

‘Fair to Us’: the use of legal myths in privately negotiated financial settlements in England and Wales

Donna L. Crowe-Urbaniak ^{1,*}

¹School of Law and Politics, Cardiff University, Cardiff, United Kingdom

*Corresponding author: E-mail: crowe-urbaniakD@cardiff.ac.uk

ABSTRACT

Since the withdrawal of legal aid for private family law disputes post-LASPO (Legal Aid, Sentencing and Punishment of Offenders), separating couples have increasingly been encouraged to resolve their own financial disputes through private ordering. Although over half of financial arrangements made by divorcees are settled by the couple themselves, limited empirical insight exists into how such agreements are negotiated and whether they achieve substantive fairness. This article draws on qualitative research with 32 divorced military wives to examine the role of legal myths in shaping privately negotiated settlements. Participants report relying on heuristic understandings of law – such as ‘fairness equals a 50:50 split’, ‘what’s mine, is mine’, and ‘his money, he decides’ – which diverge significantly from the legal principles of needs, sharing, and compensation. These myths serve to guide and constrain financial negotiations of separating couples, often at the expense of the financially weaker party. This article argues that such myths are symptomatic of broader neoliberal and gendered ideologies that underpin current family law practices. In light of current debates around reforming financial remedies law in England and Wales, this article calls for renewed scrutiny of informal settlements and considers whether privately negotiated financial settlements subject to greater judicial oversight might better promote fairness in family breakdown.

KEYWORDS: financial remedies, divorce, gender, reform, legal myths, caregiving, non-financial contributions

I. INTRODUCTION

The shift towards private ordering in financial settlement negotiations following divorce in England and Wales has profound implications for substantive fairness, gender equality, and access to justice. Since the enactment of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), access to publicly funded legal aid in private family law disputes has been severely curtailed. As a result, separating couples are now increasingly

encouraged to take responsibility for settling their own 'private' disputes out of court.¹ The policy emphasis on mediation and self-resolution aligns with broader neoliberal discourses that privilege individual autonomy, self-reliance, and non-intervention.² However, this shift has been met with sustained critique from feminist legal scholars, who argue that the idealized, rational, self-governing subject of neoliberal legal ordering obscures the relational, interdependent, and gendered realities of family life, which 'require[s] personal sacrifice for the greater good of the family'.³

Family law, despite its surface neutrality, operates within a socio-legal context whereby entrenched gender roles shape individuals' autonomy, experiences, and outcomes.⁴ While the liberal subject in family law lauds the autonomy of the detached 'rational' individual, feminist theorists, such as Martha Fineman and Carol Smart, have long questioned the compatibility of the neoliberal ideals with the lived realities of caregiving, dependency, and inequality.⁵ While the legal framework in England and Wales (seemingly) recognizes and (theoretically) acknowledges the concept of 'relationship-generated disadvantage',⁶ this recognition often fails to translate into substantive redress for women who have foregone earning capacity, career development, or pension accrual in favour of unpaid domestic labour. In a neoliberal framing, choices made during the relationships – such as withdrawing from the labour market to raise children – are framed as private, consensual decisions rather than socially conditioned acts.⁷ Feminist critiques of the current provision emphasize that the law is discriminatory against women because women are still much more likely than men to be homemakers.⁸ While the majority (50.4 per cent) of working families comprise of both parents working full time in paid employment, many families with children (44.1 per cent) continue to adopt a model of 'father as full-time worker, and mother as the primary carer of children and part-time worker', with a reported 49 per cent of mothers with a youngest child of between 1 year and 8 years old more likely to be in part-time than full-time paid employment.⁹ The current approach in family law is explicitly couched in terms of equality: 'there should be no bias in favour of the money-earner and against the home-maker and child-carer',¹⁰ whereby financial (economic) and non-financial (or 'domestic') contributions are equally valued. However, in practice, the invisible nature of domestic contributions during marriage results in highly gendered relative valorisation of financial and non-financial contributions, with domestic contributions dismissed; ignoring – and, perhaps, denying – the financial cost of both past and ongoing domestic responsibilities, which materially disadvantages women.

The study on which this article is based draws from qualitative data from 32 in-depth interviews with women formerly married to British Army personnel to explore how legal

¹ A. Barlow and others, *Mapping Paths to Family Justice: Resolving Family Disputes in Neoliberal Times* (Palgrave 2017).

² A. Heenan, 'Neoliberalism, Family Law, and the Devaluation of Care' (2021) 48 *Journal of Law and Society* 386–409.

³ A. Barlow, 'Solidarity, Autonomy and Equality: Mixed Messages for the Family' (2015) 27 *Child and Family Law Quarterly* 223–286.

⁴ C. Smart, *Feminism and the Power of Law* (Taylor and Francis 2002); see also R. Hunter, 'Narratives of Domestic Violence' (2006) 28 *Sydney Law Review* 733–776.

⁵ M. Fineman, *The Autonomy Myth: A Theory of Dependency* (New Press 2004); Smart (n 4).

⁶ Referring to the fact that those who withdraw from the labour market for the benefit of the family (eg unpaid care-giving of children, and other associated domestic labour) often do so at great financial detriment to themselves. See *Miller v Miller; McFarlane v McFarlane* [2006] UKHL 24.

⁷ A. Barlow and S. Duncan, 'New Labour's Communitarianism, Supporting Families and the 'Rationality Mistake': Part II (2010) 22 (2) *Journal of Social Welfare and Family Law* 129–143.

⁸ A. Diduck and K. O'Donovan (eds), *Feminist Perspectives on Family Law* (Routledge 2006).

⁹ Office for National Statistics, 'Families and the Labour Market, UK: 2021' (ons.gov.uk 22 July 2022).

<<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/familiesandthelabourmarketengland/2021#employment-activity-of-mothers-and-fathers-in-a-family>> accessed 6 June 2025.

¹⁰ *White v White* (UKHL) [2000] UKHL 54.

myths¹¹ influence the negotiation of informal financial settlements. These women, referred to as 'military wives' often assume the bulk of domestic responsibilities due to the demands of military life, such as frequent relocations, long deployments, and institutional expectations of spousal support. Their experiences offer a magnified lens into the gendered dynamics that characterize private ordering, particularly in contexts where legal advice is absent, and decisions are shaped by heuristics, informal norms, and gendered power disparities.

