

“TO THE STARS THROUGH DIFFICULTIES”: THE LEGAL CONSTRUCTION OF PRIVATE SPACE AND *THE WIZARD OF OZ*

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I. INTRODUCTION

Kansas. Thirty-fourth State of the Union.¹ Located in the center of the forty-eight contiguous states.² Home of Walter Chrysler, Amelia Earhart, Dwight D. Eisenhower, Melissa Etheridge, and Langston Hughes.³ One of three states claiming to be the home of the largest ball of twine,⁴ a mostly Christian state,⁵ site of the school desegregation dispute leading to *Brown v. Board of Education*,⁶ with a state motto “ad astra per aspera,” meaning “to the stars through difficulties,”⁷ and home to Dorothy Gale, her aunt, her uncle, and her dog, Toto.⁸

Why did author L. Frank Baum choose Kansas as Dorothy’s home, the home for which she goes to immeasurable trouble to return? This question has no doubt occupied the minds of *The Wonderful Wizard of Oz*⁹ enthusiasts for decades, and several theories have emerged explaining his choice.¹⁰ Whatever the explanation, it is certainly true that if Baum intended a cyclone to play a central role in the story, then Kansas was an

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¹ Ron Thornburgh, *Kansas at a Glance*, KANSAS DEPARTMENT OF COMMERCE 2, http://www.travelks.com/resources/PDF/183-Kansas%20At%20a%20Glance_web%20ready.pdf.

² *Where is Kansas*, MAPS OF THE WORLD, <http://www.mapsofworld.com/usa/states/kansas/kansas-location-map.html> (last visited Sept. 14, 2010).

³ Thornburgh, *supra* note 1, at 4–6.

⁴ *World's Largest Ball of Twine*, KANSASTRAVEL.ORG, <http://kansastravel.org/balloftwine.htm> (last visited Sept. 14, 2010).

⁵ *Kansas*, AWESOME AMERICA, <http://awesomeamerica.com/kansas> (last visited Sept. 14, 2010).

⁶ Thornburgh, *supra* note 1, at 2.

⁷ *Id.* at 3.

⁸ See generally L. FRANK BAUM, *THE WONDERFUL WIZARD OF OZ* (U. of Cal. Press, 1986) (1900).

⁹ *Id.*

¹⁰ *Baum, L. Frank*, NEW WORLD ENCYCLOPEDIA, http://www.newworldencyclopedia.org/entry/L_Frank_Baum (last modified Aug. 18 2008) (explaining that the most common theory for his choice of Kansas was that he was describing the bleakness of South Dakota but used Kansas to “avoid embarrassing relatives” still in South Dakota.).

ideal choice.¹¹ Likewise, if he wanted a place that provides a stark contrast to the colorful diversity of Oz, then Kansas—known for its wide-open prairies,¹² small population,¹³ and big sky¹⁴—seems to be an apt comparator. And perhaps coincidentally, the state's motto, “To the Stars Through Difficulties,”¹⁵ captures perfectly the tale of Dorothy Gale’s quest to return home under difficult and challenging circumstances. A more nuanced examination would acknowledge that Kansas’s centrality in *The Wonderful Wizard of Oz* provides a rich allegory from which one can examine various literary, psychological, sociological, and political theories.¹⁶

For those interested in examining the Anglo-American legal treatment of the home, Baum’s Kansas provides a superb opportunity to explore the elevated status of the home and the consequent difficulty that the law has had in protecting those who are relegated to work, or associated with working in the private sphere of the family home. It is the family home where violence, subjugation, and physical and mental abuse often originate but receive limited governmental oversight.¹⁷ That *The Wonderful Wizard of Oz*, a classic American children’s story, could act as the basis for such a critical examination of the legal treatment of the home derives not only from its simple narrative, fine imagery, rich dialogue, and appealing story line, but also from the formidable critique found within the pages themselves.

