

# iMAPP Research Brief

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## DOES DIVORCE LAW AFFECT THE DIVORCE RATE?

### A REVIEW OF EMPIRICAL RESEARCH, 1995-2006

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#### Executive Summary:

*Did the introduction of no- divorce law affect the divorce rate? This study looks at all the empirical research since 1995 that examines the impact of no-fault divorce laws on divorce rates both in the United States and in other nations, 24 studies in all, and concludes:*

***\*No-fault divorce did increase the divorce rate.*** Seventeen of 24 recent empirical studies find that the introduction of no-fault divorce laws increased the divorce rate, by one estimate as much as 88 percent. More typically, studies estimate no-fault divorce increased divorce rates on the order of 10 percent.

***\*Divorce law, however, is not the major cause of the increase in divorce over the last 50 years.*** Clearly many other factors besides divorce law influence the divorce rate.

***\*The effect of no-fault divorce laws on the overall divorce rate appears to fade with time;*** couples respond to the increased divorce risk from no-fault divorce law by delaying or forgoing marriages at higher risk of divorce, and states adopt related legal reforms that mitigate some of no-fault's consequences.

***\*For couples of a given match quality, no-fault divorce may have resulted in a permanent increase in divorce risk.*** Studies which take into consideration age at marriage tend to show a permanent increase in divorce risk after no-fault divorce.

*The idea that family law has no independent effect on family behaviors is difficult to reconcile with either economic theory or existing empirical research. Family scholars, policymakers, legislators, and media need to consider and take seriously the complex ways in which family law affects the likelihood that couples and children will enjoy the benefits of stable marriage.*

#### Introduction

Between 1960 and 1980, the U.S. divorce rate roughly doubled.<sup>1</sup> During the same time period, most American states adopted some version of no-fault divorce.<sup>2</sup> Specifically, 35 states expanded no-fault to include not only the grounds for divorce but consideration of fault in alimony and the distribution of property.<sup>3</sup>

The reforms keep coming. In the past decade, more than 15 American states have considered divorce law reform. Louisiana

recently expanded its waiting period for no-fault divorces that affect minor children.<sup>4</sup> New Jersey this year shortened the waiting period for no-fault divorce to six months.<sup>5</sup> The Chief Judge of New York's highest court has called for a similar move to no-fault divorce in that state,<sup>6</sup> while the prestigious American Law Institute recommends eliminating all vestiges of "fault" in family law, including the distribution of property and the determination of alimony.<sup>7</sup>

In the shadow of these changes both here and abroad, the scholarly and the public policy debate about the consequences of no-fault divorce for children and families continues. More than 40 studies—in the United States, Canada, Europe, and Australia—have empirically examined the question of whether or not no-fault divorce laws increase the divorce rate, including 24 studies in the last decade. What does the latest research tell us about the empirical impact of no-fault divorce on divorce rates?

This study looks at all the available empirical research since 1995 that examines the impact of divorce law on divorce rates both in the United States and in other nations. This research has been published in economic, family, and legal journals, or as working papers. In addition to searching academic databases, we examined bibliographies of published research and made inquiries among scholars to locate relevant empirical research.

In recent years scholars have also asked how divorce law affects other family behaviors including marriage rates, unpartnered births, women's labor force participation, family violence, and suicide. We have included this broader research in a separate appendix, for the ease of scholars and policymakers interested in other family outcomes that may be affected by divorce laws.

The empirical no-fault divorce literature is a complicated response to what appears to

be a simple question. With hope, this brief will organize most of it.

### **I. Defining Terms: What Is "No-Fault Divorce" and Why Would it Matter?**

"No-fault divorce" is not a single, simple piece of legislation. The term refers to a cluster of family law changes that took place in the United States, Canada, and many other "Western" nations in the late Sixties to mid-Eighties. Divorce law regulates *grounds* for divorce, *property* distribution, and *alimony*, and a given state or other legal regime may move towards "no-fault" principles in any or all of these areas. Such changes include: adding new no-fault grounds for divorce (e.g. "irretrievable breakdown") that do not require a party to allege any particular fault; reducing "waiting periods" for no-fault divorce (such as divorces based on living separate and apart); removing fault from consideration in the awarding of alimony and/or the distribution of property upon divorce; and/or eliminating fault grounds entirely from divorce law.

Under the older fault system, "faultless" divorces could be informally obtained by a couple, but only by mutual consent; that is, a couple who wished to divorce for no particular legally acceptable reason could agree in advance to present to the court an uncontested fault ground, and obtain a divorce. Therefore, the most significant practical legal change created by "no-fault" divorce in grounds was that it licensed *unilateral divorce*: for the first time, one spouse could successfully petition for divorce over the objections of his or her spouse, without alleging any grounds.<sup>8</sup> No longer would the spouse who wants a divorce have to negotiate with his or her spouse to get it. In addition, some, but not all, jurisdictions introduced no-fault principles into the distribution of property and/or alimony upon divorce.

There are two theoretical reasons no-fault divorce might increase the divorce rate. First, some argue it made divorce less costly for the initiating party because often there

were changes in the financial and emotional consequences of divorce that came along with no-fault divorce. That is, concomitant changes in terms of property settlement, maintenance (alimony), or child custody often improved the welfare of the divorce initiator. Thus, if bad behavior doesn't result in a less financially rewarding divorce settlement, the argument goes, we might expect there to be more bad behavior by spouses and therefore more divorce.

Second, the change from mutual consent divorce to unilateral divorce might change the ability of spouses to prevent a divorce through bargaining. Under the old fault system the party least wanting a divorce had to be "paid" to consent to one. Under the no-fault system this party must pay the other to stay. The outcome in either case is unlikely to be the same.<sup>9</sup> If one spouse is unable to convince the divorce instigator to stay, then more divorce is likely.

## **II. Empirical Difficulties in the "No-Fault" Debate**

Reaching a scholarly consensus about the consequences of divorce law has proved complicated for many reasons. In the first place, studying family law is complex because family law is complex. As we indicated above, "no-fault divorce" is not one specific discrete legal change but a bundle of changes in legal rules affecting grounds, property division, and alimony rules upon divorce, which different jurisdictions move toward in different ways. Canada has a version of "no-fault" divorce; so do England, South Carolina, California and New Jersey (to name just a few states). But the laws in each of these jurisdictions are not identical.

Moreover, in nations like Canada the grounds for divorce are federal law, while property division is governed by provincial law. In Europe, most (but not all) family law systems are national. Studying the effects of no-fault divorce on divorce rates is easier in nations that have national family laws, because migratory divorce is less of a

problem, and because basic questions (such as when the legal change took place) are less contested.

Yet to date, the majority of research looking at how no-fault divorce affects the divorce rate have investigated legal changes in the United States, where the legal definitions are most varied and complicated from state to state and where the change in law before and after no-fault was much smaller than in Canada and much of Europe. In the United States, scholars have not always agreed even on the basics, such as what cluster of legal changes constitutes a "no-fault" divorce law, and when a particular state has moved to a no-fault divorce system.

North Carolina, for example, always had "separation" as a ground for divorce. Should separation be considered a mutual or unilateral ground (*i.e.*, a "fault" or a "no-fault" ground)? Did the judicial interpretation of separation change over time? And should separation grounds be classified by scholars as exactly the same type of no-fault law as irretrievable breakdown or irreconcilable differences?

Moreover, formal legal rules and informal interpretation of legal rules may differ across jurisdictions, leading to different outcomes from what appear to be the same formal rules. When "mental cruelty" grounds are liberally interpreted by courts, is that just the same in terms of its effects as formally enacting "irretrievable breakdown" as a ground for divorce? Scholars have varied on whether and when to classify states such as North Carolina (and many others) as adopting no-fault divorce.

Some states added no-fault grounds to existing fault grounds, while others eliminated all fault grounds. Some states changed fault provisions in alimony, property, and custody rules, while others did not, at least not at the same time or in the same way. Estimates of the effects of no-

fault divorce on the divorce rate have proved highly sensitive to these kinds of problems.

Different disciplines (economists, family specialists, demographers, and legal scholars) have focused on different aspects of the question, and scholars in one field are often unaware of the parallel analyses going on in the other disciplines.

Finally, investigating the consequences of no-fault divorce on the divorce rate has also proved complicated because human behavior is fluid and dynamic; when legal rules change, men and women respond in a variety of complex and sometimes contradictory ways that can be difficult to disentangle.

### III. New Empirical Research: 1995-2006

Despite these difficulties there are signs of an emerging consensus about the effects of divorce law on the divorce rate. Our search process yielded 24 studies in the last decade that fit the criteria: new empirical research into how no-fault divorce affected the divorce rate. A careful review of these studies suggests the following:

*No-fault divorce laws did increase the divorce rate.* Seventeen of 24 recent empirical studies find that the introduction of no-fault divorce laws increased the divorce rate. The size of the increase attributed to legal change varies considerably in the research literature. One of the higher estimates (Kidd (1995)) found no-fault divorce boosted divorce rates as much as 88 percent. More typically, studies estimate no-fault divorce increased divorce rates on the order of 5 to 30 percent (e.g., Drewianka (2006), Friedberg (1998), Gruber (2004), Iverson (2005), Matouschek and Rasul (2006), Reilly and Evenhouse (1997), Rogers et al. (1997)).

*Divorce law, however, is not the major cause of the increase in divorce over the last 50 years.* Studies which find that no-fault divorce increased the divorce rate typically estimate the size of this effect as only a modest fraction of the increase in the

divorce rate since 1960. Clearly many other factors besides divorce law influence the divorce rate.

*The effect of no-fault divorce laws on the overall divorce rate appears to fade with time.* A number of recent studies (e.g., Drewianka (2006), Matouschek and Rasul (2006), Mechoulam (2006), Reilly and Evenhouse (1997), Wolfers (2006)) found that the increase in the overall divorce rate under no-fault, while sustained for a number of years, eventually fades and the divorce rate moves back to trend.

Why? The increases in the divorce rate are sustained for too long (about a decade) to be produced by faster divorce processing times.<sup>10</sup> The emerging consensus among law and economics scholars is that unilateral divorce influences the divorce rate in three ways: First, there is an increase in the divorce rate among existing couples, who married before the divorce law changed. Second, no-fault divorce laws produce substantial new selection effects for couples entering into marriage, in ways that mitigate the overall divorce rate. Finally, over time the state has patched various legal “loopholes” that allowed for transfers of wealth and encouraged unilateral divorce.

The first, direct, effect is straightforward. When the no-fault laws were enacted it caught existing couples by surprise. The no-fault provisions were a windfall for many married individuals. Some winners were able to abandon their marriages and take much of the marital wealth with them, leaving behind many losers.

