriage is shattered, and such understandings and rationalisations disappear with it. Different conceptualisations of and rationalisations for fairness then come into play. It is to these that I will shortly turn, after a brief excursion into the ways in which fairness is conceived in English and Welsh divorce law. This is important because it provides the context for the conceptions of post-marital fairness held by the participants in my research.

## Concepts of fairness underpinning English and Welsh divorce law

Everyone would accept that the outcome on these matters, whether by agreement or court order, should be fair. More realistically, the outcome ought to be as fair as is possible in all the circumstances. But everyone's life is different. Features which are important when assessing fairness differ in each case. And, sometimes, different minds can reach different conclusions on what fairness requires. Then fairness, like beauty, lies in the eye of the beholder. (House of Lords 2000: 1)

Divorce law in England and Wales takes a broadly equality-based approach to fairness in the division of assets (and debts), including pension funds. Furthermore, except in rare cases, neither the behaviour of one or the other party, nor the ways in which an individual couple managed their finances, affects the division of assets. As Reed puts it in her handbook for litigants in person in the family court:

The guidance can be summarised by saying that the Court will try to divide the money and property equally IF IT CAN, bearing in mind how much money there is to go around and what everybody needs…Generally speaking, in a case involving an average family with a modest house and regular incomes, the Court will not be interested in whether one person says they have worked harder, brought in more money or made more effort in the marriage, and will not base its decisions about the assets on these things. (Reed 2011: 104)

This general principle of equality is, however, based on a judgement in *White v. White* (House of Lords 2000), quoted above, in which Lord Nicholls of Birkenhead argued that a wife’s rights to property, in a case in which there were substantial holdings, was not restricted to her ‘reasonable needs’, as had previously been the case in law, but should give her a more equal share. This argument was based on the principle of equity of contribution, with contributions to family welfare and assets through housekeeping and childcare given as much weight as those acquired through paid work or entrepreneurship, and an assumption that each had worked equally hard:

In seeking to achieve a fair outcome, there is no place for discrimination between husband and wife and their respective roles. Typically, a husband and wife share the activities of earning money, running their home and caring for their children…whatever the division of labour chosen by the husband and wife, or forced upon them by circumstances, fairness requires that this should not prejudice or advantage either party…If, in their different spheres, each contributed equally to the family, then in principle it matters not which of them earned the money and built up the assets. There should be no bias in favour of the money-earner and against the home-maker and the child-carer. (House of Lords 2000:1).

English and Welsh law therefore treats long marriages as joint projects in which all inputs are considered to be free contributions to the common weal. Parties to the marriage are seen as contributing in different ways which may change over time and circumstances. Both spouses are thus understood as owning everything equally; as a consequence, on divorce, everything is available to be shared, irrespective of past circumstances. This is an approach which gives an equality-based outcome, but on broadly equity-based grounds. It reflects the ideal of companionate marriage, in which inputs are freely given without keeping score, and benefits taken equally. In contrast to this, the equity approach more often taken by husbands when considering their obligations to perform household chores (Gager 2008) treats marriages as more like business partnerships in which shares, purchased by particular kinds of contribution, are held unequally. This means that people holding this view are more likely to consider that, at divorce, they should retain assets in proportion to those shares. It is unsurprising, therefore, that when couples come to divorce, there are tensions between individuals’ understandings of fairness, those of their former spouses, and those of the law. In some cases this is exacerbated by the way that the equality-based approach of the law is underpinned by a judgement (*White v. White*) founded on an equity-based argument.

