Louisiana Law Review

Volume 62
Number 2 *Winter 2002*

Article 6

2-1-2002

Report and Recommendation of the Louisiana StateLaw Institute to the House Civil Law and Procedure Committee of the Louisiana Legislature Relative to the Reinstatement of Fault as a Prerequisite to a Divorce

Kenneth Rigby

Report and Recommendation of the Louisiana State Law Institute to the House Civil Law and Procedure Committee of the Louisiana Legislature Relative to the Reinstatement of Fault as a Prerequisite to a Divorce

*Kenneth Rigby**

I. THE TASK

In 1998, the Louisiana Legislature urged and requested the Louisiana State Law Institute ("Law Institute") to study and make recommendations to the House Civil Law and Procedure Committee as to the merits of reinstating fault as a prerequisite to a divorce in Louisiana.[1]

II. PURPOSE OF PROPOSAL

The first step in recommending whether fault should be reinstated as a prerequisite to a divorce is to define the purpose of the proposal. Several purposes suggest themselves:

---

* Attorney at Law, Shreveport, Louisiana; Adjunct Professor, Paul M. Hebert Law Center; Member of Persons Committee and Council, Louisiana State Law Institute.

1. *See* H.R., Reg. Sess., No. 1 (La. 1998) (attached to this Report as Appendix A). Pursuant to this Resolution, the President of the Louisiana State law Institute, Robert L. Curry, III, appointed the following members of a Divorce Committee: Kenneth Rigby, Shreveport, Louisiana, Chairperson; Paul M. Hebert, Jr., Baton Rouge, Louisiana; Jean Morgan Meaux, Metairie, Louisiana; J. N. Prather, Jr., Lafayette, Louisiana; Mary C. Devereux, Covington, Louisiana; Karen D. Downs, Baton Rouge, Louisiana; Phillip R. Riegel, Jr., New Orleans, Louisiana; Walter M. Sanchez, Lake Charles, Louisiana. All members of the Divorce Committee are actively engaged in the practice of Family Law, all are certified as Family Law Specialists by the Board of Legal Specialization of the Louisiana State Bar Association, and all are members of the Family Law Section of the Louisiana State Bar Association. Cumulatively, they represent 180 years of the practice of law in Louisiana.

The Committee met for several all-day conferences, reviewed numerous law review articles and other commentaries of legal, social science, and other experts, examined the available statistical data, extensively shared the members' empirical opinions, and made the recommendation contained in this Report to the Council of the Louisiana State Law Institute.

The author gratefully acknowledges the valuable suggestions and input of the members of the Divorce Committee.

The original report of the Law Institute to the House Civil Law and Procedure Committee of the Louisiana Legislature has, in some instances, been reformatted in order to conform to the Louisiana Law Review requirements. However, there have not been any substantive changes.

1. To discourage hasty or ill-thought-out marriages;
2. To preserve the quality of marriage;
3. To preserve the longevity of marriage;
4. To preserve marriage as a socially desirable societal institution;
5. To provide an occasion for catharsis or an emotional therapeutic opportunity in the divorcing process;
6. To provide an opportunity for a wronged spouse to formally and publicly document the nature and extent of the claimed wrong by the other spouse, and to obtain a judicial confirmation of it;
7. To provide a mechanism for the formal judging of the acts of the spouses during marriage, with the resulting punitive and vindication consequences;
8. To discourage divorce by making the process of obtaining a divorce more difficult, more unpleasant, more expensive, and more revealing of a person's foibles, weaknesses and other shortcomings.

Although this Report discusses other possible purposes, the Law Institute assumes that the purposes of divorce reform should be (1) to discourage hasty or ill-thought-out marriage, (2) to preserve the quality of marriage, (3) to preserve the longevity of marriage, and (4) to preserve marriage as a socially desirable societal institution.

III. STATISTICAL DATA—IS MARRIAGE IN LOUISIANA IN TROUBLE?

The answer to this question is subjective, but the statistical data concerning divorce supplies an objective view of what has happened to marriage both nationally and in Louisiana.

The following national and Louisiana data and long term trends were reported by a social scientist in January, 1982:[2]

A. The Divorce Rate

> Divorce was a rare phenomenon during the Colonial period. In fact, until the turn of the Civil War, divorce was not considered important enough to warrant statistical recording. In the mid-1800s, however, due to attempts to establish equal rights for women, divorce laws were liberalized

2. Charles E. Vetter, Child Custody: A New Direction (1982) (unpublished manuscript, on file with author). Dr. Vetter is a professor of Sociology, Centenary College, in Shreveport, Louisiana. *See* Kenneth Rigby, *Alternate Dispute Resolution*, 44 La. L. Rev. 1725 (1984) (citing Dr. Vetter's paper for some divorce data).

and "by the 1860s various groups, fearful that family values were being undermined, demanded that national divorce figures be tabulated." Divorce statistics first begun to be collected in 1867. In that year, the total number of divorces was 9,937 or about 0.3 divorces per 1,000 population. One hundred years later in 1967, the number increased to over one-half million, or about 4.2 divorces per 1,000 population. At the present time (1982), the divorce rate is approximately 5.4 divorces per 1,000 population.

* * * *

For the sixty years following 1867, the divorce rate increased consistently—rising about 75 per cent every twenty years. Had this pattern continued, the divorce rate in 1947 would have been 2.8. However, a steep rise occurred in the 1940s. The United States was at war and in the midst of a number of upheavals and uncertainties. There was a sharp increase in the number of marriages—particularly "quickie marriages." As the war came to an end, many of these marriages also ended. Thus, in 1946, the divorce rate rose to an all-time high of 4.3 divorces per 1,000 population. Almost as suddenly, the rate dropped and leveled off during the 1950s, remaining at about 2.1 to 2.3 until 1963. In that year the rate began to climb and within ten years it had almost doubled, exceeding the 1946 figure. In 1973 the rate was 4.4 and by 1975 it had reached 4.9. In 1976 and 1977 the rate remained the same at 5.0. As Scanzoni states "this was the first time in a decade that the rate had not climbed from one year to the next, and it may signal a slowdown of the spectacular rate increases that had been taking place previously." Many demographers and authorities on marriage and divorce state that, during the next decade or two, "the odds seem to favor some continuation of the current slow rise in the divorce rate, with the trend broken periodically by a year or more of stability or decline."

The crude divorce rate (number of divorces per 1,000 population) is not the most accurate way to determine the divorce picture. A more meaningful rate of divorce is the refined divorce rate (number of divorces per 1,000 married women). The refined divorce rate looks at the percentage of all existing marriages that break up in any one year. Thus in 1978, for example, there were over 1.1 million divorces among a total of 51.1 million married women or a rate of almost 22 divorces for every 1,000 marriages in existence that year.

* * * *

The divorce rate in 1920 was 8 per 1,000 wives, and by the early 1940s it had risen to about 10 per 1,000 wives. During the 1950s it fell to under 10. Since the early 1960s the rate started rising and by the late 1960s, the rise began to increase sharply. From 1965 to 1975 the rate doubled and has continued to rise to the present. It is estimated that the 1982 rate will be 22 per 1,000 married women. Once again, as with the crude divorce rate, it appears to many authorities that the refined divorce rate will also level off during the next decade or two.

Based on this brief presentation, the following conclusions can be drawn concerning divorce in the United States:

(1) The divorce rate has steadily increased within the past fifteen years.
(2) More people are divorcing today than ever before.
(3) The divorce rate appears to be leveling off.
(4) It is estimated that roughly four out of every ten marriages made in recent years will end in divorce.
(5) The divorce rate is higher today than ever in the history of the United States.
(6) There are no indications that the divorce rate will drop to the 1950s level in the near future.

Although it is difficult due to incomplete data, a similar picture of divorce can be drawn for the State of Louisiana. Indeed, the trend in the divorce rate parallels rather closely the national trend.

* * * *

The divorce rate reached a high mark around 1947, then declined and leveled off during the 1950s and early 1960s. Starting around 1965 the rate began to increase and has continued to do so to the present. It appears to have leveled off at about 3.3 or 3.4 per 1,000 population. Although the state divorce rate is below the national level, basically the same conclusions can be drawn:

(1) The divorce rate has steadily increased within the past 15 years.
(2) More people are divorcing today than ever before. For example, there was a 12% increase in the number of divorces and annulments in Louisiana from 1975 to 1976.
(3) The divorce rate appears to be leveling off.
(4) It is estimated that there is approximately one divorce granted for every three marriages.
(5) The divorce rate is higher today than ever in the history of the state.

(6) There are no indications that the divorce rate will drop to the 1950s level in the near future.[3]

More recent data, for the period 1980-1990, reveal the following statistics on divorce.[4] The number of divorcing couples in the United States was 1,182,000 in 1990, the highest number since 1985 (1,190,000) but three percent lower than the peak number in 1981 (1,213,000). The divorce rate per 1,000 population for 1990 was 4.7, the same as in 1989, but eleven percent lower than the peak rate of 5.3 in 1979 and in 1981. Provisional data indicate that the rate remained steady at 4.7 in 1991, but increased slightly to 4.8 in 1992 before dropping to 4.6 in 1993.

Attached to this Report is a table that lists the number of divorces and annulments in the United States for each of the years 1940 through 1990 and shows the crude and refined rate per thousand for each of those years.[5]

Compared to 1980, the number of divorces in 1990 was lower in every region of the United States except the South.[6] The number declined three percent in the Northeast, six percent in the Midwest, and two percent in the West. Divorces in the South were five percent higher than in 1980.[7]

---

3. *Id.* at 9-15 (footnotes omitted).

4. Center for Business & Economic Research, University of Louisiana at Monroe, Number and Rate of Marriages and Divorces, United States and Louisiana, 1960-1995 (1997) [hereinafter Center for Business & Economic Research] (attached to this Report as Exhibit 1). *See also* National Center for Health Statistics, *U. S. Department of Health and Human Services*, Monthly Statistics Report, Vol. 43, No. 9, at 1 & Table 1 (Supp. Mar. 22, 1995) (Divorces and annulments and rates: United States, 1940-90) (Table 1 attached to this Report as Exhibit 2) [hereinafter NCHS Report No. 9].

5. NCHS Report No. 9, *supra* note 4, at Table 1. *See* Vetter, *supra* note 2, at 3 (distinguishing between the crude divorce rate and the refined divorce rate and concluding that the refined divorce rate is a more meaningful rate of divorce). With respect to the Louisiana data contained in the Tables published by the NCHS, it should be noted that Louisiana is not one of the states that consistently reports the number of divorces to the National Center for Health Studies (NCHS). *See* Katherine S. Spaht, *Louisiana's Covenant Marriage: Social Analysis and Legal Implications*, 59 La. L. Rev. 63, 110 n.307 (1998). *See also* National Center for Health Statistics, *U.S. Department of Health and Human Services*, Monthly Statistics Report, Vol. 43, No. 13, at 37 (Oct. 23, 1995) (Technical Notes): "Indiana and Louisiana do not report divorces on a provisional basis." The NCHS uses sampling and other statistical methods to estimate the number of divorces in states when the data from a state are incomplete, either because the state is not one of the reporting states or the data from a reporting state are incomplete. In these instances, the divorce rate is not computed. *See* NCHS Report No. 9, *supra* note 4, at Table 2 n.2 (attached to this Report as Exhibit 3).

6. NCHS Report No. 9, *supra* note 4, at 1.

7. *Id. See id.* at Table 2.

A concern is the impact of divorce on children. In 1980, the rate of children under 18 years of age involved in divorces was 17.3 per 1,000 children. In 1990, the rate was 16.8.[8] Attached to this Report is a table that shows by percentage the number of children involved in divorce under the age of 18 years of age in each participating state in the years 1989 and 1990.[9]

Divorce is more frequent for men and women under the age of 40 than for older married couples.[10] In 1990, the divorce rate for men increased from 32.8 per 1,000 married men 15-19 years of age to 50.2 per 1,000 for men 20-24 years and declined with increasing age to 2.1 for married men 65 years of age and older.[11] A similar pattern exists for women.

Almost two-thirds of divorcing men and three-fourths of divorcing women were under 40 years of age.[12] The modal group for men was 30-34 years of age (20.7 percent)[13] and the modal group for women was 25-29 years of age (21.8 percent).[14] Since the mid-1970s the age at divorce of men and women has shifted upward.[15] The median age at divorce for men and women was more than three years older in 1990 than in 1975.[16] One factor that may affect the shifting of the age at decree is that the age of marriage has also shifted upward.[17] The median age at marriage for both divorcing husbands and wives was approximately two years older in 1990 than in the 1970s.[18]

Most divorces occur within the first ten years of marriage.[19] The median duration of marriage for all divorcing couples in 1989 and 1990 was 7.2 years, which is the longest duration in the 1970-1990

---

8. *Id.* at 2-3. *See id.* at Table 3 (attached to this Report as Exhibit 4). Note that the statistics in Table 3 are based on sample data.

9. *Id.* at 2-3. *See id.* at Table 4 (attached to this Report as Exhibit 5). Note that the statistics in Table 4 are based on sample data.

10. *Id.* at 3. *See id.* at Tables 5-8 (attached to this Report as Exhibits 6 through 9).

11. *Id.* at 3. *See id.* at Table 5 (attached to this Report as Exhibit 6).

12. *Id.* at 3. *See id.* at Table 6 (attached to this Report as Exhibit 7).

13. *Id.* at 3. *See id.* at Table 6.

14. *Id.* at 3. *See id.* at Table 6.

15. *Id.* at 3. *See id.* at Table 7 (attached to this Report as Exhibit 8).

16. *Id.* at 3. *See id.* at Table 7.

17. *Id.* at 4. *See id.* at Table 9 (attached to this Report as Exhibit 10). The mean and the median are measures of central tendency. The mean is computed by summing the values of the item under consideration and dividing this sum by the number of observations included. The median is the middle value of a set of observations that have been arranged in order of magnitude. There are an equal number of observations above and below the median. *Id.* at 31 (Technical Notes).

18. *Id.* at 4. *See id.* at Table 9.

19. *Id.* at 4. *See id.* at Table 10 (attached to this Report as Exhibit 11).

period.[20] In 1970, it was 6.7 years; and in 1980, it was 6.8 years.[21] For first marriages, the median duration of the marriage in 1990 was 8.1 years for men and women.[22] For second or more marriages, the median duration of the marriage decreased with the number of marriages, reflecting a historical trend since 1970.[23]

In Louisiana, the number of divorces in 1980 was 18,108, or a divorce rate of 4.3 per 1,000 population.[24] In 1990, the numbers were 12,523 and 3.0, respectively.[25] In 1995, the numbers were 15,097 and 3.5, respectively. The accompanying charts reveal a precipitous increase in Louisiana in both the number of divorces and the divorce rate per 1,000 population commencing in 1976, with a slight gradual increase in both numbers through 1995.[26]

IV. PERSPECTIVE

No-fault divorce and fault-based divorce are not new or unique. They are both at least 2,500 years old. A review of the history of divorce in ancient civilizations such as Egypt, Rome, and Greece, its development in countries such as Germany and England, the influence of the Church, and the other factors that influence divorce place fault-based and no-fault divorce into historical perspective and suggest some reasons why fault was originally introduced into the divorcing process.

