

No-Fault Divorce Laws and Divorce Rates in the United States and Europe: Variations and Correlations

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Presented at the European Regional Dialogue, Geneva, Switzerland, August 2004

Published in Loveless, A.S. and Holman, T.B. (Eds.), *The Family in the New Millennium: Protecting the Natural and Fundamental Group Unit of Society*. Westport, CT: Praeger Publishing, 2006.

I. Abstract

This paper brings together for comparison the divorce rates and certain relevant divorce laws for the 50 states of the United States of America, and 22 European nations participating in the Commission for European Family Law (CEFL). It finds correlations between lower divorce rates and 1- longer waiting periods for no-fault divorce, 2- stronger incentives for negotiating mutual consent, and 3- mandatory reconciliation counseling laws.

II. Context: Why Compare Different Countries' Divorce Laws?

Concern about divorce, and fundamental changes to divorce laws, are widespread in several different parts of the world, but the people involved are often not aware of legal and social developments in other countries and states. Broadly speaking, we are beginning to see a desire to turn away from divorce in places that have seen too much family breakdown, whether as a result of totalitarianism followed by drastic changes in China and Eastern Europe, or in the highly individualistic, mobile society of the "Sun Belt" states of the American South and West. But in areas where the revolution in increased family breakdown and loose divorce laws has not yet gone so far—Western Europe, Latin America, capitalist Asia, Oceania, and the American Northeast—reformers are still seeking to continue the pro-divorce trend and make divorce more available.

A. The United States

In the country that led much of the world in loosening divorce laws and experiencing unthinkable high divorce rates, people in many different walks of life have been rethinking divorce.

A new willingness to explore the causes and effects of divorce began in the mid-1980s. Sociologists and feminists began to report that women's and children's incomes suffered after divorce.² Economists and legal scholars began to argue that our current divorce laws lead to far more divorces than would be economically efficient for the people involved, because the laws allowed either spouse to end the marriage for any reason. According to this theory, this vulnerability to unilateral divorce encourages people to be prepared for divorce and to look out for their own self-interest, rather than invest their entire lives in a marriage which has no legal

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² Lenore Weitzman, *The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America* (1985); Allen Parkman: *No-Fault Divorce: What Went Wrong?* (1992)

protection.³ Other scholars discovered that divorce has all kinds of bad effects on children: it greatly increases the risks of emotional problems, teen pregnancy, drug and alcohol problems, smoking, poverty and crime.⁴ Therapists and marriage counselors began to publicly dispute the popular notion that most marriage breakdowns cannot be prevented or reversed, and introduced new therapies and marriage skills education curricula to do just that.⁵

In the mid-1990s, several major interdisciplinary books targeting a general readership called for a turnaround in the divorce culture. Books such as Barbara Dafoe Whitehead's *The Divorce Culture*, Hillary Rodham Clinton's *It Takes a Village to Raise a Child*, Maggie Gallagher's *The Abolition of Marriage*, David Blankenhorn's *Fatherless America*, and *The Marriage Report*, published by the Institute for American Values discussed the problems introduced into American culture by the surge in divorce and tried to offer solutions.

The divorce culture in the U.S. has been so all-encompassing that political and cultural conservatives, just as much as liberals, fully accepted it for a long time, completely tolerated, approved of and participated in divorce, and assumed that no-fault divorce laws were an inevitable and even wholesome development until the evidence to the contrary began piling up around them. Because of this, in the U.S. divorce has not been a left-right political issue.

Indeed, one of our most unashamed political and cultural liberals, First Lady Hillary R. Clinton, has written: "Recent studies demonstrate convincingly that while many adults claim to have benefited from divorce and single parenthood, most children have not. . . . Every society requires a critical mass of families that fit the traditional ideal, both to meet the needs of most children and to serve as a model for other adults who are raising children in difficult settings."⁶

Efforts to translate these insights into divorce-reduction legislation got underway from 1995 to 1997, when many state legislatures considered a requirement for mutual consent in no-

³ Martin Zelder, "The Economic Analysis of the Effect of No-Fault Divorce Law on the Divorce Rate", 16 Harvard J. Law & Pub. Pol. 241 (Winter 1993); Elizabeth Scott, "Rational Decisionmaking in Marriage and Divorce," 76 Va. L.Rev. 9 (1990); Robert Rowthorn, "Marriage and Trust: Some Lessons from Economics", 23 Cambridge Jnl. of Econ. No. 5, 661-91 (September 1999); Allen Parkman, *Good Intentions Gone Awry: No-Fault Divorce and the American Family* (2000).

⁴ See for example Judith Wallerstein, *The Unexpected Legacy of Divorce* (2000); Judith Wallerstein, *Second Chances: Men, Women, and Children a Decade After Divorce* (1989); Sara McLanahan and Gary Sandefleur, *Growing Up With A Single Parent: What Hurts, What Helps* (1994); Daniel T. Lichter et al., "Race and the Retreat from Marriage: A Shortage of Marriageable Men?" *American Sociological Review* 57 (December 1992): 781-799; N.D. Glenn and K.B. Kramer, "The marriages and divorces of the children of divorce," *Journal of Marriage and the Family*, 49, pp. 811-825; Sara McLanahan and Larry Bumpass, "Intergenerational Consequences of Family Disruption," *American Journal of Sociology* 4 (July, 1988), 130-52; Barry D. Ham, "The Effects of Divorce on the Academic Achievement of High School Seniors," *Journal of Divorce & Remarriage* 38.3/4 [2003]: 167-185; Nicholas Zill, Donna Morrison, and Mary Jo Coiro, "Long-term Effects of Parental Divorce on Parent-Child Relationships, Adjustment, and Achievement in Young Adulthood," *Journal of Family Psychology*, 7:1; Deborah A. Dawson, "Family Structure and Children's Health and Well-being: Data from the National Health Interview Survey on Child Health," *Journal of Marriage and the Family*, 53, p. 578; R.J. Sampson, "Crime in Cities: The Effects of Formal and Informal Social Control," *Crime and Justice* (Chicago, IL: University of Chicago Press, 1987).

