3-1-1983

The Valuation of an Educational Degree at Divorce

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Recommended Citation
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I. INTRODUCTION

In June, 1982, a New York state trial court held that a physician's license to practice medicine was marital property subject to equitable division at divorce and awarded the wife forty percent of the value of the husband's medical degree. The court found the wife's contribution to the marriage amounted to $103,390 and that the husband's degree was worth $472,000, given his age and what he could be expected to earn in comparison with a college graduate without a medical degree. Based on these findings, the court awarded the wife $188,800 as her property share of her husband's degree.\(^1\) Within a month, a New York appellate court in another case held that a professional education or license did not fall within traditional concepts of property and that "gross inequities may result from predicating distribution awards upon the speculative expectation of enhanced future earnings."\(^2\) In January, 1982, a California court of appeal held that where the community had not previously benefited from the increased value of an educational degree or license to practice, the community possessed an interest in that increase in value.\(^3\) But only eight months later, on rehearing before the

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\(^1\) O'Brien v. O'Brien, 114 Misc. 2d 233, 452 N.Y.S.2d 801 (1982). During their nine-year marriage, Mrs. O'Brien was employed as a grammar school teacher and her entire earnings went for the joint support of the couple. The husband attended college and medical school and completed an internship during this period. The O'Briens did not accumulate any substantial assets while they were married and the court concluded that "the only valuable surviving asset acquired by either spouse during their nine-year marriage is the professional license of the plaintiff." Id. at 236, 452 N.Y.S.2d at 803.

\(^2\) Lesman v. Lesman, 88 A.D.2d 153, 452 N.Y.S.2d 935 (1982), aff'd sub nom. 110 Misc. 2d 815, 442 N.Y.S.2d 955 (1981). In Lesman, the court held that a medical license to practice is not property for the purpose of equitable distribution of marital property under New York's Domestic Relations Law. The court based its conclusion, in part, on its finding that the supporting spouse had not played a significant monetary role in the medical education of the husband. See N.Y. DOM. REL. L. § 236 B (McKinney 1982).

\(^3\) In re Marriage of Sullivan, 127 Cal. App. 3d 656, modified, 134 Cal. App. 3d 634,
same panel of judges, the court seemingly reversed itself, stating: "Upon further reflection, we have recognized that the starting premise for the holding previously reached is wrong." The court then held that a professional education acquired during the course of a marriage is neither community nor separate property, since the education does not possess the attributes of property.

These cases illustrate the doctrinal chaos in a rapidly developing area of the law — the situation where one spouse supports the other through college, graduate school, or professional school, only to discover that the marriage has failed. In recent months a number of

184 Cal. Rptr. 796 (1982). The Sullivans were married for ten years, during which Mrs. Sullivan worked both part-time and full-time as an accountant and a budget analyst. Her husband finished his undergraduate work, attended medical school, and completed advanced training as a urologist. The court found that Mrs. Sullivan was the main support of the community for much of the marriage. At the time of the divorce, the Sullivans had very few assets — some used furniture and two automobiles that were not completely paid for. Under these circumstances the court held that where the community has not previously benefited from the increased value of an educational degree or license to practice, the community possesses a pro tanto interest in the increase in value during the marriage. Id. at 680.

4. In re Marriage of Sullivan, 134 Cal. App. 3d 634, 184 Cal. Rptr. 796 (1982). On rehearing the Sullivan panel was disturbed by possible inaccuracies in the trial court record, noting that "there was not one shred of evidence before the trial court to demonstrate that this case was one where the wife had 'put hubby through' as was widely represented in the media." The court indicated that notwithstanding the fact that its prior decision was based on a "largely hypothesized" case, this problem was of no consequence since the court was reversing itself on other grounds. Id. at 641, 184 Cal. Rptr. at 800.

5. Id. at 642, 184 Cal. Rptr. at 800.

states have decided cases of first impression in which one spouse has asked the court to consider the other spouse's educational degree a marital property asset to be distributed along with the couple's other accumulated property. More often than not, in short duration mar-

7. No reported case has involved a husband who asked the court for some recompense for his support or contributions to a wife's pursuit of an educational degree. In all cases discussed in this article, the wife contributed financially and otherwise while the husband attended school. As more women enter the work force and pursue professional careers, the typical "wife-supports-husband-through-school" syndrome will change. The analysis and proposed remedies in this article are intended to apply regardless of the gender of the supporting spouse.


riages, there is little or no other property for the court to distribute.  


Even in long duration marriages there may be few or no assets available for distribution, because the divorcing couple may be on the brink of bankruptcy. See Inman v. Inman,
Also, the statutory schemes of some states entangle many supporting spouses in a peculiar legal “Catch-22”: Supporting spouses are barred from receiving maintenance or alimony precisely because they have proven themselves capable of self support.9


For a thorough discussion of divorce awards in relation to the duration of the marriage, see generally Weitzman, The Economics of Divorce: Social and Economic Consequences of Property, Alimony and Child Support Awards, 28 U.C.L.A. L. Rev. 1181 (1981) [hereinafter Weitzman, The Economics of Divorce]. Weitzman’s study, which analyzed a statistical sample of divorce decrees in California, concluded that “[t]he first and perhaps most important fact that this research reveals about marital property is that many divorcing couples have little or no property to divide.” Id. at 1188.


Professor Weitzman’s study of divorced couples concluded that a small minority of divorced women actually receive spousal support. “The relatively low proportion of support awards suggests two conclusions . . . first, an expectation of self-sufficiency for most divorced women — and for virtually all of those married for less than fifteen years — and second, a significant gap between the reality of support awards and the law’s stated intent to provide transitional support and support for women with impaired earning capacities.” Weitzman, The Economics of Divorce, supra note 8, at 1222-23. But see In re Marriage of Lundberg, 107 Wis. 2d 1, 318 N.W.2d 918 (1982); Roberto v. Brown, 107 Wis. 2d 17, 318 N.W.2d 358 (1982) (more liberal approaches to construing maintenance statutes). The court in Lundberg, for example, ruled that under Wisconsin’s maintenance statute, “maintenance payments are no longer limited to situations where the spouse is incapable of self-support. Instead, we view maintenance as a flexible tool available to the trial court to ensure a fair and equitable determination in each individual case.” In re Marriage of Lundberg, 107 Wis.
That courts have been perplexed and troubled by these cases is evident from the language of their decisions. Some judges have likened marriage to a partnership or to a joint venture.\textsuperscript{10} Similarly, many courts have described an “investment” theory of marriage in which the supporting spouse invests time and money in the student spouse, with the expectation of a financial return when the student spouse becomes a professional practitioner.\textsuperscript{11} A variation on this theme is the agricul-

\textsuperscript{10} A typical statement of the “investment” theory of marriage can be found in Wisner v. Wisner, 129 Ariz. 333, 341, 631 P.2d 115, 123 (Ct. App. 1981) where the court observed that when a divorce follows soon after the completion of an educational degree, “the spouse who has devoted much of the product of several years of labor to an ‘investment’ in future family prosperity is barred from any return on his or her investment, while the other spouse has received a windfall of increased earning capacity.” See also In re Marriage of Graham, 194 Colo. 429, 434, 574 P.2d 75, 78 (1978) (Carrigan, J., dissenting) (“Her earnings not only provided her husband's support but also were 'invested' in his education . . .‘); Inman v. Inman, 578 S.W.2d 266, 268 (Ky. Ct. App. 1979) (“Thus the spouse who has devoted much of the product of several years of labor to an ‘investment' in future family prosperity is
tural analogy, where the laboring wife diligently helps her farmer husband to sow the seeds, but is not around when the crop is harvested and the fruits of their labors are reaped.\textsuperscript{12} The decisions are also filled with the language of equity, justice, and fairness.\textsuperscript{13} In an often quoted dissent, a Colorado Supreme Court justice argued that where a wife had sacrificed to support her husband through school, only to be divorced shortly after he had completed his degree, "equity demands that courts seek extraordinary remedies to prevent extraordinary injustice."\textsuperscript{14} In analyzing the so-called "educational degree/professional license syndrome,"\textsuperscript{15} many judges have concluded that it is patently unfair to allow one spouse to be the

\textsuperscript{12} See, e.g., Moss v. Moss, 80 Mich. App. 693, 694, 264 N.W.2d 97, 98 (1978) ("This case presents the not uncommon situation of a wife who, having worked so that her husband could obtain a professional education, finds herself left by the roadside before the fruits of that education can be harvested."). One commentator, critical of the growing trend to award the wife some interest in the husband's future professional career, noted: "However, when faced with the short term 'educational partnership' marriage, the theory of these courts seems to be that because the 'fruits' of the crop seeded by the wife did not fully develop during coverture, she should be awarded a portion of all later harvests, regardless that she will not be involved in future cultivation of the field." Greene, Dissolution of the "Educational Partnership" Marriage, supra note 7, at 296.

\textsuperscript{13} A typical description of the educational degree case is provided in Hubbard v. Hubbard, 603 P.2d 747, 750 (Okla. 1979): "[T]his case presents broad questions of equity and natural justice which cannot be avoided on . . . narrow grounds." For similar invocations of equity, justice, and fairness, see In re Marriage of Graham, 574 P.2d 75, 78 (Colo. 1978) (Carrigan, J., dissenting); Lockwood v. Lockwood, 354 So. 2d 1267, 1269 (Fla. 1978); In re Marriage of McManama, 399 N.E.2d 371, 375 (Ind. 1980) (Hunter, J., dissenting); Inman v. Inman, 578 S.W.2d 266, 268 (Ky. Ct. App. 1979); Prosser v. Prosser, 156 Neb. 629, 634, 57 N.W.2d 173, 176 (1953); Mahoney v. Mahoney, 175 N.J. Super. 443, 446, 419 A.2d 1149, 1150 (1980), rev'd, 182 N.J. Super. 598, 442 A.2d 1062, 1066-67 (1982); In re Marriage of DeLa Rosa, 309 N.W.2d 755, 758 (Minn. 1981); cf. DeWitt v. DeWitt, 98 Wis. 2d 44, 57, 296 N.W.2d 761, 767 (1980) (marriage not strictly a business partnership where one spouse makes a calculated investment in the commodity of the other's professional training). For an extensive discussion of the theory of "investment in human capital," see generally Krauskopf, Recompense For Financing Spouse's Education, supra note 7, at 381-88.

\textsuperscript{14} In re Marriage of Graham, 194 Colo. at 434, 574 P.2d at 78 (1978) (Carrigan, J., dissenting).

\textsuperscript{15} Lynn v. Lynn, 7 Fam. L. Rptr. 3001 (N.J. Super. Ct. 1980).
beneficiary of a "windfall" at divorce, while other judges have characterized the situation as the classic case of unjust enrichment.

Though most courts agree that there is something disturbing and unfair in these educational degree cases, judges have been unable to find an equitable solution to the problem. Courts have utilized an array of legal remedies — alimony, property settlements, rehabilita-


18. See Greer v. Greer, 32 Colo. App. 196, 199, 510 P.2d 905, 907 (1973) (alimony in gross award to wife for same number of years as she supported husband through medical school); Vaclav v. Vaclav, 96 Mich. App. 584, 588, 293 N.W.2d 613, 617 (1980) ($15,000 per year permanent alimony to wife who supported husband through medical school); Moss v. Moss, 80 Mich. App. 693, 695, 264 N.W.2d 97, 98 (1978) ($15,000 alimony in gross award to wife who worked while husband attended medical school); Wheeler v. Wheeler, 193 Neb. 615, 617, 228 N.W.2d 594, 596 (1975) (increase in alimony award to wife who made substantial contributions to furtherance of husband's education in veterinary medicine); Lira v. Lira, 68 Ohio App. 2d 160, 169, 428 N.E.2d 445, 449 (1980) ($250.00 alimony per month to wife who supported husband through medical school, subject to court review as husband's income increased); Daniels v. Daniels, 20 Ohio Op. 2d 458, 461, 185 N.E.2d 773, 776 (1961) ($24,000 alimony award to wife where both spouses worked and contributed to family maintenance during marriage); Shahan v. Shahan, (Okla. Ct. App. 1975) (unpublished decision summarized at 1 Fam. L. Rptr. 2802) ($28,400 alimony award to wife who helped husband earn three advanced educational degrees); Diment v. Diment, 531 P.2d 1071, 1073-74 (Okla. Ct. App. 1975) ($35,600.00 alimony award to wife for her contribution to husband's college and medical education; permanent alimony award really a "property" award); and DeWitt v. DeWitt, 98 Wis. 2d 44, 62, 296 N.W. 2d 761, 769-70 (1980) (remand for determination of wife's entitlement to alimony where she helped support husband through law school).

19. See In re Marriage of McManama, 399 N.E.2d 371, 373 (Ind. 1980) (wife awarded real estate and personal property; $3600 award for contributions to husband's legal education vacated); Wilcox v. Wilcox, 173 Ind. App. 661, 666, 365 N.E.2d 792, 796 (1977) (wife supported husband through Ph.D. program awarded substantially all marital assets, but had no property interest in husband's future earnings as tenured university professor); Parsons v. Parsons, 68 Wis. 2d 744, 755, 229 N.W.2d 629, 634-35 (1975) (property award to wife who helped put husband through medical school increased; long duration marriage). Compare In re Marriage of Sullivan, 127 Cal. App. 3d 656, 680, modified, 134 Cal. App. 3d 634, 184 Cal. Rptr. 796 (1982) (community possesses interest in increased value of education acquired during marriage), and Reen v. Reen, 8 Fam. L. Rptr. 2193 (N.J. Super. Ct. 1981) (medical degree and license to practice are property and subject to equitable distribution) with In re Marriage of Aufmuth, 89 Cal. App. 3d 446, 461, 152 Cal. Rptr. 668, 677-78 (1979) (husband's legal education not property and not a community asset divisible at divorce); and Todd v. Todd, 272 Cal. App. 2d 786, 791, 78 Cal. Rptr. 131, 135 (1969) (husband's legal education not a property asset of the community, but wife awarded $89,116.35 in assets).
tive alimony, spousal support, and maintenance — as well as a variety of ingenious equitable awards. By invoking principles of fairness, courts have proposed or provided remedies by means of restitution, reimbursement, implied contract, quasi-contract, implied loan, unjust enrichment, constructive trust, and recoupment.


22. See Wisner v. Wisner, 129 Ariz. 333, 340, 631 P.2d 115, 117, 123 (Ct. App. 1981) (mixed property and maintenance award to wife of physician); Mori v. Mori, 124 Ariz. 193, 196, 603 P.2d 85, 88 (1979) (lawyer's wife entitled to rehabilitative maintenance to enable her to pursue higher education after twenty-five years of marriage); Leveck v. Leveck, 614 S.W.2d 710, 714 (Ky. 1981) (lump sum award of $10,000 and periodic maintenance to wife who supported husband through medical school); In re Marriage of Venet, 544 S.W.2d 236, 241, 243 (Mo. Ct. App. 1976) (property award to wife; future earning capacity of attorney husband can be considered in awarding maintenance to wife who helped husband through school); In re Marriage of Lundberg, 107 Wis. 2d 1, 6, 318 N.W.2d 918, 923-24 (1982) (lump sum maintenance of $25,000 to wife who supported husband through medical school); Roberto v. Brown, 107 Wis. 2d 17, 23, 318 N.W.2d 358, 360 (1982) (remand for trial court to consider maintenance award in addition to property settlement); cf. In re Marriage of Graham, 194 Colo. 429, 433, 574 P.2d 75, 78 (1978) (maintenance remedy available but not requested by wife).

In some cases, wives are awarded both property and alimony or maintenance. See Bowen v. Bowen, 347 So. 2d 675, 676, 678 (Fla. Dist. Ct. App. 1977); Prosser v. Prosser, 156 Neb. 629, 634, 57 N.W.2d 173, 175-76 (1953); Magruder v. Magruder, 190 Neb. 573, 577, 209 N.W.2d 585, 587-88 (1973); Wallahan v. Wallahan, 284 N.W.2d 21, 24, 26-27 (S.D. 1979).