A. History of Divorce and Separation

As long as men and women have entered into variant forms of cohabiting relationships generally called marriage, various societies have regulated the relationship and its termination, as well as the societal consequences of its termination to the participants, to the children produced by the relationship, and to the property acquired by the parties.

---

20. *Id.* at 4. *See id.* at Table 10
21. *Id.* at 4. *See id.* at Table 10.
22. *Id.* at 4. *See id.* at Table 10.
23. *Id.* at 4. *See id.* at Table 10.
24. Center for Business & Economic Research, *supra* note 4, at 1 (attached to this Report as Exhibit 1).
25. *Id.*
26. There are two apparently unexplained exceptions to this conclusion. In 1972, there was a one-year surge in the numbers, to 10,618 divorces and a rate of 2.8. In 1987 and 1988, the numbers significantly dropped for each of these two years, increased again in 1989, and have gradually increased through 1995. *Id.*

1. Egypt[27]

In early Egypt, when a marriage broke down, divorce was possible and could be initiated by either the wife or the husband. Like marriage and adultery, divorce was a private matter in which the state took no interest and it seems that at no time was it considered to be socially unacceptable. For the husband, the actual divorce was simple. He merely had to recite the following formula before witnesses:

> I have dismissed you as wife, I have abandoned you, I have no claim on earth upon you. I have said to you, 'Take a husband for yourself in any place to which you may go.'

The most common reasons for a husband to "dismiss" his wife were her inability to bear children or, more especially, to provide him with a son; his wish to marry someone else; or the fact that she simply ceased to please him. A wife might divorce her husband, but only for "cause," cruelty to her, either physical or, in modern parlance, mental.

If a man divorced his wife, he had to return her dowry and give her the "marriage portion" that had been agreed in their marriage settlement. He also had to pay her compensation and give her a share (usually a third, but sometimes a half) of any property that they had acquired during their marriage. If, however, the divorce originated with the wife, then she forfeited her right to a share of the communal property, and she had to pay compensation to her husband. Once divorced, both men and women could remarry as soon as they wished.

2. Rome[28]

From the dawn of the Roman legend to the Punic Wars in 202 B.C., the usual Roman family was patriarchal, and the intra-family relationships were stable, simple, and rigid. Although the laws of the Twelve Tables, promulgated in 450 B.C., expressly recognized the right of the husband to divorce his wife, divorce was rare.[29] The grounds for and frequency of divorce in the Roman Republic during this period is described as follows:

> The law of Romulus permitted divorce to men but refused it to women. It was permitted on the grounds of adultery,

---

27. Barbara Watterson, Women in Ancient Egypt 70-72 (1991).

28. Except as otherwise noted, the discussion of divorce in Rome is found in Joyce Green et al., Dissolution of Marriage 8 (1986) [hereinafter Dissolution of Marriage].

29. *Id. See also* Lawrence A. Moloney, Comment, *Our Divorce Laws*, 9 Loy. L. Rev. 238, 240 (1923).

> poisoning of children and falsification or counterfeiting of keys. While the law granted divorce, the moral feeling of the people and their respect for the marriage bond, coupled with some fear of public opinion, was such that no divorces are of record in Rome for the first 520 years of its existence.[30]

During the period between the Punic Wars and the fourth century anno domini, many changes occurred in Roman society. There was an absence of men for long periods of time because of service in the Roman legions in foreign countries during the period of Roman expansion and conquest. Women emerged as a wealthy independent class, due in part to the absence of the men. The institution of slavery resulted from the Roman conquests, wealth was enhanced, and the leisure time of the Roman citizens was increased. Upper class conspicuous consumption and individualism also increased. Marriages for limited purposes were common; many were only for money, social position, or political gain.

As a result of these influences, the stability of the Roman family was upset. Divorce was popular and marriage was not. Both the husband and the wife were given the right to divorce at will. Divorce was described as epidemic.[31] Some efforts were made to reduce

---

30. Moloney, *supra* note 29, at 240.

31. *See* Dissolution of Marriage, *supra* note 28, at 9 (quoting E. Westermarck, The History of Human Marriage 320-21, 323 (5th ed. 1925)):

> Almost all the well-known ladies of the Circeronian age were divorced at least once. Seneca said that some women counted their years, not by consul, but by their husbands. Ovid and Pliny the Younger married three times. Caesar and Antony, four, Sulla and Pompey five; and such cases must have been frequent. On the stone erected to a certain Turia by her husband in the early days of the Empire it is said, "seldom do marriages last until death undivorced."

Moloney identifies the Consul Quintus Vespillio as the husband and the full inscription to be, "Seldom do marriages last until death un-divorced; but ours continued happily for forty-one years." Moloney, *supra* note 29, at 242. Moloney further reports that during this period, when marriage became merely a civil contract, divorce became common:

> Cicero repudiated his wife Terentia, while Augustus forced the husband of Lydia to divorce her, that he might have her for himself. One woman had ten husbands in five years, while St. Jerome states that there was in Rome a woman who had married her twenty-third husband, she herself being his twenty-first wife. "Divorce," writes Tertullian, "is the fruit of marriage" . . . Ovid and Pliny the Younger had three wives: Caesar and Anthony four; Sulla and Pompey five. Nero, who was a much wedded man, was the third husband of Poppea, and the fifth of another of his wives . . . Seneca, the Roman philosopher, says: "Does any woman now blush at divorce when some illustrious and noble women compute their own years not by the number of consuls, but by the number of their husbands, and divorce themselves for the sake of marriage, and marry for the sake of divorce."

divorce and regulate the consequences of divorce. Emperor Augustus attempted to restrict divorce by enacting the Lex Julia de Adulteris in 18 B.C. This law required a party desiring a divorce to execute a repudium, a written statement renouncing the marriage, in the presence of seven Roman citizens.[32] It also made adultery a crime and required that a husband divorce his adulterous wife.[33] Roman law also required that a husband who divorced his wife for minor cause, or who was at fault himself, return his wife's dowry, or dos.[34] If the wife divorced the husband, or was at fault, the husband could retain one-sixth of the dowry for each child of the marriage, up to a maximum of one-half the dowry. The husband retained the custody of the children of the marriage.[35] These laws had little or no effect on divorce.[36]

3. Hebrews[37]

From the time of the Biblical Patriarchs to the Roman occupation of Palestine in 65 B.C., the two primary characteristics of Hebrew divorce were that (1) a husband had the unilateral right to divorce his wife for any reason and (2) divorce was a private matter, unsupervised by the public or by the law. To divorce his wife, a husband had to give her a bill of divorcement, or a get, which typically included the words "Be thou divorced (or separated) from me."[38]

Id.

32. Dissolution of Marriage, *supra* note 28, at 9.

33. *See id.* (quoting J. Balsdon, Roman Women, Their History and Their Habits 219-21 (1963) who wrote of the chilling effect this had on husbands of rich wives):

> For divorce has always had its crude financial aspect; and when a husband had no better ground of divorcing his wife than the fact he found her company tedious, he was frequently restrained, no doubt, by the chill realization that he could not divorce her without replacing her dowry. Cicero was at his wits' end to find the necessary money when he divorced Terentia in late 47 or 46 B.C., and it is probable that when he died four years later, the dowry was still not repaid.

34. Dissolution of Marriage, *supra* note 28, at 9.

35. *Id.*

36. Moloney, *supra* note 29, at 244 (stating that the "laws passed by Augustus had little or no effect"). Jerome Carcopino, Daily Life in Ancient Rome 96-97 (1940) (stating that the divorce epidemic continued despite Augustus' law, or perhaps because of it). *See also* Dissolution of Marriage, *supra* note 28, at 9 n.28.

37. Except as otherwise noted, the discussion of Hebrew divorce is from Dissolution of Marriage, *supra* note 28, at 6-7. *See also* Perl v. Perl, 126 A.D.2d 91 (N.Y. App. Div. 1987); Ze'ev Falk, Jewish Matrimonial Law in the Middle Ages 113 (1966).

38. For a discussion of modern Jewish divorce law and the problem of compelling the husband to give the wife a *get*, see Ira Ellman et al., Family Law:

Before the Common Era, however, rabbinical schools expressed disapproval of divorce and attempted to impose a fault system upon Hebrew divorce customs. The rabbis increased the details and formalities of divorcement. Fault grounds were enunciated for the husband, including adultery, flagrant disregard of moral decency, refusal to cohabit for a year or more, change of religion, and physical "disease" such as barrenness or leprosy of the wife.[39] Influenced by the Roman law, rabbinical law also recognized divorce grounds for Hebrew wives. These grounds included physical impotence if admitted by the husband, change of religion, extreme dissoluteness, refusal of support, continued mistreatment, commission of a crime followed by escape from the country, post-marital affliction of a loathsome disease, and pursuit of a disgusting trade. Adultery of the husband was not included. Rabbis eventually enforced divorces against couples with or without their consent if the marriage was in conflict with rabbinical law, and they also invalidated marriages which could not fulfill the marital purpose of procreation.

4. Greece[40]

Greek divorce mirrored divorce under Hebrew and Roman law. Only the husband could divorce at will; he could repudiate his wife before witnesses for any reason or no reason. The wife was considered an incapable. The only way she could obtain a divorce was to submit a written claim for a divorce before the archon, who was the traditional protector of all incapables.

Cases, Text, Problems 200, 208 (Michie 1991) and the numerous sources cited therein. The authors point out that the "*get*," the formal document establishing the wife's right to remarry, is governed by very formal and exact rules pertaining to the writing, signing and delivery of the *get*:

> The Mishnah mentions a particular form of *get* which was customary in the case of kohanim, who were regarded as pedantic and hot-tempered and therefore likely to be hasty in divorcing their wives. This form of *get*—called a "folded" or "knotted" one as opposed to a "plain" *get*—consisted of a series of folds, each of which (called a *kesher*) was stitched and required the signature of three witnesses (two in the case of a "plain" *get*) who signed on the reverse side and not on the face, between each fold. All this was done to draw out the writing and signing of the *get* so that the husband might reconsider and become reconciled with his wife. The "folded" *get* was customary in ancient times only and the rules pertaining to it are omitted from most of the codes.

Id. at 200. *See also* Menachem Elon, The Principles of Jewish Law 421 (M. Elon ed., 1975).

39. Dissolution of Marriage, *supra* note 28, at 6-7; W. Goodsell, A History of Marriage and the Family 72 (1934).

40. Except as otherwise noted, the discussion of Greek divorce is from Dissolution of Marriage, *supra* note 28, at 7.

A Greek husband had the duty to divorce his wife if she were barren or committed adultery, because these conditions frustrated the Greek purpose of marriage, the perpetuation of the gens, or clan. On the other hand, in the Greek city-state of Sparta, which placed great importance on a strong army, adultery was not considered a sufficient ground for a divorce.

Both during the marriage and upon divorce, a Greek woman had very few rights. A divorced woman was entitled to the return of her dowry, whether she was guilty or innocent. However, she lost custody of the children and was required to return to her father's family and legal authority.

5. Athens[41]

In Athens, unlike Greece generally, divorce was easily attainable, either by mutual consent or through action on behalf of either one of the spouses; there was no stigma attached. When the divorce was initiated by the husband, he was merely required to send his wife from his house. When the wife wished a divorce, she needed the intercession of her father or some other male citizen to bring the case before the archon. There are only three cases from the Classical period where an Athenian divorce proceeded from the wife's side.

Since children were produced to perpetuate the father's house, they were the property of their father, and remained in his house when marriages were dissolved through death and probably also in cases of divorce. The divorcee or widow was thus entirely free to remarry and to bear children of a new husband.

The purpose of marriage was procreation, within the limits of the economic resources of the family. The necessity that the bride be a virgin, coupled with the ancient belief that young girls were lustful, made an early marriage desirable. A girl was ideally married at the age of fourteen to a man of about thirty. The husband who married at thirty could well be dead at forty-five, having begotten two or three children within the marriage and leaving his wife a candidate for remarriage. A young widow could serve as a wife in a number of serial marriages. Because marriage was the preferable condition for women, and men were protective of their women, a dying husband, like a divorcing husband, might arrange a future marriage for his wife.

41. Except as otherwise noted, the discussion of divorce in Athens is from Sarah B. Pomeroy, Goddesses, Whores, Wives, and Slaves: Women in Classical Antiquity 64-65 (1975).

6. *Germany*[42]

Under Germanic law, a man could repudiate a woman for her inability to bear children as well as for the commission of any serious crime. If she were beyond reproach, he still could divorce her if he was willing to relinquish control over her property and pay her a compensation equal to that of a bride-gift. A wife had to remain faithful and obedient to her husband, even if he was a drunkard, a gambler, mistreated her, or was adulterous. Under the simplistic Germanic laws, the Burgundian Code, she was to be smothered in mire if she attempted to divorce him. The Visigothic law permitted a wife to sue for divorce if her husband was guilty of pederasty or having forced her to fornicate with another. Fidelity in marriage was required of the wife only, not of the husband, unless he sinned with another man's spouse.

7. *England*[43]

Augustine summoned up the purpose of marriage in three words: procreation, fidelity, sacrament.[44] During the first one thousand years of the common era, marriage was deemed by the church to be a sacrament. The dissolution of marriage was thus governed by canonical law, which considered that marriage was to last for the duration of the joint lives of the parties.[45] The authority to dissolve marriage was vested in ecclesiastical courts.[46]

---

42. Except as otherwise noted, the discussion of divorce in Germany is from 2 A History of Women in the West: Silences of the Middle Ages 176 (Christiane Klapisch-Zuber ed., 1992) [hereinafter History of Women in the West].

43. Except as otherwise noted, the discussion of divorce in England is from Dissolution of Marriage, *supra* note 28, at 10-14; William J. O'Donnell & David A. Jones, The Law of Marriage and Martial Alternatives 115-16 (1982) [hereinafter O'Donnell & Jones]; Judith Areen, Cases and Materials on Family Law 317 (1992); Joel P. Bishop, Commentaries on the Law of Marriage and Divorce 36-52 (1881); Lenore J. Weitzman, The Divorce Revolution 6 (1985).

44. History of Women in the West, *supra* note 42, at 223.

45. In 407 A.D., at the Council of Carthage, the church laid down the strict doctrine of the indissolubility of marriage. Dissolution of Marriage, *supra* note 28, at 11. *See also* Weitzmen, *supra* note 43, at 6.

46. In England these courts would retain control until 1857, when Parliament established the Court of Divorce and Matrimonial Causes. It had the jurisdiction and powers of the ecclesiastical courts and possessed the legislature's ability to grant absolute divorces. Dissolution of Marriage, *supra* note 28, at 14. *See also* Bishop, *supra* note 43, at 49. The Act of Parliament establishing this court dated August 28, 1857, reflects the gender distinctions of that day, as well as earlier and later times, discussed *infra*. It authorized a husband to present a petition praying that his marriage be dissolved "on the ground that his wife has since the celebration thereof has been guilty of adultery." On the other hand, the wife could present such

In England, there were two kinds of divorces granted by ecclesiastical courts—one total and the other partial.[47] The first was a divorce *a vinculo matrimonii*. It was a total divorce because of a prior-existing impediment to the marriage, such as a prohibited degree of consanguinity between the parties. In a case of a total divorce, the marriage was declared null, as having been absolutely unlawful *ab initio*.