There were two subtle effects of this. First, the incentives to marry changed and this changed the pool of married couples. As the law retreats from enforcing marriage contracts, some couples respond by searching longer, delaying marriage and (sometimes) avoiding it altogether. Others might jump into marriage quickly, knowing that if the marriage fails it is “easy out.” Thus the lowering of divorce rates from the

peak in the early 1980s may be partially explained by more better-matched, more intrinsically stable couples choosing to marry.<sup>11</sup>

Second, the high divorce rates of the 70s and 80s were partially driven by failures in old elements of family law to match the new no-fault provisions. When no-fault laws were first introduced, inadequate marital property laws allowed one spouse (mostly husbands) to leave the family and take marriage assets with them. In both Canada and the United States, courts and legislatures quickly moved to patch the leak. Other issues followed in the areas of definition of property, child support guidelines, custody changes, and the like. In most cases, the legal change tried to prevent a spouse from unilaterally improving their own welfare at the expense of the rest of the family. In doing this these subsequent laws reduced the incentive to divorce, and the divorce rate receded a bit.

*For individual couples, the increase in divorce risk under unilateral divorce may be permanent.* We note that some studies that control for age at marriage (e.g., Andersson (1997); Kidd (1995); Reilly and Evenhouse (1997) (PSID sample); but see also Sweezy and Tiefenthaler (1996)) have found that no-fault divorce causes a permanent increase in the divorce risk. Stability in the overall divorce rate may disguise the increased divorce risk that unilateral divorce laws pose for individual couples of a given match quality. Couples who marry under unilateral divorce laws may face a permanent increase in divorce risk relative to similarly well-matched couples who married under the older, “stricter” mutual consent divorce law regimes. We note recent evidence suggests the lower divorce rates are confined in this country to couples with at least a college education; less educated couples have faced a continuing rise in divorce risk into the 1990s.<sup>12</sup> More research is needed to tease out with confidence the selection effects from any underlying increase in divorce risk for individual couples.

If these emerging theories on the double effects of unilateral divorce are confirmed, it also suggests an important new area for future research: Are permissive divorce laws partly responsible for the simultaneous large increase in nonmarital childbearing that occurred in recent time periods? The social effects of unilateral divorce depend in part on the answer to this question. For if unilateral divorce merely discourages divorce-prone couples from marrying, most would find this a social good. But if as a result of permissive divorce laws, younger, more at-risk couples increasingly choose not to marry at all (and thus have more children outside of marriage in cohabiting or dating relationships), studies that look only at the effects of divorce law on divorce rates may be underestimating its influence on rates of family fragmentation generally.

#### **IV. Some Specific International and U.S. Studies of Note**

An interested reader going through the summary of research listed in the appendix might come away with the impression that nothing is settled. However, not all research is created equal. In this section we summarize the most important and significant research.

##### ***International studies***

There have only been a handful of divorce rate studies in countries other than the United States. These include Canada (Allen (1998)), England (Binner and Dnes (2001)), Portugal (Coehlo and Garoupa (2006)), Sweden (Livia (2001)), and Great Britain (Smith (1997)). All of these cases differ from the United States in that the grounds for divorce are national. This means the entire country switched from fault to no-fault at the same time, and therefore the only test that can be conducted is to look at divorce rates before and after the legal switch. These studies have some natural advantages. First, the issue of migratory divorce (or people escaping more restrictive divorce laws in their state by petitioning for divorce in more permissive states) is



eliminated, or greatly mitigated. Second, the legal change is clear: not only what the law changed to, but what it changed from.

The down side of these international studies is that they can only test for changes over time, and it may be impossible to control for other changes that are highly correlated with the legal change.

The international studies generally find a large and statistically significant positive effect of no-fault divorce on the divorce rate. For example, Binner and Dnes find that no-fault divorce increased the divorce rate in Great Britain by 0.8 divorces per 1000 people. Considering the average divorce rate is 1.84 divorces per 1000 people in a given year, this is quite a substantial effect (about a 43% increase).

### ***U.S. Studies***<sup>13</sup>

#### *Friedberg and Wolfers*

Much of the debate over no-fault divorce and divorce rates seemed to be over with the publication of Friedberg's (1998) seminal work in the *American Economics Review*. This paper created a panel data set of every divorce in the United States from 1968 to 1988. It used sophisticated econometric techniques to control for state endogeneity and changes in behavior over time. She tested for different legal classifications, and performed a series of robustness tests. In the end she found that no-fault divorce laws led to a 6% higher divorce rate and that they accounted for about 17% of the increase in divorces over the time period studied. She also found that the change was permanent, and exogenous. Differences between states and changes over time, however, accounted for most of the divorce trends. She concluded: "The results above make it clear that unobserved covariates and unobservable divorce propensities — which may include for instance, social attitudes, religious beliefs, and family size — are the main determinants of divorce." [p. 616, 1998]

Friedberg's study stood as the high-water mark of the no-fault divorce literature until the arrival of Wolfers (2006). Furthermore, it was corroborated by a number of other papers examining other aspects of no-fault divorce.<sup>14</sup>

Justin Wolfers' paper is an extension of Friedberg. He uses the same basic data set over a longer period of time, replicates her results, and then respecifies all of her state trend variables. Wolfers' point, which has been made by theorists for the past several years, is that exogenous changes to laws are followed by endogenous changes in behavior. As divorce laws change, people might be more or less careful in choosing a spouse. They might marry sooner or later. Laws protecting marital property put at risk by no-fault might be changed. When these things are adjusted for, Wolfers finds that the divorce rate still increases (although the effect is not as large as with Friedberg), but the increase only lasts for about 10 years. As Wolfers acknowledges, though, his test is not really a test of "no-fault" divorce *per se*, but rather a test of the set of legal changes that took place over the past 30 years. Taken together, divorce rates were higher throughout the 1970s and early 1980s, but then they leveled out and may have fallen after that (although not to 1960 levels).

The most important contribution of the Wolfers study, along with other papers on behavior within the household, is the idea that the effect of no-fault divorce laws on the divorce rate *depends* on the environment one is divorced in. Although Wolfers thinks internal marriage bargaining best explains the small long-run effect of the law, an alternative and complementary explanation is found in other legal changes. As mentioned, other legal changes followed no-fault laws that help prevent some of the most egregious cases of wealth transfers brought on by divorce.

### **V. Conclusions**

Does the divorce law affect the divorce rate? Yes. Divorce law is not the primary

cause of increases in divorce rate, but it is a contributing factor. Estimates vary, but the best evidence suggests no-fault divorce increases the divorce rate on the order of 10 percent.

These changes are caused by a low cost of divorcing that allows one party to unilaterally break the marriage vows. The effect of no-fault divorce laws on the divorce rate is critically conditional on the legal, social, and cultural environment. Thus the same legal change can have different effects across jurisdictions, and over time the effect probably dissipates. Some of the other legal changes in the past 30 years (in child support, custody, and marital property) may have mitigated the consequences of no-fault divorce. New research is needed to establish the “side effects” of weaker marital contracts on rates of cohabitation and non-marital births.

The premise of many family law scholars—that legal change is only a response to underlying cultural shifts and never an independent cause—is difficult to reconcile with either economic theory or existing empirical research.

Changing divorce law can affect the divorce rate, and likely the rate of unmarried childbearing and cohabitation as well. Family scholars, policymakers, legislators, and media need to consider and take seriously the complex ways in which family law affects real families and real children.

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## Endnotes

<sup>1</sup> A U.S. Census Bureau report shows the annual divorce rate per 1,000 married women rose from 16 per 1000 for the period 1960-62, to 40 per 1000 for the period 1978-1980. U.S. Bureau of the Census (1992), Current Population Reports, *Marriage, Divorce, and Remarriage in the 1990's*, P23-180: 2 (Table A). Looking at cohort data, the National Survey of Family Growth found that 14% of first marriages entered between 1955 and 1959 ended in divorce within 10 years, compared to 31% of first marriages entered from 1975-1979. National Center for Health Statistics (July 2002), *Cohabitation, Marriage, Divorce, and Remarriage in the United States*, Vital and Health Statistics 23 (22): 27. The overall divorce rate appears to have peaked around 1980, but the modest decline since that time appears to be driven by a bifurcation in divorce risk, with highly educated couples experiencing dramatic drops in divorce risk, while divorce rates among Americans with less than college degrees continue to rise. Steven P. Martin, 2006. “Trends in Marital Dissolution by Women’s Education in the United States.” *Demographic Research* 15:537–560.

<sup>2</sup> No-fault divorce is now available in every state, with all but a handful permitting such divorce unilaterally, not requiring consent of the other spouse.

<sup>3</sup> 20 states have adopted complete no-fault rules for spousal support and property distribution following divorce. An additional 15 states have adopted no-fault rules for either spousal support or property distribution. American Law Institute, *Whether Marital Misconduct should be Considered in Property Allocations and Awards of Compensatory Payments*, Reporter’s Notes, PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS (2002); see also Lynn Wardle, “Beyond Fault and No-Fault in the Reform of Marital Dissolution Law,” in *Reconceiving the Family: Critique on the American Law Institute’s Principles of the Law of Family Dissolution* (Robin Fretwell Wilson, ed., Cambridge University Press, 2006).

<sup>4</sup> La. Civ. Code Art. 103.1 (2007).

<sup>5</sup> N.J. P.L. 2007, c.6.

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<sup>6</sup> Danny Hakim, “Panel Asks New York to Join the Era of No-Fault Divorce,” *The New York Times*, Feb. 7, 2006 at A1.

<sup>7</sup> American Law Institute, *Whether Marital Misconduct should be Considered in Property Allocations and Awards of Compensatory Payments*, Summary and Conclusion, PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS (2002).

<sup>8</sup> Of course such a mutual agreement to present divorce grounds could be considered a collusive fraud on the court, albeit one that was undetectable to outsiders and widely tolerated at the time.

<sup>9</sup> The famous Coase theorem in economics states that in the absence of transaction (bargaining) costs, a switch from mutual to unilateral divorce should not affect the divorce rate (because under the old fault system, the spouse who wished to divorce should simply offer to increase the compensation to the other spouse in order to achieve his or her goal). But as many point out, divorce is never costless. Hence, under real-world conditions of high-transaction costs, economic theory predicts the move to unilateral no-fault rules should increase “inefficient” divorces (*i.e.*, cases in which a spouse leaves a marriage because it makes them as an individual better off, even if the rest of the family is made worse off). An important point, often missed by those simply trying to estimate an empirical reaction to the law, is that there is no economic reason for no-fault divorce *by itself* to have any effect on any behavior. It is only when combined with other laws, family circumstances, or social customs, that the switch *may* provide an incentive for *some* spouses to terminate their marriage when it is not in the best joint interests of the couple to do so.