Inevitably, in awarding compensation to the supporting spouse, courts have been confronted with the difficult task of quantifying either the worth of the education or the value of the spouse’s support. Some judges have concluded that the value of an educational degree cannot be calculated and therefore that no award based on worth should be made. Other judges have argued that the mere difficulty of the task should not deter the courts from the attempt, since other intangible assets whose values are difficult to calculate have been evaluated and distributed at divorce. Thus, the courts draw an analogy to tort awards in wrongful death or disability cases or to the distribution of goodwill in a spouse’s professional practice. A California court, invoking well

tract between wife who assisted husband to obtain Ph.D. degree, to in turn aid her in obtaining advanced degree).

For commentary on the various equitable remedies, see generally, Brigner, I Put Him Through Law School, supra note 7, at 43-44; Castleberry, Constitutional Limitations on the Division of Property upon Divorce, supra note 7, at 61-62; Erickson, Spousal Support Toward the Realization of Educational Goals, supra note 7, at 968-71; Note, Domestic Relations: Recognition of Wife’s Interest, supra note 7, at 191-93; Comment, Professional Education as a Divisible Asset in Marriage Dissolutions, supra note 7, at 718-19; Recent Cases, Divorce After Professional School, supra note 7, at 335.

24. See, e.g., In re Marriage of Horstmann, 263 N.W.2d 885, 888 (Iowa 1978). The valuation problem has been analyzed by many commentators. See generally Brigner, I Put Him Through Law School, supra note 7, at 43-44; Castleberry, Constitutional Limitations on the Division of Property upon Divorce, supra note 7, at 62; Greene, Dissolution of the “Educational Partnership” Marriage, supra note 7, at 296; Kenderdine, Contributions to Spouse’s Education, supra note 7, at 422-32; Kennedy and Thomas, Putting a Value On: Education and Professional Goodwill, supra note 7, at 5, 39; Schaefer, The Interest of the Community in a Professional Education, supra note 7, at 92-97; Best (Thankless) Performance in a Supporting Role, supra note 7, at 51; Note, In Re Marriage of Graham: Education Acquired During Marriage, supra note 7, at 729; Note, Professional Education as a Divisible Asset in Marriage Dissolutions, supra note 7, at 713-20; Note, Recognition of Wife’s Interest in Professional Degree Earned by Husband During Marriage, supra note 7, at 187; Recent Cases, Divorce After Professional School, supra note 7, at 333-36.


28. E.g., In re Marriage of Sullivan, 127 Cal. App. 3d 656, 672, 682, modified, 134 Cal. App. 3d 634, 184 Cal. Rptr. 796 (1982). A number of cases have placed a value on a spouse’s interest in his medical or legal partnership or its goodwill. See In re Marriage of Lopez, 38
settled community property principles,29 suggested that the methods used in determining the increased profit or enhanced value of a spouse's separate property could be used in educational degree cases.30

What emerges is a portrait of the law in disarray — the law confronting a relatively new social and legal problem and recognizing an inequity. Yet there emerges no consistent basis for the full panoply of remedies courts currently devise for divorcing spouses. A New Jersey judge has aptly summarized the confusion of other jurisdictions:

Although it is commendable to say that “. . . equity demands that the court seek extraordinary remedies to prevent extraordinary injustice”, In re Marriage of Graham, 574 P.2d 75, (Sup. Ct. of Colo., 1978, dissent), we cannot travel a tortuous road to find a remedy in a particular case unless we also apply the same conceptual philosophy to all cases. The attorneys and litigants in this state deserve and are entitled to no


29. The community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington. Puerto Rico is also a community property jurisdiction. See Freed and Foster, Divorce in the Fifty States, supra note 8, at 249. As of July 1, 1982, Virginia adopted a system of "equitable distribution" of property rights that closely resembles community property concepts. See VA. CODE § 20-107.3 (Supp. 1982). In commenting on the operation of this statute in relation to professional degrees, one commentator notes: "It is expected that this question will receive immediate attention in the courts and will be one of the more hotly contested issues under the new law. The ultimate outcome will probably turn on policy considerations concerning what is encompassed within the concept of 'property' as the term is used in the act." The Research Group, Equitable Distribution in Virginia: An Overview of the New Statute, 31 Va. Bar News 47, 50 (August 1982).

less than relative certainty and consistency in equitable distribution . . . . To find that a non-licensed spouse in one case is entitled to such distribution and a non-licensed spouse in another case is not, is to substitute legal mumbo-jumbo for legal analysis and application.31

This article will focus on the problem of the valuation of an educational degree at divorce.32 Educational degree cases present two problems: Is the educational degree a marital property asset subject to division at divorce,33 and if so, how can or should such a degree be valued?34 There has been much argument concerning the property issue, without satisfactory results. In fact, modern courts recognize many intangibles as property, although their characteristics are not materially different from an educational degree. As will be discussed below, an educational degree should also be recognized as property.

An exclusive focus on the property issue, however, ignores the knotty problem of valuation. Many courts have anguished over the first issue, only to dismiss the difficult valuation problem without much

32. A great deal of commentary has been written on these educational degree cases, see supra note 7, and it is not the purpose of this article to synthesize or resummarize these materials. Similarly, it is not the purpose of this article to describe, at length, the weaknesses of the legal and equitable remedies proposed by courts and commentators. This criticism has been well articulated by others. See supra notes 23 and 24. Erickson’s article contains an excellent criticism of the legal and equitable remedies used by the courts. She points out that alimony is still considered in many states to be a support award, rather than a matter of entitlement. In some states alimony is dependent on the wife’s lifestyle and moral behavior; it can be annulled or modified retroactively. Alimony usually ends if the wife remarries. Property awards have two disadvantages: The award can be discharged in bankruptcy, and if there is no marital property, there is nothing to divide. As for possible equitable remedies, Erickson points out that reimbursement is not available unless the wife has an express promise of repayment, and a constructive trust is not feasible unless the wife can prove that her husband was unjustly enriched and fraudulently breached his agreement to her. Theories based on quasi-contract are not likely to succeed in a matrimonial setting, and strict contract arguments are unlikely to succeed because of vague contract terms. See Erickson, Spousal Support, supra note 7, at 959-70; see also Krauskopf, Recompense For Financing Spouse’s Education, supra note 7, at 388-95.
34. See supra note 24.
analysis. The valuation of an educational degree is unlike the valuation of wrongful death awards or professional goodwill. Although some courts have estimated the degree to be worth the present value of the attributable income stream, such a calculation is unrealistic in view of the many variables involved. Ultimately, any attempt to value the worth of an educational degree deteriorates into speculation largely influenced by the widely varying testimony of competing economic experts.

A fair solution to this problem must enable the supporting spouse to share in the degree’s value if it was earned during the marriage with the expectation that it would provide mutual benefits. Yet the remedy must also avoid a harsh penalty that compels the student spouse to relinquish the just rewards of hard work and ambition. In addition, an equitable award must apply consistently to marriages of varying duration, as well as to degrees that vary greatly in the extent to which they

35. See supra note 26.
36. This objection was best stated by Justice Callow, concurring in In re Marriage of Lundberg:
I would specifically reject any compensable formula based upon future earning potential. Attempting to value the percentage of future earnings to which the supporting spouse is entitled is too speculative to be judicially recognizable. There is no guarantee that the spouse with the enhanced education will actually practice in the particular field or earn the average amounts the economists have calculated. Too many intangibles are associated with an enhanced education or degree to enable a court to prospectively value it in any award to a supporting spouse.
107 Wis. 2d 1, 16, 318 N.W.2d 918, 925 (Callow, J., concurring); see also Inman v. Inman, 578 S.W.2d 266, 268 (Ky. Ct. App. 1979); DeWitt v. DeWitt, 98 Wis. 2d 44, 56-57, 296 N.W.2d 761, 767 (1980).
37. Lundberg, 107 Wis. 2d at 16, 318 N.W.2d at 925. The speculation problem in valuing an educational degree or license has been noted by many commentators. See generally Note, Domestic Relations: Recognition of Wife’s Interest, supra note 7, at 187; Schaefer, The Interest of the Community in Professional Education, supra note 7, at 611; Best (Thankless) Performance in a Supporting Role, supra note 7, at 51; Note, In re Marriage of Graham — Education Acquired During Marriage, supra note 7, at 72; Note, Professional Education as a Divisible Asset in Marriage Dissolutions, supra note 7, at 715.
38. The utilization, or suggested utilization, of expert economic testimony to establish either the value of the degree or the spouse’s contributions to the education has occurred in some cases. See In re Marriage of Graham, 194 Colo. 429, 431, 435, 574 P.2d 75, 76, 79 (1978); In re Marriage of Horstmann, 263 N.W.2d 885, 891 (Iowa 1978); Lira v. Lira, 68 Ohio App. 2d 164, 166-67, 428 N.E.2d 445, 447 (1980); Lynn v. Lynn, 7 FAM. L. Rptr. 3001, 3007 (Mass. P. and Fam. Ct. 1980); In re Marriage of Lundberg, 107 Wis. 2d 1, 5, 318 N.W.2d 918, 920 (1982); see also Brigner, I Put Him Through School, supra note 7, at 43-44; Note, Professional Education as a Divisible Asset in Marriage Dissolutions, supra note 7, at 715-16; Recent Case, Divorce After Professional School, supra note 7, at 333-34.
39. Typically, in long duration marriages the couple has accumulated substantial property, which allows the judge to generously distribute property to the wife, rather than to address the issue of the property nature of her husband’s educational degree. See supra Section I and accompanying notes. See generally Weitzman, The Economics of Divorce,
increase future earnings. Finally, a fair settlement must be workable, so the courts can apply it with relative ease and preferably without the need to use expensive economic experts whose fees in the divorce context are unjustified.

The first section of this article will examine some current remedies and will demonstrate that awards in the past have depended more on the facts of the case than on the law. This case-by-case relief creates unacceptable inconsistencies between long and short duration marriages. The next section will discuss the property issue and its confused disposition by various courts. The third section focuses on the valuation problem and reviews attempted valuations by the courts, as well as other proposed methods of valuation. The currently applied valuation methods and proposed formulas are all problematic and should be avoided. This article will conclude with a proposed remedy for recompense to the supporting spouse based upon a labor theory of value. This proposed remedy combines the virtues of fairness and workability.

II. THE PROBLEM OF UNPRINCIPLED AND ARBITRARY REMEDIES

Many educational degree cases involve short duration marriages where one spouse supported the other through professional school. Typically, the young couple has few assets and is in debt at the time of dissolution. The only valuable asset, or so the supporting spouse claims, is the educational degree acquired during marriage. Many judges have concluded that their hands are tied by the statutory schemes governing property and support awards at dissolution. At least one court has found the inconsistencies engendered by this case-by-case approach to be objectionable:

This court cannot accept that line of cases which looks to each individual situation to determine whether an educational degree or license is subject to equitable distribution. The accumulation of material, traditional absolutely distributable assets should not be a factor. Whether the non-degreed or non-licensed spouse is left empty-handed should not be a factor to be considered.


40. See supra note 8.

41. “The modern functions of property division and maintenance are consistent with both the economic theories and the traditional legal principles previously analyzed; therefore, courts implementing the state dissolution statutes should be able to interpret them to further incentives for investment in a spouse's education. The danger of failure lies primarily in refusals by courts to make awards because of inadequate presentation of claims or overly narrow interpretations of the statutory language.” Krauskopf, Recompense for Financing Spouse's Education, supra note 7, 398; see also id. at 395-409. A restrictive reading of the California statutory provision for spousal support appears in In re Marriage of Sullivan, 127 Cal. App. 3d 656, 664-68, modified, 134 Cal. App. 3d 634, 184 Cal. Rptr. 796 (1982). In the first Sullivan decision, the court rejected the wife's contention that she should have been given an award of spousal support based on the value of her husband's medical education,
Thus, in many states, alimony, maintenance, or support are not available remedies because both spouses are capable of self-support. Judges in such jurisdictions must confront the property issue if the supporting spouse is to be fairly compensated.

In these cases judges have first analyzed the property nature of the educational degree and then decided on available relief. An examination of all educational degree cases, however, leads to a different observation. Courts' approaches have depended most of all on the duration of the marriage and the accumulation of assets at the time of divorce. In a lengthy marriage, where the couple has acquired a good deal of property, judges have generally made a generous property settlement to the supporting spouse and have indicated that the settlement includes a recompense for contributions to the student spouse.

even though she was employed and earning over $26,000 at the time of the divorce. The court agreed with the husband's argument that spousal support could not be used as a means of making an "in lieu of" property award. The court noted that its hands were tied by the law: "As opposed to the rather broad equitable discretion that has been vested in the trial courts of most other jurisdictions regarding the matter of awards of maintenance or alimony, the matter of spousal support in California is governed primarily by statute ...." 127 Cal. App. 3d at 664-65. "California courts simply do not have the same latitude in awarding spousal support as do the courts in many other jurisdictions where alimony awards are often used to prevent an unjust result." Id. at 688.

Sullivan referred to Stern v Stern, 66 N.J. 340, 331 A.2d 257 (1975), In re Marriage of Graham, 194 Colo. 429, 574 P.2d 75 (1978), and In re Marriage of Horstmann, 263 N.W.2d 885 (Iowa 1978), as three cases where state judges had more flexibility in interpreting their state statutes. Perhaps the most dramatic example of a court flexibly interpreting its powers is in In re Marriage of DeLa Rosa, 309 N.W.2d 755 (Minn. 1981). There the court ordered restitution to the wife who had expended her earnings for the couple's living expenses and her husband's medical education expenses. The husband argued, on appeal, that the trial court was without the power to make this restitutionary award because there was no specific statute authorizing such relief. The appellate court disagreed and indicated that trial courts in divorce actions have broad powers:

Although dissolution is a statutory action and the authority of the trial court is limited to that provided for by statute, ... [t]he district courts are guided by equitable principles in determining the rights and liabilities of the parties upon a dissolution of the marriage relationship .... The district court therefore has inherent power to grant equitable relief 'as the facts in each particular case and the ends of justice may require.'

309 N.W.2d at 757-58 (citations omitted).

42. One commentator has noted this phenomenon in the context of awards of rehabilitative spousal support in California: "The approach the court will follow appears to depend on the duration of the marriage and the financial condition of the supporting spouse. Presently, no case or statutory law distinguishes, in terms of years, between a short-term, middle-term, or long-term marriage." Comment, Rehabilitative Spousal Support, supra note 7, at 651.

43. For the purposes of discussion here, a long duration marriage is considered to be any marriage that has lasted ten years or longer; a short duration marriage is considered to be one lasting up to ten years. Because of the very long educational periods for some professional fields, particularly in medicine, the student spouse may spend ten years of the marriage in college, medical school, and then specialized training, only to file for divorce at this
fore, in many common law and equitable distribution jurisdictions, awards to the supporting spouse often contain a disguised compensation for contributions to the student spouse, without expressly stating that the award is a distribution of property. In most long duration marriages, then, judges avoid or sidestep the property issue. These decisions are confusing, evasive, unprincipled, and unfair.

In short, judges have looked to the facts first, rather than to the law. If they can avoid confronting the property issue, they will. Beyond the property characterization is the more troubling problem of how to value the degree once it is deemed to be a marital asset. Only a case-by-case analysis determines whether an educational degree is an asset subject to division at dissolution. This is an unacceptable approach: "The . . . accumulation of material, traditional absolutely distributable assets should not be a factor. Whether the non-degreed or non-licensed spouse is left empty-handed should not be a factor to be considered . . . . Either a professional degree and/or license is or is not property."44

These inconsistencies in approach are exemplified by two Kentucky cases, Inman v. Inman45 and Leveck v. Leveck.46 Although the Inmans had been married for seventeen years at the time of their divorce, the facts of their case more closely resemble the typical short point. Because many of these cases more closely resemble the short duration/no assets fact pattern, a ten year cut-off is appropriate.