The second form of divorce was the divorce *a mensa et thoro,* or the partial divorce. It was granted when the marriage was just and lawful *ab initio*, but for some reason occurring during the marriage, it became improper or impossible for the parties to live together, for reasons such as adultery, cruelty, or other gross misconduct by one of the parties. A divorce *a mensa et thoro* gave the spouses permission only to live apart, not to remarry.[48]

---

a petition if her husband had been guilty of "incestuous adultery, or of bigamy with adultery, or of rape, or of sodomy or bestiality, or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce *a mensa et thoro*, or of adultery coupled with desertion without reasonable excuse for two years or upwards . . . ." Bishop, *supra* note 43, at 49 n.2.

47. Dissolution of Marriage, *supra* note 28, at 13; O'Donnell & Jones, *supra* note 43, at 115-16.

48. There were exceptions, however, to the strict doctrine of the indissolubility of marriage. Canon law provided for divorce in three narrow instances. The first was called the Pauline Privilege, because it was first enunciated by the Apostle Paul. An absolute divorce could be granted if a newly converted person's spouse refused to be converted or cohabit peacefully with the new convert. The convert could marry only a believer, however. Code of Canon Law, 1983 Code c. 1143-1146. *But see* Code of Canon Law, 1983 Code c. 1147 (non-Catholic remarriage). Canon law also provided that an unconsummated marriage bond could be validly dissolved by direct intervention from the Pope. The third case was called the Petrine Privilege. Notum Est, Dec. 6, 1973, Motu Proprio of Pope. It is a combination of the first two instances.

Papal dispensations were also available to those wealthy people who either wanted to remarry after a divorce or to marry within prohibited degrees. Dissolution of Marriage, *supra* note 28, at 13. Additionally, there were a few instances of very wealthy people squeezing a rare private bill of divorce out of Parliament. Between 1800 and 1836 there were, on the average, three of these a year. Areen, *supra* note 43, at 317. *See* Harvey Couch, *The Evolution of Parliamentary Divorce in England*, 52 Tul. L. Rev. 513 (1978) (providing an interesting and extensive discussion of parliamentary divorces, including a number of such divorces obtained by persons of noble birth).

With these few exceptions, England was a "divorceless society" from the date of the Norman Conquest in 1066 until 1857. Areen, *supra* note 43, at 317.

Another inroad on ecclesiastical law was a practice, emerging in 1698, by which Parliament enacted legislation specifically to authorize the remarriage of certain divorced persons, who were always nobles, in violation of the divorce *a mensa et thoro,* which permitted two spouses to live apart but forbad their remarriage. Between 1715 and 1775, Parliament enacted about sixty of these bills. O'Donnell & Jones, *supra* note 43, at 116.

English secular courts adopted these distinctions when those courts assumed jurisdiction over divorce, and divorce became a part of the English common law. Additionally, the courts determined whether the parties should be allowed to remarry. Courts could forbid the guilty party of a divorce *a vinculo matrimonii* from remarriage, restrict remarriage for a specified period of time, disallow marriage during the life of the innocent party, or prohibit marriage to a paramour if the divorce was for adultery.

The power of the ecclesiastical courts over divorce ended in the Reformation. The early Protestants rebelled against canon law.[49] Martin Luther reclassified marriage as a civil, not a religious, matter and rejected the jurisdiction of the ecclesiastical courts over divorce.[50] The Reformers rejected the concept of self-divorce, believing that the intervention of some civil authority was necessary to dissolve a marriage. Roman law and the Christian Scriptures were the Reformer's primary influences.

The Christian church established a stricter divorce doctrine as a result of the Reformation. The grounds for divorce *a mensa et thoro* (permanent judicial separation) were reduced to one ground—adultery.[51] However, the wealthy citizens of England turned to the Parliament for decrees of absolute divorce. In 1857, Parliament established the Court of Divorce and Matrimonial Causes.[52] It had the jurisdiction and powers of the ecclesiastical courts and possessed the legislature's ability to grant absolute divorces. The fault-oriented system remained intact.[53]

8. United States

The history of divorce in the United States has been succinctly summarized:

> . . . the notion of fault was taken to the American colonies where, as one commentator has noted, "when post-revolution America drafted its divorce legislation, the fault concept was compulsively carried over into our own legal system where it remained to this day." Each state developed its own body of law which, among other things, enumerated grounds for divorce.
>
> The traditional fault divorce grounds stemmed from the Biblical ground of adultery. These grounds included cruelty,

49. Dissolution of Marriage, *supra* note 28, at 13.
50. *Id.* at 14.
51. *Id.*
52. *Id.* at 16.
53. *Id.*

desertion, impotence, imprisonment, intoxication, nonsupport, and insanity. At one time, adultery was a ground for absolute divorce in all states.

In the United States, for many years, public policy supported the statutory fault divorce system. The state had an interest in protecting and preserving the integrity and stability of marriage. Therefore, the state not only prohibited divorce by mutual agreement of the parties, but required that divorces be granted for *just causes*, or on fault grounds. The party who desired a divorce was required to go to court and prove that the other spouse was guilty of specific marital misconduct which was a statutorily enunciated ground.

Although used much less frequently, the fault system still exists in most states.[54]

V. NATIONAL HISTORICAL DEVELOPMENT OF NO-FAULT DIVORCE

Commencing in 1969, state legislatures began to abrogate fault-based grounds as the sole causes for divorce.[55] They substituted

---

54. *Id.* (footnotes omitted).

55. *See* Kenneth Rigby & Katherine S. Spaht, *Louisiana's New Divorce Legislation: Background and Commentary*, 54 La. L. Rev. 19, 22 n.8 (1993) (quoting from the report of the Louisiana State Law Institute Persons Committee meeting on May 4, 1984):

> The history of divorce law reform in the United States over the past twenty years reveals a continual increase in realism on the part of lawmakers and judges. At the beginning of that period the majority of states still permitted divorce only on traditional fault grounds. (A substantial minority, Louisiana among them, would grant a divorce after some period of living separate and apart). That (fault) approach had had its origin in ecclesiastical law, both in Louisiana and in her sister states, and was apparently ultimately grounded in the notion that, because ecclesiastical doctrine gave marriage a religious dimension, marriage should only be dissolved for a religiously significant reasons—i.e., a sin of one party against the other.
>
> During the 1970s state legislatures apparently came to accept the assertions of legal scholars that the fault approach did not accurately reflect what occurred in most marriage breakdowns, and that it deterred reconciliation by forcing spouses to adopt adversary attitudes toward each other. Beginning with California in 1970, an increasing number of states enacted new, no-fault divorce laws that made dissolution of marriage available on such easily proven grounds as "irreconcilable differences," "incompatibility." Today (in 1984) thirty-nine of the fifty states have such laws (usually alongside statutes embodying the more traditional fault grounds). Only one state, South Dakota, still permits divorce exclusively on fault grounds.

Author's Note: South Dakota now permits a divorce on the grounds of "irreconcilable differences," as well as specified-traditional fault grounds. *See infra*

statutory non-fault causes described as "irreconcilable differences," "incompatibility," "irretrievable breakdown of the marriage," "incompatibility of temperament," "voluntary separation for statutorily-mandated periods of time," "breakdown of the marriage to the extent that the legitimate objects of marriage have been destroyed and there remains no reasonable likelihood that the marriage can be preserved," "a finding that the marriage is irretrievably broken," "a statutorily mandated period of separation with no reasonable prospect of reconciliation," and similarly worded no fault causes for divorce.[56] Other states have retained fault causes while permitting divorce for no-fault causes.[57] All fifty states, Puerto Rico, and the Virgin Islands presently permit the obtaining of a divorce without proof of fault.[58]

VI. HISTORICAL REVIEW OF FAULT AS A CAUSE FOR DIVORCE IN LOUISIANA

The Louisiana Civil Code of 1808 provided that the bond of matrimony was dissolved by the death of the husband or wife and whenever the marriage was declared null and void for cause, or when another marriage was contracted, on account of absence, when authorized by law.[59] Divorce was not given as a cause for the dissolution of the marriage.[60] It also provided that separation from bed and board did not dissolve the bond of matrimony because the separated husband and wife were not at liberty to marry again; but it ended their conjugal cohabitation and to the common concerns that existed between them.[61] The Louisiana Civil Codes of 1808[62] and

---

note 56.

56. State Divorce Laws, Fam. L. Rep. (BNA) §§ 442:001-453.001 (1999); Linda D. Elrod et al., *A Review of the Year in Family Law: Children's Issues Dominate*, 32 Fam. L.Q. 661, 715 (1999) (Chart 4: Grounds for Divorce and Residency Requirements) (attached to this Report as Exhibit 12).

57. Elrod, *supra* note 56, at 715.

58. *Id.*

59. La. Civ. Code art. 30 (1808) provided:

> The bond of matrimony is dissolved,
>
> 1stly, By the death of the husband or wife;
>
> 2dly, Whenever the marriage is declared null and void for one of the causes mentioned in the third chapter of this title, or when another marriage is contracted on account of absence, when authorised by law.
>
> Separation from bed and board does not dissolve the bond of matrimony, since the separated husband and wife are not at liberty to marry again, but it puts an end to their conjugal cohabitation and to the common concerns which may subsist between them.

60. *Id.*

61. *Id.*

62. La. Civ. Code art. 1 (1808) ("Separation from bed and board as it formerly existed according to the laws of the country, shall take place for the following

1825[63] both provided that married persons could reciprocally claim a separation on account of excesses, cruel treatment or outrages of one of them towards the other, if it were of such a nature as to render their living together insupportable, and for abandonment, public defamation, or an attempt by one against the life of the other. They provided that the husband could claim a separation in case of adultery on the part of the wife. This relief was not reciprocated to the wife; she could claim a separation in case of adultery on the part of the husband only when he had kept his concubine in their common dwelling.[64] Neither code provided for divorce.[65] Divorce was not permitted until 1827, when it was provided that married persons could also claim reciprocally a divorce for the causes enumerated in Civil Code article 138.[66] Unless a spouse had been sentenced to an infamous punishment or convicted of adultery, no divorce could be granted unless a judgment of separation from bed and board had been rendered and two years had thereafter elapsed with no reconciliation between the parties.[67] In the two excepted cases, a judgment of

---

causes"); La. Civ. Code art. 2 ("The husband may claim a separation in case of adultery on the part of his wife"); La. Civ. Code art. 3 ("The wife may also claim a separation in case of adultery on the part of her husband, when he has kept his concubine in their common dwelling."); La. Civ. Code art. 4 ("The married persons may reciprocally claim a separation, on account of excesses, cruel treatment or outrages of one of them towards the other, if such ill treatment is of such a nature to render their living together insupportable."). La. Civ. Code art. 5 (1808):

> Separation may also be reciprocally claimed in the following cases, to wit:
>
> 1stly, Of a public defamation on the part of one of the married persons towards the other.
>
> 2dly, Of abandonment of the husband by his wife and of the wife of her husband.
>
> 3rdly, Of an attempt of one of the married persons against the life of the other.

63. La. Civ. Code of 1825 repeated, with a few punctuation and stylistic changes, these provisions of the La. Civ. Code of 1808 in articles 135 through 139.

64. La. Civ. Code arts. 2, 3 (1808); La. Civ. Code arts. 136, 137 (1825).

65. Neither did the Spanish law nor the marriage legislation of 1807. Katherine S. Spaht, Family Law in Louisiana § 7.2 (4th ed. 1998). By contrast, the Code Napoleon (1804) in articles 229 and 230 permitted divorce for adultery (with the same disparate gender treatment as in La. Civ. Code of 1808, arts. 2 and 3 and in La. Civ. Code of 1825, arts. 136 and 137), as well as for excesses, cruel treatment, or outrages of one towards the other (art. 231) and condemnation to an infamous punishment (art. 232).

66. 1827 La. Acts, p. 130, § 4.

67. 1827 La. Acts, p. 130, § 4 provided that married persons may also claim reciprocally a divorce for the several causes enumerated in article 138,

> except in the cases where the husband or wife may have been sentenced to any infamous punishment or convicted of adultery as provided for in the first section of the act, no divorce shall be granted, unless a judgment of separation from bed and board shall have been previously rendered between the parties, and unless two years shall have expired from the date

divorce could be granted in the same decree that pronounced the separation from bed and board.[68] These codes provided that the wife could not remarry until ten months after the dissolution of her preceding marriage.

This restriction on remarriage was not imposed on the husband.[69] The Revised Civil Code of 1870 substantially reenacted these provisions, with the disparate treatment of husbands and wives who were guilty of adultery being eliminated.[70] This fault-based statutory scheme remained in effect, with various amendments, until the enactment of La. Acts 1990, No. 1009, Section 2, effective January 1, 1991, which established a general no-fault divorce law that retained only two fault-based causes for divorce: adultery and commission of a felony and sentence to death or imprisonment at hard labor.[71] That revision did not provide for

---

of the judgment of separation from bed and board, and no reconciliation may have taken place; provided, that in the cases excepted above a judgment of divorce may be granted in the same decree which pronounced the separation of bed and board.

68. This unusual procedure of granting both the separation from bed and board and the divorce in the same decree was carried forward in Article 139 of the Revised Civil Code of 1870 and remained part of it for eighty-four years, although it was not adopted in practice. The Supreme Court in *Ledoux v. Her Husband*, 10 La. Ann. 663 (1855), involving a husband who kept concubines in the common dwelling, held that it is not necessary for the complaining spouse to pray for a separation from bed and board as well as for a divorce and that it is not necessary for the court to render a judgment both of separation from bed and board and divorce, as the latter includes the former.

69. La. Civ. Code art. 31 (1808); La. Civ. Code art. 134 (1825). This prohibition was carried forward in Revised La. Civ. Code of 1870, art. 137: "The wife shall not be at liberty to contract another marriage, until ten months after the dissolution of her preceding marriage."

70. Revised La. Civ. Code arts. 138, 139 (1870).

71. 1990 La. Acts No. 1009, § 2 (effective Jan 1, 1991), enacted, *inter alia*, La. Civ. Code arts. 102, 103. La. Civ. Code art. 102, *as amended by* 1991 La. Acts No. 367, 1993 La. Acts No. 107, 1995 La. Acts No. 386, and 1997 La. Acts No. 1380, § 1 (effective July 15, 1997) provides:

> Except in the case of a covenant marriage, a divorce shall be granted upon motion of a spouse when either spouse has filed a petition for divorce and upon proof that one hundred eighty days have elapsed from the service of the petition, or from the execution of written waiver of the service, and that the spouses have lived separate and apart continuously for at least one hundred eighty days prior to the filing of the rule to show cause. The motion shall be a rule to show cause filed after all such delays have elapsed.

La. Civ. Code art. 103, *as amended by* 1991 La. Acts No. 918 and 1997 La. Acts No. 1380, § 1 (effective July 15, 1997) provides:

> Except in the case of a covenant marriage, a divorce shall be granted on the petition of a spouse upon proof that:
>
> (1) The spouses have been living separate and apart continuously for a

legal separation.[72] In the latter years of this pre-1990 period, questions were raised concerning fault as the exclusive basis for divorces and separation judgments, and legislative inroads were made in this fault-based statutory scheme, reflecting trends also occurring in other states.