⁵ Some of these efforts go back to the late 1970s and have been developed and refined since then, but the field first coalesced and became prominent with the 1996 launching of the Smart Marriage coalition. For articles and information on this and related developments see <http://www.smartmarriages.com>.

⁶ Hillary R. Clinton, *It Takes a Village to Raise a Child* (1996), pp. 39-40, 50. See also William A. Galston, "A Liberal-Democratic Case for the Two-Parent Family," *The Responsive Community* Vol. 1 Issue 1 (1990).

fault divorces of couples with children under 18.⁷ A few such reforms continue to be introduced, but this model was quickly overshadowed by covenant marriage, the idea of giving couples an option for a legally recognized type of marriage that would be more difficult to end. The first covenant marriage law was enacted by Louisiana in late 1997, followed by Arizona in 1998, and Arkansas in 2001. It was introduced in about half the states and passed only one house of the legislature in five states.⁸ Covenant marriage laws have no effect on most people, but they let couples enter, or convert into, a stronger form of marriage. These marriages require counseling both before entering and before exiting the marriage, and a slightly lengthened waiting period before no-fault divorce.⁹ This waiting period is two years in Louisiana and Arizona and three years in Arkansas, and thus is not too different from the existing waiting periods in some northeastern states' divorce laws (see Table 1).

More moderate and conventional steps toward divorce reform, such as longer waiting periods, have been suggested by some of the more liberal opponents of divorce,¹⁰ but until now there has been little in the way of introduced legislation and almost no organized effort behind this idea.

On the other hand, there have been unsuccessful and little-known attempts to reduce relatively long waiting periods or change the law's emphasis on fault in Maryland, Pennsylvania, and Mississippi. New Jersey's legislature passed a bill to shorten the wait for non-consensual no-fault divorce from 18 to 6 months, but then-Governor Christine Todd Whitman vetoed it. New York's bar association is mounting a concerted push to abolish fault and enact quick unilateral divorce in the 2005 legislative session, because of discontent with the ugliness of divorce litigation there.¹¹

But these developments do not really give the whole picture of the tensions surrounding divorce in the U.S. There is widespread discontent with the divorce process and its results. Men's groups and women's groups both claim that the family courts shortchange them financially and give them too little time with their children, and too little control over their children's lives. Politicians and the media eagerly join these debates.

Americans have perhaps uniquely high expectations of marriage, divorce, and the legal system. We are inveterate optimists as we plunge into marriage and then into divorce. We have heard of the perfect marriage and the good divorce, and we expect them. We are demanding consumers and idealistic citizens. We expect our courts to do justice and protect individuals' rights and property, and not penalize them for life choices they have a right to make. From long experience with democratic government, we believe that what's good for us individually furthers the common good, and cannot be bad for others. When one American's ideal of the good divorce collides with his spouse's version of it, the results that emerge from the court system surprise and outrage the parties and their friends. Typically they blame the judge, both lawyers, and their ex-spouse. They frequently take their stories to politicians and the press, who often share and spread their surprise and outrage.

⁷ Such bills were considered, but not passed, by perhaps half the states' legislatures. 13 of them are accessible via <http://www.divorcereform.org/con.html>.

⁸ Texas, Oklahoma, Georgia, Virginia and Oregon.

⁹ For the texts and legislative histories of Covenant Marriage bills, see <http://www.divorcereform.org/cov.html>.

¹⁰ See Hillary Clinton's comments quoted below under "International Knowledge and Coordination," and *The Marriage Movement: A Statement of Principles*, Institute for American Values, 2001, available at <http://www.marriagemovement.org>.

¹¹ John Caher, "NY Bar Group Pushes for No-Fault Divorce." *New York Lawyer* July 30, 2004. Accessed at <http://www.nylawyer.com/news/04/07/073004c.html>

The topic of child custody reveals an especially explosive fault line. Supporters of the “good divorce” model, including most divorce lawyers and fathers’ organizations, believe that “parents are forever” and children’s relationships with both parents should be nurtured after divorce. They are opposed by radical feminists who idealize the bond between the child and a single “psychological parent” who should have complete control over the child; and by traditionalists who believe so strongly in the nuclear family that they think a reconstituted stepfamily should completely supplant the family ties to a divorced or unwed father. Each of these three cultural groups appears to believe that its worldview is enshrined in our family law system, and it is interesting to consider how they would approach the question of unilateral no-fault divorce if they believed it imposed the other side’s system, not their own.

Recent high-profile cases exposing this divide include the *Newdow* case, where the U.S. Supreme Court said a non-custodial father has no standing to challenge his child’s exposure to religion in public school;¹² the *LaMusga* case, the latest and most publicized case pitting a mother’s freedom to relocate against the best-interests-of-the-child standard;¹³ and the *Elian Gonzalez* case, one of many in which the law collides with the popular notion that children are the mother’s property and should not go to the father if she dies.¹⁴

Thus we are working with a divorce system whose supporters and operators bitterly disagree on what results it is supposed to produce. Such a system may not be sustainable indefinitely, and the rage that it produces on either side may one day be turned upon the basic legal and social changes that created the system. *Washington Post* columnist Judy Mann has summarized America’s predicament: “The one thing we can probably all agree on is that we haven’t figured out a way to make most marriages work, or most divorces work. . . . We aren’t happy with the situation, but we don’t know what to do.”¹⁵

B. Other Western or Capitalist Countries

Divorce was recently allowed for the first time in Ireland, with a four-year waiting period, and in Chile, with a three-year waiting period. Reformers in Chile had hoped for a far shorter waiting period.