The findings illuminate how widely held beliefs – such as '50:50 is fair', 'his money, his decision', and 'what's mine is mine' – substitute for legal principles in the absence of professional legal guidance. These myths are not merely misunderstandings; they are deeply embedded in gendered cultural scripts and are reflective of broad social ideologies about fairness, ownership, and entitlement. This article situates these findings within a socio-legal framework, drawing on feminist critiques of family law and theorizations of power and autonomy. In doing so, this article contributes to ongoing debates about the privatization of family justice, the need for reform in financial remedies law, and the implications of informal justice mechanisms for gender equality.¹² It argues that far from reflecting true autonomy, private ordering masks coercion, dependency, and material inequality. As such, it calls for enhanced scrutiny of informal settlements and renewed consideration of the state's role in protecting the economically vulnerable during family breakdown.

1. Towards private ordering

The withdrawal of legal aid for most private family law disputes post-LASPO represented a paradigmatic shift in the way in which the state conceptualizes its role in family justice. The turn towards private ordering was not merely a fiscal policy decision but a broader ideological move consistent with neoliberal governance; by promoting individual responsibility and minimizing state intervention, policy discourse now positions separating couples as autonomous agents capable of resolving complex financial matters without legal assistance.¹³ This vision is encapsulated in the emphasis on alternative dispute resolution mechanisms, particularly mediation, as the preferred route for resolving financial issues post-separation; a concept predicated on the assumption that the relationship is conceived of as being composed of two equal partners with each having equal bargaining power,¹⁴ in the pursuit of achieving a 'fair' outcome.¹⁵

This retreat from state support must be understood in light of the persistent assumption that family breakdown is a personal, rather than legal, matter; an individual has the 'right to organise their lives as they wish, free from intervention by the state and courts'.¹⁶ Autonomy discourse thus limits the state's role in assisting the individual parties to reach a financial settlement,¹⁷ the consequences of which are situated within the private sphere where 'the state has no duty or legitimate authority to intervene'.¹⁸ As Cretney noted, the notion that divorce

¹¹ Legal myths are untruths or misrepresentations of the law, often given authority and credibility by the legal system and/or media. For an example, see S. Thompson, 'A Millstone around the Neck? Stereotypes about Wives and Myths about Divorce' (2019) 70 *Northern Ireland Legal Quarterly* 181–201.

¹² N. Hopkins, C. Gentry and B. Payne, 'Financial Remedies: The Law Commission's Scoping Project' (2023) 3 *Financial Remedies Journal* 176.

¹³ Barlow and others (n 1).

¹⁴ M. A. Fineman, 'Progress and Progression in Family Law' (2004) 2004 *University of Chicago Legal Forum* 1–26, Article 2.

¹⁵ Miller, McFarlane (n 6).

¹⁶ S. Cretney, 'Private Ordering and Divorce—How Far Can We Go?' (2003) 33 *Family Law* 399–405, 399.

¹⁷ J. Herring, *Relational Autonomy and Family Law* (Springer 2014).

¹⁸ A. Diduck, 'Autonomy and Vulnerability in Family Law: The Missing Link' in J. Herring and J. Wallbank (eds), *Vulnerabilities, Care and Family Law* (Routledge 2013) 103.

should be de-judicialized and privatized has gained increasing traction over recent decades;¹⁹ the framing of divorce as a ‘relationship problem’ rather than a legal dispute further entrenches this perspective. In doing so, however, it obscures the structural inequalities and power imbalance that may affect negotiations, particularly in cases involving children, where financial dependence may be a key feature.

While private ordering is often framed as more flexible,²⁰ less adversarial,²¹ and more efficient than litigation, these advantages are contingent upon both parties having roughly equal bargaining power and access to relevant information. Where this is absent, private settlements risk replicating and exacerbating existing inequalities. Moreover, the state’s minimal interventionist approach – via minimal scrutiny of consent orders²² – has led to a de facto system in which informal, often undocumented, arrangements govern the post-divorce distribution of wealth and care responsibilities. In 1,022, of the 80,057 divorces that were granted in England and Wales,²³ only around half sought a financial remedy, with only a third in receipt of a court order; the majority of which are made by consent,²⁴ with minimal judicial intervention.²⁵

In private ordering, women ‘are expected to protect their interests within privatised dispute resolution processes which reproduce and perpetuate gendered familial inequalities and power relations’.²⁶ This shift places disproportionate responsibility on individuals – particularly women – to protect their own financial interests in the context of reduced legal aid, limited knowledge of family law principles, and persistent gendered expectations of caregiving. As the data from the study on which this article is based will show, private ordering frequently takes place within a context of legal ignorance, relational dependency, and structural inequality. Rather than facilitating autonomy, such processes may, in fact, undermine it, particularly for the financially weaker party.

II. THE RESEARCH STUDY

This empirical research was exploratory and small-scale in nature, and utilized semi-structured interviews with 32 civilian women formerly married to male serving members of the British Army – ‘military wives’ – who received their Decree Absolute in England and Wales at least 12 months prior to the interview date. Interviews were conducted between July 2018 and May 2019, and approved by the Ethics Committee at the University of Exeter.

Military wives offer a magnified lens into the operation of gendered dynamics of privately negotiated financial settlements. Due to the unique demands of military life, the majority of military families have little choice but to adopt highly gendered heteronormative familial roles; frequent relocations, long periods of absence due to deployments, unpredictable working hours, mean that military wives often operate as ‘pseudo-single parents’,²⁷ bearing the burden of domestic responsibilities, which significantly constrains their ability to pursue

¹⁹ Ibid.

²⁰ Family Justice Review Final Report (November 2011) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/217343/family-justice-review-final-report.pdf> accessed 6 June 2025

²¹ L. Trinder and others, *Finding Fault? Divorce Law and Practice in England and Wales. Full Report*, 2017.

²² H. Woodward, “‘Everyday’ Financial Remedy Orders: Do they Achieve Fair Pension Provision on Divorce?” (2015) 27 *Child and Family Law Quarterly* 151–172.

²³ Office of National Statistics, ‘Divorces in England and Wales: 2022’. <<https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/divorce/bulletins/divorcesinenglandandwales/2022>> accessed 6 June 2025.

²⁴ Ibid.

²⁵ E. Hitchings, J. Miles and H. Woodward, *Assembling the Jigsaw Puzzle: Understanding Financial Settlement on Divorce* (2013). Briefing Paper.

²⁶ Barlow and others (n 1) 17.