During this period, several no-fault causes for divorce, based upon voluntarily living separate and apart, were enacted. The original seven year period of living separate and apart enacted in 1916[73] was reduced to four years[74] in 1932, next to two years[75] in 1938, then to one year[76] in 1979, and finally in the 1990 revision to six months.[77]

VII. LOUISIANA NO-FAULT DIVORCE LEGISLATION

In the 1980s, the Persons Committee and the Council of the Law Institute ("Law Institute") recommended a revision of Louisiana divorce law, which resulted in the enactment of the present no-fault divorce law.[78] Early in its deliberations, the Persons Committee established six specific objections or goals in the revision of divorce law in Louisiana:

> (1) The law should recognize that, because marriage is a personal relationship entered into for complex personal and social reasons, the parties to a marriage are in the best position to know when it has ceased to serve its intended purposes; (2) dissolution of marriage should be as amicable as possible, and the law should encourage civility in dissolution actions by making them non-adversarial in nature; (3) the law should promote reconciliation between spouses by imposing a reasonable waiting period in all divorce actions; (4) the law should seek to avoid the adverse effects on the judicial system occasioned by fault-based and

---

period of six months or more on the date the petition is filed; or
(2) The other spouse has committed adultery; or
(3) The other spouse has committed a felony and has been sentenced to death or imprisonment at hard labor.

72. 1997 La. Acts No. 1380 (effective July 15, 1997), the Louisiana Covenant Marriage Act, *does* provide for separation from bed and board. *See* La. R.S. 9:307-309 (2000).

73. 1916 La. Acts No. 269.

74. 1932 La. Acts No. 31.

75. 1938 La. Acts No. 430.

76. 1979 La. Acts No. 360.

77. La. Civ. Code arts. 102, 103(1); 1990 La. Acts No. 1009, § 2 (effective Jan. 1, 1991).

78. 1990 La. Acts No. 1009.

> complex no-fault schemes; (5) the law should encourage spouses to resolve the incidents of dissolution of marriage between themselves whenever possible; (6) simple divorce procedures should be available in simple cases in order to insure that everyone has access to the courts in this area.[79]

The Persons Committee recommended the abandonment of a statutory fault-based divorce scheme because of a belief that such fault causes fail to reflect that divorce is usually an incremental process rather than a catastrophic one traceable to specific acts.[80] To require fault grounds adversely affects the judicial system by increasing the caseload and encouraging perjury.[81]

The Persons Committee and the Council of the Law Institute initially were concerned that a no-fault system of divorce would encourage an increase in the overall rate of divorce.[82] It was concluded, however, that empirical evidence existed that no-fault divorce laws do not promote divorce, although such laws may contribute to other inequities.[83] The Law Institute, through its Council, recommended that the Louisiana Legislature enact legislation that would establish a general no-fault divorce statutory scheme, while retaining two fault causes for divorce.[84]

VIII. COMMENTARIES

There has been a profusion of legal, social science, and other disciplinary literature attempting to associate or disassociate the enactment of no-fault divorce legislation with the number and rate of divorce.[85] Correlations may be demonstrated in certain instances.

---

79. Rigby & Spaht, *supra* note 55, at 22.
80. *Id.*
81. *Id.* at 22-23 and authorities cited at 23 n.9.
82. *Id.* at 26.
83. *Id.* and authorities cited at 26 n.16, 27 n.17.
84. La. Civ. Code art. 103 provides, in part:

> Except in the case of a covenant marriage, divorce shall be granted on the petition of a spouse upon proof that:
>
> * * * *
>
> (2) The other spouse has committed adultery; or
>
> (3) The other spouse has committed a felony and has been sentenced to death or imprisonment at hard labor.

The exception for covenant marriage was enacted by 1997 La. Acts No. 1380, § 1 (effective July 15, 1997).

85. One of the more recent commentaries is Mark Ellman, *Divorce Rates, Marriage Rates, and the Problematic Persistence of Traditional Marital Roles*, 34 Fam. L.Q. 1 (2000), a publication of the Section of Family Law, American Bar Association. In this article, Ellman reviews (1) the statistical data on marriage and divorce rates, (2) the competing hypotheses that changes in divorce laws cause

However, the infinite variables that induce or deter divorce that cannot be eliminated in any statistical analysis make impossible a conclusion of a causal connection between the two with any degree of reliable statistical probability. For example, the following are the number of Louisiana divorces and the crude divorce rates (divorces per 1,000 population in Louisiana) for the years indicated:

Year	Number of Divorces	Divorce Rate
1928	----------	0.98%
1931	----------	1.90%
1940	----------	1.40%
1950	----------	2.00%
1960	4,412	1.40%
1970	5,065	1.40%
1975	8,720	2.20%
1980	18,108	4.30%
1981	17,397	4.00%
1982	16,765	3.80%
1983	16,204	3.60%
1984	13,894	3.10%
1985	17,608	3.90%
1986	15,173	3.40%
1987	9,532	2.10%

changes in divorce rates and that changes in divorce rates causes changes in divorce laws, and the hypothesis that increasing divorce rates and no-fault reform are both the products of changing cultural norms, increasing social mobility, and (3) the improving economic status of women in the workforce. *See also* Heather Flory, *I Promise to Love, Honor, Obey... and Not Divorce You:" Covenant Marriage and the Backlash Against No-Fault Divorce*, 34 Fam. L.Q. 133 (2000) (providing an insightful review of Louisiana's Covenant Marriage Act and discussing both its strengths and weaknesses). This article by Ms. Flory was the first place winner in the 1999 Howard C. Schwab Memorial Award Essay Contest.

1988	9,534	1.90%
1989	10,186	2.30%
1990	12,523	3.00%
1991	13,552	3.20%
1992	16,795	3.90%
1993	15,031	3.50%
1994	16,308	3.80%
1995	15,097	3.50%

As seen above, the number of divorces and the crude divorce rate in Louisiana commenced to increase significantly in 1980, ten years before January 1, 1991, the effective date of the no-fault divorce legislation. A review of the data with respect to the number of divorces and the rate of divorce (both crude and refined) in Louisiana for the period 1980-1990 and 1991-1995 does not establish any causal relationship between the no-fault divorce law and either the number or rate of divorce in Louisiana. Therefore, the Law Institute does not believe that a case may be made either in support of or in opposition to a no-fault divorce statutory scheme based upon divorce statistics alone.

Some commentators have supported the return to fault-based divorces because such a requirement gives the economically disadvantaged spouse (usually the wife) additional bargaining or negotiating strength.[86] This

86. Professor Allen Parkman of the University of New Mexico espouses this view:

> Economics can provide insights about why no-fault divorce resulted in the deterioration of the financial situation of divorced women and the children of divorced parents identified by Weitzman and Peters. Many of the reformers appear to have been so preoccupied with reducing the hypocrisy of the fault divorce system that few of them thought about the consequences of the new system—consequences that included a decline in the bargaining power of married women at divorce and, therefore, in their financial situations after divorce. The California Governor's Commission on the Family that initiated the fault divorce debate in that state did not include any economists or financial analysts.
>
> * * * *
>
> Often one party did not want a divorce and a more generous financial settlement and custody of any children was necessary to induce that party to initiate the lawsuit and provide the obligatory testimony.
>
> * * * *

Problems developed with no-fault divorce because the reformers did not recognize the interrelationship among laws concerning the grounds for divorce, parental rights, and the financial condition of the spouses. Changing one set of rules without changing the others destroyed a delicate balance. Under the fault divorce statutes, the custodial and financial settlements were commonly based on the negotiations of the parties, with the spouse who did not want to dissolve the marriage having substantial power over the outcome. With no-fault divorce eliminating negotiations to establish the grounds for divorce, the previously disregarded laws that governed the custodial and financial repercussions of divorce became much more important—the financial condition of divorced women and children of divorced parents deteriorated.

The Economics of Negotiation and Litigation

Economics conclude that individuals decide to settle a dispute or litigate it based on the expected costs and benefits of the alternatives with the incentive to settle a dispute increasing as the outcome of litigation becomes more predictable. The incentives to settle or litigate in divorce proceedings have some unique traits because of the role of the state. Because the state was the party to a marriage, it also has to be a party to the divorce. The courts will only grant a divorce when specific procedures and standards have been met. Negotiated settlements were particularly important during the period when the grounds for divorce were based on fault because the outcome of litigation was reasonably predictable. One of the spouses had to be at fault, but spouses opposed to divorce were unlikely to make it easy to prove that they were at fault. Therefore, it was difficult for individuals to dissolve a marriage when their spouse was unwilling to cooperate. Litigation was then not only expensive, but it was unlikely to be successful and a divorce was usually the result of a negotiated settlement with evidence being produced to conform to the legal standards.

* * * *

Under fault divorce, the negotiations that resulted in the divorce included the custodial and financial arrangements that were part of the divorce. The importance of these negotiations changed dramatically with the introduction of no-fault divorce, when the cooperation of the innocent party was no longer required. A divorce could be obtained in many jurisdictions by the unilateral action of one spouse. The emphasis in divorce proceedings then shifted from the grounds for the divorce to the custodial and financial arrangements. The range of issues subject to negotiation was reduced. With less negotiating power in the hands of the unwilling party, the minimum compensation acceptable to that party and the maximum compensation offered by the other would be expected to decrease.

* * * *

(Gary) Becker also argues that although a change in the rules would not change the incentives to reach a negotiated settlement, it would change the bargaining power of the parties and thus he expected the introduction of no-fault divorce to reduce the financial settlements received by wives.

* * * *

The deterioration in the financial condition of divorced women

position assumes that the disadvantaged spouse has the grounds, or causes, for divorce and that the other does not. The Law Institute believes that any perceived inequities of this nature, which may result in economic injury to a spouse or children of the marriage, should be remedied by legislative changes in the laws governing child support and spousal support and not by the reinstitution of fault as a prerequisite to a divorce. In the distribution of marital property, many states that have no-fault divorce laws consider the fault of a spouse as one of the factors that a court must or may consider under the statutory or jurisprudential law of the state governing the equitable distribution of marital property.[87] The equitable distribution laws or community property laws of other states expressly provide that marital property shall be distributed without regard to the fault of the

---

> that has occurred since the introduction of no-fault divorce often has been viewed as benefitting men. When no-fault divorce was introduced, there were more men who obviously benefitted from the new legal environment—the men who wanted to dissolve their marriage and found the cost of divorce had been reduced benefitted from the reduced negotiating power of their spouse.
>
> * * * *
>
> The effects of no-fault divorce have often been viewed as a zero sum game with the losses experienced by the divorced spouses, often women, balanced by gains to divorcing spouses, often men. It may be more appropriate to describe the effects of no-fault divorce as a negative sum game, as the sum of the effects is probably negative.

Allen M. Parkman, No-Fault Divorce: What Went Wrong? 4-5, 44-45, 103 (1992).

Professor Peter Swisher argues that fault based factors in no-fault divorce continue to serve a useful and viable moral, social, economic, and legal purpose in contemporary American society, and that therefore, fault-based statutory factors for determining spousal support awards or for determining the distribution of marital property on divorce should not be abolished or abrogated in those states that continue to recognize and properly utilize these factors. Peter N. Swisher, *Reassessing Fault Factors in No-Fault Divorce*, 31 Fam. L.Q. 269 (1997)

The issue is whether fault should be abolished as ground or cause for divorce, yet legitimately retained for determining all or some of the incidents of divorce, such as custody, child support, spousal support, and distribution of marital property.

The restoration to the innocent spouse of her bargaining power by re-instituting mandatory fault grounds for divorce is advocated by Katherine S. Spaht, *supra* note 5, at 78. Professor Spaht argues that the innocent spouse's bargaining power under a fault-based divorce regime can be exercised to insist upon serious counseling in an effort to preserve the marriage, or barring counseling's success, to demand financial advantages for herself and for her children.

87. Among the states in which the fault of the spouses expressly may be taken into account or is required to be taken into account in the distribution of marital property are Alabama, Connecticut, Delaware, Hawaii, Maryland, Missouri, New Hampshire, Rhode Island, South Carolina, Utah, Vermont, Virginia, and West Virginia. The Virgin Islands statute also mandates consideration of fault in the distribution of marital property.

spouses.[88] In Louisiana, the equality of ownership and distribution of community property reflect a strong public policy that should not be changed.[89]

A. Surveys

In 1998, the Section of Family Law of the American Law Association polled its approximately 6,000 members on whether or not there should be a return to fault-based divorce.[90] More than 1,400 attorneys responded to the survey, an approximate response rate of 24%.[91] Nearly 84% stated that they did not support a return to fault-based divorces, describing it as a "bad idea."[92] Additionally, 69% of the respondents did not agree that there was a direct correlation between the increase of the divorce rate in the United States and the advent of no-fault divorce twenty years ago.[93] Sixty-seven percent of the respondents agreed that no-fault divorces were typically quicker than fault-based divorces; 69% believed no-fault divorces were less expensive than fault-divorces, and 65% agreed that no-fault divorces typically are less acrimonious than fault divorces.[94] However, 30% of the respondents supported two systems of divorce, fault and no-fault, based on whether the divorcing spouses are parents, while 66%

88. The states in which fault of the parties expressly may not be taken into account in the distribution of marital property include Alaska, Arizona, Colorado, Illinois, Kentucky, Louisiana, Minnesota, Montana, Oregon, Pennsylvania, South Dakota, Tennessee, Washington, and Wisconsin. Other states limit a consideration of fault to dissipation of assets, concealment of assets, and economic fault. State Divorce Laws, Fam. L. Rep. (BNA) § § 442:001-453:001 (1998).

89. This public policy is reflected in Katherine S. Spaht & W. Lee Hargrave, Matrimonial Regimes § 3.2 at 47, *in* 16 Louisiana Civil Law Treatise (2d ed. 1997):

> From the earliest times, the most important legislative policy underpinning the Louisiana community property regime has been that spouses share equally the produce of the reciprocal labor and industry of both husband and wife. No matter how married couples organize their lives—one earning income, the other managing the home; both working for wages; neither earning wages and both producing things; or whatever—the basic rule is that they share equally in whatever each produces and accumulates. Historically, this policy protected the wife who was not a wage earner by giving her a share in the husband's accumulations of income. In more modern times, the policy fosters equality as the household with two working spouses becomes more common.

90. Press release, American Bar Association, Section of Family Law (Nov. 1, 1998) (on file with author).

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

did not support this differentiation.[95] The large majority of the respondents, when asked if a return to fault-based divorce would solve the following problems related to the dissolution of marriage, answered "No."[96] The percentages of **negative** responses were as follows:

(1) Financial disparity between the divorcing spouses—women consistently fare worse (86 percent);
(2) The abandonment of the family by those who are unwilling or cannot abide the mandatory waiting periods currently in place in 24 states (88 percent); and
(3) Unfairness to victims of domestic violence who occasionally are treated with bias by the courts and/or in the mediation process (85 percent).[97]

When asked if no-fault divorces are emotionally easier on children of the marriage, nearly 58% agreed that they are, but 37% disagreed.[98] Twenty-six percent of the respondents agreed that no-fault divorce is more equitable in recognizing the father's rights in custody, while 59% agreed that judges still do consider fault in divorce related issues even if fault is not a statutory element of that issue.[99]

One writer, commenting on the no-fault divorce law of Louisiana[100] wrote:

> *People marry for very personal and individual reasons; the same is true of divorce.* The state cannot select a spouse for one of its citizens, nor should it try to force a person to remain in a marriage in which a satisfactory personal relationship is no longer possible. The state may encourage thoughtful reflection and decision making through the procedures provided for the divorce process. Or state coercion may be exercised by limiting the grounds or causes for which a divorce may be obtained and requiring cumbersome and burdensome procedures in divorce actions. In both, the underlying policy is to discourage hasty divorce. However, empirical evidence suggests that such a public policy has not deterred divorces. Cognizant of this, the committee included in its goals reducing adversarial proceedings, encouraging

95. *Id.*
96. *Id.*
97. *Id.*
98. *Id.*
99. *Id.*
100. 1990 La. Acts No. 1009.