<sup>10</sup> This finding is different from the idea, popular among family law scholars in the 1970s, that the increase in divorce rate observed after no-fault divorce was spurious—a statistical artifact of speeding up divorce processing times such that divorces in say, 1970 and 1971, were both suddenly processed in 1971. Faster processing times under no-fault would produce a statistical bump in the divorce rate but no real increase in the underlying divorce risk. Recent studies, by contrast, suggest that no-fault divorce did result

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in a sustained increase in divorce risk for existing married couples, but that over time, the effects are cancelled out, or masked, as couples at greater risk of divorce increasingly decline to marry at all.

<sup>11</sup> Only a few studies have begun to look at this marriage effect and the results are preliminary.

<sup>12</sup> Steven P. Martin, 2006. “Trends in Marital Dissolution by Women’s Education in the United States.” *Demographic Research* 15:537–560.

<sup>13</sup> The U.S. studies can be divided into three periods. The first wave of papers from 1970–1985 were characterized by small samples and simple test design. The second wave mostly consisted of Peters’ (1986) seminal study using a large individual data set, and rebuttals to her work by Allen (1992) and Parkman (1992). The third wave is made up of the sophisticated papers after Friedberg (1998).

<sup>14</sup> For example Gruber (2004), Johnson and Mazingo (2000).



**APPENDIX**  
**Does Divorce Law Affect the Divorce Rate?**  
**Empirical Research 1995-2006**

**STUDIES SHOWING NO-FAULT DIVORCE AFFECTS THE DIVORCE RATE**

**1. Allen, Douglas W. (1998).** No-Fault Divorce in Canada: Its Cause and Effect. *Journal of Economic Behavior & Organization*, 37: 129-149.

**Background:** In 1968, Canada created no-fault grounds for divorce. (Prior to this change, adultery was the only grounds for divorce in 8 provinces, while Quebec and Newfoundland permitted divorce only by a private act of the parliament's senate.) In 1985, Canada introduced a second major legal change, reducing the number of fault grounds for marriage from 15 to one (marital breakdown) and reducing the separation period for a no-fault divorce from 3-5 years to just one year.

This study analyzes two different samples to test the effect of both the 1968 and 1985 divorce law changes on the overall divorce rate. The first consists of Canadian women who had been married only once, and who had married prior to 1968, drawn from the 1984 Family History Survey (a supplement to the 1984 Labor Force Survey conducted by Statistics Canada). The second sample consists of a panel of every Canadian divorce from 1950-1992 created using data from *Census of Canada*.

**Results:** First, after analyzing data from the 1984 Family History survey, this study concludes: "a movement to the nofault period increased the probability of divorce, conditional on the length of marriage by 1.09 percent. This result is statistically significant, and is consistent with the recent U.S. findings that no-fault divorce increases the divorce rate." (p. 144) The author concludes: "The variable indicates that a particular *type* of divorce increased, namely, inefficient divorces, where one spouse used the new law to the disadvantage of his or her partner." (p. 145) A second analysis using Census data on divorce from 1950 to 1992 concludes: "As with the Family History Survey, this indicates that both changes in divorce law increased the number of inefficient divorces. This holds even when provincial effects and inter-temporal provincial effects are controlled for." (p. 147)

**2. Andersson, Gunnar (1997).** The Impact of Children on Divorce Risks of Swedish Women. *European Journal of Population* 13(2): 109-45.

**Background:** In 1974, procedures of divorce in Sweden were simplified so that no specific reason for divorce need be alleged; waiting periods were eliminated for childless couples and reduced to six months for couples with children. This study looks at formal divorces occurring after first marriages formed between 1968 and 1994 in Sweden taken from the Statistics Sweden Fertility Register.

**Results:** While the main purpose of the study was to study the impact on children from divorce risks, the paper also suggests that the "general picture of Swedish divorce-risk trends shows a strong increase in 1974, mostly among childless women, in response to a reform of the divorce legislation." (p. 109) However, the authors also suggest the finding of a sustained increase in divorce risk is partly a result of controlling for age at marriage, which increased over the period: "the increase in divorce risks...mainly appears because

we have removed the effect of an ongoing transition of married women in our data set towards ages at marriage that are associated with lower divorce risks, i.e., towards higher ages.” (p. 121)

**3. Binner, Jane M. & Antony W. Dnes (2001).** Marriage, Divorce, and Legal Change: New Evidence from England and Wales. *Economic Inquiry*, 39(2): 298-306.

**Background:** In 1969, the British Parliament passed “the Divorce Reform Act of 1969,” which added no-fault grounds alongside fault grounds for divorce. This study uses long-run time-series analysis and short-run error-correction models to determine impact of the introduction of unilateral divorce on the divorce rate, after accounting for other possible explanations, including male to female earnings ratios and postdivorce welfare benefits. The study analyzes data on all marriages in England and Wales from 1948-1996, including marriage and divorce rates created using annual data from the Office for National Statistics and the Office of Population Census and Surveys. (p. 305)

**Results:** “[U]nilateral divorce raised the divorce rate by more than 0.8 divorces per thousand people, a substantial impact relative to the average divorce rate of 1.84 over the period....We therefore find a permanent impact from the easing of divorce law in the 1970s.” (p. 303) and “We can conclude that the law increased divorce by making it easier to divorce.” (p. 304) The study observed no impact on marriage rates, however, which the authors interpret as perhaps reflecting “the canceling out of two trends. First, making divorce easier reduces the irreversibility of marriage and possibly makes it more attractive to some people. Second, observing a rising divorce rate may make others cynically aware that marriage may not last and cause them to avoid it (e.g., by cohabitation...)” (p. 303)

**4. Brinig, Margaret F. & F.H. Buckley (1998).** No-Fault Laws and At-Fault People. *International Review of Law and Economics*, 18: 325-340.

**Background:** This study defines no-fault divorce states in the U.S. as those in which “fault is irrelevant at both dissolution and at financial settlement.” (p. 326). The study codes 17 states as unilateral divorce regimes. It uses a fixed-effects model to analyze annual *per capita* divorce rates from 1980-1991 in 49 states (excluding Nevada as an outlier) from Census data, isolating no-fault divorce law reform from other demographic and social factors that might also explain the variation in divorce rates across states and across time including two state-level measures of economic wellbeing (unemployment rate and employment growth), and four social predictors of divorce rates: Date of entry into the U.S. union (a proximate measure of region, i.e., “westernness,” of states), the proportion of the population living in metro areas, the amount of life insurance issued as a proportion of state income (a proxy for risk averseness), and the proportion of Catholics.

**Results:** “Our principal finding is that divorce levels are positively and significantly correlated with state laws that do not penalize marital misbehavior at the time of divorce.” (p. 331) “Our study of divorce rates from 1988 to 1991 provides the strongest evidence to date that no-fault divorce laws are associated with higher divorce levels. Prior studies failed to detect a significant no-fault predictor of long-term divorce rates because they defined ‘no fault’ solely in terms of the dissolution of the marriage and ignored the financial penalty that a court might impose on at at-fault party.”(p. 340) However, the authors also caution “our results are suggestive only....Divorce levels likely will be lower in societies that stigmatize divorce. Such societies are also less likely to enact no-fault

divorce laws. The legal predictor thus might serve as a proxy for more fundamental social norms.” (p. 340).

**5. Coelho, Clarisse & Nuno Garoupa (2006).** Do Divorce Law Reforms Matter for Divorce Rates? Evidence from Portugal. *Journal of Empirical Legal Studies* 3(3): 525-542.

**Background:** In 1975, Portugal approved a new divorce law that extended no-fault divorce by mutual agreement to Catholic marriages (for which legal divorce had previously not been available). In 1995, Portugal permitted couples to receive a mutual consent divorce by a simple administrative procedure if the couple had no children or after child custody has been adjudicated by a judge. This study tests the impact of both these legal changes on Portuguese divorce rates, using a time-series econometric model, using data from 1960 to 2002 for divorce and marriage rates in Portugal (from the Instituto Nacional de Estatística de Portugal).

**Results:** After controlling for economic growth (per capita GDP), secularization (measured by the out-of-wedlock birth rate and the proportion of Catholic rather than civil marriages), and infant mortality (a proxy for technological progress), the study finds that the 1975 Divorce Law (which introduced no-fault regime to Catholic marriages) had significant positive impact on the divorce rate, but the 1995 Code of Civil Registration (which permitted mutual consent divorce by civil registration for childless couples or after custody issues are adjudicated) did not. “[O]ur most important finding is that a major reform of divorce law such as the one in 1975 had a significant positive effect on the divorce rate, but a less substantial change such as the one in 1995 does not seem to be statistically important.” (p. 535, 539)

**6. Drewianka, Scott (2006).** Divorce Law and Family Formation. (forthcoming in the *Journal of Population Economics*) paper available at <http://www.uwm.edu/~sdrewian/DivorceLawAndFamilyFormation.pdf>.

**Background:** This study measures the effects of both no-fault and unilateral divorce laws on state-level rates of divorce, marriage, fertility, and legitimacy in 49 states (excluding Nevada). It follows Jonathan Gruber (2004) codings of no-fault and unilateral divorce. It uses crude divorce rates, or divorces per 1000 population.

**Results:** “[T]here was little to indicate that either no-fault or unilateral divorce had any effect on marriage rates. As in the existing literature, there was some indication that unilateral divorce causes a modest increase in divorce rates, at least during the first five or ten years after the law passes, but no-fault divorce does not seem to have any meaningful effect on divorce rates.” (p. 15) More specifically, “[U]nilateral divorce laws lead to 2–4 additional divorces each year per 10,000 people in a state (6–10 percent of the mean over this period)...However...we find that the effect only lasts for 6–8 years.” (p. 11)

The study also found effects on fertility: “[U]nilateral divorce seems to increase marital birth rates and decrease non-marital birth rates, and both of those effects seem to grow the longer the law is in effect.” (p. 15) The study concludes: “[C]hanges in divorce law were not a major cause of changing family structure.” (p. 2)

**7. Friedberg, Leora (1998).** Did Unilateral Divorce Raise Divorce Rates? Evidence from Panel Data. *The American Economic Review*, 88(3): 608-627.

**Background:** This study assembles a panel of state-level divorce rates between 1968-1988 from data collected by the National Center for Health Statistics. Friedberg compares legal regimes in three ways: unilateral no-fault divorce versus mutual consent divorce

states, unilateral divorce states with waiting periods before divorce versus unilateral divorce states without separation requirements or waiting periods, and states where marital fault may be considered in property settlements at divorce versus states with no-fault property distribution laws.

**Results:** “The estimates suggest that the divorce rate would have been about 6 percent lower in 1988 if no type of unilateral divorce had been adopted in those states that switched to unilateral divorce after 1968. The move towards unilateral divorce accounted for 17 percent of the increase in divorce rates between 1968 and 1988.” (p. 608). Furthermore: “[T]he effect of unilateral divorce on divorce behavior was permanent, not temporary.” (p. 608.)