²⁷ H. Gray, ‘The Power of Love: How Love Obscures Domestic Labour and Shuts Down Space for Critique of Militarism in the Autobiographical Accounts of British Military Wives’ (2022) 9 *Critical Military Studies* 1–18.

education, training opportunities,²⁸ and/or career development.²⁹ As a result, economic equality in military families is particularly difficult to achieve.³⁰ In many families – both civilian and military – childcare³¹ and domestic responsibilities³² continue to be the purview of women, even when women undertake paid employment outside the home.³³

Participants were recruited through social media advertisements and the author's personal and professional networks, with interviews taking place in-person, via telephone, or via Zoom. Despite best efforts to gain perspectives from a diverse range of participants, all identified as 'White British', which may be reflective of the fact that only 13.1 per cent of the UK Regular Forces are from ethnic minority groups.³⁴ As a result, I was unable to explore the impact of any intersecting social determinants, such as race and ethnicity.

The demographic profiles of the 32 participants recruited to the study are summarized in Table 1, below. By design, all participants had been in a heterosexual marriage, had lived married-accompanied³⁵ prior to their separation, and had never, themselves, served as military personnel. All of the participants had children. Of the interviewees, eight participants had been married to officers, with the remaining previously married to other ranks.³⁶ After divorce, all children lived with their mother; time spent with their fathers was contingent on a range of contextual factors. It is worth noting that all 32 participants from this self-selecting group privately negotiated their own financial settlements, with only two participants reporting to have received legal advice at any point during the divorce process, five reporting to have attended a Mediation and Information Assessment Meeting (MIAM), and three attended a least one session of mediation (see Table 2).³⁷ None of the participants in the study instructed a lawyer to represent them, nor applied for a financial order.

Interviews were semi-structured, which allowed for 'clarification and elaboration' to be sought on participants' answers to pre-prepared questions.³⁸ Participants were posed open-ended questions regarding (i) the roles (both paid and unpaid) undertaken during marriage and post-divorce, (ii) finances and childcare upon separation, including how and why they had made particular decisions. Once completed, the interviews were transcribed by the author, and an inductive thematic analysis was conducted in NVivo.³⁹ All participants were given pseudonyms, and any identifying information was removed. The findings offer explorative insights into the factors that influence financial arrangements post-divorce.

²⁸ D. Harrison and L. Laliberté, 'How Combat Ideology Structures Military Wives' Domestic Labour' (1993) 42 *Studies in Political Economy* 45–80.

²⁹ J. J. Hisnanick and R. D. Little, 'Honey I Love You, but ... Investigating the Causes of the Earnings Penalty of Being a Tied-migrant Military Spouse' (2014) 41 *Armed Forces & Society* 413–439.

³⁰ L. Spanner, 'Governing "Dependents": The Canadian Military Family and Gender, a Policy Analysis' (2017) 72 (4) *International Journal: Canada's Journal of Global Policy Analysis* 484–502.

³¹ N. Chesley and S. Flood, 'Signs of Change? At-Home and Breadwinner Parents' Housework and Child-Care Time' (2017) 79 *Journal of Marriage and Family* 511–534.

³² C. Lyonette and R. Crompton, 'Sharing the Load? Partners' Relative Earnings and the Division of Domestic Labour' (2015) 29 *Work, Employment and Society* 23–40.

³³ C. L. Starnes, 'Mothers, Myths, and the Law of Divorce: One More Feminist Cast for Partnership' (2006) 13 *William and Mary Journal of Women and Law* 203–234.

³⁴ Armed Forces Workforce. UK Armed Forces Biannual Diversity Statistics (11 February 2025) <<https://www.ethnicity-facts-figures.service.gov.uk/workforce-and-business/workforce-diversity/armed-forces-workforce/latest/accessed>> 05 August 2025.

³⁵ 'Married-accompanied' refers to service families who accompany their serving spouse on their assignments, relocating throughout the UK and abroad as and when required.

³⁶ 'Other ranks' refers to all service members who hold the rank below officers in the British Armed Forces.

³⁷ Thirteen participants stated that they 'didn't know' whether or not their ex-husband had received any legal advice regarding proposed financial settlement.

³⁸ T. May and B. Perry, *Social Research: Issues, Methods and Process* (5th edn, Open University Press 2022) 145.

³⁹ V. Braun and V. Clarke, 'Using Thematic Analysis in Psychology' (2006) 3 *Qualitative Research in Psychology* 77–101.

Table 1. Demographic data for participants

	Married to officer rank	Married to ‘other ranks’
Length of marriage	0–5 years: 0 6–10 years: 1 11–15 years: 2 16–20 years : 3 20+ years : 2	0–5 years: 5 6–10 years: 6 11–15 years: 9 16–20 years: 4 20+ years : 0
Number of children	1 child: 2 2 children: 3 3 children: 2 4 children: 1	1 child: 7 2 children: 7 3 children: 9 4 children: 1
Age at interview	26–30 years old: 0 31–35 years old: 1 36–40 years old: 0 41–45 years old: 3 46–50 years old: 3 50+ years old: 1	26–30 years old: 4 31–35 years old: 6 36–40 years old: 10 41–45 years old: 4 46–50 years old: 0 50+ years old: 0
Rank of former husband at the time of divorce	Colonel: 3 Major: 5	Warrant Officer Class 1: 3 Warrant Officer Class 2: 3 Staff Sergeant: 2 Sergeant: 6 Corporal: 6 Lance Corporal: 1 Sapper: 3

Table 2. Legal professional and mediation input in the divorce process

Legal/professional input	Number	Per cent
Wife received legal advice at any point	2	6
Ex-husband received legal advice at any point ^a	6	18
Instructed a legal professional to represent them	0	0
Wife received legal advice regarding proposed financial settlement	0	0
Ex-husband received legal advice regarding proposed financial settlement ^b	3	9
MIAM	5	16
Mediation	3	9
Settled following mediation	2	6
Applied for a financial order	0	0
No input	11	36

^a Eight participants stated that they ‘didn’t know’ whether or not their ex-husband had received any legal advice at any point.

^b Thirteen participants stated that they ‘didn’t know’ whether or not their ex-husband had received any legal advice regarding proposed financial settlement.