For long duration marriages where the court has made a generous property settlement to the wife, in part as recompense for her contributions to her husband's professional education and development, see Wisner v. Wisner, 129 Ariz. 333, 335, 631 P.2d 115, 117 (Ct. App. 1981) (wife awarded $80,000 in property after 14 years of marriage); Todd v. Todd, 272 Cal. App. 2d 736, 741, 78 Cal. Rptr. 131, 135 (1969) (wife awarded $111,500.97 in community assets after 17 years of marriage); Wilcox v. Wilcox, 173 Ind. App. 661, 666, 365 N.E.2d 792, 794 (1977) (wife awarded $20,000 equity in family residence and $900 a month permanent alimony after 14 years of marriage); Vaclav v. Vaclav, 96 Mich. App. 593, 293 N.W.2d 613, 617 (1980) (wife entitled to 60% of proceeds of sale of residence and $15,000 a year in permanent alimony after 15 years of marriage); In re Marriage of Vanet, 544 S.W.2d 236, 241 (Mo. 1976) (no abuse of discretion for trial court to award wife 74% of marital property after 21 years of marriage); Diment v. Diment, 531 P.2d 1071, 1073 (Okl. Ct. App. 1975) ($39,600 alimony award to wife based on husband's increased earning capacity through medical education acquired during 18 year marriage); Wallahan v. Wallahan, 284 N.W.2d 21 (S.D. 1979) (award of $195,000 in property assets and $700 a month alimony to wife who put husband through college and law school during 22 year marriage); DeWitt v. DeWitt, 107 Wis. 2d 50, 296 N.W.2d 761, 764, 765 (1980) (net property award to wife of $37,151 after 10 years of marriage); Parsons v. Parsons, 88 Wis. 2d 744, 755, 229 N.W.2d 629, 634-36 (1975) (trial court abused discretion in awarding wife only 40% of marital assets after 26 year marriage; increased on appeal to 48% plus $800 a month alimony).

duration marriage. Mrs. Inman worked throughout the marriage, but both spouses contributed financially to Mr. Inman's dental school education. At the time of their divorce proceedings the couple's mortgage had been foreclosed because of failure to make payments. The Inmans were heavily in debt, and their net worth was zero. The Kentucky Court of Appeals noted that although the couple had a lifestyle that reflected prosperity, the Inmans were in fact on the verge of bankruptcy. The trial court found that the husband's license to practice dentistry was marital property and allocated most of the valuable assets, including the home, to Mrs. Inman on the theory that her husband's future earning capacity was a marital asset.

On appeal the Kentucky Court of Appeals stated that although it had reservations about characterizing a professional license as an asset, there were some situations where treating the professional license as property would be the only way of achieving an equitable result. Such an instance could occur where one spouse had supported the other through school and there was little or no marital property accumulated at the time of divorce. In this event the supporting spouse, who had devoted several years "to an 'investment' in future family prosperity," would not realize any return on that investment, while the other spouse would receive a windfall in the form of an increased earning capacity. The court further noted that the United States Supreme Court had recently found property interests in personal and nontransferable tenured federal employment and welfare benefits. Therefore, those courts that refused to be "hamstrung by narrow definitions of 'property'" were in distinguished company. On remand, if the court were to find that Mrs. Inman had a property interest in her husband's professional degree, this interest should be measured by her monetary

47. Inman, 578 S.W.2d at 267. The Inmans owned an expensive home and several vehicles. During 1975-77, Dr. Inman earned approximately $90,000 from his dental practice. In 1977 his net income fell to less than $18,000. (There was expert testimony to the effect that a dentist employing reasonable business practices should have been able to net 45-50% of his gross income.) As Dr. Inman failed to pay mortgage payments, the bank foreclosed on the Inman residence.

48. Id. at 267. Although the Meade circuit court held that the license to practice dentistry was marital property, it did not attempt to value it. "Apparently proceeding under the theory that Dr. Inman's future earning capacity is marital property, the court allocated to Mrs. Inman most of the valuable marital assets, including the marital domicile."

49. Id. The circuit court had provided that, in the event of a foreclosure on the home, Mr. Inman was to pay Mrs. Inman $60,000 over the next ten years. Id.

50. Id. at 268.

51. Id.

52. Id. at 269 (citing Arnett v. Kennedy, 416 U.S. 134 (1974); Goldberg v. Kelly, 397 U.S. 254 (1974)).
investment in the degree, "the amount spent for direct support and school expenses during the period of education, plus reasonable interest and adjustments for inflation."  

Two years after Inman, the Kentucky Court of Appeals decided another educational degree case, Leveck v. Leveck. In this case the wife, a registered nurse, supported the couple while her husband attended medical school; she paid their living expenses, her husband's medical school tuition, and the majority of costs for books and laboratory fees. Once her husband had completed his third year of medical school, she stopped working, and the family lived off the husband's income for the next seven and one-half years. After eleven years of marriage, the divorce court awarded Mrs. Leveck a lump sum of $10,000 and periodic maintenance; the court indicated that the lump sum included compensation for her contributions to her husband's medical education.  

On appeal, Mrs. Leveck argued that the trial court erred when it did not specifically find her husband's medical license to be marital property, a principle established in Inman. The appellate court rejected this contention, indicating that this was an attempt to broaden the holding of Inman. The appellate court pointed out that classifying the license as marital property was the only way the trial court could achieve a fair result in Inman because there was no other marital property and Mrs. Inman was not eligible for maintenance. In the Levecks' case, however, an equitable result was possible without characterizing the license as marital property, because the wife was entitled to maintenance.  

Viewed together, Inman and Leveck illustrate that the Kentucky courts looked to the facts first and then determined whether it was necessary to characterize the degree as property. In many states, if there are enough marital assets or if maintenance is possible, the courts will

53. Inman, 578 S.W.2d at 269-70.
55. Id. at 711. Mrs. Leveck worked as a psychiatric nurse while her husband attended Johns Hopkins University in Baltimore. She continued to work as a nurse for three years while her husband went to medical school at the University of Colorado. During his final year of medical school she did not work but he received pay from the Army Senior Medical Program.
56. Id. at 712.
57. Id. ("The trial court stated that the lump sum award included compensation for her investment in Terrence's medical education. In this case, an equitable result was able to be reached without treatment of the license as marital property, because Judith was entitled to maintenance.").
58. Id.
make a settlement and declare that the award includes recompense for the supporting spouse's contributions to the education.\textsuperscript{59} Such analysis, however, begs the real question of whether the degree is property and what it is worth to the supporting spouse and the professional practitioner. If such recompense is supposed to represent a “return on investment” to the supporting spouse, it is difficult to know what is being valued, and at what rate of return. This obfuscated recompense is unacceptable, particularly where another court in the same state has declared the degree to be marital property and ordered a calculation of the investment. Moreover, it is possible for a supporting spouse in the no-asset situation to receive a more advantageous settlement than a spouse in a long duration marriage where there is accumulated property.

This pattern of legal reasoning is especially evident in longer duration marriages. For example, in \textit{Wisner v. Wisner}\textsuperscript{60} the Arizona Court of Appeals upheld an award of limited maintenance and a property allocation of $80,000 to a physician's wife after fourteen years of marriage. The court rejected the wife's “novel argument” that her husband's medical degree and license to practice were community property because the education had been acquired during the marriage.\textsuperscript{61} After reviewing a variety of educational degree cases, the court adopted the Colorado Supreme Court's conclusion in \textit{In re Marriage of Graham} that an educational degree is not marital property.\textsuperscript{62} The court noted that an important factor to consider in the “overall picture” was the

\textsuperscript{59} For a discussion of the \textit{Inman} and \textit{Leveck} cases, see Mazanec, \textit{The Inman Case}, supra note 7, at 18-19. See also Note, \textit{Intangible Educational and Professional Attainments As Divisible Marital Property}, supra note 7 (critical of \textit{Inman} holding); Kenderdine, \textit{Contributions To Spouse's Education}, supra note 7, at 426 (proposed modification of \textit{Inman} formula for recompense).

\textsuperscript{60} 129 Ariz. 333, 631 P.2d 115 (Ct. App. 1981). Mrs. Wisner worked as a nurse during her husband's final year in medical school, but she did not work outside the home during their marriage. She claimed that under Arizona community property principles, insofar as her husband's medical license and board certification in surgery were obtained during their marriage, they were community property and that she was entitled to one-half of their value. At the time of divorce Mrs. Wisner was 39 and was thinking about further schooling. \textit{Id.} at 334-35, 339, 631 P.2d at 116-17, 121.

\textsuperscript{61} \textit{Id.} at 340, 631 P.2d at 122.

extent to which the supporting spouse had already benefited during the marriage from her husband’s increased earning capacity:

However, the acquisition of a considerable estate obviously solves this problem. Such is the situation here. [The] [w]ife shared in the fruits of [her] husband’s education for many years during their marriage, and ultimately realized a value therefrom by a substantial award to her of the community assets, plus spousal maintenance . . . .63

Two California decisions similarly avoided the property issue. In Todd v. Todd,64 a California court of appeal held that a spouse’s education could not be classified as a community asset, but noted that the accumulated property acquired during the seventeen-year marriage was the result of the husband’s legal education and practice. Therefore, the wife realized the value of her contribution to her husband’s career in an award to her of $111,500.97.65 This reasoning was followed in Aufmuth v. Aufmuth,66 where a California court of appeal again refused to characterize a husband’s legal education as a community asset. “[T]o the extent [that] community assets were the product of [the] husband’s legal education, [the] wife has realized their value in the award of these assets to her.”67

Similarly, the Michigan Court of Appeals in Vaclav v. Vaclav vacated a three-year, $15,000 annual award to a physician’s wife, di-

63. Wisner, 129 Ariz. at 341, 631 P.2d at 123.

64. Todd v. Todd, 272 Cal. App. 2d 786, 78 Cal. Rptr. 131 (1969). In Todd the wife worked during the period her husband attended law school and began his practice. While he was attending law school, the husband received benefits from the Cal-Vet and G.I. programs. At the time of divorce the couple had accumulated over $200,000 in assets and the husband’s practice was netting approximately $23,412 per year. The wife argued that her husband’s education, which was partially funded by community earnings, was a community asset. Id at 790, 78 Cal. Rptr. at 134.

65. Id at 791, 78 Cal. Rptr. at 135. The husband was awarded $89,116.35 in assets.

66. In re Marriage of Aufmuth, 89 Cal. App. 3d 446, 152 Cal. Rptr. 668 (1979) disapproved on other grounds in In re Marriage of Lucas, 27 Cal. 3d 808, 815, 614 P.2d 285, 166 Cal. Rptr. 853 (1980). In Aufmuth, the wife worked as a teacher while her husband attended law school; he worked part-time as a clerk. A loan paid for his third year of law school because his wife stopped working after the birth of a child. At the time of trial the Aufmuths owned a house with a fair market value of $125,000. Mrs. Aufmuth was not employed after the birth of their child. Id at 452-53, 152 Cal. Rptr. at 672.

67. Id at 461, 152 Cal. Rptr. at 677. The court also thought that characterizing a degree as property would violate another aspect of California community property principles: “A determination that such an ‘asset’ is community property would require a division of post dissolution earnings to the extent that they are attributable to the law degree, even though such earnings are by definition the separate property of the acquiring spouse.” Id at 461, 152 Cal. Rptr. at 678.
vorcee, who had been supported through medical school by his wife, was earning a net taxable income of $111,000 a year. The appellate court held that this award was an abuse of discretion and ordered $15,000 annual permanent alimony. Relying on another Michigan decision, *Moss v. Moss*, the appellate court stated that a medical degree acquired during marriage was an asset for property settlement purposes. The wife, the court reasoned, was "justifiably entitled to the greater share of the marital estate because of the disparate earning capacity of the parties . . . ." 

The Oklahoma Court of Appeals also announced that a supporting spouse is entitled to a greater share of the marital estate in *Diment v. Diment*. In this case the trial court awarded the wife $39,600 in permanent alimony after eighteen years of marriage. The wife had worked to put the husband through both college and medical school. In upholding the trial court's award, the appellate court stressed that the award was not based upon an interest in the doctor's medical practice:

"Although the award of money is termed "permanent alimony", it is in substance a property award for the contributions which plaintiff made to defendant's increase in earning capacity. Without this award, plaintiff would be left with nothing to show for her contributions, financial and otherwise, to approximately eighteen years of marriage, which enabled the defendant to acquire a valuable college and medical school education that has greatly enhanced his earning capacity."

The confused analysis in educational degree cases is demonstrated in recent cases involving short duration/no-asset marriages where the courts must inevitably confront the property issue. For example, in *In re Marriage of Sullivan*, the wife worked during the ten-year marriage received after fifteen years of marriage. At the time of divorce the husband, who had been supported through medical school by his wife, was earning a net taxable income of $111,000 a year. The appellate court held that this award was an abuse of discretion and ordered $15,000 annual permanent alimony. Relying on another Michigan decision, *Moss v. Moss*, the appellate court stated that a medical degree acquired during marriage was an asset for property settlement purposes. The wife, the court reasoned, was "justifiably entitled to the greater share of the marital estate because of the disparate earning capacity of the parties . . . ."

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The confused analysis in educational degree cases is demonstrated in recent cases involving short duration/no-asset marriages where the courts must inevitably confront the property issue. For example, in *In re Marriage of Sullivan*, the wife worked during the ten-year marriage

69. *Id.* at 519-92, 293 N.W.2d at 616-17.
72. *Diment v. Diment*, 531 P.2d 1071 (Okla. Ct. App. 1975). In *Diment* the wife worked to support her husband through both college and medical school. There was no tangible marital property to divide at the time of divorce because the husband had experienced various emotional problems and had declared bankruptcy. *Id.* at 1073.
73. *Id.*
74. *Id.*
75. *In re Marriage of Sullivan*, 127 Cal. App. 3d 656 (1982). This was the first *Sullivan* decision. The *Sullivan* case was reheard by the same panel of judges, who modified their
while her husband completed college, medical school, and specialized training in urology. At separation their assets consisted of some used furniture and two automobiles.\footnote{6} With no assets to compensate the wife, and unable to award her support or maintenance, the court felt compelled to find some kind of interest in the educational degree:

We therefore hold, absent an agreement to the contrary, where the community has not received any real economic benefit from the acquisition by one of the parties of an education, degree and/or professional license during the marriage, that \textit{as a minimum} the community should be reimbursed for the amount of any community funds that were expended to acquire the education, degree and license. Not to provide for at least this minimal remedy in this type of situation would have the effect of countenancing a situation where spouses in the position of Mark would be allowed to walk away from a marriage with a "windfall" that might have great value.\footnote{7}

Similarly, in \textit{Mahoney v. Mahoney},\footnote{78} where the wife supported the household while her husband earned a master's degree in business administration, there were no substantial assets acquired during the mar-

\footnote{6} Id. at 661. According to a stipulated agreement, the wife received $500, some of the furniture, and her automobile for which she was obligated to make payments. 127 Cal. App. 3d at 661, n.3.