The choice of Kansas ultimately works. It works not only because of the necessary contrast between it and Oz but also because it represents something authentic to many Americans. That is, it represents home, a place against which few other places can compete for our true affections: the most recognizable domicile in American popular culture.¹⁸ But what is it about Kansas that represents home? Baum’s Kansas is able to capture the enduring, ideal symbol of the American home—family, hard work,

¹¹ U.S. Tornado Climatology, NATIONAL CLIMATIC DATA CENTER, <http://www.ncdc.noaa.gov/oa/climate/severeweather/tornadoes.html#maps> (last updated Apr. 10, 2008) (Kansas belongs to a section of States that make up “Tornado Alley” and has the second highest average violent tornadoes of any state next to Texas.).

¹² Kansas Travel and Tourism Div., Kansas Dep’t of Commerce, *Kansas Fast Facts*, KANSAS AS BIG AS YOU THINK, <http://www.travelks.com/s/index.cfm?aid=25> (last visited Sep. 23, 2010).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Kansas Symbols, State Mottos*, SHG RESOURCES, <http://www.shgresources.com/ks/symbols/motto> (last visited Sept. 23, 2010).

¹⁶ See, e.g., Henry Littlefield, *The Wizard of Oz: Parable on Populism*, 16 AM. Q. 47–58 (1964) (arguing that the WIZARD OF OZ is a populist allegory in the context of late nineteenth century politics); Todd Gardner, *Responses to Littlefield: The Wizard of Oz, TURN ME ON, DEAD MAN*, http://www.turnmeondeadman.com/index.php?option=com_content&view=article&id=54&Itemid=67 (last visited Sept. 23, 2010); WILLIAM R. LEACH, *LAND OF DESIRE: MERCHANTS, POWER, AND THE RISE OF A NEW AMERICAN CULTURE* 248–60 (1994) (using the tales of Oz to demonstrate the benefits of capitalism).

¹⁷ *Location*, BUREAU OF JUSTICE STATISTICS, <http://bjs.ojp.usdoj.gov/index.cfm?ty=tp&tid=44> (last updated May 5, 2010) (last visited Oct. 16, 2010) (explaining that one in three violent crimes occur in or near the home, and eighteen percent of those crimes occur in the home directly).

¹⁸ Dorothy’s quest to return home is surprisingly useful for explaining some important legal terminology that law students encounter in their first year of law school. For example, the story of Dorothy’s quest to return home provides an apt definition of the term “domicile.” “Domicile. That place where a man has his true, fixed and permanent home and principal establishment and to which whenever he is absent he has the intention of returning.” BLACK’S LAW DICTIONARY 435 (5th ed. 2003).

Christian values, thrift, strict childrearing, etc.¹⁹ But at periods during Dorothy’s journey, Baum invites the reader to question this ideal.

II. “BE IT EVER SO HUMBLE, THERE’S NO PLACE LIKE HOME”²⁰

I suspect that most adults who have been raised in North America and elsewhere have, at some point, seen the 1939 movie *The Wizard of Oz* starring Judy Garland²¹ or at least know of the adventures of Dorothy in the land of Oz. I also suspect that a large segment of these adults, however, have not read the original 1900 novel, *The Wonderful Wizard of Oz*. The novel is sufficiently different from the film in tone and texture that one can certainly consider the film related but not completely true to the novel. Both, however, are classics. One of the most interesting differences between the novel and film is found in the depiction of Kansas as home. In both novel and film, Dorothy longs to be home from the moment the cyclone takes her to the land of Oz, through her sometimes perilous, but always exciting adventures, and until her wish to return is at last fulfilled.²² Her adventure, therefore, though full of excitement and suspense, is ultimately a journey forever home. Dorothy’s home in both the film and novel is bleak and uncompromising.²³ In the film, however, it is nonetheless depicted in such a way as to provide a greater scope for understanding the appeal of her home in Kansas. For example, though none of the Kansas adults in the film are particularly appealing,²⁴ they are nonetheless more complex and nuanced than Aunt Em and Uncle Henry are in the novel. Aunt Em’s and Uncle Henry’s colorlessness and sternness in the novel are departed from in the film. The film manages to humanize them in a way that apparently Baum, in the novel, refuses to do.²⁵ Additionally, not only does the film introduce five additional characters who do not appear in Baum’s novel but those same five characters also become central to Dorothy’s later adventures in Oz.²⁶ For example, there are the three farm hands who, later in the film, become the Scarecrow, the

¹⁹ “The only truly lasting interpretation is one that can be understood by children as well as adults, regardless of political leanings or era. In that light, Oz is the quintessential American success story, wherein an ordinary child, alone and friendless in a desolate land, attains her goals through hard work, friendship, and self-reliance.” Sarah Hamilton, *Over the Rainbow and Down the Rabbit Hole: Law and Order in Children’s Literature*, 81 N.D. L. Rev. 75, 98 (2005).