III. EMPIRICAL FINDINGS

The findings of the study upon which this article is based illuminate the ways in which gendered power dynamics, shaped by broader ideological frameworks and structural processes, influence privately negotiated financial settlements post-divorce. Firstly, I outline the ways in which the consistent undervaluing of domestic contributions, along with the overvaluing of financial contributions, underpins financial negotiations. The invisibility and undervaluing of

domestic contributions socially conditions women to de-legitimize their claim on family resources, with women feeling less 'entitled' to a share of *his* earnings and *his* assets.⁴⁰

This ownership narrative – 'what's mine is mine' and 'his money, he decides' – featured prominently in participants' reasoning. Assets acquired before the marriage, or solely in one spouse's name, were frequently excluded from negotiations, irrespective of the actual contribution to family life, for example, the personal sacrifices in career development or income-earning potential to support the family unit. Pensions were overlooked and excluded from settlement discussions. The military pension, often the largest asset, was considered as the husband's alone, despite its classification as matrimonial property under the current legal framework. Such an omission has significant long-term financial consequences.

Thirdly, I address how financial negotiations are shaped and informed by notions of formal equality – '50:50 split is fair' – which disproportionately disadvantages women. This framing of financial contributions – which imbues both power and privilege – mirrors broader societal trends,⁴¹ which render invisible the financial cost of both past and ongoing domestic responsibilities and contribute to unequal financial outcomes.

Finally, I consider the ways in which private negotiations can be vehicles through which the ideological privileging of financial contributions and devaluing of domestic contributions perpetuates and exacerbates gender inequality. Private ordering reflects not genuine autonomy but the reproduction of entrenched inequalities, highlighting that autonomy cannot be presumed where the legal system fails to account for the reality of dependency.⁴² Such findings challenge the prevailing orthodoxy that private settlements are preferable due to their flexibility and informality.

1. Valorisation of contributions: financial and non-financial contributions

As a gendered institution, traditional gendered ideologies empower the military and its serving members to take systematic advantage of the work done by military wives, enhancing men's status, power, and bargaining position.⁴³ Military wives valorise and prioritize their husband's military service, recognizing and valuing breadwinner contributions at the expense of their own domestic contributions; domestic contributions are conceptually perceived as inferior, 'less than', and – if valued at all – undervalued. While many of the participants recognized that they undertook 'exaggerated forms of domestic labour',⁴⁴ it was the important nature of their husbands' work which necessitated the (re)production of traditional gendered roles; military wives had the 'easy' job. Conceptualizing domestic contributions as 'unproductive' socially conditions women to de-legitimize their claim on family resources,⁴⁵ with women feeling less 'entitled' to a share of *his* earnings and *his* assets. The imbrication of ideological and structural factors thus serves to reinforce differences in the valorisation of financial (economic) and non-financial (domestic) contributions, with military-related economic contributions deemed of greatest value; serving personnel literally risk their lives in the pursuance of military objectives. Bargaining under such conditions, where power disparities and gender bias are key features, has been shown to result in negative outcomes for

⁴⁰ T. Wilkinson-Ryan and D. Small, 'Negotiating Divorce: Gender and the Behavioural Economics of Divorce Bargaining' (2008) 26 *Law and Inequality: A Journal of Theory and Practice* 109–132.

⁴¹ E. Gordon-Bouvier, 'Crossing the Boundaries of the Home: A Chronotopical Analysis of the Legal Status of Women's Domestic Work' (2019) 15 *International Journal of Law in Context* 479–494.

⁴² M. L. A. Fineman, 'Masking Dependency: The Political Role of Family Rhetoric' (1995) 81 *Virginia Law Review* 2181–2215.

⁴³ N. Fraser, *Fortunes of Feminism: From State-Managed Capitalism to Neoliberal Crisis* (Verso 2013).

⁴⁴ Gray (n 27) 7.

⁴⁵ L. Coelho, 'My Money, Your Money, Our Money: Contributions to the Study of Couples' Financial Management in Portugal' (2014) 6 *RCCS Annual Review* 83–101.

women.⁴⁶ While legal practitioners may be able to mitigate against such gendered power imbalances in the pursuance of achieving a fair outcome by considering a multitude of factors, the absence of any legal advice compounds existing vulnerabilities. Many participants, however, conceptualized legal professionals as creating or exacerbating unnecessary conflict, which would damage the relationship between the parties and their children, as Stephanie explains:

Stephanie: We both agreed not to involve solicitors. We had enough to deal with without them making it worse. We got on, so why make it worse?

Stephanie's account is illuminating in a number of ways. The 'mutual' decision not to get legal advice echoes the 'equal partnership' discourse inherent within neoliberal rhetoric of autonomy and equality; they are capable, rational, and self-sufficient individuals who do not require involvement from legal professionals. Furthermore, Stephanie points to the amicable relationship between herself and her ex-husband as key to their decision, echoing previous research which found that petitioners in high conflict separations were more likely to state that they required the services of solicitors.⁴⁷ Replicating previous research,⁴⁸ common to many participants' accounts was the notion that legal professionals increased conflict, 'making it worse':

Kathryn: Why would we involve a solicitor? They don't care about us. They just want to stir the pot. They just drag it all out and it takes months and months, and all the time we're getting more and more peeved off with each other. What's the point in that? I have to still deal with him afterwards, what with Fin and that, so I don't want to do anything that would rile him up.

Tara: Pah. Get a lawyer? I'd rather pull my own teeth out, thanks very much. I just didn't have the fight in me, and that's all they do, they want to fight, and it's you against him, and I just didn't have it in me. Like, yes, I wanted more money and whatnot, but I was just tired and wanted to get out, and move on, and this was the easiest way, to be honest.

Both Kathryn and Tara's accounts conceive of solicitor-involvement as increasing time-scales and exacerbating conflict: neither wanted to 'drag it all out' or 'fight'. Negotiating a private settlement was conceptualized as more timely and thus a more efficient process than it would have been, had solicitors been involved. Tara's account, however, goes further, acknowledging that while she might have been able to negotiate a better settlement had a solicitor been involved, her desire to expedite the process, and move on, was the driving factor.

Two participants pointed to cost as a factor in not appointing a solicitor, as Kerry explains:

Kerry: I just didn't have any money for any lawyers, I mean, they cost a bomb, don't they? It's not like we had loads to argue over, did we? And any money that goes to them, doesn't go to me, right? Like, it's all got to come out of the same pot, and the pot wasn't that big. That's what he keeps telling me anyway I know what I've got [in the bank] and it isn't

⁴⁶ E. Hinchings and others, 'Fair shares? Sorting out money and property on divorce.' Full Report (Nuffield Foundation 6023); see also Wilkinson-Ryan and Small (n 40); H. Fisher and H. Low, 'Who Wins, Who Loses and Who Recovers from Divorce?' in J. Miles and R. Probert (eds), *Sharing Lives, Divided Assets: An Inter-disciplinary Study* (Bloomsbury 2009); S. André, C. Dewilde and R. Muffels, 'What do Housing Wealth and Tenure Have to do With it? Changes in Wellbeing of Men and Women after Divorce using Australian Panel Data' (2019) 78 *Social Science Research* 104–118.