Legislation to reduce Italy’s three-year waiting period to one year failed in October of 2003.¹⁶ In France, a late 1990s drive to introduce uniformly no-fault divorce with short waiting periods mellowed (after the government changed into conservative hands), into a system with a two-year waiting period, with fault grounds still available. This system should take effect in 2005.¹⁷

England, after much study and debate, and with opposition from the Conservative Government’s own backbenchers and some members of other parties, passed a new Family Law Act in 1996 that reduced all waiting periods to one year but eliminated quick divorce under fault

¹² *Elk Grove Unified School Dist. v. Newdow*, 124 S.Ct. 2301 (U.S. 06/14/2004)

¹³ *In re LaMusga*, 32 Cal.4th 1072, 88 P.3d 81 (Cal. App. 04/29/2004)

¹⁴ *Gonzalez v. Gonzalez Quintana*, Circuit Court No. 00-00479 FC 29 (Family Division, Miami-Dade County 1/10/00); *In Re Gonzalez*, (Florida Circuit Court No. 00-00479-FC-28, Miami 4/13/00).

¹⁵ “Helping the Real Victims of Divorce”, Wednesday, August 20, 1997; Page D20.

¹⁶ “Divorzio veloce: bocciata la riforma.” Familex,

<http://www.familex.com/news.shtml?action=show&no=4>, accessed March 28, 2004.

¹⁷ Charlotte Butruille-Cardew, “French divorce law: Reform and european prospects.” Eurojuris, July 2, 2004. <http://www.eurojuris.net/eng/article-detail.asp?ArticleId=200> accessed July 28, 2004; Andrew Bainham, editor, *The International Survey of Family Law, 2004 Edition*, pp. 182-87.

grounds, including “intolerable behavior.”¹⁸ However, the Labour government that took power soon afterward announced that it would not implement the new law.¹⁹ Northern Ireland’s home-rule parliament considered a less ambitious reform, which reduced the five-year non-consensual no-fault waiting period from five years to three, but it was put on ice when the home-rule devolution process was suspended.²⁰

Fiji recently followed the abortive English example by enacting a single, no-fault ground of divorce with a one-year waiting period, thus allowing unilateral no-fault divorce for the first time but also eliminating “quickie” divorce for fault grounds. The Fijian law integrates state-funded and accredited marriage skills education programs and reconciliation counseling into the family court system.²¹

C. Post-Communist Family Law

The communist and post-communist world has recently witnessed efforts at wholesale legal reform, many of which have included initiatives in family law. In some countries these have included restrictions on divorce, intended to counter the social atomization caused by their former rather extreme anti-family laws, and the chaos that then results when the totalitarian regime is gone but leaves behind it the destruction of the family and other institutions of civil society.

When Lithuania recently revised its civil law system with guidance from the American Bar Association’s Central and Eastern European Law Initiative (CEELI), it sought to enshrine freedom of contract, which includes protecting against breach of contract, and thus it abolished “unilateral” no-fault divorce (i.e., divorce without either mutual consent of the parties or a bad act by one party justifying the other’s exit from the contract).²²

The Czech Republic’s 1998 revision of its Family Code includes a “hardship clause” allowing a court to refuse a divorce if it is not in the minor children’s interests, and a more limited hardship clause protecting some innocent spouses who would suffer extraordinarily from a divorce.²³

But moves to restrict divorce are not solely anti-communist; they can also be motivated by a belief that a good socialist society requires social discipline, and that society should require individuals to support the people closest to them, their family members, even at the expense of individual sexual freedom.

China recently undertook a comprehensive reform of its family laws to emphasize punishment of adultery and other contemporary marital misbehavior, and to require a two-year separation period before granting a no-fault divorce. The new law aims at “administering society according to a moral framework which would enhance the construction of a socialist spiritual civilization. This refers to the establishment of a system of morality compatible with a socialist

¹⁸ Andrew Bainham, editor, *The International Survey of Family Law, 1996 Edition*, pp. 157-69.

¹⁹ Andrew Bainham, editor, *The International Survey of Family Law, 2001 Edition*, p. 81.

²⁰ Andrew Bainham, editor, *The International Survey of Family Law, 2004 Edition*, pp. 390-93.

²¹ 2003 Fiji Family Law Act, Clause 31 on irrevocable breakdown of marriage and one-year separation, Part II, Marriage Education and Counselling Organizations, and Part III, Counselling and Reconciliation A 2002 version of the Act is posted at

<http://www.parliament.gov.fj/legislative/bills.aspx?billID=75&viewtype=full&billnav=bill>

²² Andrew Bainham, editor, *The International Survey of Family Law, 2004 Edition*, pp. 319, 337-32.