\footnote{7} Id. at 679-80. This holding was modified on rehearing before the same panel, only eight months later. The court recognized that "the starting premise [that degree was property] for the holding previously reached [was] wrong." \textit{See In re Marriage of Sullivan}, 134 Cal. App. 3d 634, 184 Cal. Rptr. 796 (1982).

riage. The wife testified that while her husband pursued his master's degree, she had contributed more than $28,700 for rent, food, entertainment, utilities, and debt service. Viewing these facts, the New Jersey divorce court held that the husband's education and degree constituted a property right subject to equitable offset upon the dissolution of the marriage.\textsuperscript{79}

In \textit{In re Marriage of Lundberg},\textsuperscript{80} the Supreme Court of Wisconsin concluded that the husband's medical degree was the most significant asset of the marriage, and therefore an award of $25,000 maintenance to the wife was justified.\textsuperscript{81} Again, the wife had supported the couple while the husband attended medical school. The court found that she contributed over $30,000 more to the marriage than her husband and that they had little property to divide. In construing the Wisconsin Divorce Reform Act,\textsuperscript{82} the court noted that where spouses had accumulated substantial property, the supporting spouse could be compensated by increasing his or her share of the assets, but where there were few assets to divide, it was only fair that the wife be compensated for "her costs and foregone opportunities resulting from the support of [her husband] while he was in school."\textsuperscript{83}

These cases demonstrate how difficult it is to predict whether any particular divorce court will determine that an educational degree is property subject to distribution. A great deal depends on the length of the marriage and the accumulation of assets at the time of divorce.

\textsuperscript{79} \textit{Id.} at 447, 419 A.2d at 1150-51. The court indicated: "There can be no doubt that real dollars were contributed by Mrs. Mahoney as an investment in her future marriage which is now dissolved . . . . The traditional notions of the male being the wage earner of the marriage are being rejected by [the] many and conflicting roles which couples assume in a marriage today and certainly were discarded herein." \textit{Id.} at 446-47, 419 A.2d at 1150.

\textsuperscript{80} \textit{In re} Marriage of Lundberg, 107 Wis. 2d 1, 318 N.W.2d 918 (1982).

\textsuperscript{81} \textit{Id.} at 14, 318 N.W.2d at 924 ("It is only fair that Judy be compensated for her costs and foregone opportunities resulting from her support of [her husband] while he was in school").

\textsuperscript{82} Divorce Reform Act, WIs. STAT. § 105 (1977). The Wisconsin Legislature subsequently amended the maintenance statute to include a provision that allowed courts to alter property distribution by taking into account "the contribution by one party to the education, training or increased earning power of the other." \textit{See} Lundberg, 107 Wis. 2d at 13 n.3, 318 N.W.2d at 924 n.3. Iowa, Pennsylvania, and Vermont also have this statutory language in their alimony, maintenance and property settlement provisions. \textit{See} IOWA CODE § 598.21(e) (1981); PA. STAT. ANN. tit. 23 § 401(6) (1983); VT. ST. ANN. tit. 14 § 751(5) (1974). In addition, Georgia and Florida have incorporated the following factor in alimony consideration: "The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, \textit{education and career building of the other party}." (emphasis added). \textit{See} GA. CODE § 30-209(6) (1982); FLA. STAT. CIVIL PRACTICE AND PROCEDURE § 61.08 (1983).

\textsuperscript{83} \textit{In re} Marriage of Lundberg, 107 Wis. 2d at 14, 318 N.W.2d at 924.
While the legal underpinnings of this case-by-case determination are founded in the divorce court’s equitable powers, more often than not the result appears to represent a desire by the courts to avoid the property and valuation issues. These conflicting and inconsistent approaches in different jurisdictions reveal the arbitrariness of awards in educational degree cases. At its worst, the unpredictable pattern of relief within the same jurisdiction is simply unprincipled. To devise a fair remedy in all cases, courts must begin with a reasoned basis for their awards. This basis should be the recognition that an educational degree is a property asset.

III. The Property Debate: Is an Educational Degree a Marital Property Asset?

Under contemporary, expanded notions of property, an educational degree should be characterized as property. The conclusion of the Colorado Supreme Court in *In re Marriage of Graham,* that an education degree is not property, is therefore incorrect. Courts should abandon the *Graham* court’s rationale and recognize the property nature of a degree as the basis for a fair award to the supporting spouse. Unfortunately, the property debate has only diverted attention from the real issue in educational degree cases: the valuation problem. The property debate has been as confused as the remedies that have been formulated by the courts.

The property issue was first raised in *Todd v. Todd,* where the California Court of Appeal, in one short sentence, suggested that “[a]t best, education is an intangible property right, the value of which, because of its character, cannot have a monetary value placed upon it for division between spouses.” The court suggested that even though the

85. 272 Cal. App. 2d 786, 78 Cal. Rptr. 131 (1969). In *Todd,* the husband and wife were married for 17 years at the time of their separation. The wife worked during the entire time her husband attended law school, and her earnings were community property that supported the couple during this period, although her husband did receive veteran’s benefits. At the time of divorce the couple had more than $200,000 in assets and the husband’s practice was netting approximately $23,500 a year. The wife argued that her husband’s education, which was partially paid for with community funds, was a community asset that had substantial worth. The wife introduced expert testimony on the value of the education, which included the age of her husband, his health, the expected duration of his career, and his average annual earnings from his law practice. The expert testified that the husband could be expected to earn $519,746 until he retired at age 65, and placed the value of the education at $308,000. The court found that the value of “this claimed asset was nothing — $0.” 272 Cal. App. 2d at 789-90, 78 Cal. Rptr. at 134.
86. *Id.* at 791, 78 Cal. Rptr. at 135.
husband’s law school education was acquired with community money, it was extremely doubtful that the education itself could be deemed "community property." Thus, without definitely concluding that an educational degree was not property (and at the same time intimating that such an education does in fact constitute an intangible property right), the Todd decision came to stand for the proposition that not only was a law degree not community property, but it was also not marital property to be divided at dissolution.

The Colorado Supreme Court adopted this interpretation of Todd in In re Marriage of Graham. However, the Graham court expressly stated that an educational degree is not property. The court’s explanation is the most often cited rationale for denying property status to an educational degree or professional license:

An educational degree, such as an M.B.A., is simply not encompassed even by the broad views of the concept of

87. Under California community property principles, all assets acquired during the marriage, including the earnings of each spouse, are community property. California Civil Code § 5110 defines community property as that “acquired during the marriage,” in contrast to separate property which is acquired by gift, bequest, or devise. See Cal. Civ. Code §§ 5110, 5107, 5108 (West 1970). See also REPPY, COMMUNITY PROPERTY IN CALIFORNIA at 62-63, 67 (1981).
89. See In re Marriage of Graham, 194 Colo. at 432, 574 P.2d at 77. The holding in Todd was followed by the California Court of Appeal in In re Marriage of Aufmuth, 89 Cal. App. 3d 446, 461, 152 Cal. Rptr. 668, 677 (1979), where the court again rejected a wife’s claim that her husband’s legal education was a community asset because community funds, as well as time and effort, had been utilized to obtain the professional degree. While affirming Todd, the court further noted that a determination that the education was a community asset “would require a division of post dissolution earnings to the extent that they are attributable to the law degree, even though such earnings are by definition the separate property of the acquiring spouse.” 89 Cal. App. 3d at 461, 152 Cal. Rptr. at 678. See also In re Marriage of Sullivan, 134 Cal. App. 3d at 634, 184 Cal. Rptr. 796, modifying 127 Cal. App. 3d 656 (1982).
90. In re Marriage of Graham, 194 Colo. 429, 574 P.2d 75 (1978). In Graham the trial court determined that the wife had contributed seventy percent of the financial support while her husband attended college to receive an engineering degree and then an M.B.A. At the time of their divorce after six years of marriage, they had accumulated no assets and the husband was employed as an executive assistant in a large corporation. The trial court found that the education was jointly owned property and valued the M.B.A. at $82,836. The wife was awarded $33,134 (payable in $100 monthly installments). The Court of Appeals reversed, a decision affirmed on appeal to the Supreme Court. Id. at 430, 574 P.2d at 76.
"property." It does not have an exchange value . . . on an open market. It is personal to the holder. It terminates on the death of the holder and is not inheritable. It cannot be assigned, sold, transferred, conveyed, or pledged. An advanced degree is a cumulative product of many years of previous education, combined with diligence and hard work. It may not be acquired by the mere expenditure of money. It is simply an intellectual achievement that may potentially assist in the future acquisition of property. In our view, it has none of the attributes of property in the usual sense of that term.92

Seven states—Arizona, Iowa, New Jersey, Ohio, Oklahoma, Texas, and Wisconsin93—have specifically adopted this language from Graham in arriving at the conclusion that an educational degree or license to practice a profession is not a marital property asset that is divisible at divorce. In addition, three other states—Indiana, Kentucky, and New Mexico94—have arrived at the same conclusion without reliance on Graham.

Courts desiring to characterize an educational degree or license as property must "entangle [themselves] in the dialectical subtleties inherent in the concept [of] 'property.'"95 One obstacle to such characterization has been the Graham court's traditional view of property, drawn from Black's Law Dictionary:96 "everything that has an exchange value or which goes to make up wealth or estate."97 But as one judge has pointed out, the Colorado Supreme Court did not read down far enough among the property definitions in Black's, or if it did, it selected those definitions most suited to its conservative approach to the subject, instead of the "broad views" it claimed to follow.98 Black's Law Dictionary contains many property definitions, including "'every species of valuable right and interest'" and "'everything which is subject to ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal.'"99

92. In re Marriage of Graham, 194 Colo. at 432, 574 P.2d at 77.
93. See supra note 91.
95. In re Marriage of Cropp, 5 FAM. L. Rptr. 2957, 2958 (D. Minn. 1979).
97. Id.
98. Lynn v. Lynn, 7 FAM. L. Rptr. at 3006.
99. Id. at 3006 quoting Black's Law Dictionary (emphasis added by Lynn court). The
usage of definitional language from Black's Law Dictionary is disingenuous and unprincipled. Even worse, the Graham conclusion concerning the nature of property has caused many courts to avoid the issue or to obscure it altogether.100

In analyzing the property issue, courts have adopted a bewildering array of doctrinal approaches. A majority have followed the Graham language and declared that an educational degree is not a property asset. Some courts, however, have disagreed with the Graham conclusion but have been reluctant to state forthrightly that a degree is property. These courts carefully couch the language of their decisions to suggest that the supporting spouse has some kind of "property interest" or "property right" that may constitute an asset that may be divisible, or

court in Lynn noted that other less restrictive definitions in Black's Law Dictionary include "that which is peculiar or proper to any person," "that which belongs exclusively to one;" "in the strict legal sense, an aggregate of rights which are guaranteed and protected by the government;" and "the highest right a man can have to anything." The Lynn court's point is that the Graham court's citation to Black's Law Dictionary is disingenuous. 100. Graham not only rejected the idea that an educational degree was property, but it construed Stern v. Stern, a New Jersey case, as stating that a spouse's earning capacity, even when enhanced by a educational degree financed by the other spouse, "should not be recognized as a separate, particular item of property." In re Marriage of Graham, 194 Colo. at 432, 433, 574 P.2d at 77, citing Stern v. Stern, 66 N.J. 339, 331 A.2d 257 (1975). In Stern the trial court determined that the attorney-husband's earning capacity was a separate item of property. The Lynn court, however, said that the Graham decision misconstrued Stern. Lynn 7 FAM. L. RPTR. at 3003. Stern has been repeatedly cited as indicating that New Jersey does not consider a professional education to be a marital asset. Yet Stern merely refers to the attorney's earning capacity, rather than the property character of the degree. In other words, the value of the degree can be ascertained and "is distinct from the ability of the individual to take that asset and develop his own earning capacity." Lynn v. Lynn, 7 FAM. L. RPTR. at 3002. The court in Lynn concluded that

[the value of the asset should be standardized wherever applied, whereas the earning capacity of the person holding the degree or license will vary upon individual factors and circumstances . . . . Since the concept of earning capacity is not before this court in this respect, we can find no easy refuge in Stern.]

Id. A number of courts have failed to make the distinction between valuing increased earning capacity as the result of an education or license to practice, and valuing the education itself as an asset. Taking this approach, the courts have followed the traditional method of viewing the husband's increased earning potential as one of many factors to consider in awarding alimony or maintenance. A typical statement of this blurring of the distinction between the degree or education and the future earning capacity is found In re Marriage of Horstmann, 263 N.W.2d 885 (Iowa 1978): "However, it is the potential for increase in future earning capacity made possible by the law degree and certificate of admission conferred upon the husband with the aid of his wife's efforts which constitutes the asset for distribution by the court." Id. at 891; see also Lira v. Lira, 68 Ohio App. 2d 164, 167-68, 428 N.E.2d 445, 448 (1980); Diment v. Diment, 531 P.2d 1071, 1073 (Okla. Ct. App. 1975) ("It appears clear to this court that the award of money was based upon the doctor's increase in earning capacity which he acquired during the marriage."); In re Marriage of Vanet, 544 S.W.2d 236, 242 (Mo. Ct. App. 1976). See generally Note, A Property Theory of Future Earning Potential In Dissolution Proceedings, 56 WASH. L. REV. 277 (1981).
at least reimbursable, at divorce. For example, a Minnesota court concluded that an award to a wife who had supported her husband through medical school “is also clearly justifiable upon the theory that Mrs. Cropp has a limited property interest in Dr. Cropp’s future earnings.” In addition, a number of courts have provided relief to the supporting spouse without characterizing the degree as property or by ignoring the property issue altogether. Thus, where a court based its award to a wife on a theory of restitution, the judge concluded that “it is not necessary for the Court to entangle itself in the dialectical subtleties inherent in the concept ‘property.’” Only a few courts have stated directly that an educational degree is property. In Lynn v. Lynn the court held that “the medical school degree and license to practice medicine, obtained by the plaintiff during marriage, are each property . . . and are includable as assets subject to equitable distribution.”

The current state of analysis is disturbing; courts in different states (and some courts in the same jurisdiction) arrive at contrary conclusions or evade the issue completely “subject to the individual whim and caprice of trial judges.” More often than not, a judge will make an award that can only be based on the theory that the degree is property, without saying that it is. Such evasive decision making is unprincipled and unfair. As one exasperated judge put it, “[e]ither a professional degree and/or . . . license is — or is not — property.”

Modern, expanded notions of property compel the conclusion that an educational degree should be included as a marital asset:


102. In re Marriage of Cropp, 5 Fam. L. Rptr. 2957, 2958 (D. Minn. 1979).


104. See, e.g., Lowrey v. Lowrey, 633 S.W.2d 157 (Mo. Ct. App. 1982).

105. In re Marriage of Cropp, 5 Fam. L. Rptr. at 2958.

106. See Lynn v. Lynn, 7 Fam. L. Rptr. 3001.

107. Id. at 3007.

108. Id. at 3006.

109. Id. (emphasis added).
It is clear that to include an educational degree and/or a professional license in the definition of "property" would be to take a further step into a hitherto unchartered area. But the dynamics of the law... not only permit but encourage such extraordinary expeditions so as to prevent the extraordinary injustices which a traditional adherence to past definitions would require. Traditional concepts of property must be abandoned to embrace today's developmental concepts of equity, of fairness, and of equitable distribution.¹¹⁰

Most courts have moved away from the limited idea that property consists only of land, chattels, and choses in action, and have recognized that the new concept of property embraces a wide array of rights and entitlements.¹¹¹ In California, the concept of community property has been greatly expanded to include many property rights and intangible assets: unvested pension benefits, contingent retirement benefits, ERISA retirement benefits, G.I. educational benefits, term insurance

¹¹⁰ *Id.* In a rhetorical flourish, the court concluded with: “We should not be hesitant to light the torch and probe into the darkest recesses of this syndrome in order to equitable illuminate the injustices which strict adherence to traditionalist concepts would otherwise require.” *Id.*


The United States Supreme Court gave impetus to this expanded concept of property in Arnett v. Kennedy, 416 U.S. 134, (1974), where Justice Marshall observed: “The decisions of this Court have given constitutional recognition to the fact that in our complex modern society, wealth and property take many forms. We have said that property interests requiring constitutional protection 'extend well beyond actual ownership of real estate, chattels, or money.'” *Id.* at 207-08 (footnote omitted) (Marshall, J., dissenting). “[T]oday more and more of our wealth takes the form of rights or status rather than of tangible goods... A profession or job is frequently far more valuable than a house or bank account...” *Id.* at 207-08 n.2 (quoting Reich, The New Property, 73 YALE L. J. 733, 738 (1964)); see *In re Marriage of McManama*, 399 N.E.2d 371, 374 (Ind. 1980) (Hunter, J., dissenting). Justice Hunter pointed out that the United States Supreme Court has found property interests in tenured federal employment, welfare benefits, and possession of a driver's license.