“[T]he type of unilateral divorce a state adopted mattered. The strictest unilateral divorce, without separation requirements or fault considerations in property division, raised the divorce rate by 0.549 per thousand people—11.9 percent of the average of 4.6 during the sample period...Separation requirements proved more of a constraint on divorce behavior than fault-based property division did.” (p. 620)

**8. Gruber, Jonathan (2004).** Is Making Divorce Easier Bad for Children? The Long-Run Implications of Unilateral Divorce. *Journal of Labor Economics*, 22(4): 799-833.

**Background:** This study estimates the impact of unilateral divorce laws on the incidence of divorce. It also examines the impact of living under unilateral divorce regimes and later life outcomes for children, including adult suicide. Only states which do not require separation periods for unilateral no-fault divorces are coded as unilateral divorce states.

**Results:** “[U]nilateral divorce regulations do significantly increase the incidence of divorce. Adults who were exposed to unilateral divorce regulations as children are less well educated, have lower family incomes, marry earlier but separate more often, and have higher odds of adult suicide.” (p. 799) Specifically: “I find that there is a very sizable and significant impact of unilateral divorce regulations on the likelihood of being divorced. For women, unilateral divorce being in place raises the odds of divorce by...11.6%. For men the increase is...11.6%. The results are even stronger when state-specific trends are included.” (p. 812) Gruber also finds “a very large impact on the odds of living with a never-married mother or father; however, both results are insignificant when trends are included.” (p. 814) On the other hand, “the rise in unilateral regulation can explain less than 10% of the overall rise in the stock of divorced women.” (p. 814)

**9. Iverson, Torben et al. (2005).** Divorce and the Gender Division of Labor in Comparative Perspective, *Social Politics* 12(2): 216-242.

**Background:** This study compares divorce rates in developed countries that have either unilateral or mutual consent divorce laws with developed countries that have high barriers to divorce (“such as Ireland, Italy, and Spain”); these high legal barriers to divorce include fault systems, long mandatory waiting periods, and “additional judicial hurdles.” (p. 233) Divorce rates are the number of divorces per 100 marriages, with data from 18 countries in the OECD every five years between 1970 to 1995. Other potential explanatory variables explored include relative wages of women, size of the public sector, and “skill specificity” (the mean of vocational training intensity and firm tenure rate).

**Results:** “[T]he restrictiveness of divorce legislation *does* appear to reduce the rate at which people divorce. Going from a legal system with easy unilateral no-fault divorce (such as Sweden) to one with fault and long mandatory separation periods (such as Spain)

is associated with 13 fewer divorces per 100 marriages in the short run and more than 20 in the long run.” (p. 234)

**10. Johnson, John H., IV & Christopher J. Mazingo (2000).** The Economic Consequences of Unilateral Divorce for Children. Social Science Research Network Electronic Paper Collection: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=236227](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=236227).

**Background:** This study examines (among other outcomes) the effect of having lived as a child in a unilateral divorce state on the likelihood that child’s parents had divorced. The authors “mainly employ the law coding used by Brinig and Buckley (1998) (also used by Friedberg), but also test our results with law coding from Ellman and Lohr (1998). Our results are insensitive to the legal classification we use.” (p. 5) For each child under age 17, the authors construct the number of years they lived in a unilateral divorce state and current age, and evaluate it affect on the likelihood that that child’s parents had divorced.

**Results:** “[A]n extra year of exposure to unilateral divorce increases the probability that a child’s parents are divorced by 5/10th of a percentage point” or “about a three-percent increase in the divorce rate.” (p. 16) (The study also found that increased childhood exposure to unilateral divorce laws reduced wages and schooling for women.) “[W]hile we confirm that unilateral divorce increased divorce rates, we also provide evidence that bargaining power within the household was a key factor in affecting children. Many previous studies treat these channels as being mutually exclusive.” (p. 21)

**11. Kidd, Michael P. (1995).** The Impact of Legislation on Divorce: A Hazard Function Approach. *Applied Economics* 27(1): 125-130.

**Background:** In 1975, Australia adopted the Federal Family Law Act of 1975, which altered the grounds for divorce from proof of misconduct by one party to irretrievable breakdown. This study uses a hazard model of the divorce rate to estimate the probability of leaving a given marriage before and after 1975, which allows the authors to estimate the effect of the introduction of no-fault on marriages of varying duration. Data is taken from 8,608 females aged less than 55 who had married at least once by 1982 from the Australian Bureau of Family Statistics Family Survey, a nationally representative sample. Control variables included age, age at first marriage, years of education, whether there was a child born prior to the marriage, country of birth, length of residency in Australia, and employment status.

**Results:** “[N]o-fault divorce legislation appear to have had a positive impact upon the divorce rate in Australia.” (p. 129) “These results imply the legislation increased the hazard rate [i.e. divorce] by between 45 and 88%.” (p. 129)

**12. Matouschek, Niko & Imran Rasul (2006).** The Economies of the Marriage Contract: Theories and Evidence. (Forthcoming, 2007, in the *Journal of Law and Economics*), working paper available at <http://www.homepages.ucl.ac.uk/~uctpimr/research/marriage%20contract.pdf>.

**Background:** The study constructs and tests three models of why legal marriage may matter, compared to the alternative of cohabitation: legal marriage as a preference for social custom, legal marriage as a commitment device, and legal marriage as a “signal” of true and permanent love. In the process, the authors empirically test the idea that unilateral divorce may affect the divorce rate in two ways: by increasing the incentive of existing couples to divorce and by changing the composition of couples who choose to marry in the first place.



Using individual marriage and divorce certificate data from the U.S., the study constructed year-of-divorce, duration-of-marriage, and state-specific divorce propensities for all marriages that occurred in 33 states after 1968 and divorced before 1995, including 19 states that adopted unilateral divorce in some year. This dataset represents the universe of all marriages in small states and a representative sample of marriages in larger states.

Because there is disagreement on the dates in which various states adopted unilateral divorce (due to varying definitions of unilateral divorce), the authors tested alternative codings of unilateral divorce, using Gruber (2004) who codes as unilateral divorce states those states that permit no-fault divorce without significant waiting periods, and Ellman and Lohr (1998) who code unilateral divorce as the date in which a state adopted either irretrievable breakdown or incompatibility as a grounds of divorce. Authors report results were similar using either coding system.

This study compares divorce risk between (a) states that adopted unilateral divorce and those that did not; (b) between couples married before the introduction of unilateral divorce and those who married after the state adopted unilateral divorce; and (c) couples who married between one and four years after the adoption of unilateral divorce and those who married at least five years afterwards. (By investigating the divorce propensities of marriages of different durations within the same state and year of divorce, the authors seek to control for unobserved state specific trends, such as social attitudes or labor market conditions, that may affect both the adoption of unilateral divorce and marriage and divorce risk.)

**Results:** “[A]fter the introduction of unilateral divorce, the propensity to divorce at any given marital duration increases by 4.08 divorces per 1000 marriages...[T]he implied effect of unilateral divorce is to increase the divorce propensity, averaged across marriages of all durations, by 18.5%.” (p. 26) However this increase is not sustained over time because less well-matched couples respond to the reduced effectiveness of marriage as a legal commitment device by failing to marry, which reduces the divorce rate over time. “[W]hen the costs of exiting marriage fall, only higher match quality couples are willing to marry. This reduces the divorce rate in the long run as these better matched couples form a greater share of all married couples...” (p. 28) Thus, “for cohorts of married couples that live under unilateral divorce for up to 10 years, the propensity to divorce increases. However for marriages that experience living under unilateral divorce for more than 10 years, the propensity to divorce falls.” (p. 29) “Our findings give support to those who argue that divorce costs can be ‘too low’ and that when they are too low, the very purpose of the marriage contract is undermined.” (p. 5)

**13. Mechoulan, Stéphane (2006).** Divorce Laws and the Structure of the American Family, *Journal of Legal Studies* 35(1): 143-174.

**Background:** The study uses cross-sectional micro data of recently married U.S. white women interviewed between 1971 and 1990, taken from the June Supplements of the Current Population Survey (CPS). Divorce and marriage rates are from *Vital Statistics* (National Center for Health Statistics 1950-2000) and the *Statistical Abstract of the United States* (U.S. Census Bureau 1999). The study “define[s] as having no-fault grounds only those states that have enacted specific no-fault statutes.” (p. 150) Regarding property division, the study notes: “many states barred the consideration of fault in asset division and spousal support settlements. With regard to property regimes, this work focuses on that no-fault dimension.” (p. 151)

**Results:** Creating no-fault grounds for divorce did not appear to increase the divorce rate, but moving from fault to no-fault in the distribution of marital property did appear to increase divorce rates. “[F]or those women who married under a fault regime for property, a change to a no-fault regime was responsible for a significant increase in divorce odds...On the other hand, we see that adding no-fault grounds to the statutes (whether supplementing fault grounds or supplanting them) seems to be irrelevant.” (p. 160) Comparing the divorce patterns of women who married before and after the legal changes, “the impact of a no-fault for grounds regime is to decrease age at first marriage, although not statistically significantly, while the effect of no-fault for property is to significantly delay marriage,” (p. 163) suggesting reduced risk of divorce through better matching. “The main conclusion of the paper is that this better sorting decreased the probability of divorce by about as much as the institution of no-fault divorce increased it...[U]nder no-fault for property laws on average women marry when they are significantly older than are women in fault states.” (p. 165)

**14. Nakonezny, Paul A., et al. (1995).** The Effect of No-Fault Divorce Law on the Divorce Rate Across the 50 States and Its Relation to Income, Education, and Religiosity. *Journal of Marriage and the Family*, 57(2): 477-488.

**Background:** This study investigates the effect of no-fault divorce on a state’s average divorce rate in the first three years after its adoption, controlling for state median family income, education (the proportion of people age 25 or older who have four year college degrees or more), and three measures of religion: the proportion of the state that was Roman Catholic, Southern Baptist, or United Methodist. The definition of a switch to “no-fault divorce” was not provided, although Table 1 lists the date at which states are held to have adopted no-fault divorce.<sup>15</sup>

**Results:** After controlling for religiosity, income, education, and period effects, the study finds that “[T]he switch from fault divorce law to no-fault divorce law led to a measurable increase in the divorce rate.” (p. 485) (The effect size was .91, “a large effect size as defined by meta-analysis standards.” (p. 485)) Neither the proportion of college graduates nor religious denomination had any effect, but higher state median income appeared to increase the impact of legal change on the divorce rate: “[N]o-fault divorce had a greater impact on high-income families...than on low-income families.” (p. 484) “Two important results emerge from the current study. First, the enactment of no-fault divorce law had a clear positive influence on divorce rates...Second, median family income had a small but significant positive relation to the post-no-fault divorce rate when the effects of the pre-no-fault divorce rate were statistically controlled.” (p. 487)

**15. Reilly, Siobhán & Eirik Evenhouse (1997).** Divorce Laws and Divorce Rates: Evidence from Panel Data, working paper.