²³ Czech Civil Code §24(2) and §24b, respectively, cited in Katharina Boele-Woelki, Bente Braat, and Ian Sumner, editors, *European Family Law in Action, Volume 1: Grounds for Divorce*. Schoten, Belgium: Intersentia Publishers, 2003, pp. 263-64.

market economy, democratic politics and a socialist legal system, while allowing it to become a behavioral mode which people could generally recognize and agree with, thereby accepting it on a voluntary basis.”²⁴

D. A Lack of International Knowledge and Coordination

To the knowledge of the author, who is heavily involved both in American divorce lawyers associations and in efforts to reform divorce laws, there is very little, if any, international coordination of effort or sharing of information during such reform efforts. Judging from the extremely rare articles filtering into the American press on reforms in Italy, Chile and France, for example, most countries considering liberalizations of their divorce laws frame the issue as a contest between, on one side, the church and a few ancien-regime conservatives defending ancient traditions and beliefs, and on the other side, the whole modern world. We see the same arguments that were advanced during the divorce-liberalization movement of the 1960s in the United States, with no attention paid to actual developments since that time in the real life effects of divorce. Likewise, more recent Americans efforts at reform, either to further liberalize or to reverse the direction of change, occur in the individual states without the benefit of examining the practices and experiences of other states in the United States, let alone of other countries.

There are a few exceptions to this general state of disconnection and comparative ignorance: (1) opponents of liberalizing reforms in England quoted extensively from American critics of divorce, including Mrs. Clinton; (2) reforms in Northern Ireland and Fiji are so similar to the English ones that they may well have been based on them; (3) a few lawyers and statesmen in Austria, Australia and Chile expressed interest in the “covenant marriage” reform model pioneered in Louisiana; and (4) the Commission for European Family Law is doing preliminary studies with an eye towards beginning a process of integrating family law within the EU, in response to the European Parliament’s call for a European Civil Code.²⁵

One final exception, which directly inspired this study, was a comment by then-First Lady Hillary Clinton in a television interview about her anti-divorce book *It Takes a Village to Raise a Child*. In the interview she addressed divorce law more directly than she had in the book, and said people with children should have to wait several years for a non-consensual no-fault divorce, claiming that that is required in many European countries. She specifically praised Germany’s laws on this point.²⁶

E. What are the Relevant Issues?

The debates and mistakes of the past are often repeated, and, accordingly, divorce reform questions frequently are characterized as “putting fault back in divorce” versus “allowing no-fault divorce.” But fault still plays a major role in divorce cases in many states and countries, and on the other hand, very few reform proposals would actually eliminate no-fault divorce. As Masha Antokolskaia wrote after reviewing the work of the Commission for European Family Law on which this study is based, “The main difference between the divorce laws has shifted

²⁴ Xuejin, Z. (2001) Amendment of the marriage law in China. *International Journal of Law, Policy and the Family*, v16 n3, pp. 399-409.

²⁵ Katharina Boele-Woelki, Bente Braat, and Ian Sumner, editors, *European Family Law in Action*, Volume 1: Grounds for Divorce. Schoten, Belgium: Intersentia Publishers, 2003, p. v.

²⁶ C-Span "Booknotes" show Number 352 airing on March 3, 1996.

from the dichotomy of fault [versus] non-fault divorce to the discrepancy regarding the accessibility of divorce.”²⁷

We believe that the issue is *not* whether divorces should include litigation over “fault”, but rather, the availability and preventability of divorce—how can divorce law strengthen marriage and help people nurture their relationships? What laws for this purpose are actually effective? How do we eliminate perverse incentives caused by current laws and procedures, without creating even worse ones? And how do we balance these objectives with other social concerns and interests?

And so the legal issues this paper examines are what we consider the relevant limits on the accessibility of no-fault divorce: waiting periods, reconciliation counseling laws, and mutual consent.

III. Methods and Definitions

We have attempted to draw from the most authoritative and current sources in the areas of family law and demographic research.²⁸ Nonetheless, to present the relevant, operational features of multiple jurisdictions’ no-fault divorce laws, it was often necessary to weed out inaccurate, irrelevant and confusing information from even the best secondary sources, and check the statutes themselves, as the same terms often mean different things in different states and countries, and some laws are overlapping or obsolete.

The study isolates two relevant factors in European and American divorce laws, which the authors designate as “effective waiting periods” and “reconciliation counseling laws.” It presents key details about these laws, including any exceptions or variations in cases where there is mutual consent to the divorce, along with the jurisdictions’ per capita divorce rates, in two tables. The first table covers the U.S. states, the second, 22 European countries. Assertions in the text of this paper that are not footnoted are generally repetitions of information in the tables.

A. Effective Waiting Periods for No-Fault Divorce

The effective waiting period is the minimum amount of time the law specifies for the duration of the entire process of separation and litigation leading to a no-fault divorce. For example, if a state allows instant divorce for “irretrievable breakdown”, “irreconcilable differences”, or “incompatibility”, but also allows divorce on grounds of three years’ living apart, as in Texas, the “Effective Waiting Period” is “None.” However, if a state *requires* a separation period as the only way to prove “irretrievable breakdown” etc., then that waiting period is shown. And for a state such as Ohio, which has unilateral divorce for one year’s separation but provides the alternative ground of “incompatibility” if, and only if, mutual consent is proven, the chart indicates that the waiting period is one year, or none with consent.

Waiting periods generally take one of three forms. This study does not distinguish between them, although it is likely that their effectiveness may have some relation to their form. Some are requirements for a period of separation before filing for divorce. Within this category, a few states have provisions allowing the period to be partly before and partly after filing, and some states and nations are stricter than others regarding temporary interruptions of the separation. In some places, “separation” requires a written separation agreement or a court-

²⁷ Masha Antokolskaia, “The Search for a Common Core of European Divorce Law: State Intervention v. Spouses’ Autonomy”, paper presented at the International Society of Family Law 2003 European Regional Conference, accessed at <http://civil.udg.es/isfl/europeanregionalconference2003/texts/pdf/Antokolskaia.pdf>

²⁸ For citations and some brief descriptions of these sources, see footnotes to the tables of laws and divorce rates, below.

decreed legal separation in order to be effective. The other two kinds of waiting period are post-filing ones, which run only after a case is filed, and post-decree ones, which provide that a divorce decree is not effective, or is only a limited, revocable form of divorce, for a short period after the divorce is granted. Of these kinds of waiting periods, separation requirements are the most common and post-decree periods are the most rare.