In addition, Charles Reich has defined this concept of "new property" as follows: [I]t must be recognized that we are becoming a society based upon relationship and status — status deriving primarily from source of livelihood. Status is so closely linked to personality that destruction of one may well destroy the other. Status must therefore be surrounded with the kind of safeguards once reserved for personality.

Reich, The New Property, at 785.

The new draft of the Uniform Marital Property Act also has adopted an expansive view of property. The Act states that “property means a quantifiable interest, present or future, vested or contingent, in real or personal property including income, earnings, and employee benefit plans.” *Uniform Marital Property Act*, § 1(20) (Draft, January 1982).
benefits, and the goodwill in a professional practice. Similarly, New Jersey has moved towards a most liberal, nonrigid view in defining "property", which includes various pension benefits, personal injury benefits, and workers' compensation benefits. Citing to Kruger v. Kruger, a New Jersey judge observed that "we seem to have gone beyond strict definition, and now look to "resources" as opposed to a particular asset or tangible piece of property, whether real or personal." These expansive concepts of property suggest that an educational degree should also be characterized as a marital asset. In addition, it is difficult to maintain that an educational degree or license to practice is not a property asset, while at the same time holding that the right to practice one's profession is a valuable property right.


115. 73 N.J. 464, 375 A.2d 659 (1977). Kruger, a pension case, indicated that the financial status of the husband and wife "may be ascertained only by marshalling the economic resources of the parties," id. at 468, 375 A.2d at 662, and that "[t]he right to receive monies in the future is unquestionably such an economic resource." Id.


117. In re Marriage of Sullivan, 127 Cal. App. 3d 656, 668-69, modified, 134 Cal. App. 3d 634, 184 Cal. Rptr. 796 (1982) (citing Hewitt v. Board of Medical Examiners, 148 Cal. 590, 592, 84 P. 39, 40 (1906) (right to practice medicine valuable property right); Franklin v. Franklin, 67 Cal. App. 2d 717, 155 P.2d 637 (1945) (right to practice medicine is property right); In re Riccardi, 182 Cal. 675, 679, 189 P. 694, 695 (1920) (right to practice law valuable property right); Cavassa v. Off, 206 Cal. 307, 314, 274 P. 523, 526 (1929) (pharmacist's license; "The right of a person to practice the profession for which he has prepared himself is property of the very highest character."). Many other states have similarly recognized that the right to practice a profession is a property right. See Wood v. Security Mut. Life Ins. Co., 112 Neb. 68, 201 N.W. 736, 737 (1924); Unger v. Landlord's Mgmt. Corp., 114 N.J. Eq. 68, 69, 168 A. 229, 230 (1933); Muckleroy v. Muckleroy, 84 N.M. 14, 15, 498 P.2d 1357,
A further problem with rejecting a property characterization of an educational degree is that such nonrecognition is arbitrary in those jurisdictions that accord property status to the goodwill of a professional practice. This is especially true where the goodwill of a practice has been built by the efforts of two spouses working together; it is inconsistent to say that the goodwill is an asset, while denying such status to an educational degree that may also have been acquired through the joint efforts of both spouses. As one commentator has noted, "[t]he intangible characteristics and difficulty in evaluation are apparently not considered obstacles in the case of goodwill. The differing result is questionable and the logic, if any, is illusive."120

Certainly, the recognition of goodwill as an asset is unacceptable under the *Graham* court's definition of property. Goodwill is personal to the holder and is not inheritable — it cannot be assigned, transferred, conveyed, or pledged. The *Graham* court pointed out that an educational degree "is a cumulative product of many years of previous education, combined with diligence and hard work."122 The same is true for the goodwill component of a practice. The *Graham* court argued that an educational degree cannot be acquired by the mere expenditure of money; the same is true for goodwill. The *Graham* court concluded that a degree "is simply an intellectual achievement that may potentially assist in the future acquisition of property."124 One critic has argued that goodwill "is only an entry in an accounting statement arrived at by hindsight to accommodate any amount paid or received on transfer of a going business beyond the value attributable

1358 (1972); Roberts v. State Board of Embalmers and Funeral Directors, 78 N.M. 536, 538, 434 P.2d 61, 63 (1967); In The Matter of Norman Shigon and Sheldon Portner, 462 Pa. 1, 10, 329 A.2d 235, 239 (1974); Taylor v. Oklahoma, 291 P.2d 1033, 1041 (Okla. 1955); Peatross v. Board of Commissioners of Salt Lake County, 555 P.2d 281, 283 (Utah 1976). But see Craft v. Balderston, 58 Idaho 650, 651-52, 78 P.2d 122, 124 (1938) (right to practice a profession is a privilege, not a property right); Petition of Morris, 175 Mont. 456, 575 P.2d 37 (1978) (no property right for attorney to practice his profession; is a "burdened privilege" only).

118. Weitzman, *The Economics of Divorce*, supra note 8, at 1211; see also supra note 28.
119. Id.
120. Castleberry, *Constitutional Limitations on the Division of Property upon Divorce*, supra note 7, at 58.
121. Recent Development, *Graham v Graham*, 13 TULSA L.J. 646, 651 (1978). The author comments on the analogy between goodwill and educational degrees drawn by dissenting Justice Carrigan in *Graham*: "For this analogy to be valid, goodwill and an educational degree must share similar characteristics. The dissent's goodwill analogy meets nearly all the majority's objections in their analysis of an educational degree as property."
123. Id.
124. Id.
Perhaps the only respect in which educational degrees and goodwill differ is that economists can calculate a present transfer value for goodwill, whereas it is difficult to calculate such a transfer value for a degree. Some commentators have suggested, however, that experts can calculate a present exchange value of a professional degree, assessed in terms of future earning potential. Goodwill is not something that can be sold independently, but rather is an inseparable element of the profession to which it is attached, and it is ascertainable only by actually selling the business. Yet, when a court determines that the goodwill of a spouse's profession must be valued and distributed at divorce, it is in a sense ordering a hypothetical sale of the goodwill, for which there is no real buyer or seller. A California court of appeal was cognizant of this problem:

While “market value” and the value for marital dissolution purposes of “professional goodwill” may be synonymous, in our view such value should be determined with considerable care and caution, since it is a unique situation in which the continuing practitioner is judicially forced to buy an intangible asset at a judicially determined value and compelled to pay a former spouse her share in tangible assets.

126. Recent Developments, Graham v. Graham, supra note 121.
127. See Brigner, I Put Him Through School, supra note 7, at 43-44; Greene, Dissolution of the “Educational Partnership” Marriage, supra note 7, at 296; Kenderdine, Contributions to Spousers's Education, supra note 7, at 426-430; Schaefer, The Interest of the Community in a Professional Education, supra note 7, at 602-11; Note, A Property Theory of Future Earning Potential in Dissolution Proceedings, supra note 7, at 286; Note, Professional Education as a Divisible Asset in Marriage Dissolutions, supra note 7, at 713-15; Recent Case, Divorce After Professional School, supra note 7, at 501 n. 48.
128. Lurvey, supra note 125, at 29-30.
129. Id.
130. In re Marriage of Lopez, 38 Cal. App. 3d 93, 110, 113 Cal. Rptr. 58, 68 (1974). The Lopez decision, in arriving at its conclusion, quotes extensively from Professor Bedford of the University of Illinois on the economic sense of goodwill, as opposed to legal or accounting contexts. This analysis applies equally to an educational degree:

It seems to be well established in the literature of economics that the economic value of any asset depends on the future net receipts that the asset will produce. While these receipts to a consumer are receipts of satisfactions, to a business firm the receipts are cash or cash equivalent (more broadly, purchasing power equivalent). Since the future is unknown, different individuals and business entities will have different expectations as to what these future receipts will be. Thus, there is no certainty in any one valuation of an asset. To the contrary, a considerable amount of uncertainty attaches to any valuation. But subject to this variability, the conceptual view of the economic value of any asset is based on the future receipts which the asset will produce. Because individual assets are not used in isolation but as a part of an
A very similar problem exists in calculating the value of an educational degree. Ultimately, it is unprincipled for courts to characterize goodwill as a "tangible, non-speculative market-determined asset"\textsuperscript{131} while at the same time denying such property status to an educational degree. At best goodwill is also an intangible asset: "[i]t is also amorphous, ephemeral, elusive, and, by general definition, speculative and uncertain except to the extent it has already been established by an arms-length bargaining in the open market place."\textsuperscript{132} Both goodwill and educational degrees should be recognized as intangible property assets, capable of valuation upon divorce.

IV. CALCULATION OF THE VALUE OF THE SUPPORTING SPOUSE'S CONTRIBUTIONS OR THE PRESENT VALUE OF THE DEGREE

A California court of appeal, in \textit{Todd v. Todd},\textsuperscript{133} concluded that: 

\"[education] manifestly is of such a character that a monetary value for division with the other spouse cannot be placed upon it. . . . At best, education is an intangible property right, the value of which, because of

\begin{thebibliography}{133}

\bibitem{132} Lurvey, \textit{supra} note 125, at 30. Lurvey notes that the conventional view of goodwill was that it could exist only in a commercial trade or business, but not in a professional practice that depended on the personal skill and reputation of the practitioner. In some states, such as Colorado, this view has changed and the courts have now recognized that professional practices that can be sold for more than their fixtures and accounts receivable have saleable goodwill:

\begin{itemize}
  \item A professional, like any entrepreneur who has established a reputation for skill and expertise, can expect his patrons to return to him, to speak well of him, and upon selling his practice, can expect that many will accept the buyer and will utilize his professional expertise. These expectations are a part of goodwill, and they have a pecuniary value.
\end{itemize}

\bibitem{133} Lurvey, \textit{supra} note 125, at 30.
\bibitem{133} Todd v. Todd, 272 Cal. App. 2d 786, 78 Cal. Rptr. 131 (1969).
\end{thebibliography}
its character, cannot have a monetary value placed upon it for division between spouses.\[134\]

The California court was correct in both respects: an educational degree is an intangible property right, and courts cannot place a monetary value on it. The best solution in educational degree cases is for judges to recognize that education is a marital asset and to give up attempts at valuing the degree in monetary terms. In many jurisdictions, judges equivocate on the property issue to the detriment of many supporting spouses. Even more unsettling is the resolution of the valuation problem. Awards based on valuation formulas have been arbitrary and speculative; any attempt to value the degree in monetary terms ultimately will be speculative and unfair. In order to achieve an equitable settlement, judges must recognize that the educational asset can only be valued in nonmonetary terms.

Generally, the courts have taken one of the three approaches to valuation: (1) they have indicated it is possible to value the degree or spouse’s contributions, but have not indicated how to make this calculation;\[135\] (2) they have actually made some calculation of the value of the degree;\[136\] or (3) they have made a calculation of the spouse’s contributions for the purpose of restitutionary award.\[137\] These various approaches will be analyzed below to illustrate how the courts have grappled with the valuation problem. In addition, a number of commentators have proposed methods of valuing the worth of a degree or license.\[138\] These proposals also will be examined below to assess their feasibility for utilization in educational degree cases.

\[134\] Id. at 791, 78 Cal. Rptr. at 134, 135.


\[137\] Inman v. Inman, 578 S.W.2d 266 (Ky. Ct. App. 1979); In re Marriage of DeLa Rosa, 309 N.W.2d 755 (Minn. 1981); Hubbard v. Hubbard, 603 P.2d 747 (Okla. 1979).

\[138\] See Brigner, I Put Him Through School, supra note 7, at 43–44; Erickson, Spousal Support Towards the Realization of Educational Goals, supra, note 7, at 971–77; Kenderdine, Contributions to Spouse’s Education, supra note 7, at 438–43; Kiker, Valuing the Spouses’ Contributions to the Marriage, supra note 7, at 50; and Comment, The Interest of the Community in a Professional Education, supra note 7, at 602–11.
A. Approaches By The Courts To The Valuation Problem

Justices in at least two courts have indicated that in educational degree cases the value of the education can be ascertained, although these courts have not detailed precisely how this calculation is to be accomplished. In *In re Marriage of McManama*, a dissenting justice argued that the husband's legal degree was an intangible asset to be considered in the property division. The justice indicated, without further elaboration, that in order to determine the value of the degree as an asset it was not necessary to consider future earnings; the court could "look to the amount of money expended in achieving the degree and use that as a basis for determining its present value as a marital asset."140

The Iowa Supreme Court made a similarly vague suggestion for valuation in *In re Marriage of Horstmann*. There the court held that the husband's potential increased future earning capacity as a lawyer, made possible by his wife's contributions to the marriage, constituted an asset for distribution. The husband argued, on appeal, that his wife had not established the market value of this increased earning capacity. The supreme court rejected this argument, noting that the husband himself had introduced evidence showing that his education had cost at least $14,000. This evidence, the court said, established the cost of the education. "While there are, of course, other methods that could have been used to establish the value of respondent's education, there is nothing incorrect about the approach used here."142 The divorce court awarded the wife an $18,000 property distribution, which the supreme court upheld.143 The *Horstmann* court left unanswered what other pos-

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139. *In re Marriage of McManama*, 399 N.E.2d 371 (Ind. 1980) (Hunter, J., dissenting). The justice considered the degree to be an intangible asset "in the nature of an equitable debt extended and expended by the wife to the husband during coverture. . . ." Id. at 374.

140. Id. This is basically what the economists and commentators call the "cost value" approach to measuring the present worth of the degree. It is a method of valuation that takes into account only the acquisition costs of achieving the degree, and it does not afford the supporting spouse any measure of return on his or her investment in the other spouse's education. The court developed this economic theory of the value of the education: "The economic reality is clear that the degree was acquired through the expenditure of time and money on the part of both parties. Had the money spent for the degree bought tangible goods there is no doubt that the trial court had the power to divide those goods." Id.; see also the discussion of the "cost value" method of calculation in infra Section III B.

141. *In re Marriage of Horstmann*, 263 N.W.2d 885, 891 (Iowa 1978).

142. Id. The husband in *Horstmann* argued that his wife did not introduce evidence concerning the value of the education because either it was not available; or if it was available, it was not reliable. The court rejected this contention. Id.

143. Id. One commentator has noted that the *Horstmann* court's ultimate award is muddled and "presents a paradox of theory and method. There the court talked of potential
sible methods of valuation might have been utilized, and the approach it took really did not value the asset it said was the touchstone for distribution — i.e., the husband’s increased earning capacity. Both the dissent in *McManama* and the *Horstmann* court looked narrowly to the dollar cost of the education to supply some valuation to the asset, a valuation method economists call “cost value” approach.

Two other courts, agreeing that an educational degree (or spouse’s interest in that degree) can be valued, have been a bit more specific about how to value the asset, without actually doing a calculation for the facts under consideration. In *Lynn v. Lynn*, where the court held that a medical school degree and license to practice are each property under New Jersey law, the court pointed out that courts often have to establish the present value of future interests — and do so by applying the economic theory of discounting. The wife in *Lynn* used a financial expert who “testified to the capitalized, discounted value of the differential in the earning capacity of a male with a four-year college degree and a specialist in internal medicine, that capitalized, discounted difference being the value of the medical education and license received.”

There is no indication in the opinion, however, what value this calculation yielded.