## Discourses of fairness in divorce

Once the companionate marriage breaks down, both the underpinning arrangements and the ‘marital myths’ (Hochschild 1989) couples construct for themselves and each other tend to go with it. An early casualty of this is the perception of wives that their share of household labour is fair. Once such a belief is no longer required to sustain a sense of marital mutuality, it seems to disappear relatively rapidly, and former wives can be quite open about their dissatisfaction with the balance of work during married life:

 I contributed 50% of everything in our marriage including the mortgage payment. Not only do I think a 50/50 split is fair, I believe I am at the very least ENTITLED to 50% of my investment since I put in 50% all the way through our marriage. More than, even, because I was the one doing ALL the goddamn housework.  (Forum post)[[1]](#endnote-1)

Of course it is entirely possible that growing levels of dissatisfaction were part of what led up to the breakdown of the marriage in the first place, with an increasing sense of unfairness leading to a decision to separate (Hochschild 1989). In most cases, it is hard to disentangle the issues behind a decision to leave from an individual’s justification for so doing; Willén and Montgomery (2006) argue, for example, that once someone has started to think seriously about divorce, they construct a representation of the relationship in such a way as to make their decision justifiable, and, indeed, inevitable.

Within divorce, at least in what people say in public, there is a general discourse of fairness. Divorcing people want to understand themselves, and to be seen by others, as being fair, particularly in a context in which talk of ‘taking him/her to the cleaners’ is common:

I don't want to take everything he has; I just want a chance to have a home of my own and to move on. There are no children involved and I am younger than him. I am not even bothered about his pension; it is far better than mine but would be happy to offset that for a fair settlement. (Forum post)

I just want what is fair to both. (Forum post)

Despite this overall discourse of fairness, however, individuals’ conceptions of fairness frequently conflict with the legal position, so they find it hard to understand or accept the outcomes of court or mediation processes. This seems to be for four main reasons. The first is that they are coming to divorce with an equity-based notion of fairness that discounts some aspects of their former spouse’s work. Second, even when the principle of equality of outcome is accepted, there are differing views on what this might mean. Third, when children are involved, there is the question about exactly whom the equality is supposed to be between. Finally, some divorcing partners see marriage as a form of ‘contract to be companionate’, consequently expecting there to be penalties for those who breach it. I shall consider each of these in turn.

In many ways it is unsurprising that many people, especially spouses who have been the main earner in the couple, come to divorce with an equity-based view of sharing that discounts some aspects of the other partner’s contribution. As we have seen, this is far from unusual even among happily married couples (Gager 2008). It also reflects English and Welsh law up until the *White v. White* judgment (House of Lords 2000), under which a homemaker wife could come out of divorce, even from a rich man, with only sufficient resources for her ‘needs’ or ‘reasonable requirements’ (the latter being a more generous interpretation) from a long and financially successful marital partnership (Eekelaar et al. 2000; Maclean & Eekelaar 2009). Thus, even as recently as the 1980s and 1990s, ‘fairness’ in legal terms could leave a homemaker, usually the wife, along with the children, with little property and barely enough to live on (one court used the local rate for foster care payments as a guide to ongoing child support (Eekelaar et al. 2000)) while the earning spouse retained the bulk of the assets and most of what was previously family income. Some divorcing partners, therefore, find it very hard to adapt to current legal understandings of what constitutes a fair division of property they consider themselves to have built up through their own efforts:

We have lived a very comfortable life and have accumalated a lot of wealth. My husband being very 'old school' says that as he has been the breadwinner that he should keep the largest percentage of the pot.In fact when you look at what he sees fair it equates to only 20% of all assets. (Forum post)

In cases where there are no children, people may also argue that they significantly and unfairly subsidised the other spouse throughout the marriage, and that this therefore entitles them to take that ‘investment’ back on divorce:

 Trouble is, I find that my ex has actually convinced himself that he kept me financially, to the point where he believes it…I have his offer in writing, though the 5% equates to 15k. Also in the same mail, he does his best to negate any contribution that I made, making out that he contributed the majority of things. (Forum post)