In analyzing waiting periods, this study ignores the following kinds of laws, which we believe are relatively insignificant and confusing when analyzing the availability of no-fault divorce:

- Requirements for the parties to have been married for a certain period before divorce.
- Requirements for a period of residency in the state or country.
- Delays that a party or judge may impose during litigation by invoking rarely-used reconciliation counseling laws (discussed below under counseling).
- Time that is typically consumed in any litigation process, such as periods for response to pleadings, notice of hearings, periods when reconsideration or appeal of a court order is possible, etc.

Waiting periods for fault-based divorce and limited divorce, legal separation etc. are indeed significant, and are omitted only for the sake of simplicity and keeping this study within a manageable scope, although they are an important topic in their own right. Fault divorce grounds and limited divorces often require shorter or no waiting periods. The perceived ugliness, hypocrisy and frivolity of fault litigation has provided much of the inspiration for the liberalization of divorce laws, beginning in the mid-20th century and again in the present, as in New York, France, Fiji, and England. Liberalizing reformers have pointed out that fault divorce can be “quickie” divorce, and in England and Fiji they have claimed with some justification that their reforms “make divorce harder” by imposing a single divorce ground with a mandatory waiting period.²⁹

B. Reconciliation Counseling Laws

Reconciliation counseling laws are any laws that (1) require counseling aimed at saving the marriage, (2) let judges and/or litigants initiate such counseling or delay the divorce process to allow reconciliation, or (3) require anyone in the divorce process to do anything to help such counseling happen. Reconciliation counseling must be distinguished from counseling provided for other purposes, and from mediation of the child and economic issues in the divorce. Failures to make this distinction have plagued many efforts to describe the state of divorce law, and confusion about it has been exhibited even in legislation and the implementation of such laws.

As Table 2 shows, there is variety in who can initiate counseling: the judge, one party, or both parties. There is also variation in exactly what a judge or a single party can require: one

²⁹ See, e.g., P. Imrana Jalal, *Show Me The Sections, We'll Take Them Out*, Press Statement—Fiji Law Reform Commissioner P. Imrana Jalal, October 27, 2003, posted at <http://www.wluml.org/english/newsfulltxt.shtml?cmd%5B157%5D=x-157-23006%20&cmd%5B189%5D=x-189-23006> last accessed on March 26, 2004. For England, see remarks of M.P. Ms. Jean Corston, House of Commons, Orders of the Day, Family Law Bill [Lords], 24 Apr 1996: Columns 446-47, found at http://www.parliament.the-stationery-office.co.uk/pa/cm199596/cmhansrd/vo960424/debtext/60424-25.htm#60424-25_head1

counseling session, multiple sessions, or only a moderate delay period during which counseling can happen if both parties are willing. (A similar variety exists in the U.S., but Table 1 does not show the details of these laws because in practice they are no longer used.) The authors sometimes refer to all the above variations, collectively, as “optional” counseling. Table 2 also shows a few countries where one or more counseling sessions are mandatory.

C. Mutual Consent

Mutual consent can be defined in a variety of ways—some laws look at whether a couple’s separation was voluntary (as in Maryland); some require an explicit statement of mutual consent; others look at whether there is any active opposition to the suit for divorce. The authors use “Mutual Consent” as a shorthand for all of the above, but try to make a special note of the presence of the strongest form of the mutual consent requirement, which defines it as a complete agreement on all issues related to the divorce. This is referred to on the chart as “full agreement.” Virginia and Switzerland shorten or eliminate waiting periods *only* for this form of consent, and Portugal eliminates the waiting period for it, while providing a shortened waiting period for mere consent to the divorce.

D. Divorce rate statistics

Within each table, we tried to use statistics for the same year for all states and countries. We used the most recent year for which we could get the most countries’ or states’ divorce rates. This was 2001 for the U.S. and 1999 for Europe. Where rates were unavailable for the year in question, our approach depended on what other information was available. For Europe, the only such country was Ireland, which is generally known to have an extremely low, though increasing, divorce rate, so we put it at the low-divorce end of the chart and used the only rate for it we could find, which was from 2001. Divorce was only recently legalized there, which may be why its divorce rate was not reported through the same sources as the other European countries. In the U.S., there are four states that have not gathered any information on divorces since the 1980s. The National Center for Health Statistics, the central repository and reporting agency for divorce statistics, no longer attempts even to estimate or extrapolate divorce rates for those states, which suggests that there is no worthwhile way for anyone else to do so. Those four states are not included in our rankings nor in our analysis of correlations. Their presence at the bottom of the chart is intended to exclude them from it, not to indicate that they have the highest divorce rates.

The divorce rate we chose to use was the simple per capita divorce rate. We used this because it is the most widely reported rate; it was available for the U.S. as well as for Europe, and it is the most commonly employed rate in comparing different countries, different states, and different years within the same country or state.

Both tables show states or countries in order by divorce rate, from lowest to highest. Rankings were computed for U.S. states based on the divorce rates shown in the table. Many U.S. states are shown as tied, with the same ranking number, because the U.S. source only rounded rates to the nearest hundredth of a percent. When states are tied, the order in which they are arranged is random. It would be possible to break these ties using the reported absolute numbers of divorces and population figures, but we have not done so.