A California court of appeal in *In re Marriage of Sullivan* proposed at least three different methods of valuing a spouse’s interest in an educational degree. One method was to compare the professional license holder’s income, within a reasonable time after acquiring the license, to the income of that person shortly before he had acquired the license. A second method was to calculate the exact amount of com-
munity funds and hours of labor to determine the community interest in the education, degree, or license. A third possible method was to determine the lost income to the community while one spouse attended school instead of remaining employed at some position for which he was qualified. In addition, the Sullivan court suggested that an analogy for valuation might be found in those cases that allocated a fair return, to the separate and community interest, of labor expended by one spouse in improving his separate property or business. The problems with the Lynn court's approach (the discount method) will be discussed below. The problems with the Sullivan court's proposals seem obvious: it is difficult to assess what is being valued and what is being recompensed.

In other cases the courts have valued the education, but the reported opinions give no indication of the method of valuation. For example, in Reen v. Reen, a Massachusetts court held that a husband's license to practice orthodontia was a marital asset and valued the husband's degree at $800,000. The court stated that the wife was entitled to share in this value because she had put her husband through dental school and post-graduate orthodontic training. Similarly, a New York trial court awarded a wife forty percent of the value of her husband's medical degree, which the court estimated to be $472,000, given the husband's age and what he could expect to earn compared and his salary as an attorney after he passes the exam and is in practice. Similar comparisons are made for student nurses and student accountants. The court does not explain what this differential signifies, and in what way it is a measure of the economic value for the educational degree. One can think of many examples where post-graduation employment would not be an accurate measure of either current or potential value of the degree - for example, the Harvard J.D., top 5% of his or her class, who joins a public defender's office at low salary.

148. Id. at 683. The Sullivan court is extremely vague about how these calculations would be made, and what costs would be factored into the valuations. Taken together, the two proposals resemble a "cost value" computation that also takes into account the so-called "opportunity costs" of the spouse who is attending school. See infra Section III, B; Schaefer, The Interest of the Community in a Professional Education, supra note 7, at 602-03. As indicated in supra note 140, the cost value approach does not account for a return on investment in future earning capacity.

149. 127 Cal. App. 3d at 681. The apportionment of separate and community interests in income and profits from a separate business are determined by one of two methods of valuation in California. These are the so-called Van Camp method and Pereira method. See Beam v. Bank of America, 6 Cal. 3d 12, 17-24, 98 Cal. Rptr. 137, 139-45, 490 P.2d 257, 260-65 (1971); Van Camp v. Van Camp, 53 Cal. App. 17, 199 P. 885 (1921); Pereira v. Pereira, 156 Cal. 1, 7, 103 P. 488, 491 (1909).

150. See infra Section III, B, and accompanying notes.


152. Id.
with a college graduate without a medical degree.\textsuperscript{153} And in \textit{Dewitt v. Dewitt},\textsuperscript{154} the trial court held that the husband's law degree had a value of "not less than $14,316" — a finding rejected on appeal because there was no evidence in the record to support this, or any other amount.\textsuperscript{155} In these cases the court did not clearly articulate the formula used to calculate these sums. These decisions, which place a value on educational degrees without explanation or support, are not useful in guiding other courts to an equitable distribution of assets.

While some decisions merely designate the dollar value of the degree, other opinions have indicated how the trial or appellate courts have made their calculations. For example, in \textit{Daniels v. Daniels},\textsuperscript{156} a somewhat crude valuation attempt was based on statistical information from the World Almanac. Testimony indicated that a United States physician could expect to earn approximately $15,000 annually and a specialist $18,000 annually. On appeal the husband contested this testimony as incompetent, and the appellate court noted: "[A]lthough it [is] clearly hearsay and of questionable value, it seems doubtful that said testimony, considered in its entirety, added anything to the common knowledge and experience of the trial court so as to materially affect the outcome of this case."\textsuperscript{157}

A more sophisticated approach to valuation was employed in \textit{Lira...\textsuperscript{153}} O'Brien v. O'Brien, 114 Misc. 2d 233, 452 N.Y.S.2d 801 (1982). The court in \textit{O'Brien} held that the license was marital property subject to equitable distribution. The court found that the wife's contribution to the marriage amounted to $103,390 and that she was entitled to 40% of the value of her husband's degree. The court awarded her $188,800.

\textsuperscript{154} 98 Wis. 2d 44, 56-57, 296 N.W.2d 761, 767 (Ct. App. 1980). The court indicated that the wife was probably entitled to some kind of recompense from the standpoint of equity. The court went on to say: "We cannot agree, however, that equity is served by attempting to place a dollar value on something so intangible as a professional education, degree, or license. The difficulties inherent in that attempt are illustrated by this case." The \textit{DeWitt} court also rejected the "cost approach" method of valuing a degree because this approach presumes that the value of the degree is the amount of money spent acquiring it — which the court called an unwarranted presumption. Moreover, the cost approach also "fails to consider the scholastic efforts and acumen of the degree holder, which may well have a bearing on the income yielding potential of the education." \textit{Id.} at 57, 296 N.W.2d at 767. Finally, the court noted that other formulas had been proposed for valuation, but the court dismissed these proposals as being "wholly speculative." \textit{Id.} at 58, 296 N.W.2d at 768. See Schaefer, \textit{Wife Works So Husband Can Go To Law School, supra} note 7, at 85; Erickson, \textit{Spousal Support Toward Realization of Educational Goals, supra} note 7, at 947; Note, 11 \textit{CONN. L. REV.}, supra note 7, at 62; Note, 13 \textit{TULSA L.J.}, supra note 7, at 646.

\textsuperscript{155} Dewitt v. Dewitt, 98 Wis. 2d at 57, 296 N.W.2d at 767.

\textsuperscript{156} 20 Ohio Op. 2d 458, 185 N.E.2d 773 (1961). The "expert" who was called to testify concerning the value of the education was the wife's mother, who had an extensive background in the educational field. \textit{Id.} at 460, 185 N.E.2d at 775.

\textsuperscript{157} \textit{Id.} For a discussion of the \textit{Daniels} case, see Note, \textit{Professional Education as a Divisible Asset in Marriage Dissolutions, supra} note 7, at 710-11.
v. Lira,\(^{158}\) where the wife used an expert witness to establish a present value for her husband's medical license of $863,702. The expert used
statistics from the Department of Labor, the Department of Health, Education, and Welfare, the American Medical Association, and the Medical Economics Corporation to project the husband's future earnings as an internist. The expert then subtracted the income the husband would have earned as a pharmacist (his prior occupation), and discounted the difference by six percent. From this figure the expert subtracted the husband's educational expenses.\(^{159}\) The appellate court nonetheless rejected the wife's claim that her husband's medical license was a marital asset, holding that it was only one factor to be considered in an award of alimony.\(^{160}\)

Perhaps the most detailed attempt at valuation is found in *In re Marriage of Lundberg*,\(^{161}\) where the wife's expert, an economist, used two methods to value the wife's "investment." The first method — the discount method — was suggested in the *Lynn* decision. The economist compared the average earnings of physicians with those of college graduates to establish a difference of $24,976 per year. Over a twenty-five year period, this difference totalled $624,400. The economist then discounted the figure by both a ten and twelve percent rate, and deducted the husband's foregone earnings while he attended medical school. Thus, the expert established that the net present value of the husband's additional income would be between $110,837 and $132,402.\(^{162}\) The second valuation method focused on the amount of support the wife contributed while her husband was in medical school. This was determined to be $25,510 which, if she had invested this amount at a five percent rate of return, would have realized $33,077.\(^{163}\) The trial court awarded her $25,000 as compensation for her support.


\(^{159}\) Id. at 165 n.1, 428 N.E.2d at 447 n.1.

\(^{160}\) Id. at 168-69, 428 N.E.2d at 448. Basically the court adopted the *Graham* court's definition in arriving at its conclusion; it observed that a medical license cannot be assigned, sold, transferred, pledged, or devised. For good measure, the court also noted that at the time of the trial, the husband had not yet formulated any substantive future employment plans — clearly a factor that would complicate the court's valuation of the medical license were the court to adopt an "income capacity" approach.

\(^{161}\) 107 Wis. 2d 1, 5, 318 N.W.2d 918, 920 (1982).

\(^{162}\) Id. The economic analyst also deducted the additional taxes that the husband would owe as a result of the two different discount figures that were used. "The trial court found that these present value figures were established by credible economic evidence." Id.

\(^{163}\) Id. This approach is basically a "cost value" approach, although it did not take into account the husband's so-called "opportunity costs" while he attended school. See infra Section III, B, for a "cost value" method.
phrasing the award in terms of maintenance. The appellate court upheld this award.

Finally, other courts have also developed formulas to guide judges in calculating restitutionary awards to spouses who have supported their spouses through school. For example, in In re Marriage of De La Rosa, the Supreme Court of Minnesota held that the trial court did not abuse its discretion in making a restitutionary award to a wife who had supported her husband through college and medical school. The supreme court disagreed with the trial court's method of calculation, however, and indicated that the wife should receive an award to compensate her only for contributions to her husband's direct educational costs. Accordingly, the wife's own living expenses had to be subtracted from her earnings. The supreme court set forth its version of the proper formula:

\[
\text{working spouse's financial contributions to joint living expenses and educational costs of student spouse} - \frac{1}{2} (\text{working spouse's financial contribution plus student spouse's financial contributions less cost of education}) = \text{equitable award to working spouse.}
\]

Utilizing this formula, the court determined that the wife was entitled to $11,400 as opposed to the trial court's award of $29,699.

164. Id. The trial court stated that "there is ample equitable justification for the $25,000 award as maintenance . . . . But whether it is called maintenance or property division, the amount of this award is fair." From the result the court appears to have recompensed the wife for the "cost value" of the degree.

165. Id. at 12, 318 N.W.2d at 923. In interpreting Wisconsin law, the court indicated that it "view[ed] maintenance as a flexible tool available to the trial court to ensure a fair and equitable determination in each individual case." Id.

166. 309 N.W.2d 755, 759 (Minn. 1981). The court indicated the formula the trial court used in awarding the wife $29,669:

Wife's financial contribution to the community fund during college and medical school ($41,000)

less

Husband's financial contribution to the community fund during college and medical school, excluding student loans and grants ($11,331)

equals

restitutionary award to the wife ($29,669)

Id. at 757 n.4.

167. Id. at 759. The wife had argued that her husband's increased earning capacity was a marital asset and she called an expert who valued the medical education at $246,478. See id. at n.7.

168. Id. at 759.

169. Id. Footnote 9 explains the Minnesota Supreme Court's calculation as follows: $41,000 (wife's financial contributions) - \( \frac{1}{2} \times [\$41,000 \text{ (wife's financial contributions)} + \)
A similar but less sophisticated method of valuation was proposed in Inman v. Inman, where the court also agreed that the supporting spouse should be compensated only for direct educational costs. The court indicated that the proper formula for the award would take into account "the amount spent for direct support and school expenses during the period of education, plus reasonable interest and adjustments for inflation." The court remanded the case for a calculation of the wife's "present value of her interest" in conformity with those guidelines.

The different approaches to the valuation problem and the varied awards to spouses suggest the difficulties inherent in this task. In some cases it is unclear what is being valued: the contributing spouse's support, the current market value of the degree or education, or the future potential earning capacity of the license holder. In those jurisdictions which hold that the supporting spouse should be compensated for direct educational costs only, this calculation provides the supporting spouse with no return on his or her investment - an unfair result. This calculation also assumes that the only contributions are monetary, which is unrealistic, especially in community property states. Those jurisdictions that utilize the economists' "discount" method of calcula-

\[
\begin{align*}
2,300 \text{ (husband's earnings)} & + 9,031 \text{ (husband's veterans' benefits)} + 5,680 \text{ (husband's medical school grant)} + 10,000 \text{ (husband's student loans)} - 8,810 \text{ (husband's undergraduate tuition and medical school costs)} = 11,400.
\end{align*}
\]

This is basically a cost value approach that incorporates many variables, and has the merit of imputing one-half of the living expenses and all the educational expenses to the student spouse. It fails to take into account, however, the opportunity costs of the student spouse. See infra Section III, B, for a discussion of the "cost value" method. Dissenting Justice Todd agreed that the trial court had the discretionary power to make an equitable award, but did not believe "it [was] necessary to cast the relief granted in a mathematical formula." He would have affirmed the trial court award of $29,669 to the wife. See supra note 166.

170. 578 S.W.2d 266, 269 (Ky. Ct. App. 1979). The court suggested that the "spouse's interest in such a degree should be measured by his or her monetary investment in the degree, but not equivalent to recovery in quasi-contract to prevent unjust enrichment." Id. at 269.

171. Id. This basic formula was also adopted by the Oklahoma Supreme Court in Hubbard v. Hubbard, 603 P.2d 747, 752 (Okla. 1979), and criticized by the Court of Appeals in DeWitt v. DeWitt, 98 Wis. 2d 44, 57, 296 N.W.2d 761, 767 (Ct. App. 1980). Again, this formula is a cost value approach that does not take into consideration the opportunity costs of the student spouse. See infra Section III, B, for a discussion of the "cost value" method.

172. Inman v. Inman, 578 S.W.2d at 270. For commentary and criticism of the Inman decision, see Note, Intangible Educational and Professional Attainments as Divisible Marital Property, supra note 7; Mazanec, The Inman Case, supra note 7. For commentary on the Hubbard case, see generally Note, Recognition of Wife's Interest in a Professional Degree Earned by a Husband During Marriage, supra note 7; Recent Development, The Effect of a Spouse's Professional Degree on a Division of Marital Property and Award of Alimony, supra note 7.
tion inevitably must engage in a great deal of speculation: not all medical, law, or graduate degrees will earn the average statistical value. For example, a student in the top ten percent of his or her law class at Harvard could command a high Wall Street salary upon graduation, but may choose instead to be a lower-paid public defender. Is the supporting spouse entitled to a property settlement that forces the new lawyer to work on Wall Street and give up his or her public defender's job in order to meet the earnings of the statistically average lawyer?

Moreover, the discount method does not always consider the many variables that can affect the value of a particular education, such as a desire to pursue or continue employment in the field, market opportunities, premature death, and so on. The discount method is also fallacious in its comparison of the professional's degree to that of an average four-year college degree. Most students who pursue further professional education are drawn from the top of their college classes, and so to compare their ultimate professional degree to that of average graduates is to distort income averages and income disparities.

Furthermore, none of the approaches utilized by the courts have factored in the so-called “opportunity costs”\(^\text{173}\) to the supporting spouse: the value of foregone training or education, as well as career advancement, to the spouse who worked while the other spouse's prospects are improved through additional schooling. All these problems and variables indicate that although courts are trying to reach fair settlements in educational degree cases, the actual relief awarded is quite unfair and inequitable. As will be discussed below\(^\text{174}\) courts should give up the attempt to value an educational degree in monetary terms. Fair awards can be made to both spouses based on another, nonmonetary theory of value. Until judges stop trying to assign a dollar value to educational degrees, awards in these cases will continue to be arbitrary and unfair.