> reconciliation, and instituting simple divorce procedures in simple cases to ensure that everyone has access to the courts in divorce cases.[101]

Empirically confirming the view that persons do not divorce for statutorily mandated causes, but rather for personal reasons, are the results of a poll by the American Academy of Matrimonial Lawyers of its Fellows at an annual meeting of the Academy.[102] There, the Fellows were asked to give their opinion, based upon their practice of divorce law, as to the principal causes of divorce in America. The responses were:

Number of Responses
Listing A Cause in Top Two Causes for Divorce

Rank	Cause	Number of Responses
1	Lack of communication	59
2	Divergent growth	41
3	Sex/Adultery	19
4	Money	17
5	Lack of understanding	17
6	Lack of mutual respect	15
7	Feelings of inequality	12
8	Initial mistake	11
9	Changing values	8
10	Drinking	7
11	Mid-life crisis	6
12	Boredom	5
13	Selfishness	2
14	Physical abuse	1
14	Sexual preference	1

101. Rigby & Spaht, *supra* note 55, at 48 (emphasis added).

102. Report of Survey conducted at the Fall Annual Meeting of the American Academy of Matrimonial Lawyers (AAML) held in Chicago, Illinois, on November 12-13, 1982. AAML, established in 1962, consists of 1500 lawyers specializing in family law. Membership as a Fellow is by invitation only.

It is significant that only one of the top five causes given for divorce, Sex/Adultery, and only two of the top ten causes given for divorce, Sex/Adultery and Drinking, are traditional fault grounds for divorce. Only four of the fifteen top reasons assigned for divorce are traditional fault grounds for divorce—Sex/Adultery (3rd), Drinking (10th), Physical Abuse and Sexual Preference (14th). The only traditional fault ground in Louisiana reported as a substantial reason for divorce is adultery, which is a cause for divorce in Louisiana Civil Code article 103(2). This cause should be retained.

In 2000, the American Academy of Matrimonial Lawyers published a booklet entitled "Making Marriage Last: A Guide to Preventing Divorce," which was designed to help couples identify and correct the problems in their marriage in order to avoid the financially and emotionally draining process of divorce. Published eighteen years after the Academy's survey discussed above, the booklet lists the following reasons for divorce its Fellows "hear . . . more often than others:"

Poor communication
Financial problems
A lack of commitment to the marriage
A dramatic change in priorities
Infidelity

The booklet indicates that poor communication remains the number one cause for divorce; money problems has come up in the polls; infidelity has slipped; and divergent growth/change in priorities still ranks in the top five.

The 2000 publication also lists the following causes, which the Fellows "see a lot, but not quite as often as those listed above:"

Failed expectations or unmet needs
Addictions and substance abuse
Physical, sexual or emotional abuse
Lack of conflict resolution skills

These remaining principal causes for divorce are not dramatically different from those listed eighteen years earlier. Lack of conflict resolution skills appears to be new, and the various forms of abuse of the other spouse appears to be ranked higher in the year 2000 than in 1982. In these intervening years, there does not appear to be any dramatic shift in the reasons people give for divorcing their spouses.

The results of these surveys should be compared with the

findings of Lynn Gigy and Joan B. Kelly.[103] Their Divorce and Mediation Project sampled 437 persons who were in the divorcing process in Marin County, California, during the 1983-1986 period. The respondents had been married an average of 13.3 years prior to separation. 75% of the men and 54.4% of the women had finished college or obtained advanced degrees. 75% of the women were engaged in full time or part time work, and the median combined household income was $59,000.00. The mean age of the men was 42.37 years; and that of the women was 39.35 years. The authors summarized the results:

> Table 3 gives the self-reported reasons for divorce factors in order of frequency of response. For both men and women, the two most frequent factors contributing to divorce included Unmet Emotional Needs/Gradual Growing Apart, and Serious Lifestyle Differences/Boredom. Divorce for reasons of a High Conflict/Demeaning Relationship is third most frequent, particularly for women.[104]
>
> * * * *
>
> Women were more likely to cite Unmet Emotional Needs/Growing Apart as important in the breakdown of their marriage, although for men it ranked highest among the factors as well. Women were also more likely than men to report High Conflict/Demeaning Relationship, Spouse's Jealousy, Substance Abusing/Unreliable Spouse, and Career and Role Conflict factors as reasons for their divorce. Men had a significantly higher mean score on the factor reflecting their own substance abuse and affairs. Men and women were equally likely to give Life Style Differences/Boredom, Financial and Employment Problems, and Severe Illness as reasons for divorce.[105]

Table 3 lists the following order of frequency of response:

	Factors	Males Mean Score	Females Mean Score
1	Unmet Emotional Needs/Growing Apart	.63	.70

103. Lynn Gigy & Joan Kelly, *Reasons for Divorce: Perspectives of Divorcing Men and Women*, 18 J. Divorce & Remarriage 169, 169-87 (1992).
104. *Id.* at 177-78.
105. *Id.* at 179.

1	Lifestyle Differences/Boredom	.42	.48
2	Demeaning/Violent Relationship	.29	.38
3	Financial/Employment Problems	.30	.32
4	Spouse's Jealousy	.23	.36
5	Substance Abusing/Unreliable Spouse	.19	.32
2	Career and Role Conflicts	.19	.30
6	Respondent's Substance Abuse/Affairs	.14	.06
3	Severe Illness	.06	.09

Gigy and Kelly report the following socio-demographic changes and shifts in cultural attitudes in self-reported reasons for divorce in the last fifty years:

> Studies of the reasons for marital breakdown from the perspective of divorced men and women have provided sociocultural, psychological and historical insight into divorce over the past several decades (Cleek and Pearson, 1985; Goode, 1956; Kelly, 1982; Kitson and Sussman, 1982; Kitson, Babri and Roach, 1985; Thurnher, Fenn, Melichar and Chiriboga, 1983). Despite differing methodological approaches and samples, the data from studies focusing on self-reported reasons for divorce reflect socio-demographic changes and shifts in cultural attitudes. Salient among the early studies of marital complaints at the time of divorce is William Goode's 1948 research on divorced women. The marital complaints mentioned most frequently in 1948 concerned objective and specific negative behaviors, such as non-support, heavy drinking or neglect. Twenty-five years after Goode's study, Kitson and Sussman explored the nature and correlates of marital complaints of divorcing people and found that women's more frequent complaints had shifted from specific negative behaviors to affective or emotional deficiencies in the marriage (Kitson and Sussman, 1982).
>
> Soon after Kitson and Sussman's data collection, a 1976-1977 study also found complaints to be more abstract and affective in nature with the most frequently cited reasons of "conflicting lifestyles," and "spouse wants freedom"

(Thurnher, Fenn, Melichar and Chiriboga, 1983). Cleek and Pearson (1985) found that communication problems, basic unhappiness, and incompatibility were the most frequently cited reasons for divorce. In a Danish sample, "growing apart" was the most frequently cited reasons for divorce among both the men and women (Koch-Nielsen and Gundelach, 1985).

The California Divorce Project found substantial evidence that men and women had different perceptions of the reasons for their divorces (Kelly, 1982; Wallerstein & Kelly, 1980). In the California Divorce Project, the women most frequently complained of feeling unloved, having their competence and intelligence constantly belittled by their spouses, and feeling that their spouses were hypercritical of everything about them. On the other hand, the complaint mentioned most frequently by the men was that their spouses were inattentive, and neglectful of what the husbands saw as their needs and wishes. Among the men, this complaint was followed in frequency by incompatibility of interest and values from the beginning of the marriage (Kelly, 1982).[106]

These views by family law practitioners and specialists throughout the United States, and the results of surveys of persons who are divorcing or have divorced [107] indicate that most people

---

106. *Id.* at 169-70.

107. A poll, interesting both with respect to the nature of the poll and its results, was reported by the Associated Press. It read:

> Baptists have the highest divorce rate of any Christian denomination, and are more likely to get a divorce than atheists and agnostics, according to a national survey.
>
> The survey conducted by Barna Research Group in Ventura, Calif., found that 29 percent of all adult Baptists have been through a divorce. Among Christian groups, only those who attend nondenominational Protestant churches were more likely to be divorced, with a 34 percent divorce rate.
>
> Alabama, with a population of 4.3 million, has more than one million Southern Baptists and a majority of evangelical Protestants. The state ranks fourth nationally in divorce rates, behind Nevada, Tennessee and Arkansas, according to U. S. government statistics.
>
> Barna Research Group interviewed 3,854 adults from the 48 continental states, with a margin of error of plus or minus 2 percent. The survey found that while just 11 percent of the adult population is currently divorced, 25 percent of all adults have experienced at least one divorce, the survey showed.
>
> Twenty-seven percent of those describing themselves as born-again Christians are currently or have previously been divorced, compared to 24 percent among other adults.

divorce for personal reasons that are not associated with any statutory fault grounds for divorce. This conclusion is consistent with the unanimous experiences of the Board Certified Family Law Specialists of the Divorce Committee of the Law Institute.

B. Other Possible Solutions

Although perhaps beyond the scope of the legislative request,[108] the Law Institute suggests that legislative efforts be directed toward other means of attempting to reduce the number and rate of divorces. Although this report does not advocate any particular process or requirement discussed herein, social scientists, legal experts, and others

---

"While it may be alarming to discover that born again Christians are more likely than others to experience a divorce, that pattern has been in place for quite some time," said George Barna, president of Barna Research Group.

A Birmingham minister, the Rev. Stacy Pickering, said the numbers are skewed because Baptist churches encourage young people to get married—sometimes before they're ready—before living together.

"Fewer people are getting married and the number of couples living together has increased," said Pickering, minister of young married adults and director of counseling at Shades Mountain Baptist Church.

He said his church now requires premarital counseling for couples who want to marry at the church.

Of major Christian denominations, Catholics and Lutherans have the lowest divorce rate at 21 percent, according to Barna. People who attend mainstream Protestant churches have an overall divorce rate of 25 percent.

The levels vary among non-Christian groups, Barna reported. Jews have a divorce rate of 30 percent, while atheists and agnostics have a relatively low rate of 21 percent, according to the survey.

The survey found that Mormons, who emphasize strong families, are near the national average at 24 percent.

The study found that the South and Midwest had 27 percent divorce rates, while the rates were 19 percent in the Northwest and 26 percent in the West.

Whites are more likely to be have had [sic] a divorce, at 27 percent, than African-Americans (22 percent), Hispanics (20 percent) and Asians (8 percent), Barna found.

George Barna noted that young people have changed.

"One of the most striking findings in our recent survey among teenagers is that when we asked them to name their top goals for the future, one of the highest-rated was to get married and have the same spouse for their entire life," he said.

Baptists Have Higher Divorce Rate Than Any Denomination, Shreveport Times, Dec. 31, 1999, at 4A.

108. The Legislative mandate to the Law Institute in H.R., Reg. Sess., No. 1 (La. 1998) is to "study and make recommendations to the Civil Law and Procedure Committee as to the merits of reinstating fault as a prerequisite to a divorce."

have suggested a variety of processes designed to foster a more meaningful view of marriage, a more thoughtful entry into marriage, dispute resolution mechanisms during marriage, and pre-divorcing requirements.[109]

---

109. Numerous articles in professional journals and other publications have addressed various facets of these issues. The following are some of the literature made available to the Divorce Committee of the Law Institute for its review. In turn these articles cite and discuss numerous other studies and references. The Committee recognizes that there are numerous other articles not included in this list.

1. Premarital Inventory, Counseling, and Other Premarital Measure

Lee Williams and Joan Jurich conducted a study of the predictive validity of FOCCUS (Facilitating Open Couple Communication, Understanding and Study), which is used by approximately two thirds of the Roman Catholic dioceses in the United States and by over 500 Protestant churches of different denominations. They also discuss PREPARE, an 125 question inventory designed to assess relationship strengths and weak areas for engaged couples and compare the predictive validity of FOCCUS and PREPARE. The authors conclude that FOCCUS and PREPARE are comparable in terms of their predictive validity.The study targeted couples who had been married 4 to 5 years and had completed the FOCCUS instrument prior to marriage. The authors claim that FOCCUS scores were able to predict successfully in 67.6% to73.9% of the cases (depending upon the scoring method used) the couples with high quality marriages versus those with poor quality marriages, and that FOCCUS scores could be used to identify 75% of the couples who later developed distressed marriage.

If FOCCUS and PREPARE have strong predictive validity, the authors suggest that these instruments may help identify couples who are at risk in developing distressed marriages, and if a couple were confirmed to be at risk after further evaluation, then they could be encouraged to extend their engagement, reevaluate their decision to marry, or seek additional preparation through structured programs or premarital counseling. Lee Williams & Joan Jurich, *Predicting Marital Success After Five Years: Assessing the Predictive Validity of FOCCUS*, 21 J. Marital & Family Therapy 141, 141-153 (1995).

2. Dispute Resolution During Marriage

Guy Bodenmann postulates that the deterioration of marital relationships is in most cases due to a lack of competencies among partners, especially deficiencies in communication skills, problem-solving capacities and coping. The author recommends CCET (Couple's Coping Enhancement Training) for the dual purposes of (a) the enhancement of individual and dyadic coping and (b) communication and problem-solving skills during marriage as a preventative measure. Because most couples seek marital therapy at a stage when their relationship is already largely dysfunctional, only about 40% benefit from intervention. CCET is a preventive-oriented approach, in which couples are taught dyadic coping skills prior to the occurrence of major marital problems. The training consists of six sequential units: Theoretical Introduction, Facilitating a Better Understanding of Stress and Coping, The Enhancement of Dyadic Coping, Fairness in the Relationship, Communication Skills, and Conflict and Problem-Solving Skills. The authors conclude that couples who participated in preventive training programs were significantly more satisfied with their relationship and showed a lower rate of divorce. While 30% of the control group's marriages dissolved within

a time span of three years, only 10% of the intervention group separated or divorced within this same time period. Guy Bodenmann, *Can Divorce Be Prevented by Enhancing the Coping Skills of Couples?*, 27 J. Divorce & Remarriage 177, 177-91 (1997).

The Civil Codes of some countries provide for some types of judicial recourse to resolve an impasse between parents with respect to their common authority over the child. Article 156 of the Civil Code of Spain provides that in case of disagreement between the parties in the exercise of parental authority, either may resort to the court. The court is given the authority to grant parental authority on the disputed issue to either the father or the mother. French Civil Code article 374 provides that a court may decide, upon the request of either parent or of the prosecuting attorney (ministère public), which parent of an illegitimate child may exercise parental authority.

Although it would be a drastic departure from traditional views of the function of courts and other decision-making fora, mediation and reconciliation courts and other adjudicatory agencies might be established to address intra-marriage problems.