IV. Results

Table 1: U.S. STATE DIVORCE RATES³⁰, RANKINGS, WAITING PERIODS, AND RECONCILIATION COUNSELING LAWS³¹

State	Divorce Rate Ranking (2001)	Divorce Rate per 1000 in 2001	Effective Waiting Period for No-Fault Divorce	Reconciliation Counseling Laws (All Optional)
District of Columbia	1	2.3	6 months	No
Massachusetts	2	2.4	7 months, 1 month w/consent	Yes
Montana	3	2.6	6 months	Yes
North Dakota	4	2.7	None	No
Connecticut	5	2.9	None	Yes
Maryland	6	3.0	2 years; 1 year w/consent	No
New York	6	3.0	1 year	No
Illinois	8	3.2	2 years; 6 months w/consent	No
Iowa	8	3.2	3 months	No
Kansas	8	3.2	None	Yes
Pennsylvania	8	3.2	2 years; 3 months w/consent	Yes
Wisconsin	8	3.2	None	Yes
Minnesota	13	3.3	None	No
Rhode Island	13	3.3	None	No
Oklahoma	15	3.4	None	No
South Dakota	15	3.4	None	Yes
New Jersey	17	3.5	18 months; 6 months w/consent	No
South Carolina	17	3.5	1 year	Yes
Nebraska	19	3.7	None	Yes

³⁰ Source for U.S. divorce rates: Statistical Abstract of the United States, pg. 68, No. 111, 2002, United States Census Bureau. Rates are per 1,000 population. All data are by state of occurrence of the divorce, rather than by state of residence, marriage, or birth. Information comes from courts where divorces occur, via state vital statistics bureaus and the National Center for Health Statistics at the Centers for Disease Control.

³¹ Sources for U.S. divorce laws: The following nationwide sources, supplemented by reference to individual state statutes when secondary sources were inconsistent: American Bar Association, *A Review of the Year in Family Law*, 35 FAM. L.Q. 577 at 620 (Winter 2002) (Chart 4, Table Summarizing the Law in the Fifty States, Grounds for Divorce and Residency Requirements, and at <http://www.abanet.org/family/familylaw/tables.html>. Contains information submitted annually by lawyers or law professors in each state. MARTINDALE-HUBBELL LAW DIGESTS, (1997) (a summary of each state's laws, written by lawyers in each state for other lawyers, with statute citations); *Grounds for Divorce In the United States*, <http://patriot.net/~crouch/50states/> (a web site synthesizing information from the ABA charts and the Martindale-Hubbell Law Digests, with statute citations); KAREN GARDINER ET AL., STATE POLICIES TO PROMOTE MARRIAGE: FINAL REPORT, A26-A34 (U.S. Department of Health and Human Services 2002) (prepared by the Lewin Group, Inc.); NATIONAL SURVEY OF STATE LAWS, (Gale Research 2d ed. 1996), reprinted in READINGS ON NO-FAULT DIVORCE. (Charlene Wear Simmons ed., California Research Bureau, California State Library 1998). This collection was compiled at the request of the chair of the state legislature's Judiciary Committee during consideration of a covenant marriage bill. DANIEL SITARZ, DIVORCE AND DISSOLUTION OF MARRIAGE LAWS OF THE UNITED STATES, (Nova Publishing Company 1990).

Georgia	20	3.8	None	No
Hawaii	20	3.8	None	Yes
Maine	22	3.9	None	No
Michigan	22	3.9	None	No
Delaware	24	4.0	None	Yes
Ohio	24	4.0	1 year; None w/consent	No
Vermont	24	4.0	6 months	Yes
<i>United States</i>	<i>mean / median</i>	4.0		
Alaska	27	4.1	None	No
Texas	27	4.1	None	Yes
Arizona	29	4.2	None except in covenant marriages	No
Missouri	30	4.3	6 months	Yes
Virginia	30	4.3	1 year; 6 months with no children and full agreement	No
Utah	32	4.4	3 months; may be waived w/consent or divorce education	Yes
North Carolina	33	4.5	1 year	Yes
Washington	33	4.5	3 months	Yes
Oregon	35	4.9	None	Yes
New Hampshire	36	5.0	None	Yes
New Mexico	37	5.1	None	No
Tennessee	38	5.2	None	Yes
West Virginia	38	5.2	1 year; 0 w/consent	No
Alabama	40	5.3	1 month	No
Florida	41	5.4	None	Yes
Mississippi	41	5.4	None	No
Kentucky	43	5.5	None	Yes
Idaho	44	5.6	None	No
Wyoming	45	6.1	None	No
Arkansas	46	6.6	18 months	No
Nevada	47	6.8	None	No
Louisiana	N/A [10 in '83]	N/A [3.6 in '83]	6 months; 2 years in covenant marriages	No
California	N/A [21 in '87]	N/A [4.3 in '87]	6 months	Yes
Colorado	N/A [32 in '94]	N/A [5.1 in '94]	None	Yes
Indiana	N/A [46 in '87]	N/A [6.4 in '87]	None	Yes