⁴⁷ Trinder and others (n 21).

⁴⁸ Ibid.

hundreds and hundreds like what a lawyer would want, so no money for any lawyers, and anyways, even if there was, it wouldn't be worth it.

Kerry's account highlights the ways in which her limited (financial) resources curtailed her choices: *her* money was insufficient to instruct a lawyer. Furthermore, she hints at *her* reliance upon *his* declaration that the 'pot wasn't that big', and thus not worth pursuing legal recourse for a greater share, and which may have improved *her* financial situation. Within this narrative, Kerry illustrates the particular gendered dynamics whereby a woman's agency and empowerment are a product of patriarchal gender relations in the private sphere.⁴⁹ Furthermore, the financial dependency experienced during marriage continues post-separation, impacting financial settlements: *his* money continues to be *his*, except for that portion which *he* permits *her* to have access to (and knowledge of).

2. 'His money, He decides'

In 'everyday' cases, where there may be insufficient wealth to finance two households post-separation, lawyers must prioritize the first of the *Miller; McFarlane* principles, meeting needs.⁵⁰ Full consideration should be made to 'to all the circumstances of the case',⁵¹ particularly with regard to the welfare of any children of the family,⁵² possibly resulting in a very *unequal* division of assets in order to meet the most pressing needs of the parties.⁵³ The financial settlement negotiated upon divorce provides the foundation for a future standard of living for them and their children. Previous research has highlighted the multitude of factors considered by legal practitioners when determining needs: ongoing child maintenance; the spouse's future earning capacity; consideration of assets and any debts, among others.⁵⁴ However, even in cases where parties are granted financial orders (presumably underpinned by legal principles), research has shown that women are financially disadvantaged following divorce.⁵⁵

As an example, breadwinner-men are able to continue to work as unencumbered employees following divorce; part-time (or indeed no) participation in the labour market has long-term financial repercussions for homemaker-women.⁵⁶ Where wives do undertake paid employment outside of the home, their contributions to family finances are deemed as supplementary and treated as less important.⁵⁷ Within the military context, military wives' capacity to undertake meaningful paid employment during marriage is limited by the long working hours, unpredictable work schedules, and high work demands required of their husband's (military) employment.⁵⁸ The structurally/institutionally imposed breadwinner-male, homemaker-female model which prioritizes (male) economic contributions, necessitating an

⁴⁹ M. Lokot and A. Bhatia, 'Unequal and Invisible: A Feminist Political Economy Approach to Valuing Women's Care Labor in the COVID-19 Response' (2020) 5 *Frontiers in Sociology* 1–4.

⁵⁰ G. Douglas, 'Sharing Financial Loss as Well as Gains on Divorce' (2018) 32 (2) *Australian Journal of Family Law* 108–131.

⁵¹ *Miller; McFarlane* (n 6).

⁵² Matrimonial Causes Act 1973, s25–25A.

⁵³ E. Hinchings, 'The Impact of Recent Ancillary Relief: Jurisprudence in the 'Everyday' Ancillary Relief Case' (2010) 22 *Child and Family Law Quarterly* 93–114.

⁵⁴ E. Hinchings, 'Chaos or Consistency? Ancillary Relief in the "Everyday" Case' in J. Miles and R. Probert (eds), *Sharing Lives, Divided Assets: An Inter-Disciplinary Study* (Bloomsbury 2009).

⁵⁵ Hinchings and others (n 46); J. Miles and E. Hinchings, 'Financial Remedy Outcomes on Divorce in England and Wales: Not a "meal ticket for life"' (2018) 31 *Australian Journal of Family Law* 43–80.

⁵⁶ D. de Vaus and others, 'The Economic Consequences of Divorce in Six OECD Countries' (2017) 52 (2) *Australian Journal of Social Issues* 180–199.

⁵⁷ C. Vogler, 'Money in the household: Some underlying issues of power' (1998) 46 *The Sociological Review* 687–713.

⁵⁸ E.F. Shafer, 'Wives' Relative Wages, Husbands' Paid Work Hours, and Wives' Labor-Force Exit' (2011) 73 *Journal of Marriage and Family* 250–263.

unequal division of domestic contributions, reflects and informs the unequal distribution of power between husbands and wives⁵⁹; economic power is predicated on 'who has obtained it and how it has been obtained'.⁶⁰ The conceptualization of resources as 'yours', 'mine', or 'ours' lay the foundation for familial dynamics which then informs, shapes, and impacts the division of finances during divorce.

Participants highlighted the role of gendered valorisation of contributions and perceived ownership of asset, influencing negotiations and outcomes. Many participants articulated that their husband's breadwinning status (and thus economic contributions) warranted a greater degree of agency over how any assets would be divided, as Gemma explains:

Gemma: I'd say he was the one who ultimately decided how we were going to split things. I suppose it was no different to when we were married. There was no animosity, and I wasn't going to argue with him. What was the point? It was his money and he could decide what to do with it. He's always been fair, and I thought it was fair, so I wasn't going to argue.

Gemma frames the economic contributions of her ex-husband as imbuing power and agency over the apportionment of assets; in earning the money, he was entitled to allocate it as he deemed 'fair', that is, it was he who had greater financial control and entitlement. Underlying Gemma's account is the notion that inter-relational dynamics and the resultant financial dependency embedded during marriage continue post-divorce, influencing the perception of fairness upon divorce: 'he's always been fair' and thus would continue to be fair. Furthermore, in expressing that she 'wasn't going to argue', Gemma's account speaks to the legacy of her marital 'conditioning',⁶¹ that is, deference to her husband's needs at the expense of her own.