The benefit of seeking both pre-marital counseling and marital counseling in times of marital difficulties during the marriage is recognized in the provisions of Louisiana's Covenant Marriage Law. La. R.S. 9:273 (2000) regulates the contents of a declaration of intent to contract a covenant marriage executed pursuant to La. R.S. 9:272 and requires an affidavit by the parties that they have received premarital counseling from designated types of persons, which counseling must include a discussion of the obligation to seek marital counseling in times of marital difficulties.

3. Mediation, Arbitration, and Other Interventions as Pre-Divorcing Requirements

The value of voluntary or court-ordered mediation has been statutorily recognized in child custody and visitation disputes. *See* La. R.S. 9:331-334 (2000); *see also* La. R.S. 9:306 (2000) for court-ordered attendance at and completion of a court-approved seminar designed to educate and inform parents of the needs of their children, in a custody or visitation proceeding.

The Louisiana Mediation Act, La. R.S. 9:4101-4112, applies to all civil cases except those types of proceedings excepted in La. R.S. 9:4103. The Louisiana Binding Arbitration Law, La. R.S. 9:4201-4217, applies where there exists a written contract to settle by arbitration any specified controversy or any controversy existing and thereafter arising between the parties to the contract.

Other states have mandatory mediation for contested custody, visitation, and other issues, arbitration for property matters and mediation and conciliation courts whose function is to attempt to effect reconciliation. States which require or permit a court to order one or more of these alternative dispute resolution mechanisms include California, Connecticut, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Maine, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Washington, and Wisconsin. State Divorce Laws, Fam. L. Rep. (BNA) §§ 442:001-453.001 (1999). For a more complete discussion of alternative approaches to dispute resolution in family law cases and cataloguing the availability of conciliation, mediation, and other available alternates, see Rigby, *supra* note 2.

The mediation approach to dispute resolution might be explored for issues other than child custody and visitation as a required prerequisite to court proceedings in a divorce suit. The focus would be on the spouses resolving, if

These suggestions and proposals are designed to reduce the possibility of the "initial mistake," to provide both opportunities and methods for resolving spousal differences during marriage by some mechanism short of a divorce, and to provide or require mediation, counseling, or similar processes as a prerequisite to obtaining a divorce. Divorce is a failure. It is the failure of a relationship, the failure of a societal institution, the failure of people to realize their hopes and expectations within that institution, and the failure of the preferred parental module: parents married to each other, jointly rearing, educating, guiding, and directing their children into productive adulthood.

Efforts to preserve marriage should not focus only on divorcing requirements, but on three other areas: pre-marriage requirements, facilitation of dispute resolution during the marriage, and pre-divorcing requirements.

Pre-marriage requirements, which might assist the state in achieving these goals, include mandatory pre-marriage counseling[110] or seminars, compatibility testing,[111] longer delays between the issuance of a marriage license and the marriage ceremony,[112]

---

possible, their disputes and differences in order to preserve both the marriage and the quality of the marriage, rather than an alternate means to reach a decision on an issue or issues in the divorce proceedings. Intervention in the interspousal relationship of the spouses "at a stage when their relationship is already largely dysfunctional," must be viewed realistically, and may not result in the preservation of the marriage in most cases. Bodenmann, *supra*, at 180. However, the benefits might include an identification and clarification of the fundamental issues, which may have become obscured by more emotional issues, an attempt to reconcile these differences, a requirement that a spouse state to the other spouse whether he or she desires to continue the marriage, and a realistic determination of whether the marriage can be salvaged or should be salvaged. If nothing else, it might require the spouses to talk to each other about things they have never talked about with each other, but which are the reasons that they are where they are in their marital and interpersonal relationship.

The Louisiana Covenant Marriage Act provides that a spouse may obtain a judgment of divorce or a judgment of separation from bed and board, respectively, "subsequent to the parties obtaining counseling." La. R.S. 9:307(A) and (B) (2000). This provision does not constitute a necessary prerequisite to the action for divorce or separation; rather, that the legislature intended that this obligation be legally enforceable through contractual remedies. Spaht, *supra* note 5, at 96.

110. A thoughtful discussion of the purpose of the mandatory pre-marital counseling provision of Louisiana's Covenant Marriage Law, La. R.S. 9:273, is contained in Spaht, *supra* note 5, at 84.

111. *See* Williams & Jurich, *supra* note 109 (discussing FOCCUS and PREPARE).

112. The required delay between the issuance of the marriage license and the performance of the marriage ceremony is seventy-two hours. La. R.S. 9:241 (2000). This delay may be waived by a judge or a justice of the peace authorized to perform the marriage upon application of the parties for serious and meritorious

increased tax incentives for marriage, reduction in the fee for the marriage license if the couple agree to specified marriage counseling, and the required teaching in public schools of courses concerning marriage and relationship skills. This list is far from exhaustive.

There are ways to encourage and facilitate dispute resolution between spouses during the marriage. These include required periodic "check ups" with designated types of mental health professionals or marriage or other counselors, available judicial intervention for the resolution of limited types of inter-spousal disputes or differences,[113] required mediation or arbitration of these specified disputes or differences, and other types of interventions during the marriage. The Law Institute is sensitive to the constitutional right to privacy issues implicated in state intervention in an intact marriage[114] and reiterates that it is not suggesting nor supporting these measures, but is documenting suggestions that have been made to address these issues. The state's authority to mandate the requirements for marriage and for the termination of marriage, within reason, does not appear to raise these constitutional concerns.[115]

---

reasons. La. R.S. 9:242 (2000).

113. *See supra* note 109 (discussing the availability of judicial intervention to resolve certain types of intra-spousal disputes).

114. La. Const. art. 1, § 5 expressly guarantees that every individual shall be secure in his "person" against "unreasonable searches, seizures, or invasions of privacy." One aspect of "liberty" protected by both the federal and the state constitutions is a right of personal privacy or a guarantee of certain areas or zones of privacy. This right of personal privacy includes the interest in independence in making certain kinds of important decisions. Among the decisions that an individual may make without unjustified government interference are personal decisions relating to marriage, procreation, contraception, family relationships, and child rearing and education. State v. Perry, 610 So. 2d 746, 760 (La. 1992). Under the Louisiana Constitution, the standard of 'strict judicial scrutiny' is applied to review state action which imposes a burden on decisions as fundamental as those included within the right of personal privacy. Under this test, the state action 'may be justified only by a compelling state interest, and the state action must be narrowly confined so as to further only that compelling interest.'State v. Gamberella, 633 So. 2d 595, 604 (La. App. 1st Cir.1993) (quoting *Perry*, 610 So. 2d at 760). The family has a right to be protected against unwarranted intrusion by the state. Stanley v. Illinois, 405 U.S. 645, 92 S. Ct. 1208 (1972); State in Interest of Delcuze, 407 So. 2d 707, 710 (La. 1981); *see also* Griswold v. Connecticut, 381 U.S. 479, 85 S. Ct. 1678 (1965). However, the constitutional protection of the right of privacy is not unlimited. Bowers v. Hardwick, 478 U.S. 186, 106 S. Ct. 2841 (1986); State v. McCoy, 337 So. 2d 192, 196 (La. 1976); State v. Neal, 500 So. 2d 374, 378 (La. 1987).

115. *See* Land v. Land, 183 La. 588, 591-98, 164 So. 599, 600-01 (1935); Rhodes v. Miller, 189 La. 288, 297-99, 179 So. 430, 433 (1938); Wilkinson v. Wilkinson, 323 So. 2d 120, 126 (La. 1975).

There are many alternatives for a pre-divorcing requirement. Mediation, arbitration, or counseling could be required. There could be a requirement for an agreement concerning custody, support, and property matters prior to the rendition of a divorce decree. There could be longer "cooling off" periods.[116] The defense of reconciliation[117] could be eliminated to encourage spouses to attempt to continue the marriage without the risk of losing the cause or ground for divorce. Custody seminars and seminars concerning the financial, emotional, and societal costs of divorce and its effect on the children of the marriage could be required.

The state has a legitimate and important interest in preventing or reducing "initial mistake" marriages, in improving the quality of the marriage of its citizens, in making available or requiring the mechanisms for alternate dispute resolution of marital disputes, and in preventing or

---

116. As noted earlier at notes 73-77and accompanying text, the required living separate and apart for a no-fault divorce was originally set at seven years in 1916, reduced to four years in 1932, to two years in 1938, to one year in 1979, and to six months in 1990. The Persons Committee of the Law Institute, in its task of proposing to the Council of the Law Institute revisions in the law of divorce, which culminated in the enactment of La. Acts 1990, No. 1009 (effective Jan. 1, 1991), originally considered a waiting period of ninety days if the spouses had been married for a stipulated minimum period of time and the parties had confected and filed with the petition for divorce a written implementation plan containing provisions for custody and support of children, spousal support, injunctive relief, and other incidental matters. The Committee ultimately rejected this expedited procedure. *See* Rigby & Spaht, *supra* note 55, at 29.

Louisiana's Covenant Marriage Act, 1997 La. Acts No. 1380, permits the obtaining of a no-fault divorce, but lengthens the waiting period to two years. La. R.S. 9:307A(5) (2000). *See* Spaht, *supra* note 5, at 126. The waiting period for the filing of a motion for a La. Civ. Code art. 102 no-fault divorce is 180 days after the parties have commenced living separate and apart continuously and 180 days after service of the petition for divorce or execution of written waiver of service. *See* Elrod, *supra* note 56, at Chart 4 (revealing living separate and apart requirements ranging from sixty days to three years. The average waiting period is 17.07 months; the mean of the waiting periods is 19 months; the median is 15 months).

117. La. Civ. Code art. 104 provides: "The cause of action for divorce is extinguished by the reconciliation of the parties." The Revision Comment to La. Civ. Code art. 104 states that the article "codifies the prior jurisprudence holding that an action for divorce under former Civil Code Article 139 or R.S. 9:301 (now Article 103, *supra*) could be defeated by proof that the parties had reconciled," and that reconciliation may also defeat a divorce action under La. Civ. Code art. 102.

What constitutes reconciliation is a question of fact to be determined in accordance with established jurisprudential guidelines. *Id.* Reconciliation occurs when there is mutual intent to reestablish the marital relationship on a permanent basis, although there may have been sexual relations between the spouses during the requisite period of time. Garrett v. Garrett, 324 So. 2d 494 (La. App. 2d Cir.1976); Millon v. Millon, 352 So. 2d 325, 327 (La. App. 4th Cir. 1977); Lemoine v. Lemoine, 715 So. 2d 1244, 1246-49 (La. App. 3d Cir. 1998). *See also* Rigby & Spaht, *supra* note 55, at 77.

reducing the termination of these marriages by divorce. The Law Institute applauds the interest of the Legislature in marriage and encourages it to explore any available and productive means of preserving it both for the benefit of the state and the citizens of the state, including importantly, the children of the marriage.

Community and other private initiatives are important. A local non-governmental effort to reduce divorce occurred on Friday, November 10, 2000. On that date, clergy representing fourteen Shreveport, Louisiana, congregations signed a pledge that adopted a program called a "Community Marriage Covenant." Through this pledge, the participating churches agreed to ten stipulations to be observed by those churches, in an attempt to reduce the number and rate of divorces.

The agreement's stipulations include:

1. A minimum of four months between when the wedding is scheduled and occurs.
2. Six premarital counseling sessions.
3. A premarital inventory or test.
4. Promotion of abstinence before marriage and fidelity during.
5. Identification and training of married couples to mentor couples who are engaged, newlyweds or those who marriages are in trouble.
6. Encouragement for newlyweds to meet during their first year with the mentor couple or pastor.
7. Regular enrichment for married couples.
8. Training of couples whose marriages nearly failed to mentor couples considering divorce.
9. Counseling and support to encourage reconciliation of divorced or separated couples.
10. Creation of a stepfamily support group.

The Shreveport Times[120] issue reported that Shreveport is the third Louisiana city, and the one hundred and thirty-third nationwide, to take such a step. The report stated that the City of Modesto, California, started this program in 1986 and has since seen a 30 percent reduction in its divorce rate or approximately 1,000 divorces a year. El Paso, Texas had a similar reduction of 33 percent in its divorce rate after adopting the program.

120. Alisa Stingley, *Faith Community Targets Divorce*, Shreveport Times , Nov. 11, 2000, at 3B.

IX. CONCLUSION

The Louisiana State Law Institute does not recommend to the Louisiana Legislature the reinstitution of fault as a requirement for obtaining a divorce in Louisiana. Such a requirement does not address the reasons given by the large majority of people for instituting a divorce proceeding. There is no persuasive evidence that it would preserve marriage as an important societal institution. It would not improve the quality of a marriage even if it prolonged a marriage. A fault requirement would invite and provide an additional forum for accusation and recrimination. It would be an inappropriate method of equalizing economic disparity between spouses. Rather, alternate methods designed to discourage hasty and ill-advised marriages, to preserve and improve both the quality of marriage and its longevity and to preserve the traditional marriage as an vital societal unit should be explored.

APPENDIX A

Regular Session, 1998 **ENROLLED**
HOUSE RESOLUTION NO. 1
BY REPRESENTATIVE DIMOS

A RESOLUTION

To urge and request the Louisiana State Law Institute to study and make recommendations to the Civil Law and Procedure Committee relative to the requirement of fault as a prerequisite to a divorce.

WHEREAS, on September 5, 1969, California enacted the first no-fault divorce law and within five years thereof forty-four other states enacted similar legislation; and

WHEREAS, the state of Louisiana also enacted similar no-fault legislation pursuant to which a majority of divorces in this state are granted; and

WHEREAS, Louisiana's "no-fault" grounds are provided in Civil Code Articles 102 and 103 which simply require that the spouses have lived separate and apart for one hundred eighty days prior to the filing of the rule to show cause, or that the spouses have lived separate and apart continuously for a period of six months or more on the date the petition is filed; and

WHEREAS, according to a news release of the American Bar Association, nearly thirty years after no-fault divorce was first introduced in the United States, many state legislators are trying to reinstate fault as a prerequisite for divorce in their states.