B. Proposed Methods Of Valuation By Commentators

A number of commentators have agreed with the courts that although an educational degree is difficult to value, it is possible to make such calculations. The proposed methods of valuation, however, are as problematic as the approaches used by some courts. While the proposed formulas are interesting from the economist's or statistician's perspective, ultimately these proposals are unworkable and cannot

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173. See infra Section III, B, for a discussion of opportunity costs.
174. See infra notes 196-99 and accompanying text.
guide trial-level divorce judges to an equitable settlement in educational degree cases.\footnote{175}{See supra note 138. Proposed remedies by three commentators will not be discussed extensively here. Brigner suggested that it is possible to award future earnings and that the calculation of this share would be similar to any "future-value" issue. He indicated that expert testimony is available for proof and that several mathematical formulas are available to determine each spouse's contributions and what the degree can generate in the future. He did not explain these mathematical formulas. See Brigner, \textit{I Put Him Through School}, supra note 7, at 43-44. Kiker suggested a method for evaluating a wife's foregone training and learning opportunities, which might be tangentially relevant to a valuation of an education's worth. See Kiker, \textit{Valuing the Spouse's Contributions}, supra note 7, at 50. Erickson would add a new provision to the Uniform Marriage and Divorce Act dealing exclusively with "educational debts." She would value the spouses' contributions by including tuition, fees, books, supplies, living expenses, research, and tutorial or clerical assistance, housework, and maintenance of the home and family in excess of the contributing spouse's equitable share, and any other reasonable contribution. At the federal level, she proposes that the Bankruptcy Act be revised to provide that the spousal educational debt would not be dischargeable in bankruptcy. See Erickson, \textit{Spousal Support}, supra note 7, at 971-77.} \footnote{176}{Schaefer, \textit{The Interest of the Community in a Professional Education}, supra note 7, at 603.} \footnote{177}{\textit{Id.}} \footnote{178}{\textit{Id.} Schaefer's article notes that the Association of Appraisers of Earning Capacity in Berkeley, California, provides a consulting service that can calculate the value of cost opportunity. The calculation takes into account the age, race, sex, education, occupation or profession, and earning history of the student spouse prior to attending professional school. The "cost opportunity" calculation is essentially a valuation of lost earnings. \textit{Id.} at 603 n.76. For another discussion of cost opportunity, see Krauskopf, \textit{Recompense For Financing Spouse's Education}, supra note 7, at 384.} \footnote{179}{Schaefer, \textit{The Interest of the Community in a Professional Education}, supra note 7, at 603. Schaefer gives no indication of what these three items represent, or how they would be calculated.}
Cost Value of Education

The proposed cost theory is a variation of the method now used by some courts, except that it takes into account the opportunity cost of the student spouse as a component of valuation. The formula does not take into account, however, potential earning power generated by the degree, and it therefore is a measure, not of its value in a prospective sense, but only in terms of the cost of its acquisition. For those jurisdictions which view the marital relationship from an investment standpoint, the cost value theory affords the supporting spouse no return on his or her investment. Most importantly, the measure of opportunity cost is inadequate because it fails to measure the foregone opportunity of the supporting spouse to attend school.

Another proposed method of valuation attempts to establish the worth of this future earning potential; it has been called the "income capacity value." Basically, this formula calculates the spouse's income with a professional education, less that person's income without the professional education, and the result is multiplied by a sliding fraction to adjust over time for years of skill and experience. The

180. Id.

181. See, e.g., Inman v. Inman, 578 S.W.2d 266, 269 (Ky. Ct. App. 1979); In re Marriage of DeLa Rosa, 309 N.W.2d 755, 757 (Minn. 1981); Hubbard v. Hubbard, 603 P.2d 747, 752 (Okla. 1979); In re Marriage of Lundberg, 107 Wis. 2d 1, 5, 318 N.W.2d 918, 920 (1982). For a criticism of the cost value approach, see DeWitt v. DeWitt, 98 Wis. 2d 44, 57, 296 N.W.2d 761, 767 (Ct. App. 1980).


183. Id. Schaefer suggests that there is precedent for this type of calculation in wrongful death and brain injury cases, where the courts have been willing to consider the future worth of an education over the worth of its cost. This analogy to tort law is also made in Krauskopf, Recompense For Financing A Spouse's Education, supra note 7, at 388-89. The problem with the tort analogy is that in such cases the awards are based on a theory of fault or wrongdoing on the part of the tortfeasor, which allows judge and jury to engage in an otherwise speculative calculation of future earnings. It is questionable whether such an analogy is suitable in the dissolution context, where almost all states have abandoned fault as a basis for divorce. See Freed and Foster, Divorce In The Fifty States, supra note 8, at 241-45. According to Freed and Foster, only Illinois and South Dakota have some fault grounds for divorce; all other jurisdictions now have some kind of "no-fault" divorce.

The tort analogy is also problematic because it involves a situation where the wage earner has died or is incapacitated, whereas in educational degree cases the professional continues to work in the future. Surely the professional's future earnings are based only in part on the degree; some part of his earnings are due to increased skill and experience. Even if it were possible to estimate future earnings with certainty, it does not follow that it would be possible to allocate those future earnings among a professional degree, a college degree, a high school degree, ambition, hard work, astute career choices, and luck.

Schaefer's sliding fraction proposal helps account for that portion of future income that is solely attributable to skill and experience as the professional develops his career. It is, however, an extremely rough approximation, at best.
sliding fraction is calculated by the ratio of:

\[
\frac{\text{Number of Years of Professional Education}}{\text{Number of Years Since Professional Education Commenced}}
\]

and the formula for determining the income capacity value is then expressed as:

\[
\text{Income With Professional Education} - \text{Income Without Professional Education} \times \text{The Sliding Fraction}
\]

The author of this proposal recognizes that there are problems with this approach; it is speculative in that it does not allow for unforeseeable occurrences, such as premature death, the cyclical nature of the market economy, employment disqualification, and personal decisions (such as foregoing employment or pursuing employment in a less financially lucrative, but perhaps more socially beneficial, field).\(^{184}\)

184. Schaefer, *The Interest of the Community in a Professional Education*, supra note 7, at 609. Schaefer explains that at the year of graduation the numerator and denominator of this fraction would be equal.

185. *Id.* at 609-11. Schaefer's formula assumes that one year of professional education is, and remains, equal in value to one year of professional practice. Schaefer illustrates the use of his formula with the hypothetical of a person whose projected earning capacity in his first year as an attorney is $11,000, as compared to a projected $9,000 earning capacity as a four-year graduate. The supporting spouse's share would be calculated as: \((11,000 - 9,000)\frac{1}{3} = $1,500\) with $1,500 as the value of the education in the first year after divorce and graduation. In community property states such as California, the wife would be entitled to one-half this amount, or $750.00.

186. *Id.* at 611. A very good criticism of those formulas that would value an education or degree based on future earning capacity is found in *DeWitt v. DeWitt*, 98 Wis. 2d 44, 296 N.W.2d 761 (Ct. App. 1980), where the court objected to the "wholly speculative" nature of such calculations:

Whether a professional education is and will be of future value to its recipient is a matter resting on factors which are at best difficult to anticipate or measure. A person qualified by education for a given profession may choose not to practice it, may fail at it, or may practice in a specialty, location, or manner which generates less than the average income enjoyed by fellow professionals. The potential worth of the education may never be realized for these or many other reasons. An award based upon the prediction of the degree holder's success at the chosen field may bear no relationship to the reality he or she faces after divorce. Unlike an award of alimony, which can be adjusted after divorce to reflect unanticipated changes in, the parties' circumstances, a property division may not. The potential for inequity to the failed professional or one who changes careers is at once apparent; his or her spouse will have been awarded a share of something which never existed in a real sense.

*Id.* at 58, 296 N.W.2d at 768 (footnotes omitted).
The proposed formula also tends to view all college degrees and all professional degrees through the strainer of statistical averages, but as many professional degree holders realize, the marketability of their degree depends also on a large number of variables: geographical location; rank in class or performance in school; area of professional specialization; age of the degree holder at the time of admittance to the profession; previous experience in the field. The proposed income capacity formula views all educational degree holders on the basis of national, statistical averages: a computation that is inherently inequitable in individual cases because personal opportunities diverge so radically from the hypothetical "average." Rather than proving to be a fair allocation of return to the supporting spouse, such calculations result only in more unjust property settlements.

Yet a third proposed formula measures not only the degree holder's future earning potential, but also the value of the supporting spouse's contributions in both time and money.187 This method incorporates the idea that the supporting spouse has also incurred an indirect cost: the time in which that spouse could have supplemented his or her own education and future earning potential, if he or she had not been supporting the family. The proposed formula to account for this variable would be expressed as:

\[
\text{Undiscounted Total Increased Lifetime Earning Potential} \div \text{Total Number of Working Years Remaining}
\]

\[\text{[This fraction]} \times \text{Percentage of Spouse's Contributions to Total Costs (Not to Exceed 50%)} \]

\[\text{plus} \]

\[\text{Actual Direct Costs (According to Inman Formula)}^{188} \]

\[\text{equals} \]

\[\text{Cost Recapture.}^{189}\]

187. Kenderdine, Contributions to Spouse's Education, supra note 7, at 426. The author suggests that Kentucky's Inman formula, a cost value formula, should be modified because there the supporting spouse gets neither an equitable share of the degree-holder's earning potential, nor is he or she adequately compensated for past contributions. Kenderdine argues that the supporting spouse contributes both time and money: time in which that spouse could have supplemented his or her own education and future earning potential. Id.

188. See supra notes 170-71 and accompanying text.

189. Kenderdine, Contributions to Spouse's Education, supra note 7, at 426 n.101. Kenderdine illustrates a computation under this formula, assuming the following facts: (1) a $250,000 increased lifetime earnings potential (undiscounted) based on (2) a thirty-five year working life; (3) a supporting spouse who worked five years while the other spouse attended school; (4) a supporting spouse who contributed 70% of the total family expenses, and (5)
Rather than valuing the future earning potential of the degree holder, this formula attempts to measure the supporting spouse's "reasonable share" of the future income stream. This approach has the merit of recognizing that the supporting spouse is probably not entitled to an equal division of future earnings, and of recognizing that future increased earning capacity will be enhanced by the post-graduate skills and experience of the degree holder.  

But in the final analysis, this formula is as problematic as the "income capacity value" approach and involves the same speculative considerations as have been discussed. Indeed, the formula is predicated on a large, speculative assumption — that the degree holder's increased lifetime earning potential is measurable with any degree of fairness or reliability.

Finally, a variation on the "cost value" and "income capacity" methods is based on investment in human capital. According to this approach, human capital, including skills, talents, and knowledge that increases productivity, is a form of wealth and economists can calculate a return on an investment in education. First, the value of the spouse's earning capacity, before the investment in his education, is calculated. Then the person's earning capacity, after the additional education, is valued. From these expected future earnings is subtracted the "investment costs" of the additional education, such as tuition, books, and laboratory fees, as well as opportunity costs. Finally, the pre-investment earning capacity is subtracted from post-investment earnings, less investment costs. "The [result] is the 'profit' or amount of return, which is the present value of the enhanced earnings attributable whose actual contribution plus Inman would be $21,000. According to Kenderine, the supporting spouse's share, under these facts, would be computed as:  

\[
\left(\frac{250,000}{35} \times 5 \times 0.5 \times \frac{17,857}{2} \times 21,000 \times 0.5 \right) = 38,857.13 
\]

190. Id. at 425.


192. Id. at 382-83. This is a valuation of expected earnings based on present occupation, training, and life expectancy, and takes into account elementary, secondary, and college education. Krauskopf explains that this calculation can be made based on data obtained from actuarial and United States census sources. Id.

193. Id. at 383. This calculation would be based on the same data, but includes the additional education. Krauskopf says that a major factor for the expert to consider will be the number of remaining productive years for the individual. Id. In a footnote, she acknowledges that "[this estimation process is subject to the limitations of using past data for a group to determine probabilities of future return on a particular investment. Of course, risk and uncertainty are always involved in making future projections for an individual." Id. at 383 n.18.

194. Id. at 384. This calculation would not include the maintenance costs of daily living because the spouse attending school would have incurred these expenses whether in school or not. Id.
to the investment that exceed the cost of that investment."195 Once again, this method is flawed by its reliance on speculation concerning future income streams that are unlikely to match the estimates.

A comparison of all these proposed formulas highlights the problem inherent in attempting to value the worth of an educational degree. Like many judges, the commentators disagree on what exactly should be valued: the direct educational costs or the future earning potential. In addition to that threshold issue, it is not certain what elements should be included to calculate fairly the worth of a spouse's past contributions or to value the degree holder's future potential earnings. It is interesting to note that each different proposal utilizes different variables to calculate worth; how is a judge to determine which formula will achieve an equitable result for the parties before him or her? In the final analysis, none of the proposed formulas offers a workable remedy that will both recompense the supporting spouse and fairly treat the continuing labors and skills of the degree holder.

V. A Proposed Remedy in Educational Degree Cases Based on a Labor Theory of Value

Ideally, a remedy should apply equitably in all cases, regardless of the duration of the marriage or the amount of accumulated assets at the time of divorce. More importantly, a remedy in educational degree cases should be workable and understandable for the spouses, their attorneys, and the divorce court judge. It should avoid the need to rely on expert witnesses, whose fees increase the cost of litigation without any material advance in the fairness of the result. Complicated econometric formulas, explained and justified by expert witnesses, will not, in the context of divorce proceedings, serve the needs of all parties or instill a sense of fairness or equity.

The courts are confused because they perceive that once an educational degree is construed as property or a marital asset, it must be valued in dollar amounts, along with the house, car, and furnishings. As indicated above, the courts have approached educational degree cases as a two-fold problem: is the degree or license to practice property, and if so, how should this asset be valued?196 In essence the courts have become entangled in a dilemma of their own making, because underlying all the attempts at valuation is the assumption that the degree is an asset that is capable of being valued in conventional terms of

195. Id. Krauskopf does not illustrate her proposed formula with a hypothetical case.
196. See supra Section I and accompanying notes.
dollars and cents. Judges must recognize, however, that the Todd court in California is basically correct in its conclusion that an education "manifestly is of such a character that a monetary value for division with the other spouse cannot be placed upon it."\(^{197}\)

Courts should stop trying to place a monetary value on educational degrees. They have been led astray by their underlying assumption that an education is a market asset capable of being valued in monetary terms. The better approach is to recognize that there are certain nonmarket assets that cannot readily be valued in conventional monetary terms. Such a realization does not detract from the property character of the asset; it just recognizes that there are some assets that cannot be valued in dollar terms. Divorce courts, sitting in equity, recognize this principle routinely in their distribution of various assets of incalculable worth. A good example of this is the family heirloom or the portrait of great-grandmother, which has little or no real market value but is of great sentimental value to one of the spouses.\(^{198}\) The divorce court must distribute this asset and will do so based on its equitable discretionary powers, but in such situations the courts feel no necessity to assess a monetary value for the asset. An educational degree or license is similar to such nonmarket assets; it is property, but extremely difficult to calculate in dollar or potential dollar terms.

Although an educational degree is best understood as a nonmarket asset that is difficult to value in monetary terms, it is possible to assess the worth of an education based on an older theory of value: the labor theory of value. Basically, the classical economists theorized that the value of any commodity can be expressed in terms of the labor input required in its production.\(^{199}\) According to this view, value was some-

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199. One of the earliest exponents of the labor theory of value was Adam Smith who wrote in 1776:

The value of any commodity, therefore, to the person who possesses it, and who means not to use or consume it himself, but to exchange it for other commodities, is equal to the quantity of labour which it enables him to purchase or command. Labour, therefore, is the real measure of the exchangeable value of all commodities.

The real price of every thing, what every thing really costs to the man who wants to acquire it, is the toil and trouble of acquiring it. What every thing is really worth to the man who has acquired it, and who wants to dispose of it or exchange it for something else, is the toil and trouble which it can save to himself, and which it can impose upon other people. What is bought with money or with goods is purchased by labour as much as what we acquire by the toil of our own body. That money or those goods indeed save us this toil. They contain the value of a certain quantity of labour which we exchange for what is supposed at the time to contain the value of an equal quantity. Labour was the first price, the original purchase-money that was paid for all things.
thing independent of market fluctuations; prices might vary, but the value of a commodity remained constant. This view was particularly relevant to pre-industrial societies where most commodities were produced by individual artisans or workmen and their labor input was a fair measure of value. A good expression of this idea that labor value remains constant is stated in Adam Smith's *The Wealth of Nations*:

Labour, therefore, it appears evidently, is the only universal, as well as the only accurate measure of value, or the only standard by which we can compare the value of different commodities at all times and all places. We cannot estimate, it is allowed, the real value of different commodities from century to century by the quantities of silver which were given for them. We cannot estimate it from year to year by the quantities of corn. By the quantities of labour we can, with the greatest accuracy, estimate it both from century to century and from year to year.