A variant on this approach is the argument, again stemming from an equity view of fairness, that while unpaid labour should count in the overall equation, their particular spouse did not actually do the work a court would allow for. In some ways this argument goes back to the rationale underpinning *White v. White* (House of Lords 2000), but says that it does not apply in this particular case because the contributions were in fact not equivalent. Here is an extreme example:

hi, i read in another post that the courts say a wife puts in as much as the husband because although he is the breadwinner she is the home maker. But in our case she was neither, i would work alday and then come home and cook the evening meals, the housework was left to the weekend when i was at home to do it, and when our son was little i would be the one getting up in the night, also i would take holidays from work to take him to medical appointments, so apart from giving birth and taking him to school she was not a mother to him, and she was not the home maker either so why does she deserve a share of the home i paid for and maintained (forum post)

While such an argument can be made by either spouse, in my data it generally comes from male breadwinners, who, now the marriage is over, feel that their former wives have had an easy life for years at their expense. This man’s children are aged 5 and 19 months, and in many ways he makes the case sometimes used to justify unequal arrangements within marriage, that childcare is not work (Gager 2008; Nordenmark & Nyman 2003):

Never ever believe a women when they tell you looking after young healthy children is much harder than going out to work each day. It is a load of rubbish, yes when they are ill it can be hard, but there is nothing more fullfilling than looking after your children and seeing them grow up. (Forum post)

People making this sort of argument seem to be able to accept that there might be an equity-based justification for equality of outcomes on divorce. They are convinced, however, that their contributions were in fact greater than those of their spouse, even allowing for the separate spheres of breadwinner and homemaker/childcarer, and that this should be reflected in the divorce settlement.

A second group of people have taken on board that a legal understanding of fairness incorporates some form of equality of outcome. However, how this is conceptualised is at odds with the view of English and Welsh courts. The issue here is that if someone has been out of the workplace, or has scaled back their professional ambitions, in order to care for the couple’s children, splitting the assets equally does not really lead to equal outcomes, because one spouse is better equipped for financial recovery than the other. In some cases this is dealt with by ongoing, sometimes lifelong, spouse maintenance, so that the higher earning former partner pays a regular sum to the lower earning one to bring their respective incomes to a more equal level. In others, however, particularly if both parties wish for a ‘clean break’, where all future claims are dismissed, inequities in current and potential earnings are compensated for by giving the lower earning former partner a greater share of the assets.

This means that people who conceptualise fairness in divorce as each getting half of everything find that their way of thinking about things runs up against what happens in court or in financial negotiations. This is particularly the case when the family as a whole has improved financially over time but one partner has been at home or in low paid jobs:

When i asked her why she should have the extra 10%, she replied "because you earn more than me". So she expects more because she left school with no qualifications, packed in every college course that she ever did. She had a crap paying job when we met, & she still has now & she expects me to foot the bill. (Forum post)

Sharing in family prosperity, in this conception, is something that lasts only as long as the marriage remains intact.

A third issue which complicates people’s conceptualisations of fairness in divorce is the question of whom the fairness is to be between. In the case of families with children, English and Welsh divorce law tends to treat the parent with whom the children mainly live, together with that parent, almost as one unit, especially when the children are young. Although this is based on the principle that the children’s needs are the predominant concern, it is interesting that it also reflects the situation found by Nyman (1999) in intact marriages, in which a wife’s ‘personal’ money was implicitly expected to be spent on the children, at least as much as on herself. If this resident parent has also have given up career opportunities to look after children, it frequently means that she (or occasionally he) gains a greater share of the matrimonial property, in order, for example, to be able to house the children adequately, or to maintain their lifestyles as far as possible. Such a conceptualisation of fairness reflects not only legal practice but frequently also that of resident parents themselves, whose focus may very much be on how they and the children, considered together, will survive in the future:

I don't want to screw him for everything I can, but would like a bit of security for me and kids. (Forum post)

She says she just wants a fair outcome - but fairer for her as I won't need as big a house as her as she will have the kids etc (Blog post)

Resident parents, consequently, frequently focus their ideas about fairness on comparisons between the situation of themselves and the children as a unit, and that of their former spouse. This means, for example, that they might consider it absolutely fair to live in a three-bedroom property with two children while their ex-spouse has a one-bedroom one; in this case, it could be argued, each of the parties involved (including the children) has the same: a bedroom. Non-resident parents tend, by contrast, tend to make their comparisons with their ex-spouses alone, discounting the children in the equation. This leads to considerable resentment of the former spouse, usually the wife, for living in a bigger house, particularly if it were paid for by the non-resident parent’s earnings:

Yes, it gets me too that I have to buy another house starting at the bottom of the property ladder whilst the ex queue jumps to the top (Forum post)

take my case, my wife was living with no money in a tiny flat, she will now leave the marriage with a 3 bed house paid for out right, but if she never met me then she wouldn't have that and probably be living in the same flat for all I know (Forum post)

It is clear that, for some non-resident-parents at divorce, the financial identification of the wife with the children, noted by Nyman (1999) no longer has any effect, no matter what was the case during the marriage. Indeed, post-divorce, there is a tendency for non-resident-parents to separate the former spouse from the children entirely in their thinking. Natalier and Hewitt (2010), for example, found that non-resident fathers expected child support payments to be spent on tangibly child-specific items such as education, clothes and toys, rather than general household expenses such as rent and food. Where it was not, they accused their former partners of appropriating the children’s money for their own use.

Finally, some people’s concept of fairness is related neither to the equity or to the equality model, but to a more traditional understanding of marriage as a contract, so that one should be penalised for breaking it. This harks back to a more pre-modern understanding of marriage (Illouz 2012) as a contract between two independent individuals, and does not really reflect contemporary notions of companionate relationships. It is not clear, however, whether people have this view throughout the marriage itself, or whether it only comes into play once things go wrong.

As might be expected, the most commonly claimed ‘breach of contract’ in this category was adultery. Several people felt that the fact that they or their former spouse had left the marriage by having an adulterous relationship could or should affect the distribution of assets. One man expressed gratitude toward his ex-wife for not taking this view, although it was clear that he himself experienced guilt about the situation:

Even though I am the cause of our seperation (adultry) and I have betrayed my wifes trust in me greatly she is much like yourself and only wants whats reasonable for herself and most of all for our children. (Forum post)

Not everyone was as ‘reasonable’ as this man’s wife, however. Others were firm in their belief that adulterous behaviour should be penalised in some way in the divorce settlement. This man spelled out the contractual basis of his reasoning particularly clearly:

When you marry your suppossed to enter a contract of marriage and one of the items of that contract is to forsake all others, so surly she broke the contract and is at fault so she should forfit any financial aspects of the marriage as punishment for breech of contract (Forum post)

This contractual view of marriage was a particularly strong theme among those whose spouses had left them for other relationships.

The context of the post quoted above was a thread discussing the concept of ‘no fault divorce’ (actually no-fault financial settlements) in which it was also claimed that adulterous relationships were the emotional equivalent of grievous bodily harm, perpetrated by the adulterous couple on the ‘innocent’ spouse and children. Adultery was not, therefore, always seen explicitly as a breach of contract; people’s views in some cases reflected more clearly the ideal of companionate marriage, with adulterous relationships as a threat to this which both parties were expected to avoid. There was frequently a similar approach to various other forms of bad behaviour; several people argued that people who had not lived up to the companionate ideal of working together for the benefit of the marital union should be penalised in divorce. One woman asked:

Would a judge take into account the fact that my ex was cautioned for common assult last month or the fact that he gambles? (Forum post)

Questions like this reflect a conceptualisation of fairness in which companionate marriage is understood as conferring a set of implicit obligations. These do not just involve the ‘contractual’ aspects implied by ‘forsaking all others’ but include an overall commitment to the security of the marital/family unit. This is reflected in the following post, and the responses to it. Here, the former spouse has breached these unwritten rules in two ways: by endangering the family finances and by his subsequent adultery. There is also an implied sense that it is unfair for him to take his new earning potential, for which his family made sacrifices, outside of the family unit (Hochschild 1989):

My miserable excuse of a husband took a pay cut to change career paths causing us financial difficulties prior to our daughter being born. Now he's a fully qualified management accountant he's of screwing a colleague from another department in their lunchtime! (Forum post)

In such cases, neither equity nor equality conceptions are much in evidence. Fairness is understood here much more in terms of punishment for transgression, of people getting their ‘just deserts’ in the process of asset sharing.