It was evident from a number of the accounts that the inter-relational dynamics established during marriage continue within divorce, influencing negotiations and the perception of fairness, replicating previous findings.⁶² In particular, the disparity in valorisation of economic and domestic contributions influences the nature and timing of settlements. Where individuals value items differently, concessions may need to be made on items they ascribe as having relatively less value in exchange for those they value more.⁶³ Gendered differences in valorizations functionally disadvantage women; many women sacrifice financial entitlement in favour of closure.⁶⁴ The relative valuing of 'interactional goals'⁶⁵ by women, whereby women prioritize relationships above tangible benefits, echoes the 'naturalised' narrative of hegemonic femininities which prescribes to women the role of carer, who attends to the needs of others at the expense of their own, as Stephanie explains:

⁵⁹ S.M. Bianchi and others, 'Housework: Who Did, Does or Will Do It, and How Much Does It Matter?' (2012) 91 *Social Forces* 55–63.

⁶⁰ Coelho (n 45) 87.

⁶¹ A. Chisholm and M. Eichler, 'Reproductions of Global Security: Accounting for the Private Security Household' (2018) 20 (4) *International Feminist Journal of Politics* 563–582, 564.

⁶² L.B. Watson and J.R. Ancis, 'Power and Control in the Legal System: From Marriage/relationship to Divorce and Custody' (2013) 19 (2) *Violence against Women* 166–186.

⁶³ M. Considine, 'Beyond Winning: Unlocking Entrenched Conflict using Principles and Practices of Negotiation in the Mediation Room' (2015) 2 *Journal of Mediation and Applied Conflict Analysis* 223–231.

⁶⁴ Barlow and others (n 1).

⁶⁵ 'Interaction goals' are those which pertain to the interpersonal dimensions involved in negotiations and have been shown to be favoured by women. These contrast with 'task-specific goals' which relate to the tangible goals of negotiations, eg 'getting a better deal. For a more detailed discussion see Wilkinson-Ryan and Small (n 40).

Stephanie: I didn't want to make it any harder for Chris and Phoebe to be honest, plus Chris has enough to think about without me making it worse. Phoebe is his daughter. I want her to have a good relationship with him. Just because we didn't work as a couple doesn't mean that he isn't her father anymore. There was no point fighting over money, what for? And extra couple of pounds? It was my job to make it as easy as possible for everyone.

Stephanie's account reveals the concessions she was willing to make, forgoing an 'extra couple of pounds' in favour of 'smoothing the ruptures' of divorce. In valorising interaction goals and assuming responsibility, Stephanie legitimizes the relinquishing of financial entitlements, reproducing the gendered interactional and individual power dynamics created, maintained, and legitimized within marriage, and which continue to shape the embodied performance of gender within divorce, and more specifically, influencing notions of fairness.

3. Fairness myths: '50:50' and 'What's Mine is Mine'

Many participants conceived of fairness as being a 50:50 sharing of assets (and debts), regardless of who had contributed what during the marriage or any ongoing childcare responsibilities post-divorce. While the starting point for many legal practitioners is a 50:50 split, in practice, equality and fairness often require a more complicated split of assets,⁶⁶ where a 'very *unequal* division' is required to best satisfy the immediate needs of the parties.⁶⁷ However, many participants report relying on the notion of a 50:50 split as the default position, as Amy explains:

Amy: Well, I told him that I should get 50:50 of everything, and I did. That's the fairest way, just split it down the middle: I get half; he gets half. Why would we need to go to a solicitor when it's as easy as that? Half and half. Easy.

For Amy, a 50:50 split was not a starting point, but the most desirable – and fairest – outcome; a detailed assessment of the individual needs of the parties was neither considered nor necessary as a 50:50 was presumed to be 'the fairest way'. Amy, Kate's, and others' accounts highlight the commonly held belief – or legal myth – that a 50:50 split is the legal principle upon which assets should be divided.

Rachael: It's supposed to be half each ... That's what's the law says is fair, and it was supposed to be a partnership, you know, I know our marriage didn't work out but marriage is it was a partnership, like two people complementing each other, how it's supposed to be.

Rachael's account echoed many participants who believed that the legal basis for any division of assets was a 50:50 split. Her account further illuminates the ways in which she conceptualized marriage as a 'partnership' with each party 'complementing each other'. Rachael's narrative conceptualizes her undertaking of normative gendered familial roles as complementary – and equal to – her husband's economic contributions. While her account valorises her contributions as equal to her husband's, formal equality is conflated with substantive equality.

Substantive equality may, in fact require a very *unequal* division of assets in order to adequately meet the parties' needs, particularly in the presence of ongoing childcare

⁶⁶ C. Bendall, 'A "Divorce Blueprint"? The Use of Heteronormative Strategies in Addressing Economic Inequalities on Civil Partnership Dissolution' (2016) 31 *Canadian Journal of Law and Society/Revue Canadienne Droit et Société* 267–286.

⁶⁷ Douglas (n50) 110.

responsibilities.⁶⁸ A number of participants acknowledged the ongoing impact of continuing as the primary carer for children on their own employment prospects, and their ability to be financially independent:

Kerry: I said to him that I wasn't going to take anything less than half. I was always the one who was going to have the kids, so that's the least he could do.

For Kerry, a 50:50 split was justified by her continuing domestic responsibilities. Her narrative of empowerment – her (increased) power and agency results from her domestic responsibilities – however, masks the profoundly gendered nature of the private sphere, where domestic labours are the presumed responsibility of women.

Replicating previous findings,⁶⁹ many participants, in the pursuit of fairness, describe making concessions for future needs in favour of immediate needs, as Jennifer explains:

Jennifer: If I'm really honest, I didn't really think about the future, it was more about what we needed straight away. There was only so much money to go around, well until I got settled and got a job. And then there's him, he still needs to have enough money to live off; the kids are still going to see him. I want them to have a good time with their Dad, so he needs something, too, so he can take them for days out, so I, I suppose I accepted less than I wanted ... I was ok with how we sorted it [split the finances]. I suppose it was the best we could do with the money we had.

Jennifer's account is illuminating in revealing the heuristics and biases employed to justify the particular division of assets in this case; in explaining that she had 'accepted less than' she wanted, Jennifer reveals the 'fixed-pie' bias, where one individual's gain is the other's loss.⁷⁰ The narrative further reveals the relational dimension of negotiations, whereby women place relatively 'greater weight' on interpersonal goals than men.⁷¹ Furthermore, the account reflects the normative gendered relational dynamics prevalent within marriage, whereby the needs of others are prioritized over one's own: Jennifer valorised maintaining a good relationship between her ex-husband and their children over her own financial needs.