²⁰ The melody of John Howard Payne’s *Home, Sweet Home* appears periodically in the film version of *The Wizard of Oz*. THE WIZARD OF OZ (Metro-Goldwyn-Mayer 1939). The phrase “there’s no place like home” is spoken by Dorothy when she explains to the Scarecrow her reasons for wanting to return to Kansas. THE WIZARD OF OZ, *supra* note 20; JOHN HOWARD PAYNE, *Home, Sweet Home*, in CLARI: OR, THE MAID OF MILAN (1823).

²¹ THE WIZARD OF OZ, *supra* note 20.

²² See generally BAUM, *supra* note 8; THE WIZARD OF OZ, *supra* note 20.

²³ THE WIZARD OF OZ, *supra* note 20.

²⁴ *Id.* In the film version, none of the adults are sympathetic to the pending plight of Dorothy and her dog, Toto. *Id.* As the storm begins to rage, the adults are more concerned for the horses than for Dorothy. *Id.* This is further demonstrated when they enter the storm cellar without Dorothy and Toto and do not open it when Dorothy attempts to enter. *Id.*

²⁵ *Id. supra* note 20. In the film, the adults are scurrying about, forever busy; Aunt Em and Uncle Henry make multiple references to having to work to make money and to the fact that if the farmhands do not work hard they will be out of a job. *Id.*

²⁶ *Id.* The characters are: the three farmhands, Hunk, Hickory, and Zeke; the traveling magician, Professor Marvel; and Miss Gulch, who wants to have Toto put down. *Id.*

Tin Woodman, and the Cowardly Lion.²⁷ Moreover, the novel does not attempt to present any appealing or redeeming detail of Kansas.²⁸ This ought to come as a surprise for those who read the novel after seeing the film.

In his novel, Baum intends that the reader spend as little time as possible in Kansas. The journey begins at once.²⁹ After finding herself in a whirlwind that takes her to a strange land, Dorothy seeks to return home.³⁰ This journey, and the friends and foes who she meets along the way comprise the story of *The Wonderful Wizard of Oz*.³¹ Her longing for home is considerable and does not diminish throughout the story even when she meets some lifelong friends—friends who ultimately teach her courage, love, and respect, and provide her the unique opportunity to lead.³²

For those reading the novel after having seen the film, one of the most striking differences between the novel and the film is the description of Dorothy's Kansas home.³³ In the novel, Dorothy's family and home in Kansas are described in exceedingly bleak terms.³⁴ By the time that Dorothy is orphaned and comes to live with her new family, her Aunt Em has had the life wrung out of her:

When Aunt Em came there to live she was a young, pretty wife. The sun and wind had changed her, too. They had taken the sparkle from her eyes and left them a sober gray; they had taken the red from her cheeks and lips, and they were gray also. She was thin and gaunt, and never smiled, now. When Dorothy, who was an orphan, first came to her, Aunt Em had been so startled by the child's laughter that she would scream and press her hand upon her heart whenever Dorothy's merry voice reached her ears; and she still looked at the little girl with wonder that she could find anything to laugh at.³⁵

Likewise, Dorothy's Uncle Henry is extremely hard-working but drained of spirit: "Uncle Henry never laughed. He worked hard from morning till night and did not know what joy was. He was gray also, from his long beard to his rough boots, and he looked stern and solemn, and rarely spoke."³⁶

As a result, Dorothy's home and its surroundings could not be more uninviting:

Dorothy lived in the midst of the great Kansas prairies, with Uncle Henry, who was a farmer, and Aunt Em, who was the farmer's

²⁷ The film version uses slightly different names for some of the characters. For example, in the novel the Tin Man is the "Tin Woodman." For the sake of consistency I will use the names as they appear in Baum's rendition.