## Conclusion

Fairness can be conceptualised in both marriage and divorce in terms of either equity or equality, but these conceptions are gendered, and associated with differential abilities to mobilise power within the relationship. Previous research on fairness within marriage suggests that an equity-based conception is largely held by husbands, who bring to this understanding both their stronger position within gender ideologies, and their greater likelihood of being the major or only earner in the household. Together these allow men to consider themselves able to ‘buy out’ their household labour through greater financial contributions, and to resist equality-based challenges from their wives. Furthermore, in households where the wife is the main or only earner, women tend to support a traditional masculinities by taking on even more domestic labour than those earning similar amounts to their husbands, despite long hours of work. Equality-based understandings of fairness, on the other hand, support the position of the relatively powerless, usually women with children, as they do not permit additional earnings to be counted against hours of labour in fairness calculations. Wives’ relative inability to mobilise power in support of these conceptions, however, means that there is a constant danger that they will become dissatisfied with their ‘deal’ within a supposedly fair and equal relationship.

Inequalities in household labour are not only underpinned by wider gendered power relations, but are also supported by the overall Western ideal of the companionate marriage. This requires both parties to subscribe to ‘marital myths’ in which objectively unequal contributions are rationalised as fair, in order not to undermine the relationship. These rationalisations are particularly important for wives with children, because they are both in a weak negotiating position and the loser in most marital arrangements. Finding ways to understand one’s marriage as involving fairness in terms of both contributions and benefits is essential to preserve the belief that one’s marriage fulfils the companionate ideal, and to make it emotionally possible to remain in a situation of objective exploitation.

Once marriage breaks down, however, the power relations between the former spouses frequently change. Released from the emotional necessity to view their marriages as fair, wives cease to subscribe to the myths that have previously held the couple together, while maintaining an equality-based perception of fairness. Husbands, meanwhile, place even greater emphasis on their equity-based perspective, focusing in particular on their superior financial contributions and downplaying further their former wives’ homemaking. In addition, some people move away from companionate-based conceptualisations to a more pre-modern contractual basis for fairness; they go back to the original marriage vows and treat them as if they were a binding contract in law, with penalties for their breach. The insertion of conceptions of fairness underpinning English and Welsh family law, into this complex set of negotiations and power relations, has the effect of radically changing the balance of power between former spouses, particularly those with children.

It could be argued that, for those women who do divorce, the legal approaches to fairness provide some redress, or a limited rebalancing of the objective situation when they were married. Divorcing homemakers, and those who have worked part-time to enable them to care for children, frequently do not have had their contributions fully taken into account while they are married. In the process of divorce, however, the legal system affords them much more importance. Taking the ideal of the companionate marriage seriously, it treats the couple as having spent their marriage both working, in their various roles, for the common weal. Consequently, in law, all the financial accruals of the marriage belong to both parties and should be shared, equally, subject to the primary consideration that it should be in the best interests of the couple’s children.

Conceptions of fairness in marriage and divorce are mutually illuminating. Understanding how fairness is conceptualised by husbands and wives within generally well-functioning relationships helps us to see how, despite a continuing discourse of fairness, property disputes in divorce can become so bitter. Conversely, an analysis of how divorcing couples understand what constitutes a fair divorce settlement gives us further insights into the implications of differential conceptions of what is fair during a marriage. Applying these to English and Welsh divorce law, we can also see how it both reflects the Western ideal of companionate marriage, rejecting earlier, contract-based conceptions, and serves to intervene and, to an extent, redress, the unequal power relations that pertain within that ideal.

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1. Wikivorce forum and blog posts are given verbatim, with original spelling, punctuation, etc. [↑](#endnote-ref-1)