Jennifer's perception that there were insufficient funds to finance both financial security now *and* for the future was echoed in a number of the narratives:

Alice: The first thing I had to do was make sure the kids had a roof over their head and the bills got paid. We'd always lived in Army housing, for so long, that that was the first thing I had to sort. Yeah, that's what my main thought was, worrying about now. I need to sort out now. There's no point having money when I'm 60-odd from his pension if I can't pay for things now, you see? The kids will be grown up then. They don't need it then. It doesn't matter how much I get later, I need it now.

Alice's account points to a conscious decision to forgo future financial security via a claim on the military pension in order to ensure that immediate financial needs could be met.

⁶⁸ Hitchings (n 53).

⁶⁹ Wilkinson-Ryan and Small (n 40).

⁷⁰ A.B. Van Zant and L.J. Kray, 'Negotiation and Conflict Resolution: A Behavioural Decision Research Perspective' in G. Keren and G. Wu (eds), *The Wiley Blackwell Handbook of Judgment and Decision Making* (1st edn, Wiley & Sons 2015).

⁷¹ Wilkinson-Ryan and Small (n 40).

A. Pensions

Considerable research into gender and pensions has identified the 'pension gap' between men and women, with men having the opportunity to build up far greater entitlements to state and private pensions due to their higher and less-disrupted participation in the labour market.⁷² Heteronormative gendered expectations of wife and motherhood socialize women into fulfilling their biological 'nature' of being carers,⁷³ limiting their opportunities for paid employment and pension building both during marriage and after divorce,⁷⁴ resulting in both a 'wage penalty' and a 'pension penalty'.⁷⁵ After the family home, pensions are frequently the single largest asset for couples, particularly in 'everyday' cases.⁷⁶ Consequently, upon divorce, many women 'offset' claims on their former spouse's pension in favour of keeping the former matrimonial home.⁷⁷ For those military families for whom the *only* substantial financial asset may be the military pension,⁷⁸ failure to make a claim may be of significant financial detriment to military wives, resulting in an *unequal* 'start on the road to independent living'.⁷⁹ In the absence of legal advice, participants relied on their own notions of fairness in determining whether or not to stake a claim on the military pension.

For many participants, forgoing a claim on the military pension resulted from the conceptualization of the pension as *his* pension, as Kate explains:

Kate: We just sorted it [finances] between us. We had debts, so we just split those. We didn't get a lawyer. We just didn't want that, we knew what we were going to do. We just sorted it ourselves. We split it all half and half ... he kept his pension, but, you know, it was his. I didn't earn it.

While some participants conceived of family finances as pooled, as in Kate's account, pensions were conceptualized as distinct and separate. Kate's narrative reveals the internalization of breadwinner ideology, whereby economic contributions are revered, valued and (financially) rewarded; it was *his* paid employment which contributed to *his* pension, *her* domestic labour contributed nothing to *his* pension. Framing the military pension as his pension was echoed by many of the participants:

Amy: When we were talking about it [division of finances], his pension never came up to be honest. I just didn't think about it.

Beth: It was his pension, not mine.

Polly: I didn't think about his pension at the time [of discussing financial assets].

Tara: His pension didn't come into it ... We didn't ever have a proper discussion; it was a just one of those things you just know ... it was a given that it was his.

⁷² A. Vlachantoni, 'Older Women and Comparative Pension Inequalities in the UK and US' in S. Westwood and N.J. Knauer (eds), *Research Handbook on Law, Society and Ageing* (Edward Elgar 2024); J. Ginn and L. Foster, 'The Gender Gap in Pensions: How Policies Continue to Fail Women' (2023) 11 *Journal of the British Academy* 223–242.

⁷³ M.A. Fineman, 'Feminism, Masculinities, and Multiple Identities' (2013) 13 *Nevada Law Journal* 619–639; J. Lorber, 'Believing is Seeing: Biology as Ideology' (1993) 7 *Gender & Society* 568–581.

⁷⁴ Ginn and Foster (n 72).

⁷⁵ Vlachantoni (n 72).

⁷⁶ Hitchings and others, 'Fair shares' (n 46).

⁷⁷ Ibid.

⁷⁸ In 1023–24, 57% of British Army families own their own home, versus 65% in the civilian population. See Tri-service Families Continuous Attitude Survey 2025 Main Report (17 July 2025) <<https://www.gov.uk/government/statistics/tri-service-families-continuous-attitude-survey-2025/tri-service-families-continuous-attitude-survey-2025-main-report#housing-3>> accessed 5 August 2025; J. Walker, A. Selous and G. Misca, *Living in our Shoes: Understanding the Needs of Armed Forces Families. Full Report* (2020).

⁷⁹ Miller, McFarlane (n 6) [144].

While some participants conceived of the military pension as a family asset ('the' or 'our' pension), many reported that their (ex-) husbands did not share this view:

Hannah: He made it clear that it was his pension and that I wasn't to touch it.

Sophie: God, no. Justin said right from the get-go that I wasn't going to get my hands on his pension.

Sarah: They say you have to pick your battles. It was just easier not to fight that particular battle. He wasn't going to share it [the pension]—he said as much—so there was no point me pushing for it.

While some participants were aware of their right to make a claim, many accounts revealed confusion about how this might work in practice. For Stephanie, length of marriage was (erroneously) conceived as a key factor in determining whether a claim should be made:

Stephanie: Chris was in the Army for years before he met me, so he was building up his pension all that time and we were only married for 9 years, so out of the 24 years he might do, I'd only have a portion of nine twenty-fourths so it wasn't really worth it.

In striving for a fair division of assets, the attribution of ownership was revealed to be a key factor in determining the inclusion and exclusion of particular assets from negotiations. Such accounts reveal further legal myths regarding what is considered 'marital' assets, influencing power relations and resource allocation, as Becky explains:

Becky: There was my house, but I bought before we married. It was rented out when I moved in with Rob. It was my house and he didn't have anything to do with it. We just decided to walk away with what we'd had before [the marriage]. It was easy in that way. We didn't have children together so there was no reason to complicate things.

For Becky, no bargaining was required; the division of assets was dictated by the assumption that the parties would depart the marriage with the same assets with which they had entered the marriage. This heuristic was echoed in several other accounts whereby individually held assets were excluded from financial negotiations:

Beth: We both had houses [before they were married] which we rented out. When we divorced, he kept his house and I kept mine. I moved into mine with the children after we divorced. There is only a small mortgage left on it, so it was eminently affordable.