**Background:** This study uses twenty-five years of state-level panel data on the divorce rate (1963-1987) reported by the U.S. National Center for Vital Statistics, and twenty years of data on individuals taken from the 1989 Panel Study of Income Dynamics (PSID) [Wave 22], consisting of 6,505 ever-married individuals who were married during at least one year after 1968 (the start of the study), representing 7,034 marriages (of which 1,058 ended in divorce or separation during the survey period). Marriages that lasted two years or less were excluded. Following Peters (1986),<sup>16</sup> the authors classify a state as permitting “unilateral divorce” if it (a) allows for a no-fault divorce and (b) the waiting or separation period for such a divorce is less than one year.

**Results:** For the state panel sample, the study's results suggest that "other things equal, unilateral divorce law corresponds to an increase of in [sic] the state's divorce rate of 1.5 per thousand residents, a 36 percent increase over the overall average of 4.2 per thousand." (p. 14-15) However, the study observes that this almost certainly overstates the effects of unilateral divorce. Controlling time-varying state effects, the state's 1969 divorce rate and the growth in the state's divorce rate between 1963 and 1969, suggests that "the law is associated with an 8 percent rise in the divorce rate." (p. 16-17) Comparing "no-fault" with "unilateral" divorce laws suggests that "[n]o-fault laws are indeed associated with a rise in the divorce rate, but it is the unilateral aspect of some of them that causes the effect." (p. 17) Ultimately, "[t]hese simple regressions suggest that (a) unilateral divorce has a rather modest impact on divorce rates, on the order of 5 to 8 percent; (b) the effect is short-lived...and (c) it is sensitive to the misclassification of state laws." (p. 18)

Using data on the hazard of divorce from the PSID: Controlling for age at marriage, duration of marriage, presence of children, income variables, and trend, unilateral divorce appeared to be associated with a 17 percent increase in divorce propensity (p.23): "This is a large effect relative to the effects of other variables: Its impact on the odds of divorce is five times that of having married a year younger, three times that of the local unemployment rate, nearly three times that of another year of marriage, and more than two times that of another ten to fourteen thousand dollars in annual income." (p. 23-24) Unilateral divorce also appears to affect couples who married prior to 1968 more than couples married afterwards and to increase the odds of divorce more for marriages with children at home than marriages without minor children. (p. 25-26)

In summary: "State-level data suggest that the switch from mutual consent to unilateral divorce did raise states' divorce rates, particularly in the two or three years after the new laws were introduced, but that the longer-term effect was a mere 0.2 divorces more per 1000 residents, a 5 percent increase. Individual-level data from the PSID yield ambiguous results: Estimates of the impact of unilateral divorce on an individual's annual divorce hazard range from zero to 35 percent. The sample is small enough, however, that results should be interpreted with caution." (p. 31)

**16. Rodgers, Joseph Lee, et al. (1997).** The Effect of No-Fault Divorce Legislation on Divorce Rates: A Response to a Reconsideration. *Journal of Marriage and the Family*, 59(4): 1026-1030.<sup>17</sup>

**Background:** This study expands on the findings of an earlier study (Nakonezny, Paul A., et al. (1995)) as a response to a subsequent critique (Glenn (1997)) of that study. The original study used as its data the state divorce rate, measured as the number of divorces (including annulments) per 1000 individuals for each of the 50 states for the three consecutive years before the enactment and after the enactment of no-fault divorce law for each state, data from *Vital Statistics of the United States* (National Center for Health Statistics, 1987, 1989; United States Bureau of the Census, 1950-1990). The current study added to this original data file "the divorce rates 10 years prior to the implementation of the no-fault law [for each state]." (p. 1028)

**Results:** "There was an increase in the divorce rate across the 10 years in 44 of the 50 states, as expected. In 34 states, the 10-year divorce trend underestimated the actual average of the 3 years following the enactment of no-fault divorce law, suggesting a net effect of the law itself. In 16 states, the net effect was negative, suggesting a lower divorce rate than the 10-year linear trend would have predicted." (pg. 1028) The study finds that "around 30% of the raw change [in the divorce rate] that we reported in our

original article [Nakonezny, Paul A., et al. (1995)] was due to no-fault laws, and around 70% was due to the prevailing divorce pattern.” (pg. 1028) That translates into “around 57,000 extra divorces per year in the whole U.S. that are directly attributable to the implementation of no-fault divorce law.” (p. 1028)

**17. Wolfers, Justin (2006).** Did Unilateral Divorce Laws Raise Divorce Rates? A Reconciliation and New Results. *American Economic Review* 96(5): 1802-1820.

**Background:** To reexamine the results of Friedberg (1998), which found that unilateral divorce laws have caused one-sixth of the divorce rate increase since the late 1960s, the current study extends Friedberg’s data sample back from 1968 to 1956 so as to allow for a better identification of pre-existing state-specific trends, controlling for state and year fixed effects, state-specific time trends, and quadratic state-specific time trends. (p. 1807-1808) To check these effects on the flow of new divorces against the effects of unilateral divorce laws on the stock of divorcees, the current study then replicates the results of Gruber (2000), which examined the effects of divorce laws on the pool of those individuals divorced at a given point in time; to account for divorcees who remarry, the current study also analyzes the effects of divorce laws on the ever-divorced population.

**Results:** “A clear finding from this analysis is that the divorce rate exhibits interesting dynamics in response to a change in legal regime...The data broadly indicate that divorce law reform led to an immediate spike in the divorce rate that dissipates over time. After a decade, no effect can be discerned...It should be clear that unilateral divorce laws explain very little of the rise in the aggregate divorce rate.” (p. 1816-1817)

## STUDIES SHOWING NO EFFECT FROM CHANGE IN DIVORCE LAW

**1. Ellman, Ira Mark & Sharon L. Lohr (1998).** Dissolving the Relationship Between Divorce Laws and Divorce Rates. *International Review of Law and Economics*, 18: 341-359.

**Background:** First, the study critiques conclusions of Nakonezny et al. (1995) and Brinig and Buckley (1998) that unilateral divorce raised the divorce rate. Then it presents its own analysis of available data for all states excluding Nevada and Louisiana, “to see whether there were any changes in divorce rates after the enactment of a no-fault divorce law for grounds, property, or alimony, or, whether there were divorce rate changes after a change in case law that made a state effectively no-fault for property and alimony.” (p. 349) After divorce rates for different states were plotted over time, they used an “intervention analysis” where “an ARIMA model is fit to a time series (the divorce rate for a state from 1960–1992), with additional terms included to measure the possible effect(s) of an intervention (changes in divorce law).” (p. 353) Each state was analyzed separately: “This allowed us to estimate and to remove the general trend in divorce rates for a region from each time series, with only a small loss in efficiency.” (pg. 353) There were four regions (west, north central, south, and northeast); each was treated separately. “We then weighted the data points for the other states so that neighboring states that changed their divorce laws would not exert undue influence on the analysis. Using the weighted data, we employed the Super Smoother to estimate the regional trend in divorce rates. The smoothed trend line nonparametrically accounts for other factors such as unemployment, religious affiliations, or female participation in the work force, that might be thought to influence divorce rates.” (p. 353-354)

**Results:** Regarding the two papers the current study examines (Nakonezny et al. (1995) and Brinig and Buckley (1998)), the study shows that “the conclusions of both papers rely on flawed statistical analysis,” (p. 345) and Ellman and Lohr urge that the empirical

results of these two papers be “disregarded.” (p. 345) “The analysis of Nakonezny et al. is flawed because they ignored the fact that over 60% of the states adopted no-fault divorce grounds between 1970 and 1973—years of increasing divorce rates nationwide... Thus, a simple before and after comparison does not work.” (p. 345-346) The Brinig and Buckley (1998) analysis is flawed because “their NO-FAULT variable cannot estimate the effect of no-fault laws or practice.” (p. 347) Regarding its own empirical analysis, the authors conclude that “there is no evidence that divorce laws affect trends in divorce rates.” (p. 343) “Our analyses indicate that (1) for states changing their divorce laws in the early 1970s, the divorce rates began rising *before* changes in law, and (2) for states changing their laws after 1975, there is no evidence that the effect of the divorce law change was anything other than transitory.” (p. 358). In fact, “[w]e find it far more plausible to conclude that divorce rates and divorce laws share causal influences.” (p. 358)

**2. Glenn, Norval D. (1997).** A Reconsideration of the Effect of No-Fault Divorce on Divorce Rates. *Journal of Marriage the Family*, 59(4): 1023-1025.<sup>18</sup>

**Background:** This study compares mean divorce rates for states classified by timing of no-fault adoption (pre-boom, early boom, late boom, post-boom); comparing mean crude divorce rates three years before and three years after adoption of no-fault divorce; regressing mean divorce rate on year by when, relative to the divorce boom, states adopted no-fault divorce; and regressing mean divorce rate on year states adopted no-fault divorce during the divorce boom, with mean rate for states that had not adopted no-fault divorce controlled. (p. 1024) Divorce rates for all states from 1962-1980, excluding Arizona, Indiana, Louisiana, Massachusetts, Nevada, New Mexico, and Vermont due to missing data, taken from *Vital Statistics of the United States*.

**Results:** The current study begins by examining the results of Nakonezny et al. (1995), claiming that study’s analysis “confounds the effects of other influences on divorce with any effects of the change to no-fault divorce.” (p. 1023) Glenn concludes that all states display a similar increase in divorce rate regardless of when they adopted no-fault laws, and the legal change had very little effect on divorce rates. The study shows that although states that adopted no-fault before the divorce boom did have the highest divorce rates, they also had the highest initial rates and the lowest percentage increase, leading the author to surmise that higher divorce rates led to an earlier move to no-fault, instead of the opposite. Similarly, states that adopted no-fault after the divorce boom had the lowest divorce rates but also had the lowest initial rates, which may have resulted in the late adoption. Furthermore, in the states that adopted no-fault provisions at times other than during the divorce boom, the mean divorce rate was no higher in the 3 years after adoption than in the 3 years before adoption. (p. 1023) “[S]tates that had not yet adopted no-fault divorce and that did not do so during the subsequent 3 years can be used as a control group for each state that adopted no-fault divorce during the divorce boom,” (p. 1024) with the following results: “The percentage changes of the means for the adopter states and the control group states are so similar that they are essentially the same.” (p. 1025) These findings indicate that “the adoption of no-fault divorce had little direct, immediate effect on divorce rates.” (p. 1025)

**3. Glenn, Norval D. (1999).** Further Discussion of the Effects of No-Fault Divorce on Divorce Rates. *Journal of Marriage and the Family*, 61: 800-802.<sup>19</sup>

**Background:** In this response to Rodgers, Joseph Lee, et al. (1997), Glenn compared the mean divorce rate from 1961-1974 with the projected mean rate from 1972-74 in the 7 states that implemented no-fault divorce in 1971 (which had the highest mean positive



effect on divorce rates in Rodgers-Shull-Nakonezny analysis) and the 13 states that implemented no-fault divorce after 1974.