²⁸ BAUM, *supra* note 8, at 57–59.

²⁹ See generally *id.*

³⁰ *Id.* at 9–10.

³¹ See *id.*

³² See *id.*

³³ Compare THE WIZARD OF OZ, *supra* note 20, with BAUM, *supra* note 8, at 7–8.

³⁴ BAUM, *supra* note 8, at 7–8.

³⁵ *Id.* at 8.

³⁶ *Id.* at 9.

wife. Their house was small, for the lumber to build it had to be carried by wagon many miles. There were four walls, a floor and a roof, which made one room; and this room contained a rusty looking cooking stove, a cupboard for the dishes, a table, three or four chairs, and the beds. Uncle Henry and Aunt Em had a big bed in one corner, and Dorothy a little bed in another corner. There was no garret at all, and no cellar—except a small hole dug in the ground, called a cyclone cellar, where the family could go in case one of those great whirlwinds arose, mighty enough to crush any building in its path. It was reached by a trap-door in the middle of the floor, from which a ladder led down into the small, dark hole.

When Dorothy stood in the doorway and looked around, she could see nothing but the great gray prairie on every side. Not a tree nor a house broke the broad sweep of flat country that reached the edge of the sky in all directions. The sun had baked the plowed land into a gray mass, with little cracks running through it. Even the grass was not green, for the sun had burned the tops of the long blades until they were the same gray color to be seen everywhere. Once the house had been painted, but the sun blistered the paint and the rains washed it away, and now the house was as dull and gray as everything else.³⁷

The obvious question is, then, why is Dorothy so desperate to return to a land so dreary and cheerless and a family so forlorn. Her sole joy at home is her dog Toto,³⁸ but since he was swept away to the Land of Oz with Dorothy, there is no need to return to Kansas for his company. Unlike in the film version, there are no friendly farmhands or traveling magicians to draw her back home in the novel. Moreover, the land of Oz where she lands is marvelous in contrast to the ugliness of Kansas. In Oz:

There were lovely patches of green sward all about, with stately trees bearing rich and luscious fruits. Banks of gorgeous flowers were on every hand, and birds with rare and brilliant plumage sang and fluttered in the trees and bushes. A little way off was a small brook, rushing and sparkling along between green banks, and murmuring in a voice very grateful to a little girl who had lived so long on the dry, gray prairies.³⁹

Dorothy’s uncritical embrace of her home, or the status quo, is somewhat perplexing. Yet it is understandable, indeed expected, by most readers that Dorothy would yearn to return home. Again, the question is why. Baum invites this question. As a children’s author who socializes

³⁷ *Id.* at 7–8. See also Littlefield, *supra* note 16, at 51 (describing Dorothy’s home: “On [the farm] a deadly environment dominates everyone and everything except Dorothy and her pet. The setting is Old Testament and nature seems grayly impersonal and even angry.”).

³⁸ “It was Toto that made Dorothy laugh, and saved her from growing as gray as her other surroundings. Toto was not gray; he was a little black dog, with long, silky hair and small black eyes that twinkled merrily on either side of his funny, wee nose. Toto played all day long, and Dorothy played with him, and loved him dearly.” BAUM, *supra* note 8, at 9.

³⁹ *Id.* at 10.

children to the rules and norms of society,⁴⁰ Baum's success is found not only in inviting these questions, but also in providing a simple, child-friendly answer. The adult reader, however, gets the strong impression that the answer that Baum gives is not quite as simple. The following exchange between Dorothy and the Scarecrow exemplifies the difficulty one might have in crediting her longing to be home despite the dreariness and depravation awaiting her on her return:

“Tell me something about yourself, and the country you came from,” said the Scarecrow, when she had finished her dinner. So she told him all about Kansas, and how gray everything was there, and how the cyclone had carried her to this queer Land of Oz. The Scarecrow listened carefully, and said,

“I cannot understand why you should wish to leave this beautiful country and go back to the dry, gray place you call Kansas.”