Table 2: EUROPEAN DIVORCE RATES³², WAITING PERIODS, AND RECONCILIATION COUNSELING LAWS³³

Country	Divorce Rate (per 1000)	Effective Waiting Period for No-Fault Divorce	Reconciliation Counseling Laws
Italy	0.60	3 years.	None.
Ireland ³⁴	0.70	4 years.	All lawyers must give clients names of qualified counselors.
Greece	0.90	4 years.	None.
Spain	0.94	1 year.	One session required.
Poland	1.09	N/A. (No no-fault divorce.)	One session required, with judge, who may then refer couple to specialists.
Bulgaria	1.19	N/A. (No no-fault divorce.)	One session required. Judge may require more sessions.
Portugal	1.79	3 years. (1 year w/ consent to divorce; 0 if also a full agreement on all issues.)	One session required.
France	1.98	6 years. (0 w/ consent.)	One session required.
Norway	2.04	1 year.	None.
Netherlands	2.12	None.	None.
Austria	2.29	3 years. (6 months w/ consent.)	Judge can delay to allow reconciliation, but counseling is only if both spouses want.
Czech Rep.	2.30	0.	None.
Germany	2.32	3 years. (1 w/ consent.)	Judge can delay to allow reconciliation, but not if both spouses object and have lived apart 3 years.
Sweden	2.37	6 months. (0 w/ consent.)	None.
Denmark	2.54	1 year. (6 months w/consent.)	Only if both spouses want.
Hungary	2.54	0	Mandatory, without exception. Also, judge may delay case 3 months: divorce case is then dismissed unless both parties want divorce.
Belgium	2.58	2 years. (0 w/ consent.)	If either spouse wants.

³² Source for European divorce rates, except Ireland: 2001 UNITED NATIONS DEMOGRAPHIC YEARBOOK 591 (1999 data, the latest year for which rates were almost uniformly available).

³³ Source for European laws: 1 EUROPEAN FAMILY LAW IN ACTION: GROUNDS FOR DIVORCE. (Katharina Boele-Woelki et al., eds., Intersentia Publishers 2003). Information is from family law professors in, or specializing in, each country.

³⁴ Source for Irish divorce rate: *Divorce Rate in EU Jumps by 42% Within Two Decades*, ISLAMIC REPUBLIC NEWS AGENCY HEADLINES NEWS [sic], August 8, 2003 (2001 data). Accessed at <http://www.irna.ir/en/head/030808195529.che.shtml> on August 12, 2003. When comparing this rate with others from two years earlier, it should be noted that the same article gave identical 2001 divorce rates for Ireland and Italy, 0.70 per 1000.

England/ Wales ³⁵	2.66	5 years. (2 w/consent.)	All lawyers must discuss reconciliation with clients, and give names of qualified counselors.
Scotland	2.66	5 years. (2 w/consent.)	None.
Finland	2.72	6 months.	None.
Switzerland	2.91	4 years. (0 w/consent & full agreement)	None.
Russia	3.65	0 (But husband cannot seek divorce without wife's consent while she is pregnant or a child is under 1 year old.)	Judge can delay to allow reconciliation for up to 3 months, but only in a contested case.

V. Analysis

A. The United States

A clear correlation between the length of the effective waiting period and divorce rates is apparent in the U.S. data. For instance, of the twelve states with the lowest divorce rates, eight have effective waiting periods, while of the twelve states with the highest divorce rates, only three have a waiting period of any length. Generally, states with a waiting period of any substantial length tend to have slightly lower divorce rates than others.

The length of this waiting period appears to be significantly correlated with divorce rates only in the states with periods significantly longer than the mean (which offer correspondingly larger cuts in the waiting period if couples achieve mutual consent). The states with two-year waiting periods are Maryland, Illinois, and Pennsylvania. They have respective annual per capita divorce rates of 3.0, 3.2, and 3.2 per thousand, compared to the U.S. mean of 4.0.

Eighteen-month waiting periods are required in two states, New Jersey (tied for 17th-lowest divorce rate) and Arkansas (next-to-highest divorce rate of all states with reported divorce rates). New Jersey offers a one-year cut in the waiting period for mutual consent; Arkansas offers no such provision.

However, the U.S. data demonstrates no relationship between the presence of reconciliation counseling laws and divorce rates. This is not surprising, because these statutes have almost completely fallen into disuse.³⁶ But it suggests some causal relationship between laws and divorce rates, because the waiting periods, which are enforced, correlate with lower divorce rates, while the reconciliation counseling statutes, which are not enforced, do not.

³⁵ England and Wales are presented together because they share a single legislature and body of law, while Scotland has always had its own. The status of Northern Ireland's home-rule parliament is unstable, and it is not included in the chart because it did not participate in the Commission for European Family Law survey.

³⁶ As early as 1977, prominent family law professor Harry Krause wrote that conciliation counseling "has not been widely practiced" due to a lack of funding, trained personnel, and pessimism about its effectiveness once people have reached divorce court. FAMILY LAW IN A NUTSHELL 301 (West 1977).

B. Europe

The more diverse European legal data was subjected to a more detailed analysis, including key details about reconciliation counseling laws: whether they are mandatory in all cases, and if not, who decides when they will be used, what activities they require, and any provisions for formal delay of the case associated with them.

The multi-axis heterogeneity of European law makes direct comparison difficult, but a pattern in the relationship between waiting periods and divorce rates is still apparent.

Nations with required reconciliation attempts, such as Bulgaria, Poland, Portugal, France and Spain, tend to have below-average divorce rates (among other factors tending to discourage divorce). The only exception is Hungary.

Optional counseling and information requirements, in contrast, did not correlate with lower divorce in Europe. In the U.S., where all counseling requirements are optional, such requirements have uniformly become a dead letter.³⁷ England's counseling-information requirement has also been called "a dead letter."³⁸ It would be instructive to gather anecdotal information from Europeans working in the divorce process, to investigate whether the same thing has happened in all or some European countries.