This study finds that during the divorce boom, states without no-fault had similar rates of increase to those with no-fault, and states that adopted no-fault after 1975 saw decreases in divorce rate. Furthermore, “there is scant unambiguous evidence for any effect of no-fault divorce in 1972–1974 in the states that implemented no-fault divorce in 1971. It seems clear that the Rodgers-Nakonezny-Shull method greatly overestimates the positive effects on divorce rates of the implementation of no-fault divorce in the seven states that made the change in 1971.” (p. 802) Ultimately, the current study shows that the method used in Rodgers, Joseph Lee, et al. (1997) “made linear projections from nonlinear trends,” (p. 800) and “confounds any effects of implementation of no-fault divorce with the effects of other influences that brought about the divorce boom of the 1960s and 1970s and that led to a leveling off of divorce rates after the late 1970s.” (p. 800)

**4. Gray, Jeffrey S. (1998).** Divorce-Law Changes, Household Bargaining, and Married Women’s Labor Supply. *The American Economic Review*, 88(3): 628-642.

**Background:** State laws were classified on whether they had adopted unilateral divorce (with separation requirements if any of less than one year) between 1970 and 1974, and also classified based on the marital property distribution regime: equitable distribution, common law, or community property. Census data from 1960, 1970, and 1980 were used to create a primary sample including married women ages 18 to 55 with husbands present. Because Census data does not include hours worked, a second sample was constructed from the Current Population Survey (CPS).

**Results:** The study finds that, controlling for socioeconomic variables, “unilateral divorce laws have little impact on state divorce rates.” (pg. 634) Furthermore, “unilateral divorce has no significant impact on married women’s labor-force participation unless the underlying marital-property laws in each state are considered...Once these property laws are controlled for...the labor-supply behavior of wives does appear to respond to their states adopting unilateral-divorce statutes.” (p. 629)

**5. Olah, Livia Sz (2001).** Policy Changes and Family Stability: The Swedish Case. *International Journal of Law, Policy and the Family* 15: 118-134.

**Background:** This study investigates Swedish trends in family disruption for both consensual unions and legal marriages, investigating whether there is increased individual risk of family disruption in three time periods associated with three separate legal changes: (1) 1964-1973, when divorce was possible on both fault and no-fault grounds; (2) 1974 to mid-1983, when all fault grounds were eliminated and waiting periods were shortened and simplified; and (3) mid-1983–1993, when joint custody was introduced as the general rule when unions dissolved. Data on the likelihood of union dissolution from 1,869 women (of whom 20.5 percent experienced the disruption of their union before the sixteenth birthday of their first child), was taken from the *Swedish Family and Working Life Survey* of 1992/93, conducted by Statistics Sweden. The working sample for the present study comprises women who have reported one or more coresidential unions and have given birth to at least one child in such a union. Individuals excluded include: those of a non-Nordic origin, those whose first child was an adopted child, or whose partner had a child from a previous relationship, those whose union ended in the same month when they had their first child, or those whose first child died. Controls include religiosity, age at first birth of the respondent, age at union formation, educational attainment, and employment status.

**Results:** The study found neither divorce law change appeared to increase family disruption risk: “[T]he introduction of one of the most liberal divorce laws of the world had relatively little effect on union disruption among families with children as the risks of family dissolution were very similar in the first and second policy periods (ie [sic] 1964–73, and 1974–mid-1983). This suggests the lack of long-term effects of the no-fault divorce law on family dissolution behavior...” (p. 124) However, the study did find that the introduction of joint custody for children after family breakup as a main rule seems to increase family disruption, primarily among consensual (i.e. unmarried cohabiting) unions. “Although the no-fault divorce law had hardly any long-term effect on family stability in Sweden, joint custody and fathers’ use of parental leave seem to be important.” (p. 118) In the third policy period (mid-1983–1993) the risk of union dissolution was 30% higher than in previous decades. (p. 124)

**6. Smith, Ian (1997).** Explaining the Growth of Divorce in Great Britain. *Scottish Journal of Political Economy* 44(5): 519-544.

**Background:** Between 1964 and 1985, ten important changes in divorce law and procedures took place in England (and Wales) and/or Scotland. This study uses this difference in timing to investigate the consequences of seven of these divorce law changes on the divorce rate. For example: The 1969 Divorce Reform Act in England and Wales introduced irrevocable breakdown of the marriage as the sole grounds for divorce, although the breakdown had to be proved by showing one of five possible facts: adultery, unreasonable behavior, desertion, living separately for two years with mutual consent to the divorce, living separately for five years without mutual consent. (The authors note the long waiting period for unilateral no-fault divorce means “the British data do not provide a good testbed for addressing the no-fault controversy and little weight can be placed on them as input to that specific American debate.” (p. 523)) A similar law was not adopted in Scotland until 1976.<sup>20</sup> In 1983, the Scots introduced two procedural innovations, (1) so-called “do it yourself” divorces for couples separated at least two years and where both parties consent to the application and there are no children of the marriage under age 16 and no alimony claims are being made upon one another (simplified divorces now account for one-third of all Scottish divorces), and (2) Scottish law also began permitting divorce cases to be heard in local courts, rather than exclusively in Edinburgh.<sup>21</sup>

Important legal changes regarding property division upon divorce include The Succession Act of 1964, which permitted Scottish judges to award a maintenance allowance to a wife on divorce. In 1970, in England and Wales, courts were given the power to dispose of matrimonial property, especially the family home. Scottish courts did not receive this power until the Family Law (Scotland) Act of 1985, which introduced a principle of equal sharing of all marital property, including the marital home. In 1984, the English Matrimonial and Family Proceedings Act limited maintenance (alimony) to a temporary and transitional period. The 1985 Scottish law similarly limited maintenance to a limited transitional period.

The study also looked at changes in real and relative wages, fertility control (defined as diffusion of knowledge about the contraceptive pill), and value of welfare benefits, as possible confounding factors in the rise in divorce.

**Results:** “For neither England & Wales nor Scotland can any long run legal effects [of permissive legal reform] be detected...In contrast to the absence of significant long run effects, the strictly short run impacts of legal and procedural innovations are powerful and statistically significant.” (p. 540) “[T]he analysis failed to detect any increase in the

number of divorces arising from the introduction of no-fault separation grounds. If anything, it is not extensions to the judicial grounds for divorce which have contributed to rising divorce rates but rather diminishing transactions costs and court settlement rules that improve the post-divorce financial position of women...In particular, it was found that the introduction of a relatively low cost Simplified Procedure in Scotland in 1983 appears to have permanently narrowed the differential between Scottish and English divorce rates.” (p. 541)

**7. Sweezy, Kate & Jill Tiefenthaler (1996).** Do State-Level Variables Affect Divorce Rates? *Review of Social Economy* 54: 47-65.

**Background:** Using data on 32,369 women over age 15 who are or have been married from the Fertility, Birth Expectations, and Marital History supplement to the 1990 Current Population Survey, this study looked at the effects of two legal variables on divorce risk: whether states have an equitable distribution versus community property law and whether states have a waiting period before divorce. A multivariate hazard model is used for an event history analysis. State-level controls include AFDC payments, proportion of population who attends church, and the percent of population who are Christian fundamentalist. Controls for personal variables include age at marriage, premarital pregnancy, previous divorce, earnings, region of country, urban residency, and race.

**Results:** “[T]he length of the waiting period and the property distribution laws of a state have no effect on the incidence of divorce.” (pg. 62) “These results reject notions that liberal divorce laws and generous AFDC payments encourage the breakup of families but support the hypothesis that social norms do influence individual behavior.” (p. 47)

## **APPENDIX B: DIVORCE LAW REFORM AND OTHER FAMILY OUTCOMES**

### **A. Wives’ Labor Force Participation**

**Chiappori et al. (2002).** Marriage Market, Divorce Legislation, and Household Labor Supply. *Journal of Political Economy* 110: 37-72.

**Background:** This study examines how divorce law affects husbands and wives’ labor force participation, analyzing 1,618 households in which both spouses work and are between 30 and 60 years of age, data taken from wave 23 (1988) of the University of Michigan Panel Study of Income Dynamics (PSID), a nationally representative longitudinal study of nearly 8,000 U.S. families. A composite measure of divorce law regimes most favorable to women is constructed out of four features: mutual consent versus unilateral divorce, community property versus common-law property division, enforcement of support orders, and spousal rights in professional degrees and licenses. “As of 1989, most states (42) had adopted unilateral-divorce laws. Among these states, as many as 24 allowed unilateral divorce only after a lengthy separation that lasted between six months and five years. We follow Peters (1986)<sup>22</sup> and Gray (1998) and define them as mutual-consent states. Property division refers to state marital property systems, which can be either community property or common law.”<sup>23</sup> (p. 58) Mutual consent divorce, community property, stronger support enforcement, and spousal rights in professional

degrees and licenses are treated as more favorable to wives. The “divorce law index” is created out of these four indicators. Controls include income, age, education, race, city size, religion, and number of children.

**Results:** “According to our estimates, a one-percentage-point increase in the index, which reflects the adoption of a divorce law deemed favorable to women, reduces wives’ labor supply by approximately 46 hours, whereas it increases husbands’ labor supply by 81 hours over a year.” (p. 62)

**Gray, Jeffrey S. (1998).** Divorce-Law Changes, Household Bargaining, and Married Women’s Labor Supply. *The American Economic Review*, 88(3): 628-642.

**Background:** State laws were classified on whether they had adopted unilateral divorce (with separation requirements if any of less than one year) between 1970 and 1974, and also classified based on the marital property distribution regime: equitable distribution, common law, or community property. Census data from 1960, 1970, and 1980 were used to create a primary sample including married women ages 18 to 55 with husbands present. Because Census data does not include hours worked, a second sample was constructed from the Current Population Survey (CPS).

**Results:** The study finds that, controlling for socioeconomic variables, “unilateral divorce laws have little impact on state divorce rates.” (pg. 634) Furthermore, “unilateral divorce has no significant impact on married women’s labor-force participation unless the underlying marital-property laws in each state are considered...Once these property laws are controlled for...the labor-supply behavior of wives does appear to respond to their states adopting unilateral-divorce statutes.” (p. 629)

**Parkman, Allen M. (1998).** Why Are Married Women Working So Hard? *International Review of Law and Economics*, 18: 41-49.

**Background:** 172 married women and 159 married men, data from the *Time Use Longitudinal Panel Study, 1975–1981*. The sample was restricted to fault divorce states and the no-fault divorce states that had adopted no-fault divorce grounds by 1978. Observations from the states that switched from fault to no-fault divorce between 1978 and 1981 were eliminated from the sample.