“That is because you have no brains,” answered the girl. “No matter how dreary and gray our homes are, we people of flesh and blood would rather live there than in any other country, be it ever so beautiful. There is no place like home.”

The Scarecrow sighed.

“Of course I cannot understand it,” he said. “If your heads were stuffed with straw, like mine, you would probably all live in the beautiful places, and then Kansas would have no people at all. It is fortunate for Kansas that you have brains.”⁴¹

Of course it is clear to the reader very early on that the Scarecrow is not suffering from a want of brains. He is clearly the best problem solver of the four companions. His insight and planning allow the four friends to escape untold dangers.⁴² When the Scarecrow concludes that people must have brains because otherwise they would all live in wonderful places like Oz,⁴³ Baum is inviting us to question our own choices of the place we call home. How wonderfully ironic. In order to live in a dull, gray place like the Kansas portrayed in the novel one must have brains,⁴⁴ because only those with brains can explain why someone would choose Kansas over Oz. But in both the novel and film, Kansas, or home, cannot compete on a rational level with the world of Oz. Yet on an emotional level, the world of Oz does not stand a chance against Kansas. The novel addresses the question as to how Kansas can possibly compete against Oz for Dorothy's loyalty. In its closing chapter, “Home Again”:

Aunt Em had just come out of the house to water the cabbages when she looked up and saw Dorothy running toward her.

⁴⁰ HAMILTON, *supra* note 19, at 79 (“Children's literature provides an alternative method of social education. The fictional world of literature, and particularly the use of magic and the surreal, enables children to see cause-and-effect relationships between rules and punishments that are normally more amorphous. In real life, a child with no understanding of private property rights may not comprehend why it is so important to stay off the neighbor's lawn, but in a fairy tale, a child who enters another's property may find herself surrounded by angry bears.”).

⁴¹ BAUM, *supra* note 8, at 41.

⁴² See *id.*

⁴³ *Id.* at 41.

⁴⁴ *Id.*

"My darling child!" she cried, folding the little girl in her arms and covering her face with kisses; "where in the world did you come from?"

"From the Land of Oz," said Dorothy, gravely. "And here is Toto, too. And oh, Aunt Em! I'm so glad to be at home again!"⁴⁵

The joy that is felt by a loved one's adoring embrace is powerful indeed and is clearly an irresistible pull toward home, no matter where home happens to be. And perhaps ultimately that is the easiest and best answer to the question, unworthy of further comment. A more nuanced answer, however, would surely take into consideration that Dorothy was leaving a magnificent magical land where she had grouped together another family of sorts. It was a family not related by blood—in fact, we do not even know if her Kansas family is related by blood⁴⁶—but by sharing a common experience, caring for each other, facing danger together, overcoming hardship and deprivation, and eventually succeeding in attaining the one thing most important to each, it became a family.⁴⁷ In the following exchanges, Dorothy explains how important it is to go home. First, Dorothy explains the importance in a dialogue between herself and the Wizard of Oz:

Again the eyes looked at her sharply, and they saw she was telling the truth. Then Oz asked,

"What do you wish me to do?"

"Send me back to Kansas, where my Aunt Em and Uncle Henry are," she answered earnestly. "I don't like your country, although it is so beautiful. And I am sure Aunt Em will be dreadfully worried over my being away so long."⁴⁸

Second, Dorothy explains the importance to Glinda the Witch of the South:

"My greatest wish now," she added, "is to get back to Kansas, for Aunt Em will surely think something dreadful has happened to me, and that will make her put on mourning; and unless the crops are better this year than they were last, I am sure Uncle Henry cannot afford it."⁴⁹

The earnestness with which Dorothy wishes to return home and the thoughtful consideration of the feelings of her Aunt and Uncle are touching. Baum makes it easy for the reader to relate to her predicament. More challenging is Baum's subtle appeal to the reader to question this ideal depiction of home.

⁴⁵ *Id.* at 253.

⁴⁶ *Id.* at 19–50.