THEREFORE, BE IT RESOLVED that the House of Representatives of the Legislature of Louisiana does hereby request that the Louisiana State Law Institute study and make recommendations to the Civil Law and Procedure Committee as to the merits of reinstating fault as a prerequisite to a divorce.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the director of the Louisiana State Law Institute.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

L E A P
Center for *Business* & Economic Research
Northeast Louisiana University, Monroe, Louisiana 71209-0101
Tel: 318-342-1215; Fax:318-342-1209

NUMBER AND RATE OF MARRIAGES AND DIVORCES
UNITED STATES AND LOUISIANA

1960-1995

	Marriages				Divorces			
	United States		Louisiana		United States		Louisiana	
Year	Number	Rate	Number	Rate	Number	Rate	Number	Rate
1960	1,523,000	8.5	23,523	7.2	393,000	2.2	4,412	1.4
1961	1,548,000	8.5	24,057	7.3	414,000	2.3	5,412	1.6
1962	1,577,000	8.5	24,630	7.3	413,000	2.2	4,016	1.2
1963	1,654,000	8.8	26,013	7.6	428,000	2.3	3,415	1.0
1964	1,725,000	9.0	27,086	7.8	450,000	2.4	4,704	1.4
1965	1,800,000	9.3	28,972	8.1	479,000	2.5	4,623	1.3
1966	1,857,000	9.5	30,694	8.5	499,000	2.5	3,452	1.0
1967	1,927,000	9.7	31,661	8.6	523,000	2.6	3,149	0.9
1968	2,069,000	10.4	33,899	9.1	584,000	2.9	3,826	1.1
1969	2,145,000	10.6	34,540	9.2	639,000	3.2	4,885	1.3
1970	2,159,000	10.6	35,416	9.7	708,000	3.5	5,065	1.4
1971	2,191,000	10.6	36,648	10.0	773,000	3.7	9,431	2.5
1972	2,282,000	11.0	38,981	10.4	845,000	4.1	10,618	2.8
1973	2,284,000	10.9	39,498	10.5	915,000	4.4	7,294	1.9
1974	2,230,000	10.5	38,185	10.1	977,000	4.6	7,812	2.0
1975	2,153,000	10.1	37,309	9.8	1,036,000	4.9	8,720	2.2
1976	2,155,000	10.0	37,999	9.9	1,083,000	5.0	12,550	3.2
1977	2,178,000	10.1	38,645	9.9	1,091,000	5.0	12,910	3.2
1978	2,282,000	10.5	39,877	10.0	1,130,000	5.2	13,229	3.3
1979	2,331,000	10.4	41,347	10.0	1,181,000	5.3	15,170	3.7
1980	2,390,000	10.6	43,460	10.3	1,189,000	5.2	18,108	4.3
1981	2,422,000	10.6	44,929	10.5	1,213,000	5.3	17,397	4.0
1982	2,456,000	10.6	45,581	10.4	1,170,000	5.0	16,765	3.8
1983	2,446,000	10.5	43,177	9.7	1,158,000	4.9	16,204	3.6
1984	2,477,000	10.5	41,087	9.2	1,169,000	5.0	13,894	3.1
1985	2,413,000	10.1	39,368	8.8	1,190,000	5.0	17,608	3.9
1986	2,407,000	10.0	37,457	8.3	1,178,000	4.9	15,173	3.4
1987	2,403,000	9.9	36,185	8.1	1,166,000	4.8	9,532	2.1
1988	2,396,000	9.7	33,974	7.7	1,167,000	4.7	9,534	1.9
1989	2,404,000	9.7	38,574	8.8	1,163,000	4.7	10,186	2.3
1990	2,448,000	9.8	40,443	9.6	1,175,000	4.7	12,523	3.0
1991	2,371,000	9.4	39,161	9.2	1,189,000	4.7	13,552	3.2
1992	2,362,000	9.3	40,053	9.4	1,215,000	4.8	16,795	3.9
1993	2,334,000	9.0	39,364	9.2	1,187,000	4.6	15,031	3.5
1994	2,362,000	9.1	40,405	9.4	1,191,000	4.6	16,308	3.8
1995	N/A	N/A	40,516	9.3	N/A	N/A	15,097	3.5

N/A - Not available.
1 Rate per 1,000 population.
2 Figures are rounded to the nearest thousand.

Questions about the subject matter should be directed to the offices in the Economic Census Staff, Business Division or Industry Division specified below.

EXHIBIT 1

Table 1. Divorces and annulments and rates: United States, 1940–90

[Data refer only to events occurring within the United States. Alaska included beginning with 1959, and Hawaii, beginning with 1960. Rates per 1,000 population enumerated as of April 1 for 1940, 1950, 1960, 1970, and 1980 and estimated as of July 1 for all other years]

Year	Divorces and annulments	Rate per 1,000 — Total population[1]	Rate per 1,000 — Married women 15 years and over
1990	1,182,000	4.7	20.9
1989	1,157,000	4.7	20.4
1988	1,167,000	4.8	20.7
1987	1,166,000	4.8	20.8
1986	1,178,000	4.9	21.2
1985	1,190,000	5.0	21.7
1984	1,169,000	5.0	21.5
1983	1,158,000	5.0	21.3
1982	1,170,000	5.1	21.7
1981	1,213,000	5.3	22.6
1980	1,189,000	5.2	22.6
1979	1,181,000	5.3	22.8
1978	1,130,000	5.1	21.9
1977	1,091,000	5.0	21.1
1976	1,083,000	5.0	21.1
1975	1,036,000	4.8	20.3
1974	977,000	4.6	19.3
1973	915,000	4.3	18.2
1972	845,000	4.0	17.0
1971	773,000	3.7	15.8
1970	708,000	3.5	14.9
1969	639,000	3.2	13.4
1968	584,000	2.9	12.5
1967	523,000	2.6	11.2
1966	499,000	2.5	10.9
1965	479,000	2.5	10.6
1964	450,000	2.4	10.0
1963	428,000	2.3	9.6
1962	413,000	2.2	9.4
1961	414,000	2.3	9.6
1960	393,000	2.2	9.2
1959	395,000	2.2	9.3
1958	368,000	2.1	8.9
1957	381,000	2.2	9.2
1956	382,000	2.3	9.4
1955	377,000	2.3	9.3
1954	379,000	2.4	9.5
1953	390,000	2.5	9.9
1952	392,000	2.5	10.1
1951	381,000	2.5	9.9
1950	385,000	2.6	10.3
1949	397,000	2.7	10.8
1948	408,000	2.8	11.2
1947	483,000	3.4	13.6
1946	610,000	4.3	17.9
1945	485,000	3.5	14.4
1944	400,000	2.9	12.0
1943	359,000	2.6	11.0
1942	321,000	2.4	10.1
1941	293,000	2.2	9.4
1940	264,000	2.0	8.5

[1] Rates for 1981–88 are revised and may differ from rates published previously. See Technical notes.

EXHIBIT 2

Table 2. Number and rate of divorces and annulments: United States, each region, division, and State, 1980, 1989, and 1990

(Data are counts of decrees granted supplied by States. Figures for the divorce-registration States differ from those based on sample data shown in table 4. Rates per 1,000 population in each area enumerated as of April 1 for 1980 and estimated as of July 1 for all other years)

Region, division, and State	Number			Rate		
	1990	1989	1980	1990	1989	1980
United States	[1]1,182,000	[1]1,157,000	1,189,000	4.7	4.7	5.2
Regions:						
Northeast	169,000	171,000	174,000	3.3	3.4	3.5
Midwest	274,000	262,000	292,000	4.6	4.4	5.0
South	[1]470,000	[1]457,000	449,000	[1]5.5	[1]5.4	6.0
West	269,000	267,000	274,000	5.1	5.1	6.3
Northeast:						
New England	44,039	45,715	49,049	3.3	3.5	4.0
Middle Atlantic	125,367	125,002	124,690	3.3	3.3	3.4
Midwest:						
East North Central	[2]197,347	[2]187,709	212,405	[2]4.7	[2]4.5	5.1
West North Central	76,256	74,778	79,825	4.3	4.2	4.6
South:						
South Atlantic	227,039	218,540	206,344	5.2	5.1	5.6
East South Central	91,508	90,265	[2]97,528	6.0	6.0	[2]6.0
West South Central	[2]148,007	[2]143,093	[2]155,025	•	•	[2]6.5
West:						
Mountain	[2]79,425	[2]76,582	86,088	[2]6.5	[2]6.3	7.6
Pacific	179,584	[2]182,036	187,900	4.6	[2]4.7	5.9
New England:						
Maine	5,176	5,702	6,205	4.2	4.7	5.5
New Hampshire	4,933	5,011	5,254	4.5	4.5	5.7
Vermont	2,491	2,523	2,623	4.4	4.5	5.1
Massachusetts	16,258	16,819	17,873	2.7	2.8	3.1
Rhode Island	3,754	3,626	3,606	3.7	3.6	3.8
Connecticut	11,427	12,034	13,488	3.5	3.7	4.3
Middle Atlantic:						
New York	58,283	60,570	61,972	3.2	3.4	3.5
New Jersey	27,113	28,059	27,796	3.5	3.4	3.8
Pennsylvania	39,971	36,373	34,922	3.4	3.2	2.9
East North Central:						
Ohio	53,504	48,627	56,809	4.9	4.5	5.4
Indiana	[2]39,571	[2]35,010	[3]40,006	[2]7.1	[2]6.3	[3]7.3
Illinois	45,977	46,066	50,997	4.0	4.0	4.5
Michigan	40,566	40,276	45,047	4.4	4.4	4.9
Wisconsin	17,727	17,730	17,546	3.6	3.7	3.7
West North Central:						
Minnesota	15,595	15,675	[4]15,371	3.6	3.6	[4]3.8
Iowa	10,913	10,507	11,854	3.9	3.8	4.1
Missouri	25,701	25,139	27,595	5.0	4.9	5.6
North Dakota	2,320	2,229	2,142	3.6	3.5	3.3
South Dakota	2,651	2,624	2,811	3.8	3.8	4.1
Nebraska	6,496	6,308	6,442	4.1	4.0	4.1
Kansas	12,560	12,296	13,410	5.1	5.0	5.7
South Atlantic:						
Delaware	2,986	2,896	2,313	4.5	4.4	3.9
Maryland	16,607	16,321	17,494	3.5	3.5	4.1
District of Columbia	2,291	2,751	4,682	3.6	4.4	7.3
Virginia	27,307	25,808	23,615	4.4	4.2	4.4
West Virginia	9,775	9,154	10,273	5.4	5.1	5.3
North Carolina	34,039	32,272	28,050	5.1	4.9	4.8
South Carolina	16,182	15,115	13,595	4.6	4.4	4.4
Georgia	36,857	34,556	34,743	5.7	5.4	6.4
Florida	80,995	79,685	71,579	6.2	6.3	7.3
East South Central:						
Kentucky	20,897	20,396	[2]16,731	5.7	5.5	[2]4.6
Tennessee	32,198	31,939	30,206	6.8	6.8	6.8
Alabama	25,678	24,985	26,745	6.3	6.2	6.9
Mississippi	12,735	12,945	13,846	4.9	5.0	5.5
West South Central:						
Arkansas	16,655	16,687	[2]15,882	7.1	7.1	[2]6.9
Louisiana	[2]12,525	[2]9,922	[2]18,108	•	•	[2]4.3
Oklahoma	24,977	23,050	24,226	7.9	7.3	8.0
Texas	93,850	93,434	96,809	5.5	5.6	6.8

See footnotes at end of table.

EXHIBIT 3

Table 2. Number and rate of divorces and annulments: United States, each region, division, and State, 1980, 1989, and 1990—Con.

[Data are counts of decrees granted supplied by States. Figures for the divorce-registration States differ from those based on sample data shown in table 4. Rates per 1,000 population in each area enumerated as of April 1 for 1980 and estimated as of July 1 for all other years]

Region, division, and State	Number			Rate		
	1990	1989	1980	1990	1989	1980
Mountain:						
Montana	4,049	4,112	4,940	5.1	5.1	6.3
Idaho	6,446	6,275	6,596	6.4	6.3	7.0
Wyoming	3,132	3,034	4,003	6.9	6.8	8.5
Colorado	18,665	16,686	18,571	5.6	5.7	6.4
New Mexico	[2]9,327	[2]8,817	10,426	[2]6.1	[2]5.9	8.0
Arizona	25,088	23,153	19,908	6.8	6.4	7.3
Utah	8,950	8,119	7,802	5.2	4.8	5.3
Nevada	13,095	13,203	13,842	10.8	11.6	17.3
Pacific:						
Washington	28,757	29,890	28,642	5.9	5.7	6.9
Oregon	15,734	15,079	17,762	5.5	5.4	6.7
California	127,044	[2,5]131,025	133,541	4.3	[2,5]4.5	5.6
Alaska	3,170	3,429	3,517	6.7	8.3	8.8
Hawaii	5,178	5,613	4,438	4.8	5.1	4.6

[1]Figure includes estimates; see Technical notes.
[2]Data are incomplete; see Technical notes.
[3]Some counties reported divorce petitions filed rather than decrees granted.
[4]Data are estimated.
[5]Includes approximately 1,000 legal separations.

Table 3. Estimated number of children involved in divorces and annulments, average number of children per decree, and rate per 1,000 children under 18 years of age: United States, 1950–90

[Data refer to children under 18 years of age and only to events occuring within the United States. Beginning in 1960, estimated from frequencies based on sample data; for 1950–59, estimated from total counts. For estimating method, see Technical notes. Population enumerated as of April 1 for 1950, 1960, 1970, and 1980 and estimated as of July 1 for all other years]

Year	Estimated number of children involved	Average number of children per decree	Rate per 1,000 children under 18 years of age
1990	1,075,000	0.90	16.8
1989	1,063,000	0.91	16.8
1988	1,044,000	0.89	16.4
1987	1,038,000	0.89	16.3
1986	1,064,000	0.90	16.8
1985	1,091,000	0.92	17.3
1984	1,081,000	0.92	17.2
1983	1,091,000	0.94	17.4
1982	1,108,000	0.94	17.6
1981	1,180,000	0.97	18.7
1980	1,174,000	0.98	17.3
1979	1,181,000	1.00	18.4
1978	1,147,000	1.01	17.7
1977	1,095,000	1.00	16.7
1976	1,117,000	1.03	16.9
1975	1,123,000	1.06	16.7
1974	1,098,000	1.12	16.2
1973	1,079,000	1.17	15.7
1972	1,021,000	1.20	14.7
1971	946,000	1.22	13.6
1970	870,000	1.22	12.5
1969	840,000	1.31	11.9
1968	784,000	1.34	11.1
1967	701,000	1.34	9.9
1966	669,000	1.34	9.5
1965	630,000	1.32	8.9
1964	613,000	1.36	8.7
1963	562,000	1.31	8.2
1962	532,000	1.29	7.9
1961	516,000	1.25	7.8
1960	463,000	1.16	7.2
1959	468,000	1.16	7.5
1958	398,000	1.08	6.5
1957	379,000	0.99	6.4
1956	361,000	0.95	6.3
1955	347,000	0.92	6.3
1954	341,000	0.90	6.4
1953	330,000	0.85	6.4
1952	318,000	0.81	6.2
1951	304,000	0.80	6.1
1950	299,000	0.78	6.3

EXHIBIT 4

Table 4. Number of divorces and annulments and percent distribution, by number of children involved under 18 years of age: Divorce-registration area and each registration State, 1989 and 1990

(Based on sample data)