Regression analyses were conducted to determine the causes of changes in number of hours worked by married men and women. Dependent variables used in these regressions were the minutes per week spent in four activities: regular work, housework, child care, and leisure, plus total work, that is the sum of regular work and housework. The independent variables consisted of variables associated with labor force participation: age, family assets, religion, number and age of children, race, education, spouse’s earnings, whether the family lived in a Standard Metropolitan Statistical Area (SMSA), and regional variables for the western, north, central, and southern United States. The influence of no-fault divorce was introduced by a dummy variable for states that in 1978 permitted unilateral divorce within 2 years. (pg. 47-48)

**Results:** The study finds that “living in a no-fault divorce state tends to increase the employment of married women.” (p. 48) Furthermore, the decrease in housework was not statistically significant, and the sum of any decrease in housework and childcare did not equal the increase in regular work, so that “the introduction of no-fault divorce has increased the [total] hours worked by married women.” (p. 41) “[L]iving in a no-fault divorce state results in married women having 4.5 hours less leisure time [per week] and approximately the same amount of additional time devoted to work. These results support

the hypothesis that married women in no-fault divorce states have been forced to take steps to protect themselves from the potentially adverse effects of no-fault divorce.” (p. 48) (The study also found that living in a no-fault divorce state did not affect the number of hours worked by married men.) The study concludes that the increase in employment by married women under no-fault divorce laws is motivated by a desire for personal insurance against the potential costs of divorce rather than by an increase in their family’s welfare. However, “to continue to make their marriage attractive to their husband, they have to continue to provide a substantial number of hours of domestic work. The result has been an increase in the total number of hours worked by married women.” (p. 49)

**Stevenson, Betsey (2007).** The Impact of Divorce Laws on Marriage-Specific Capital. *Journal of Labor Economics* 25(1): 75-94.

**Background:** This study investigates how changes in divorce laws affect marital behavior through altering couples’ incentives to make investments in their marriage. To reduce selection effects out of marriage as a result of legal change, the study looks at newlyweds in the first two years of marriage, taken from the 1970 and 1980 Census. Spousal behaviors investigated include female labor force participation, full-time labor market work by both spouses, one spouse supporting the other’s education, children born during the marriage, and home ownership. This study uses Gruber (2004) coding of states having unilateral divorce (although the author notes “Results presented are robust to following the coding for unilateral divorce used in Friedberg (1998).” (p. 82) States are coded as having adopted no-fault divorce following Ellman and Lohr (1998), and the property regimes upon divorce follow Gray (1998). The study includes controls for gender, state and year fixed effects, own age, race, education, metropolitan status, spouse’s age, spouse’s race, and spouse’s education.

**Results:** “[N]ewlywed couples in states that allow unilateral divorce are about 10% less likely to be supporting a spouse through school. They are 8% more likely to have both spouses employed in the labor force full time and are 5% more likely to have a wife in the labor force. Finally, they are about 6% less likely to have a child.” (p. 77)

“The empirical evidence demonstrates that a switch to unilateral divorce reduces couples’ willingness to make substantial investments early in their marriage. Couples are less likely to have children in the first 2 years, are less likely to support each other sequentially through school, and are more likely to have two full-time workers in the labor force and greater female labor force participation. Some of these investments may simply be being postponed, while others may never be made. Furthermore, these results are largely invariant to the laws governing property division. The exception is home ownership, where the removal of fault in property settlements appears to encourage home ownership in the early years of a marriage.” (p. 92-93)

## **B. Divorce Law and Family Violence**

**Dee, Thomas (2003).** Until Death Do You Part: The Effects of Unilateral Divorce on Spousal Homicides. *Economic Inquiry* 41(1): 163-82.

**Background:** This study investigates how unilateral divorce laws affect spousal homicide rates. State legal regimes are divided into six categories: unilateral divorce, unilateral divorce with separation requirements (waiting periods), unilateral divorce with one of three forms of marital property distribution (equitable distribution, community property, and common law), and states without unilateral divorce. Spousal homicide



counts for husbands and wives are taken from FBI Uniform Crime Reports for all 50 states and the District of Columbia between 1968 and 1978. Results are run both with and without controls for state fixed effects. Other controls include state unemployment and real personal income per capita, AFDC expenditures per recipient, intensity of crime enforcement (as measured by per person number of state and local law enforcement officers and presence of the death penalty), the numbers of stranger homicides, and state gun control laws.

**Results:** “[T]he widespread adoption of unilateral divorce laws had relatively small and statistically insignificant [sic] on the number of wives murdered by their husbands...[T]he introduction of unilateral divorce laws led to a statistically significant increase of roughly 21% in the number of husbands killed by their wives. Notably, the increases in spousal homicides of husbands were concentrated in the states with marital property laws that favored husbands.” (p. 181). The author notes his study results are “quite different” from those of Stevenson and Wolfers (2000)<sup>24</sup> (p. 177) and suggests these possible reasons: Stevenson and Wolfers use a much longer time period, use homicide rates instead of homicides numbers, and do not distinguish unilateral divorce regimes with separation requirements from pure unilateral divorce regimes. “I replicated their data set...[and] found that their results were sensitive to the use of homicide rates instead of counts as well as to their representation of the state laws.” (p. 177)

**Ellman, Ira Mark & Sharon Lohr (1997).** Marriage as Contract, Opportunistic Violence, and Other Bad Arguments for Fault Divorce. *University of Illinois Law Review*, 1997(3): 719-72.

**Background:** State divorce regimes are divided into three categories, no-fault (22 states), limited fault (6 states), and fault (22 states), based on the ease with which trial courts may consider marital misconduct in awarding alimony. Two measures of spousal homicide rates for all 50 states for the years 1987 through 1992 were taken from the FBI’s Uniform Crime Reporting Program (average number of spousal homicides per 100,000 married couples per year from 1985-92, and the average number of homicides of wives by their husbands per 100,000 married couples per year from 1985-92). A measure of wife assault rate (calculated as the percentage of couples in a state in which at least one physical assault of the wife by her partner had been reported as occurring in the previous 12 months) was taken from Murray Straus (1994) “State-to-State Differences in Social Inequality and Social Bonds in Relation to Assaults on Wives in the United States,” *Journal of Comparative Family Studies*, 25(1): 7-24, which computed the rate of wife assault for each state from the 1985 National Family Violence Survey, a national probability sample of 6002 households. Controls included region, income per capita, the violent crime rate, and the proportion of state population that is black.

**Results:** “There is...no statistically significant relation between fault/no-fault category and spousal homicide.” (pg. 766) The study found no statistically significant association for wife assaults.

**Stevenson, Betsey & Justin Wolfers (2006).** Bargaining in the Shadow of the Law: Divorce Laws and Family Distress. *Quarterly Journal of Economics* 121(1): 267-288.

**Background:** “This paper exploits the variation occurring from the different timing of divorce law reforms across the United States to evaluate how unilateral divorce changed family violence and whether the option provided by unilateral divorce reduced suicide and spousal homicide.” (pg. 269) Data are drawn from state panel data on suicide rates (constructed from the National Center for Health Statistics), reports of domestic violence (data from Straus and Gelles’ Family Violence Surveys in 1976 and again in 1985), and

spousal homicides (data from the FBI Uniform Crime Reports) from 1964 through to 1996 in 37 states that adopted some form of “unilateral divorce” (using Leora Friedberg’s coding) during this time period. The other 14 states—who had either not yet adopted unilateral divorce at the time of the study or had adopted some variant of unilateral divorce earlier—are included as controls.

**Results:** “Examining state panel data on suicide, domestic violence, and murder, we find a striking decline in female suicide and domestic violence rates arising from the advent of unilateral divorce. Total female suicide declined by around 20 percent in the long run in states that adopted unilateral divorce...There is no discernable effect on male suicide...Data on conflict resolution reveal large declines in domestic violence committed by, and against, both men and women in states that adopted unilateral divorce. Furthermore, we find suggestive evidence of a decline in females murdered by intimates, although these results are not as convincing. As with suicide, there is no discernable effect on males murdered, although this reflects the imprecision and volatility of our estimates.” (pg. 286-287)

Regarding suicides, after controlling for the ratio of male-to-female employment rates, state income per capita and unemployment, the maximum AFDC payment for a family of four, the share of the state population on the welfare rolls, the availability of abortion, and the racial and age composition of the state, the study shows that “there is a large and statistically significant reduction in the female suicide rate following the change to unilateral divorce. Further, this effect grows over time with the full effects of unilateral divorce on female suicide occurring fifteen to twenty years following the adoption of unilateral divorce. Averaging the effects over the twenty years following reform suggests an aggregate decline of 8 percent–10 percent in female suicide and a long-run decline that is much larger. For male suicides [the study] reveals no discernible effect.” (pg. 276)

Regarding domestic violence, after controlling for state fixed effects; respondent’s age, race and gender; the educational attainment and current labor force status of both husband and wife; the maximum AFDC rate for a family of four; the natural log of state personal income per capita; the unemployment rate; the female-to-male employment rate; age composition variables indicating the share of states’ populations aged 14-19 and then ten-year cohorts beginning with age 20 up to a variable for 90+; and the share of the state’s population that is black, white and other, the study shows that “[c]omparing these declines in violence rates with their base rates, domestic violence appears to have declined by somewhere between a quarter and a half between 1976 and 1985 in those states that reformed their divorce laws.” (pg. 282-283)

Regarding intimate homicide of women by men, the study shows “a large and significant decline in intimate femicide following the adoption of unilateral divorce for all three definitions of intimate homicide,” with results suggesting “declines on the order of around 10 percent.” (pg. 283) This estimate is robust to adding a rich set of controls, including a death penalty indicator; the Donahue and Levitt Effective Abortion Rate; the state incarceration rate, once lagged; the AFDC rate for a family of four; the natural log of state personal income per capita; the unemployment rate; the female-to-male employment rate; age composition variables indicating the share of states’ populations aged 14-19, and then ten-year cohorts beginning with age 20 up to a variable for 90+; and the share of the state’s population that is black, white, and other. The study adds, however, that “the timing evidence is somewhat worrying, and the reader is left to judge whether the decline in homicide predated the law change to an extent that undermines our results.” (pg. 285)

### C. Divorce Law and Other Family Formation Behavior

**Alesina, Alberto & Paola Giuliano (July 2006).** Divorce, Fertility and the Value of Marriage. available at [http://www.economics.harvard.edu/faculty/giuliano/papers/AGdivorce\\_April07\\_final.pdf](http://www.economics.harvard.edu/faculty/giuliano/papers/AGdivorce_April07_final.pdf) (previously “Divorce, Fertility and the Shot Gun Marriage,” National Bureau of Economic Research, NBER Working Paper 12375).