Under this view, the most accurate method of valuing the worth of a table or a piece of pottery would be in terms of the labor of the artisan to produce the item, rather than the price it could command in the


John Stuart Mill basically adhered to the classical economists' labor theory of value, but added his own insights. His explanation of the difference in the value between two commodities is interesting in the context of educational degrees:

If one of two things commands, on the average, a greater value than the other, the cause must be that it requires for its production either a greater quantity of labour, or a kind of labour paid at a higher rate; or that the capital, or part of the capital, which supports that labour must be advanced for a longer period; or lastly, that the production is attended with some circumstances which requires to be compensated by a permanently higher rate of profit.

J. Mill, *Principles of Political Economy* 480 (W. J. Ashley ed. 1926). In the case of an educational degree, its own value must therefore be measured by the time expended on its acquisition; the "stored labor," or capital, used to acquire preliminary degrees should not be attributed to the advanced degree.

200. See A. Smith, *The Wealth of Nations*, supra note 199. "Labour alone, therefore, never varying in its own value, is alone the ultimate and real standard by which the value of all commodities can at all times and places be estimated and compared. It is their real price; money is their nominal price only." *Id.* at 51.

201. *Id.* at 65-66.

202. *Id.* at 54.
marketplace. A table might be valued at four labor-hours by the individual laborer.

The labor theory of value was abandoned by economists as industrial society developed and the production of goods became more complicated, particularly in assembly-line factories utilizing mass production techniques. Since the production of goods now required the labor of many persons working together, theories of value changed to reflect the multiplicity of inputs necessary to produce a good. This impact of industrialization on the labor theory of value was described by Karl Marx in the mid-nineteenth century:

The introduction of power looms into England probably reduced by one-half the labour required to weave a given quantity of yarn into cloth. The hand-loom weavers, as a matter of fact, continued to require the same time as before: but for all that, the product of one hour of their labour represented after the change only half an hour's social labour, and consequently fell to one-half its former value.\(^\text{203}\)

With the advent of industrial society economists began to focus on theories of value as determined by market exchanges and price. The labor theory of value, however, has never been repudiated or discredited, and thus it remains the only fair way to assess the worth of a commodity where the good being valued is fundamentally a nonmarket asset that has been produced by the application of a single factor of production. Fundamentally, an educational degree is solely the result of the labor of the student spouse. Thus, the labor theory is uniquely suitable as a measure of value in educational degree cases. Any market-oriented measures must inevitably fail to produce a consistent result, and the objections that have led modern economists away from the labor theory of value do not apply to these educational degree cases.

Under the labor theory of value, the measure of the value of the education is the labor time necessary for the production of the com-

\(^{203}\) Marx's analysis of value followed from the classical economists; he agreed that labor was the source of all value and that capital consisted of accumulated labor. He argued that the value of labor-power was established by labor inputs: "The value of labour-power is determined, as in the case of every other commodity, by the labour-time necessary for the production, and consequently also the reproduction, of this special article." I K. Marx, Capital 189 (1912); see also J. Mill, Principles of Political Economy, supra note 199. Perhaps ironically, in 1848 Mill wrote that "there is nothing in the laws of value which remains for the present or any future writer to clear up; the theory of the subject is complete." Principles of Political Economy at 436. This was, of course, the same year in which Karl Marx published his Communist Manifesto.
modiity: the educational degree or the license to practice a profession. For example, if it takes a law student three years to complete law school and another six months to study for and pass the bar exam, then the value of that degree is 3 1/2 years of labor time. This valuation assumes a full-time student spouse, but the calculation can be applied fractionally for part-time students, as well. A part-time evening law student who takes four years to earn his or her law degree has accumulated an equivalent amount of labor-input time as the full-time day student: three years of labor time to produce the degree. Similarly, in valuing the worth of a medical degree, the calculation would include the time period needed to complete the training necessary to practice in the profession. The court would count minimally the years expended by the student spouse in medical school, and an internship and possibly a residency, and advanced specialized training. In some cases the worth of the education could be in excess of ten years of labor value.

Thus, the value of the educational degree as a marital asset can be calculated by establishing the amount of time it took for the student spouse to acquire it. This value is what the student spouse owes back to the family at the time of divorce and is based on the theory, adhered to in community property jurisdictions, that in marriage both partners contribute to the family existence, although the contributions may be financially unequal. In addition, many contributions are nonmonetary, in the form of support services such as housekeeping and child care. Nonetheless, the contributions of the spouses are presumed to be equal regardless of the form they take. In this regard community property jurisdictions are correct. Therefore, where a student spouse spends time on earning a degree, that is time that would otherwise have been spent on the family, contributing either financially or intangibly in other services. At divorce, the student spouse owes the marriage the value of the property asset, which is the amount of labor-time utilized to acquire it.

The supporting spouse, under this theory, would thus be entitled to one-half the value of the degree. As an equal in the marriage, the supporting spouse is presumed to contribute to the family during the marriage. This is true whether the other spouse attends school or not; in either situation, the supporting spouse will work outside the home and contribute financially or remain at home and provide support services. In many marriages both spouses contribute financially and intangibly, yet regardless of the actual amount of contribution the spouses are treated as equal providers. Under this view, each spouse is entitled
to one-half of all assets acquired during the marriage, in spite of actual contributions towards the acquisition of the property.

The labor theory of value can thus be applied in all marital situations and awards each spouse one-half of the value of the degree. For example, if the supporting spouse provides 100% of the family income while the student spouse attends school and earns nothing, the spouses are considered equal providers and each is entitled to one-half the value of the asset they jointly acquire. If, on the other hand, one spouse stays at home and watches soap operas while the other attends law school, each would still be entitled to one-half the value of the degree even though one spouse arguably had contributed no financial support during this period. Likewise, if a student spouse finances his education through loans, this financial support would neither add nor subtract from the calculation of the worth of the degree. The value is still calculated simply in labor-input terms, with each spouse entitled to one-half that value notwithstanding outside support. Finally, the labor theory can also be applied to award each spouse one-half the value of the degree if both spouses work part-time or full-time, or any other combination of possibilities.

How is the court to award labor time to the supporting spouse? Under this theory of value, the supporting spouse is entitled to support, at fifty percent of the professional spouse's actual income, for the same period of time it took for that spouse to acquire the degree or license. In other words, the wife who supported her husband through three and one-half years of law school is entitled, at divorce, to receive one-half of her husband's income for the same period of time, to be paid out in periodic payments over that time period. Alternatively, depending on the desires of the spouses, the court could flexibly alter the award so that the supporting spouse could receive 100% of the professional's income for 1 3/4 years, 10% for 17 1/2 years, or any other combination yielding the same product. This entitlement would be awarded without regard to the duration of the marriage or the accumulation of other assets. Other marital property would be distributed independent of the award made for the value of the educational degree. Because the award would be based on the theory that the degree was a marital property asset, it would not run afoul of maintenance requirements in

204. The theory here is that one-half of living expenses are imputed to each spouse during the marriage, as these are costs they would have had to incur regardless of whether one or both spouses attended school. The wife or supporting spouse is therefore not entitled to all the professional's income for the equivalent number of post-divorce years, because such an award would ignore the one-half of expenses imputed to the student spouse.
many states. \textsuperscript{205} Moreover, once the degree is construed as property, community property jurisdictions could likewise effectuate such an award. \textsuperscript{206} In short, all jurisdictions could make this type of award because it would be a property distribution, and all divorce courts are empowered to make property settlements.

This method of valuation and award has two chief virtues: (1) it is simple to calculate and is therefore a highly workable remedy, and (2) it is equitable and fair to both parties. The calculation of value is simple when based on a labor theory of value: all the court need do is to look to the labor time of the student spouse in order to determine value. The supporting spouse, as marital partner, is then entitled to one-half that value. This approach avoids the complexities of econometric formulas. It avoids the speculation that is inherent in evaluating a particular degree holder's future earning potential. It does not require the evaluation of a multiplicity of variables; on the contrary, it looks solely to the input of the student spouse. It does not necessarily require expert testimony with its attendant uncertainties and potential unfairness, actual or perceived. Moreover, this approach is explicit in what it is valuing: it measures the cost of the degree to the student, rather than the value of the supporting spouse's contributions. Thus, it is the marital asset that is being valued, rather than something else that the court feels should be compensated.

It should also be clear that this method of valuation and award is fair to both spouses. In essence, the supporting spouse receives what he or she contributed towards the earning of the degree: an equivalent amount of time in which to pursue further education or career advancement. If the supporting spouse, at divorce, chooses not to pursue further personal development that will be the spouse's choice. Moreover, the supporting spouse will receive a return on the investment in the student spouse: this will be realized in terms of the increased income of the student spouse. Since the supporting spouse will be entitled to one-half of the professional's income for an equivalent period, it can be expected that in most cases this will result in a higher level of support than when the student spouse was in school.

This type of award is also equitable to the student spouse who finally begins a professional career. The award recognizes that the degree is the result of the labor of the student spouse, and that future earnings are the product not only of the education, but also the devel-

\textsuperscript{205} See supra notes 9, 41, 42 and accompanying text.

opment of skills and professional experience. The award is finite and based on the value of the degree, rather than on speculative calculations of potential earning capacity. It neither forces the professional spouse to seek a higher paying position nor to remain in a high-income position he or she dislikes. It allows the spouse to pay out a property settlement over time, rather than be burdened with an onerous, one-time, lump-sum award. In short, the professional spouse is free to pursue his or her career interests without the restrictions imposed indirectly by a divorce court’s artificial evaluation of the economic worth of the profession.

In 1975 a New York state court, recognizing that “times have changed,” took an innovative step in this direction in Morgan v. Morgan.207 There, the wife worked to support her husband through undergraduate school and then law school at Columbia University. She worked full-time as a secretary, and after the birth of their child, she did part-time secretarial work and child care at home.208 The court found that she was highly skilled and could earn at least $10,000 a year as an executive secretary. The husband, after a federal judicial clerkship, joined a Wall Street law firm, where at the time of trial he was earning $27,500. The court concluded that, “[i]n all, he has done well and his future appears very promising.”209 Shortly after the Morgans separated, the wife began to pursue pre-medical education at the undergraduate level, and she hoped to go to medical school.210 At their divorce hearing, the husband contended that his wife was not entitled to alimony, since she was capable of supporting herself.211 The court, however, framed the issue in an interesting fashion: “[s]hall a young mother, presently a full-time pre-medical student with exceptional grades, be given an equal opportunity for development and fulfillment by completing her medical school training although capable of being

208. Id. at 978-79, 81 Misc. 2d at 618.
209. Id. at 979, 81 Misc. 2d at 618. The husband’s starting salary at his Wall Street firm was $18,000. In two years, his salary was increased to $27,500.
210. Id. The wife began taking pre-medical courses at Hunter College. The court noted that she had earned a 3.83 general average and an A in organic chemistry—which ranked her fifth in a class of seventy. Id.
211. Id. at 981, 81 Misc. 2d at 619. The husband’s argument was based on Section 236 of the Domestic Relations Law of New York, which directs the court to consider the ability of the wife to be self-supporting. In construing this mandate, the trial court stated: “‘Self-supporting,’ . . . does not imply that the wife shall be compelled to take any position that will be available when her obvious potential in life, in terms of ‘self-support’ will be greatly inhibited.” Id., 81 Misc. 2d at 620.
The court concluded that she was entitled to an alimony award and noted “she merely seeks for herself the same opportunity which she helped to give the defendant.” The husband was ordered to pay weekly alimony until the wife completed her medical studies. The court stated that, in its opinion, the answer to this issue is that under these circumstances, the wife is also entitled to equal treatment and a “break” and should not be automatically relegated to a life of being a well-paid, skilled technician laboring with a life-long frustration as to what her future might have been as a doctor, but for her marriage and motherhood.

Unfortunately, the court’s award was overturned on appeal. The appellate court found that “[a]lthough the wife’s ambition is most commendable,” the trial court was in error “in including in the alimony award monies for the achievement of that goal.”

The Morgan case is significant because it is one of the few instances where a court based an award, in an educational degree case, on the theory of providing the supporting spouse with an equivalent opportunity to that of the student/professional spouse. The Morgan court’s approach to devising a fair remedy was novel in its analysis of equal treatment. Basically, the Morgan court had the right idea and translated it into an available statutory remedy that proved unacceptable to an appellate court because it was framed in terms of alimony.

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212. Id. at 978, 81 Misc. 2d at 617.
213. Id. at 982, 81 Misc. 2d at 621.
214. Id. The husband was ordered to pay $200 a week in alimony and child support, so long as his wife did not remarry and continued to be a full-time pre-medical or medical student. Id. Clearly, the remedy proposed in this article would carry no such restrictions or limitations on the supporting spouse in terms of post-divorce life style or career pursuits.
215. Id. at 981-82, 81 Misc. 2d at 621.
217. Id. at 344, 52 A.D.2d at 804 (emphasis added). The court also added: “[W]hile this Court recognized plaintiff’s goal in medicine, this pursuit was never in the contemplation of the parties during marriage and appears to be of recent origin.” Id. Again, the remedy proposed in this paper would not take such a consideration into account in recompensing the supporting spouse.
218. See also Mori v. Mori, 124 Ariz. 193, 196, 603 P.2d 85, 87-88 (1979) (wife entitled to three years rehabilitative maintenance to pursue higher education and seek employment after twenty-five year marriage to lawyer); In re Marriage of Bowman, 633 P.2d 1198, 1202 (Mont. 1981) (wife of physician must be given opportunity to not only pursue a bachelor’s degree but also post-graduate education to secure appropriate employment to maintain high standard of living); Childers v. Childers, 15 Wash. App. 792, 796, 552 P.2d 83, 85-86 (1976), modified, 89 Wash. 2d 592, 575 P.2d 201 (1978) (husband ordered to support wife while she earned undergraduate college degree; she supported him through medical internship).
rather than as a property settlement. In a sense, the Morgan decision was ahead of its time. Importantly, the appellate court did not reject the theory of the award; it merely rejected the trial court's attempt to fashion its remedy within the bounds of New York's statutory provisions.

The times now, however, seem ripe for this equal opportunity approach to recompensing supporting spouses in educational-degree cases. Simply by recognizing that an educational degree is a marital property asset, and valuing the asset in terms of its labor input, courts will be able to treat fairly both spouses at dissolution. Courts utilizing this approach will be able to help the supporting spouse realize a return on investment, as well as the opportunity for self development in whatever manner he or she chooses. And the degree holder, while recompensing his or her partner for the fair value of the degree, will also be free to pursue his or her career interests.

V. CONCLUSION

Educational degree cases present courts with difficult problems involving fair valuation and distribution at divorce. These troubling complexities can be avoided once courts recognize that an educational degree or license to practice is a marital asset. Further, courts should stop trying to evaluate educational degrees in monetary terms; both the cost value methods and the future earnings calculations are problematic, flawed, and ultimately unfair. The most equitable method of valuing a degree is in terms of the labor time utilized by the student spouse to achieve the degree. The labor theory of value offers courts a simple and economically sound approach to assessing the worth of this asset. The supporting spouse, under this view, would be entitled to one-half the value of the asset. In real terms, this would mean that the supporting spouse would receive one-half of the other spouse's income, for a number of years equivalent to those needed to acquire the degree or license. This equal opportunity approach, grounded in a labor theory of value, satisfies the dual needs of the courts in these cases; it provides an uncomplicated remedy that is both workable and equitable.