⁴⁷ See generally *id.*

⁴⁸ *Id.* at 122.

⁴⁹ *Id.* at 246.

III. IN THE LAW THERE REALLY IS NO PLACE LIKE HOME: GOVERNMENTAL RELUCTANCE TO REGULATE THE HOME

It is interesting to see a common societal view of the importance of the home so thoroughly reflected in the law's treatment of the family home. As in the popular imagination, the home holds an exalted, near-sacred status in Anglo-American jurisprudence. Its ideological connection to private family relations and its declared importance as the basis for societal growth and success has resulted in a legal posture that preserves the home as an institution, the sanctity of which ought not to be disturbed by the state.⁵⁰ Some of the strongest manifestations of this posture can be seen in important constitutional cases. For example, in the *Kyllo* decision, the Supreme Court of the United States held that the government's use of a thermal imaging device to detect heat in one's home constituted an unlawful search in violation of one's expectation of privacy in the home.⁵¹ The Court was concerned that although the device could detect the presence of a marijuana growing operation within the home, its ability to reveal intimate details about the home infringed on the defendant's privacy rights as guaranteed under the United States Constitution. The Supreme Court held:

The Fourth Amendment provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” “At the very core” of the Fourth Amendment “stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.”⁵²

Therefore, “with few exceptions, the question whether a warrantless search of a home is reasonable and hence constitutional must be answered no.”⁵³

Other areas of criminal law are replete with instances of special treatment of the home. For example, until the relatively recent overhaul of state criminal law statutes in the 1980s recognizing the crime of marital rape, husbands were free to have coerced sex with their spouses without legal consequence.⁵⁴ Likewise, criminalization of the practice of domestic/spousal abuse only became widespread in the United States in the 1980s.⁵⁵ Much of this positive change in the law was the result of a sustained feminist critique of the irrationality of the law's devotion to the private/public dichotomy; a dichotomy responsible for the failure, or

⁵⁰ See, e.g., *infra* text accompanying notes 51–55.

⁵¹ *Kyllo v. United States*, 533 U.S. 27, 40 (2001).

⁵² *Id.* at 31 (citations omitted) (citing *Silverman v. United States*, 365 U.S. 505, 511 (1961)).

⁵³ *Id.* (citing *Illinois v. Rodriguez*, 497 U.S. 177, 181 (1990); *Payton v. New York*, 445 U.S. 573, 586 (1980)).

⁵⁴ Laleya Weintraub Siegel, Note, *The Marital Rape Exemption: Evolution to Extinction*, 43 CLEV. ST. L. REV. 351 (1995).

⁵⁵ Though marital rape laws and domestic violence laws are now the rule rather than the exception in the United States, there is still a legal gap in regulating corporal punishment of children within the home. See generally Timothy John Nolen, Note, *Smacking Lesson: How the Council of Europe's Ban on Corporal Punishment Could Serve as a Model for the United States*, 16 CARDOZO J.L. & GENDER 519 (2010) (discussing how corporal punishment is still defended in terms relating to parental “rights” to discipline one's own children as one sees fit).

indeed refusal, of the state to intervene in household disputes in which women and children were subjected to mental abuse and physical and sexual violence.⁵⁶

In addition, in the area of employment law, the home has occupied a double status. On the one hand, it is a place of refuge from the outside world. It is where families have a degree of privacy and protection from governmental intrusion in order to operate unencumbered while raising the next generation, providing physical and emotional comfort and support to household members, and carrying on the process of religious and cultural teaching. On the other hand, the home is often the site of employment relations.⁵⁷

