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COMMUNITY PROPERTY FOR WIVES

The division of labor between husbands and wives has traditionally been the central economic feature of the institution of marriage. The big majority of married couples lived together throughout their adult lives; the husband worked outside the home to bring economic resources into the family, while the wife assumed primary responsibiity for the home and the day-to-day management of the family.

The rise in the divorce rate, the increasing percentage of wives in the labor force, and the growth of single-parent households have changed this traditional pattern for millions of couples. Whether those changes are permanent, or are due to temporary causes such as inflation, remains to be seen.

Despite the media attention widely given to these changes, about half of American couples still live in a lifestyle in which the husband is the primary breadwinner and the wife is the primary homemaker. The key word here is "primary," since hardly anyone is the "exclusive" or "sole" breadwinner or homemaker.

Society should provide a just way to recognize in the law the fact that the homemaker's economic contribution to the marriage is essential not only to current income but to the breadwinner's increase in earning capacity. This is difficult because the breadwinner's economic contribution is quantified in dollars while the homemaker's is not.

In our U.S. federal system, family law is part of the legal domain reserved to the states, rather than delegated to the federal government. The marriage laws of the 50 states have evolved differently for historical reasons, but the common denominator of all 50 states was that every state (by statute, common law, or case law) made it the obligation of the husband to support his wife. As stated in American Jurisprudence 2d: "One of the most fundamental duties imposed by the law of domestic relations is that which requires a man to support his wife and family."

However, the legal rationale behind the legal rights and duties was different. Of the 50 states, 42 are based on English common law, and 8 are based on the French/Spanish community-property rationale.

The essence of the community-property concept is that husband and wife jointly and equally own all the property earned or acquired by either of them during the marriage. This recognizes the economic partnership of the two spouses, and the equal-though-different contributions they make to the family unit under the traditional division of labor. Federal tax law recognized the fairness of this concept when it adopted the joint income tax return for all states in 1948.

Community property states have found it more practical that the property owned by each party prior to the marriage remains his or her separate property. Of course, the spouses are free to give or contract otherwise, but experience has shown that most couples prefer to share the property of the marriage only. This rule takes care of the problem that some marriages end in divorce soon and others are of lifetime duration.

The most complicated and controversial question pertaining to community-property laws is the question of management (as opposed to ownership) of the money and assets. Since each spouse owns an equal, undivided, present interest in the community property, who has the authority to manage and dispose of it?

It is generally considered impractical to require the consent of both spouses for ordinary commercial and consumer transactions, except for certain types of property such as real estate. On the other hand, to give each spouse, acting alone, the power to dispose of community assets (as several states have done) really gives both spouses equal power to harm each other rather than providing protection for the homemaker.

Texas (a community-property state) achieved a workable compromise by giving each spouse the power to control and dispose of those community assets that he or she brings into the community, subject to the ultimate rights of the other spouse as co-owner.

Some states in recent years have made their marriage property laws sex-neutral in the mistaken belief that they were promoting "women's rights." However, gender neutrality fails to take into account the voluntary division of labor between husbands and wives.

Adopting a community-property system in the 42 states that do not have it now would be a practical way to provide legal recognition of the equal dignity and equal economic value of the homemaker's contribution to marriage. Although this change would pose some difficulties, it would provide more "homemaker's rights" than any other legislation.