VI. Conclusions

This study demonstrates a correlation between the presence of pre-divorce waiting periods and the divorce rate in a population, but especially when the periods are two years or more. These long waiting periods also often include correspondingly long reductions in the waiting period as an incentive for negotiating mutual consent. This study also shows lower divorce correlating with mandatory reconciliation counseling laws, but not with optional ones.

Also, in very general terms, Europe has considerably less divorce, and stricter divorce laws, than the United States. The lowest-divorce Northern U.S. states resemble the highest-divorce Western European countries.

Correlation is not causation, of course. Determining all the causal factors involved is beyond the scope of this study, but the relationships shown here indicate that further study in this area may be able to definitively establish a causal framework.³⁹ Among the interrelated phenomena that probably have some role in causing divorce are religion, culture, marriage rates, population age, interstate mobility, and individuals' "social rootedness" with communities and

³⁷ *Id.*

³⁸ M.P. Dr. Jeremy Bray, in proposing an amendment to the 1996 Family Law Act to let people make binding agreements that in the future they would get marriage counseling before seeking divorce, said: "Counselling, where people have no wish to be counselled, is futile. Any requirement for counselling may rapidly become a dead letter, as indeed the requirement to give information on counselling has done in previous legislation since the Divorce Reform Act 1969." House of Commons, Orders of the Day, Family Law Bill [Lords], 24 Apr 1996: Column 456, found at http://www.parliament.the-stationery-office.co.uk/pa/cm199596/cmhansrd/vo960424/debtext/60424-25.htm#60424-25_head1

³⁹ Studies to date on the causation question include Thomas B. Marvell, *Divorce Rates and the Fault Requirement*, 23(4) L. AND SOC'Y REV. 543 (1989); Joseph Lee Rodgers, et al., *Did No-Fault Divorce Legislation Matter? Definitely Yes and Sometimes No*, 61 J. MARRIAGE & FAM. 803, 804 (1999); Leora Friedberg, *Did Unilateral Divorce Raise Divorce Rates: Evidence From Panel Data*, 88 AM. ECON. R. 608-627 (1998); Paul A. Nakonezny et al., *The Effect of No-Fault Divorce Law on the Divorce Rate Across the 50 States and Its Relation to Income, Education, and Religiosity*, 57(2) J. OF MARRIAGE & FAM. 477-488 (May 1995); Martin Richards, *Divorce Numbers and Divorce Legislation*, 26 FAM. L. 151-53 (1996).

extended families. The work of untangling all these chains of cause and effect, and isolating the effects of various divorce waiting periods, may never be completed. But it would be unrealistic to completely discount the law as a factor affecting marital behavior.

Indeed, one useful clue, in the nature of a control group taking placebos in a drug test, is this study's finding that unimplemented laws (on reconciliation counseling in the U.S.) do not correlate with higher or lower divorce. This at least undercuts the hypothesis that a stricter divorce law is merely a *result* of cultural factors that also lead to lower divorce, and does not itself have any effect on the divorce rate.

But, aside from questions of causation, the information collected here is immediately useful for other purposes, too. Issues of divorce law reform are too often seen as choices between a vanished, irrelevant past and an inevitable, unpredictable future. Legislators are understandably reluctant to try to "turn back the clock" and reenact a legal regime that was repealed generations ago. They are just as reluctant to enact a fundamentally new model with no hard evidence that it has been tried elsewhere and works. But this paper shows that there is a wide range of waiting periods and marriage counseling laws presently in use, which legal reformers in different states and countries can draw on and adapt with probable meritorious results.

VII. Postscript: Policy Implications and New Directions for Reform

The authors' organization, Americans for Divorce Reform, is presently working on a new kind of reform proposal for the U.S., based largely on the wider perspective provided by considering the different laws of other states and countries. It proposes a variable waiting period ranging from two years to six months, depending on the presence of children, full mutual consent, and marriage skills education or counseling.

As in the recently-enacted reforms in Great Britain and Fiji, this waiting period applies to fault and no-fault divorces alike. The result is that the shortest road to divorce becomes the negotiation of mutual consent, rather than either fault litigation or no-fault unilateral exit.

This proposal integrates the new forms of marriage skills education into the family courts, in a way similar to that recently enacted in Fiji; but in doing so it tries to avoid the hubris, the disconnects between legislation and social reality, and the reliance on nonexistent funding and institutions that are thought to have contributed to making the U.S.'s existing reconciliation counseling laws a dead letter.

The proposal departs from previous proposals in many ways, all of which are intended to adapt its workings to the ways that the U.S.'s married and divorcing people, court clerks, lawyers, judges, marriage counselors and educators think and act. The most prominent change is having the additional waiting period begin not with physical or legal separation, or filing for divorce, or a divorce decree—i.e., any of the ways existing waiting periods begin—but instead by one spouse giving the other a notice that the marriage has serious problems that need work, and a chance to get information and guidance on how to address those problems. The existing ways of beginning waiting periods all seem like downright counterproductive ways to begin a time for exploring reconciliation, within the present-day framework of unilateral divorce.

The proposal is suitable for adding to the existing laws of any U.S. state, without repealing or changing any other provisions of state law. (It achieves this by introducing a new pre-divorce requirement rather than adding to or subtracting from the actual grounds for divorce.) However, it is not necessarily suitable for other countries, many of which already have far stricter divorce laws, and which may not need this legislation's many adaptations to Americans' character and customs.

We have received considerable encouragement on this project from larger organizations and hope to soon have a larger, structured group involved in its adaptation and advocacy. The text of the proposed legislation, and more information on it, is available at <http://snurl.com/dewpa>.