The importance of this cannot be underestimated because the law's treatment of the home in many ways contrasts with its treatment of the workplace. Typically, the workplace brings to mind some form of employment done outside the home, in the public sphere. Consequently, it is generally accepted that the government has a role in regulating the workplace in order to prevent harassment, discrimination, abuse, and grievous forms of exploitation.⁵⁸ Thus, the public interest in regulating employment is clear because good working relations contribute to societal stability and well-being. When we think of the home, however, we think of it as a place of private, familial relations, not as a place of employment relations. For millions of Americans, however, the workplace is the home and the home is the workplace.⁵⁹ People who work in these private dwellings are as much workers as those who work outside the home and as such are entitled to some governmental protections against harmful working conditions.⁶⁰ The private sphere, therefore, is often someone else's public sphere accountable to governmental regulation.⁶¹ “Nonetheless, where housework is done by a paid employee, its public nature is often obscured by a common understanding of the house as a private entity”,⁶² and thus it is shielded from government meddling. In *State v. Bachmann*, the court stated,

⁵⁶ See generally JEAN BETHKE ELSHTAIN, PUBLIC MAN, PRIVATE WOMAN: WOMEN IN SOCIAL AND POLITICAL THOUGHT 322–23 (1981) (critiquing and restructuring traditional notions of public and private); MARTHA ALBERTSON FINEMAN, THE NEUTERED MOTHER, THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES 180–92 (1995) (examining the traditional notion of family privacy in the context of single mothers); CATHERINE A. MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW 93–102 (1987) (critiquing the “privacy doctrine”); Frances E. Olsen, *The Family and the Market: A Study of Ideology and Legal Reform*, 96 HARV. L. REV. 1497, 1509–13 (1983) (detailing the state's failure in the nineteenth century to intervene in the private family setting); Donna E. Young, *Working Across Borders: Global Restructuring and Women's Work*, 2001 UTAH L. REV. 1, 67 (2001) (examining the negative consequences of the law's adherence to the different spheres doctrine).

⁵⁷ Statistics show that twenty-four percent of working adults do some or all of their work from home. *American Time Use Survey—2009 Results*, BUREAU OF LABOR STATISTICS (June 22, 2010), <http://www.bls.gov/news.release/atus.nr0.htm>.

⁵⁸ See, e.g., Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e (2010).

⁵⁹ *American Time Use Survey—2009 Results*, *supra* note 57.

⁶⁰ For two cases involving serious abuse of a domestic worker see *Tabion v. Mufti*, 73 F.3d 535 (4th Cir. 1996) and *United States v. Alzanki*, 54 F.3d 994 (1st Cir. 1995).

⁶¹ See Young, *supra* note 56 (examining the regulation of domestic work and explaining the difficulty domestic workers find themselves when they “work in what is simultaneously their workplace (the domestic worker's public sphere) and someone else's home (her employer's private sphere”)).

⁶² *Id.* at 20–21.

[T]he home is a sacred place for people to go and be quiet and at rest and not be bothered with the turmoil of industry, and that as such it is a sanctuary of the individual and should not be interfered with by industrial disputes. We think [this] conception of the ‘home’ as a ‘sanctuary of the individual’ is sound. The word is defined as, the abiding place of the affections, [especially] domestic affections; as the social unit formed by a family residing together in one dwelling and as an organized center of family life.⁶³

Clearly the sanctity of the home ought not to conceal the home’s dual character when employment occurs there. The law should be mindful of this duality in order to address the legitimate concerns of the parties in the employment relationship. Although the home can be a wonderful place, sometimes it really is as ugly and gray as a Kansas prairie before the coming of a cyclone.

IV. CONCLUSION

Much of the appeal of *The Wonderful Wizard of Oz* stems from its depiction of the archetypal American quest for home. There is safety in the home. There is love in the home. There is physical and emotional nourishment in the home. Thus, on a very basic level, Dorothy’s quest to return home makes sense. Yet Baum’s bleak description of Kansas and Dorothy’s focused determination to return ought to leave the reader ill at ease. In this way, Baum captures the essential duality of the meaning of home and facilitates our understanding of the way in which the wonderful world of the law struggles with the duality. For clearly there is no place like home, but the home can also be full of “[l]ions and tigers and bears, Oh my!”⁶⁴

⁶³ State v. Bachman, 521 N.W.2d 886, 888 (Minn. Ct. App. 1994) (alteration in original) (citations omitted) (quoting State v. Cooper, 285 N.W. 903, 905 (Minn. 1939)).

⁶⁴ THE WIZARD OF OZ, *supra* note 20.