**Background:** This study analyzes marriage and birth certificate data from the National Vital Statistics System of the National Center for Health Statistics to determine the impact of unilateral no-fault divorce laws on marriage and fertility behavior. For birth certificates, the study uses public use micro data on every birth certificate in the United States from 1968 through 1999 to mothers aged 10 and older, and marriage data covers the years 1956 through 1995. Additional data is collected from the Current Population Survey (labor market, education levels) and Census 1980 5% state sample (fertility rates in first 2 years of marriage). Specifically, the authors test whether changes in state divorce laws (using state law classifications from Gruber (2004)) impact marital and nonmarital fertility rates, as well as marriage rates, while controlling for various factors including income, unemployment rates, female labor participation, education, and abortion. The authors also consider data (where available) from prior years to determine whether the fertility changes preceded the legal change.

**Results:** Both with and without controls for a variety of state-specific variables, this study finds that the adoption of unilateral no-fault divorce laws “is associated with a decline in the fertility rates in adopting states. The effect is significant at the 1 percent level and the implied decline in fertility is about 3 percentage points.” (p. 6)

Based on the research of Wolfers (2006), the study also considers the effect of time, finding that “[t]here is a large and significant reduction in fertility rate following the introduction of [unilateral] divorce and the effect is constant over time and does not disappear until 15 years after the introduction of [unilateral] divorce.” (p. 8-9)

More specifically, the decline in overall fertility rates reflects a drop in out-of-wedlock births, while marital fertility remains roughly constant. “All our specifications show a significant decline in out-of-wedlock ratio following the adoption of unilateral divorce, with an elasticity of the order of 6%. . . . The impact of unilateral divorce laws on the out-of-wedlock rate is always significant at the 1% level, with or without the inclusion of state-specific trends, whereas the impact on the marital rate is always insignificant.” (p. 10) “In summary: out of wed lock fertility goes down significantly when divorce becomes easier. Marital fertility is unaffected.” (p. 11)

To test the hypothesis that women are more likely to choose marriage to have children when the exit options are more readily available, the study considered 5% sample data from the 1980 Census, finding that “fertility is higher in the first two years of marriage for women living in states with unilateral divorce, although the coefficient is significant only at the 10 percent level.” (p.13) The study also finds that, controlling for education and labor market status, “the number of never married women declines with the introduction of unilateral divorce. Our estimates imply an elasticity of around 4%.” (p. 12) Explaining their findings, the authors conclude:

The theory and empirics on the effect of divorce laws on marital stability and fertility typically emphasized what we have labeled a “dilution”

effect, namely a reduction in the value of marriage that should imply fewer marriages and lower marital fertility, and by implication potentially higher out-of-wedlock fertility. We emphasized another effect which we labeled a “commitment effect”. As divorce becomes easier, people feel less locked in when they marry. So when women consider having children (or are already pregnant) they are more willing to “try” marriage. Therefore out of wedlock fertility declines and marriage rates go up.

The welfare implications of our results are of course very hard to evaluate. Reduction of out of wedlock fertility may be a social good, but society may “pay” for it with an increase in bad marriages and more divorces. (p. 13)

**Ekert-Jaffe, Olivia & Shoshana Grossbard (2006).** Does Community Property Discourage Unpartnered Births? July 24, 2006 draft was presented at a seminar at the Department of Economics, Aarhus School of Business, University of Aarhus, Denmark, on September 27, 2006. (July 24, 2006 draft at: <http://www.hha.dk/nat/workshop/2006/sg2709.pdf>. A previous draft was presented at the European Society for Population Economics, Verona, June 2006.)

**Background:** This study analyzes retrospective data from 31,449 women who gave birth to their first child between 1963 and 1992 in 12 countries (Western European countries plus Canada, U.S. and New Zealand) in order to test whether rules of property division at dissolution increase or decrease the likelihood of unpartnered births. Mothers who have “partnered births” in this study may be either married or cohabiting. Legal regimes were divided into three categories according to the degree of protection offered to women who earn less than their partner: low degree of community in property (New Zealand before 1977, Canada’s Common Law provinces, the U.S.A., and Austria); medium degree of community in property (France and Belgium (Flanders only), the former West Germany, Finland, Quebec, the Canadian province of Ontario since 1985, Italy and Spain after they legalized divorce); and high degree of community in property (Norway and Sweden). The data is drawn from the Family Fertility Surveys, conducted for the U.N. Economic Commission for Europe.

**Results:** After taking into account the child’s year of birth, the mother’s age, the mother’s age at birth, whether the mother’s parents had divorced, the mother’s religiosity, family size, and the mother’s work and study status, this study concludes the likelihood of an unpartnered birth was higher in countries that offer women who depend on male earnings less access to joint property upon relationship dissolution. “[T]he lower the degree of community in a country’s divorce laws, the higher women’s likelihood of having an unpartnered birth.” (p. 28) Women in countries with low levels of community property are more likely to have unpartnered births than women in countries with medium levels of community property. Women in countries with medium levels of community property are more likely to have unpartnered births than women in countries with high levels of community property. “Most unlikely to give birth without a partner were women in countries where divorce was illegal, a finding significant at the highest level.” (p. 28)

Legal regime had less of an impact on unpartnered births among teenagers, women past age 29 and children of divorce (all of whom were more likely to have unpartnered births); Legal regime had a greater impact on women who attend religious services at least once a week.

**Allen, Douglas W., Krishna Pendakur & Wing Suen (2006).** No-Fault Divorce and the Compression of Marriage Ages. *Economic Inquiry* 44:3 (July): 547 ff.

**Background:** This study uses marriage records collected by the National Center for Health Statistics, accounting for all first marriages of men and women between 1970 and 1995. States which switched to no-fault divorce during this period are compared to states whose laws did not change in this period. States' divorce laws are classified using Friedberg's (1998) definitions of no-fault and "strong no-fault" states and also Brinig and Buckley's (1998) alternative classification of "strong no-fault" states. (The main difference being: Friedberg classifies a state as having a strong no-fault divorce system if fault is ignored in both grounds and property distribution, while Brinig and Buckley's classification as "strong no-fault" requires that the state also excludes fault in consideration of alimony.)

**Results:** "Our main prediction, that the spread of the marriage age distribution should decline with the introduction of no-fault divorce, is broadly corroborated by the data. Controlling for state-specific effects on the age at first-marriage distribution and for national-level trends over time, we find that the introduction of no-fault divorce is associated with a 1% to 5% decrease in the standard deviation of the log at first marriage....Controlling for state-specific effects and for national-level trends, we find a small increase of about 0.3% to 0.7% in the age at first marriage. Given average ages at first marriage of 25, this suggests that no-fault divorce is associated with 1 to 2 months more marital search with an associated small loss in welfare." (p. 548)

**Rasul, Imran (2003).** The Impact of Divorce Laws on Marriage, working paper, University of Chicago.

**Background:** In theory, unilateral divorce laws might affect unmarried people's likelihood of entering legal marriages in either direction: either by making marriage more attractive (by lowering its cost of exit) or by reducing its usefulness as a commitment device, compared to cohabitation. This study uses state-level panel data from 1960 to 2000 to investigate the impact of unilateral divorce laws and more equal distribution of property laws on marriage rates. Crude marriage rates (the number of marriages per 1000 adults age 15 to 65) were constructed from Vital Statistics data. Vital Statistics data and data from the March CPS were combined to derive rates of marriage per 1000 single adults (age 15 to 65). Thirdly, marriage certificates and March CPS data are used to construct cohort specific marriage propensities, calculated by age, gender, race, and marriage number.

This study uses Friedberg's (1998) coding of unilateral divorce law states (and also in the appendix experiments with using alternate definitions of unilateral divorce, including codings used by Gruber (2000), Johnson and Mazingo (2000), and Ellman and Lohr (1998), which the author states produced similar results). "Equitable" property law is an umbrella term the author uses to describe states that moved to more equal distribution of property following divorce through one or more of a number of distinct legal steps including moving from title-based common law marital property regimes to equitable property and/or the ending of the use of marital fault in the distribution of assets. (The author thanks Saku Aura and Jonathan Gruber for providing the coding of property laws but provides little further detail.)

**Results:** On the effect of unilateral divorce laws: "After the adoption of unilateral divorce, marriage rates declined significantly and permanently in adopting states. The effect of unilateral divorce...accounts for 10% of the overall decline in the marriage rate.



The impact of unilateral divorce in reducing the rate of marriages per 1000 singles—a closer measure of the propensity to marry—is twice as large...The greatest quantitative impact is among whites, and those marrying for a second time.” (p. 26-27) On property division laws, “States which also introduced an equitable distribution of property in divorce have further significant reductions in marriage rates.” (p. 27)

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<sup>15</sup> A critique of this study’s methodology by Norval Glenn in the pages of *The Journal of Marriage and the Family* (Glenn, Norval D. (1997). A Reconsideration of the Effect of No-Fault Divorce on Divorce Rates [paper #2 under Studies Showing No Effect from Change in Divorce Law) lead to a series of exchanges between Glenn and Joseph Lee Rodgers, Paul A. Nakonezny and Robert D. Schull in that same journal, consisting of Rodgers, Joseph Lee, et al. (1997). The Effect of No-Fault Divorce Legislation on Divorce Rates: A Response to a Reconsideration [paper #16 under Studies Showing No-Fault Divorce Affects the Divorce Rate]; Glenn, Norval D. (1999). Further Discussion of the Effects of No-Fault Divorce on Divorce Rates [paper #3 under Studies Showing No Effect]; and Rodgers, Joseph Lee, et al. (1999) Did No-Fault Divorce Legislation Matter? Definitely Yes and Sometimes No.

<sup>16</sup> Peters, H. Elizabeth. “Marriage and Divorce: Informational Constraints and Private Contracting” *American Economic Review* 76 (June 1986): 437-54.

<sup>17</sup> See footnote 15.

<sup>18</sup> See footnote 15.

<sup>19</sup> See footnote 15.

<sup>20</sup> Other potentially important legal changes include the adoption in England and Wales of a special procedure at the end of 1973 for quickly processing divorce petitions of married couples without children who sought divorce by mutual consent by signed affidavit (without a court hearing). In 1975, this easier procedural option was extended to all uncontested divorces by childless married couples (except those who alleged “unreasonable behavior”), and in 1977 divorce by affidavit was extended to all uncontested divorces, including those with children. Similar procedural changes permitting divorce without court hearing were adopted in Scotland in April 1978 (and by 1980, 92 percent of Scottish Divorces used this procedure).

<sup>21</sup> In 1984, England lowered the time from marriage at which a divorce petition may be heard from three years to one year from the date of the marriage. Scotland has no such time bar.

<sup>22</sup> See footnote 16.

<sup>23</sup> Arizona, Mississippi, and Nevada are community property states which require “equitable” rather than equal distribution of property upon dissolution and the authors code these states as “common-law” regimes. (See footnote 24, page 58)

<sup>24</sup> Stevenson, B., and J. Wolfers. “Til Death Do Us Part: Effects of Divorce Laws on Suicide, Domestic Violence and Spousal Murder.” Manuscript, October 2000. (p. 182) [This is an earlier draft of Stevenson & Wolfers (2006)]