In Beth's case, a formal valuation was not conducted on either house, although she explained that she had a 'rough idea' of their values, as she explains:

Beth: It was immaterial what they were worth: his house was his and mine was mine. They weren't ever going to be included in any discussions. I could never have afforded the mortgage on his house even if we had thought about it.

For Beth, and others, allocating assets based on pre-marital ownership was the fairest division of assets, regardless of the value of such assets; they were 'immaterial'. Rather than the value of any individual assets, it was the perceived ownership of said assets which was the determining factor in deciding any allocation. In common with participants who relied on a

50:50 split, allocating assets based on perceived ownership may fall short of achieving substantive equality. In this context, employing either 50:50 split of assets or excluding individually owned assets is likely to result in long-term poverty for the woman and children.⁸⁰

IV. CONCLUSION

In common with the position of civilian families, changes over the course of the marriage (eg the birth of children) can frequently result in one of the parties being more economically vulnerable than the other.⁸¹ While 'income dependency' is becoming less common in an era of (civilian) dual-earning couples,⁸² many women, particularly those with young children, make decisions to reduce paid employment or limit their hours.⁸³ Within the military context, the disparity between earnings between a serving husband and civilian wife magnifies that experienced by civilian families and which functions to enhance men's power in relation to women's, ideologically and materially disadvantaging the financially weaker spouse. The findings of this study illuminate the ways in which economic resources are a primary source of bargaining position⁸⁴; 'relative earnings differences are indicative of power differences in couples that enhance the bargaining position of the higher earning spouse',⁸⁵ which exacerbates and entrenches disadvantage.

Furthermore, the relative valorisation of economic contributions above domestic contributions imbues both power and agency, laying the foundations for the apportionment of assets post-divorce. The reproductive labour expected of women both during marriage and post-divorce mirrors that performed by women more generally in society⁸⁶; such power dynamics significantly disadvantage wives in their post-divorce lives, particularly where exaggerated domestic contributions are necessitated by their ex-husbands' employment.

Private ordering is impacted by myriad factors influencing the salience of the law in financial settlement negotiations, including: the parties' respective needs and interests;⁸⁷ disparities in negotiating power;⁸⁸ the unwillingness of one (or both) of the parties to embark on court proceedings; ambiguities in the law; the parties' own values; issues of blame and fault; and the role of gender.⁸⁹ In cases where the parties eschew legal processes, social, cultural, and economic factors have been shown to be the salient factors, casting multiple shadows on the parties and influencing outcomes.⁹⁰

The findings of this research highlight the highly gendered implications for those who undertake domestic responsibilities (whether 'freely chosen' or not). Economic disadvantage within heterosexual couples remains a deeply gendered issue, with wives continuing to be more likely to undertake the day-to-day domestic duties than their husbands;⁹¹ a

⁸⁰ Douglas (n 50).

⁸¹ R. Leckey, 'Relational Contract and Other Models of Marriage' (2002) 40 *Osgoode Hall Law Journal* 1–47.

⁸² N. Charles and E. James, 'He Earns the Bread and Butter and I Earn the Cream' (2016) 19 *Work, Employment and Society* 481–502; M. Bertrand, E. Kamenica and J. Pan, 'Gender Identity and Relative Income within Households' (2015) 130 *Quarterly Journal of Economics* 571–614.

⁸³ Office for National Statistics (n 9).

⁸⁴ Y. Hu, 'What About Money? Earnings, Household Financial Organization, and Housework' (2019) 81 (5) *Journal of Marriage and Family* 1091–1109; Fraser (n 43).

⁸⁵ Chesley and Flood (n 31) 13.

⁸⁶ L. Spanner, '"The Strength behind the Uniform": Acknowledging the Contributions of Military Families or Co-Opting Women's Labour?' (2021) 41 *Atlantis* 57–71.

⁸⁷ J. Crowe and others, 'Bargaining in the Shadow of the Folk Law: Expanding the Concept of the Shadow of the Law in Family Dispute Resolutions' (2018) 40 *Sydney Law Review* 319–338.

⁸⁸ E. Hitchings and J. Miles, 'Mediation, Financial Remedies, Information Provision and Legal Advice: the Post-LASPO Conundrum' (2016) 38 *Journal of Social Welfare and Family Law* 175–195.

⁸⁹ Wilkinson-Ryan and Small (n 40); Crowe and others (n 87).

⁹⁰ Crowe and others (n 87).

disadvantage compounded by the gender pay- and pension-gap. Furthermore, the significance of attribution of ownership – whereby the parties ‘keep’ assets perceived to be theirs – provided the foundation for the division of assets for many participants in the delegalized space. The reliance upon the legal myths of ‘50:50’ and ‘what’s mine is mine’, masks, and renders invisible, the cost to women. The invisible nature of women’s domestic contributions results in it being discounted by men *and* women during negotiations, wherein *both* parties fail to acknowledge the financial cost of both past and ongoing domestic responsibilities.

Presumptions of rationality and economic self-sufficiency inevitably favour the financially stronger spouse, who is disproportionately more likely to be male. This article raises myriad intersecting issues of neoliberal principles for family law, specifically relating to financial settlements upon relationship breakdown and highlights the ongoing harms resulting from the increasing emphasis on private ordering. If ‘law is the only safeguard individuals have *against the exercise of power*’,⁹² permitting couples to negotiate their own settlements denies appropriate protections against such gendered power disparities. In order for both parties to participate fully and effectively in any negotiation process – particularly those which operate within privatized dispute resolution processes – substantive equality between the parties must first exist.⁹³

FUNDING

Funding for this research was provided by the Economic and Social Research Council (ESRC) (1927749).

INSTITUTIONAL ETHICAL APPROVAL

This study received ethical approval from the University of Exeter Ethics Committee.

ACKNOWLEDGEMENTS

I am grateful to the organizers and delegates of the Anglo-Australian Financial Remedies Workshop for their thoughtful comments and feedback on this article.

⁹¹ E. Gordon-Bouvier, ‘The Open Future: Analysing the Temporality of Autonomy in Family Law’ (2020) 32 *Child and Family Law Quarterly* 75–92.

⁹² J. Eekelaar, ‘Self-Restraint: Social Norms, Individualism and the Family’ (2012) 13 *Theoretical Inquiries in Law* 75–96, 83.

⁹³ Barlow and others (n 1)

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International Journal of Law, Policy and The Family, 2025, 39, 1–16

<https://doi.org/10.1093/lawfam/ebaf025>

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