Area and year	All divorces and annulments	Number of children involved under 18 years of age					
		Total	None	1	2	3	4 or more
1990	Number	Percent distribution					
Divorce-registration area	580,111	100.0	47.0	25.1	20.0	6.1	1.8
Alabama	25,770	100.0	48.9	26.3	17.8	5.2	1.7
Alaska	3,161	100.0	50.9	22.0	19.1	5.5	2.5
Connecticut	10,330	100.0	50.5	23.9	19.2	6.2	1.2
Delaware	3,094	100.0	47.5	25.2	19.9	5.7	1.7
District of Columbia	2,490	100.0	62.0	22.3	11.8	2.7	1.2
Georgia	36,940	100.0	47.8	26.6	19.5	4.8	1.3
Hawaii	5,179	100.0	47.7	23.3	20.2	6.4	2.4
Idaho	5,456	100.0	45.2	22.7	20.4	7.9	3.8
Illinois	48,290	100.0	45.5	24.7	20.9	7.1	1.8
Iowa	10,914	100.0	41.1	24.3	23.7	8.8	2.2
Kansas	12,570	100.0	44.8	23.6	21.9	7.5	2.3
Kentucky	20,750	100.0	49.0	25.9	19.0	5.0	1.1
Maryland	18,565	100.0	53.9	23.3	15.8	4.1	0.9
Massachusetts	16,280	100.0	45.3	25.2	21.4	6.6	1.5
Michigan	40,640	100.0	46.3	22.7	21.8	6.7	2.4
Missouri	25,585	100.0	45.8	25.9	20.3	6.2	1.8
Montana	4,049	100.0	44.7	23.6	21.5	7.7	2.5
Nebraska	6,500	100.0	36.4	24.7	25.1	10.9	2.9
New Hampshire	4,955	100.0	40.6	25.9	24.4	7.2	1.9
New York	58,160	100.0	52.5	24.3	17.1	4.9	1.2
Ohio	53,500	100.0	46.4	25.1	20.8	6.4	1.5
Oregon	15,755	100.0	45.2	22.5	20.4	6.2	2.7
Pennsylvania	40,120	100.0	43.2	27.8	21.3	6.4	1.6
Rhode Island	3,784	100.0	42.7	27.7	22.0	6.2	1.5
South Carolina	16,190	100.0	46.7	27.6	19.1	5.2	1.4
South Dakota	2,654	100.0	40.3	24.8	23.8	8.3	3.0
Tennessee	32,110	100.0	50.1	27.1	17.5	4.6	0.8
Utah	8,950	100.0	38.8	21.8	21.4	11.6	6.6
Vermont	2,491	100.0	42.6	23.8	25.0	6.4	2.2
Virginia	27,275	100.0	51.3	26.1	17.8	4.2	0.9
Wisconsin	17,760	100.0	39.4	24.8	25.0	8.7	2.3
Wyoming	3,132	100.0	43.2	23.1	22.8	8.2	2.7
1989							
Divorce-registration area	568,441	100.0	46.8	26.2	19.9	6.2	1.9
Alabama	25,085	100.0	46.2	26.7	18.4	5.2	1.5
Alaska	3,419	100.0	47.6	24.5	19.2	6.2	2.5
Connecticut	11,652	100.0	50.9	23.9	18.7	5.3	1.2
Delaware	2,896	100.0	47.0	26.8	19.0	5.7	1.3
District of Columbia	1,842	100.0	63.0	22.0	11.1	2.7	*
Georgia	35,160	100.0	49.6	26.1	17.7	5.2	1.4
Hawaii	5,813	100.0	44.6	25.1	20.9	6.4	2.9
Idaho	6,256	100.0	44.8	22.6	21.5	7.5	3.8
Illinois	45,870	100.0	45.4	25.0	20.4	7.0	2.1
Iowa	10,510	100.0	39.1	24.4	25.3	9.0	2.3
Kansas	12,294	100.0	44.5	23.1	22.4	7.5	2.4
Kentucky	20,395	100.0	50.3	26.6	16.6	4.9	1.6
Maryland	16,315	100.0	53.2	25.9	16.2	4.0	0.8
Massachusetts	16,845	100.0	45.5	25.8	21.1	6.6	2.2
Michigan	40,270	100.0	44.1	24.4	21.4	7.3	3.0
Missouri	25,135	100.0	48.0	24.3	19.7	6.3	1.7
Montana	4,103	100.0	44.9	22.4	22.5	7.7	2.5
Nebraska	6,344	100.0	37.1	25.8	24.7	8.9	3.1
New Hampshire	5,023	100.0	42.3	26.4	23.0	6.6	1.8
New York	60,800	100.0	52.9	22.7	18.9	5.8	1.7
Ohio	48,630	100.0	45.4	25.4	21.0	6.3	1.9
Oregon	15,085	100.0	47.6	21.7	21.5	6.7	2.5
Pennsylvania	38,390	100.0	42.7	26.9	22.5	6.3	1.8
Rhode Island	3,628	100.0	40.5	28.1	24.8	6.8	2.2
South Carolina	15,120	100.0	46.6	26.4	19.0	4.9	1.1
South Dakota	2,627	100.0	41.5	24.4	23.1	8.2	2.8
Tennessee	31,880	100.0	50.1	26.9	17.8	4.2	1.1
Utah	8,114	100.0	37.8	22.4	21.0	10.6	8.3
Vermont	2,523	100.0	39.8	25.3	26.2	6.8	2.1
Virginia	25,790	100.0	50.7	26.7	17.0	4.8	1.0
Wisconsin	17,735	100.0	37.8	25.6	25.6	8.7	2.5
Wyoming	3,034	100.0	42.0	23.2	24.3	7.8	2.9

EXHIBIT 5

Table 5. Number of divorces and annulments by age of *men* and women at time of decree, 1990; and rates by age of men and women at time of decree, 1970, 1980, and 1984–90: Divorce-registration area

[Based on sample data. Before calculation of rates, figures for age not stated were distributed. Before 1989, rates exclude data for Michigan, Ohio, and South Dakota; beginning in 1989 rates exclude data for Ohio and South Dakota. Rates per 1,000 married population in specified group enumerated as of April 1 for 1970 and 1980 and estimated as of July 1 for all other years]

Age of men and women at time of decree	*Number*	*Rate*								
	1990	*1990*	*1989*	*1988*	*1987*	*1986*	*1985*	*1984*	*1980*	*1970*
Men										
All ages	580,111	19.2	18.7	18.9	18.8	19.0	19.4	19.2	19.8	14.2
15–19 years[1]	2,183	32.6	34.7	37.5	37.6	41.2	40.0	42.9	29.3	15.1
20–24 years	41,952	50.2	51.1	55.9	52.2	49.5	49.9	48.2	46.9	33.6
25–29 years	100,807	39.3	37.9	38.9	37.5	38.2	38.4	37.6	41.4	30.0
30–34 years	111,292	31.9	30.5	30.2	30.4	30.6	30.4	31.7	33.6	22.3
35–39 years	94,481	25.9	25.8	26.1	26.0	25.4	26.3	27.1	26.8	17.9
40–44 years	76,535	21.9	21.7	21.3	21.4	22.2	23.2	22.0	21.0	13.8
45–49 years	47,805	17.3	16.9	17.0	17.1	17.2	16.7	16.1	14.5	10.7
50–54 years	27,388	12.0	11.5	11.4	11.0	10.8	11.1	10.7	9.5	7.6
55–59 years	16,062	7.8	7.2	7.0	6.5	6.4	6.8	6.4	5.8	5.1
60–64 years	9,623	4.7	4.5	4.5	4.3	4.2	4.1	4.0	3.7	3.4
65 years and over	9,599	2.1	2.0	1.9	2.0	2.0	2.1	1.9	1.9	1.9
Not stated	43,364	...	...	...	...	...	...	...	...	...
Women										
All ages	580,111	18.7	18.4	18.5	18.6	18.8	19.2	18.8	19.5	14.0
15–19 years[1]	8,316	48.6	52.0	56.3	49.5	51.4	48.4	45.5	42.4	26.9
20–24 years	69,340	46.0	44.8	46.3	46.0	46.2	46.8	44.4	47.2	33.3
25–29 years	116,486	36.6	35.5	35.6	33.9	34.5	35.6	35.0	37.8	25.7
30–34 years	111,421	27.9	27.7	28.7	27.2	27.7	28.6	28.1	29.2	18.9
35–39 years	86,858	23.1	22.6	22.3	23.1	23.0	23.4	23.5	23.3	14.8
40–44 years	66,310	19.3	19.1	19.0	18.7	18.6	19.6	18.5	18.7	11.9
45–49 years	36,852	13.8	12.9	13.0	13.1	12.8	12.8	11.8	10.8	8.5
50–54 years	18,330	8.2	7.8	7.8	7.5	7.6	7.4	7.4	6.8	5.8
55–59 years	9,285	4.8	4.7	4.7	4.5	4.2	4.2	4.3	3.9	3.5
60–64 years	5,670	2.9	2.7	2.8	2.7	2.8	2.7	2.7	2.7	2.3
65 years and over	5,151	1.4	1.4	1.5	1.5	1.5	1.6	1.4	1.4	1.3
Not stated	46,092	...	...	...	...	...	...	...	...	...

[1]Includes divorces of persons under 15 years of age.

EXHIBIT 6

Table 6. Percent distribution of divorces and annulments by age of husband and wife at time of decree: Divorce-registration area, 1970 and 1980–90

[Based on sample data]

Age of husband and wife at time of decree	1990	1989	1988	1987	1986	1985	1984	1983	1982	1981	1980	1970
Husband	Percent distribution											
All ages	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Under 20 years	0.4	0.4	0.4	0.4	0.5	0.5	0.5	0.6	0.6	0.7	0.8	0.8
20–24 years	7.8	8.2	8.7	9.0	9.7	10.3	10.8	11.0	11.7	12.5	13.5	16.3
25–29 years	18.8	18.9	19.5	20.2	20.6	21.0	20.9	21.3	22.0	22.6	23.4	22.8
30–34 years	20.7	21.2	20.8	20.6	20.6	20.6	20.7	21.0	21.3	22.1	21.4	16.2
35–39 years	17.6	17.5	17.2	17.3	17.6	17.2	17.1	16.6	16.3	15.1	14.6	12.8
40–44 years	14.1	13.7	13.3	13.0	12.1	12.0	11.8	11.5	10.7	10.0	9.8	10.7
45–49 years	8.9	8.6	8.4	8.1	7.8	7.4	7.4	7.2	6.9	6.7	6.5	8.3
50–54 years	5.1	5.0	4.9	4.8	4.8	4.8	4.7	4.8	4.8	4.8	4.4	5.4
55–59 years	3.0	3.0	2.9	2.9	2.9	3.0	3.0	2.9	2.8	2.7	2.7	3.2
60–64 years	1.8	1.8	1.8	1.8	1.7	1.8	1.7	1.7	1.5	1.5	1.4	1.8
65 years and over	1.8	1.8	1.7	1.7	1.7	1.7	1.8	1.5	1.5	1.4	1.4	1.7
Wife												
All ages	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Under 20 years	1.8	1.8	1.7	1.7	2.0	2.1	2.2	2.5	2.7	2.9	3.4	4.1
20–24 years	13.0	13.3	14.4	15.0	16.3	16.8	17.3	17.4	18.6	19.5	20.8	24.9
25–29 years	21.8	22.4	22.8	22.6	22.8	23.1	23.1	23.8	24.1	24.8	24.6	21.8
30–34 years	20.9	21.1	20.4	20.3	19.8	19.9	19.7	19.5	19.9	20.2	19.4	14.4
35–39 years	16.3	16.2	15.8	16.1	16.2	15.5	15.4	15.0	14.2	13.1	12.8	11.0
40–44 years	12.4	11.8	11.4	11.0	10.1	10.2	9.8	9.5	8.8	8.2	7.7	9.4
45–49 years	6.9	6.8	6.5	6.2	5.8	5.6	5.5	5.5	5.1	4.9	4.8	6.8
50–54 years	3.4	3.3	3.3	3.2	3.2	3.1	3.2	3.2	3.1	3.1	3.1	3.8
55–59 years	1.7	1.8	1.8	1.9	1.8	1.8	1.9	1.9	1.8	1.8	1.7	2.0
60–64 years	1.1	1.0	1.1	1.1	1.1	1.1	1.0	1.0	1.0	0.9	0.9	1.0
65 years and over	1.0	0.9	1.0	0.9	0.9	0.9	0.8	0.9	0.8	0.8	0.8	0.8

EXHIBIT 7

Table 7. Median and mean age of husband and wife at time of decree by number of this marriage: Divorce-registration area, 1970–90

(Based on sample data. Means and medians computed on data by single years of age)

Year	Number of marriage of husband						Number of marriage of wife					
			Remarriage						Remarriage			
	Total	First marriage	Total[1]	Second marriage	Third marriage or more	Number of marriage not stated	Total	First marriage	Total[1]	Second marriage	Third marriage or more	Number of marriage not stated
	Median age in years											
1990	35.6	33.2	41.5	40.4	44.9	35.1	33.2	31.1	38.2	37.3	40.6	32.8
1989	35.4	32.9	41.2	40.2	44.3	35.8	32.9	30.9	37.7	36.8	40.2	33.1
1988	35.1	32.7	40.8	39.7	44.1	35.3	32.6	30.6	37.5	36.6	40.1	32.7
1987	34.9	32.6	40.4	39.5	43.7	35.1	32.5	30.5	37.3	36.4	39.8	32.6
1986	34.6	32.4	40.0	39.2	43.5	34.9	32.1	30.2	37.0	36.1	39.4	32.2
1985	34.4	32.2	39.8	38.8	43.0	34.5	31.9	30.0	36.8	36.0	39.1	31.8
1984	34.3	32.2	39.6	38.5	42.7	34.4	31.7	30.0	36.4	35.7	38.5	31.5
1983	34.0	32.1	39.3	38.3	42.6	34.1	31.5	29.8	36.3	35.5	38.9	31.3
1982	33.6	31.7	39.1	38.0	42.4	33.7	31.1	29.5	35.8	35.0	38.8	30.9
1981	33.1	31.4	38.5	37.4	42.4	33.4	30.6	29.1	35.3	34.5	38.5	30.8
1980	32.7	31.0	38.3	37.3	41.9	32.8	30.3	28.8	35.2	34.3	38.3	30.1
1979	32.5	30.8	38.4	37.3	42.4	32.5	30.1	28.6	35.3	34.4	38.5	29.9
1978	32.0	30.5	38.2	36.9	41.1	32.5	29.7	28.3	35.1	33.9	38.7	29.7
1977	32.4	30.5	39.3	38.0	43.8	32.5	29.9	28.2	35.7	34.6	40.1	29.9
1976	32.3	30.2	39.8	38.2	44.3	31.9	29.7	28.1	36.2	34.9	40.8	29.2
1975	32.2	30.1	39.9	38.3	44.9	32.8	29.5	27.9	36.4	35.1	40.8	29.7
1974	32.2	30.2	40.3	38.7	45.0	32.0	29.5	27.7	36.7	35.4	41.3	29.2
1973	32.4	30.4	40.8	39.3	45.8	31.7	29.7	27.8	37.3	36.0	42.0	28.7
1972	32.6	30.4	40.9	39.4	45.8	32.4	29.8	27.9	37.7	36.2	42.6	29.6
1971	32.9	30.5	41.5	40.0	46.3	32.8	29.8	27.7	37.9	36.5	42.2	29.8
1970	32.9	30.5	41.5	39.9	46.5	33.1	29.8	27.7	38.2	36.8	42.8	29.3
	Mean age in years											
1990	37.3	35.0	43.1	41.9	46.5	37.2	34.8	32.9	39.5	38.6	41.9	34.7
1989	37.2	34.8	42.9	41.8	46.1	37.4	34.6	32.7	39.2	38.3	41.6	34.7
1988	36.9	34.7	42.5	41.5	45.8	37.0	34.4	32.5	39.0	38.2	41.5	34.3
1987	36.8	34.6	42.3	41.3	45.5	37.2	34.2	32.4	38.8	38.0	41.4	34.4
1986	36.5	34.4	42.1	41.0	45.2	36.8	33.9	32.2	38.6	37.8	41.1	33.8
1985	36.4	34.3	41.9	41.0	44.9	36.4	33.7	32.0	38.5	37.7	41.2	33.6
1984	36.2	34.2	41.6	40.7	44.6	36.4	33.6	31.9	38.2	37.5	40.5	33.6
1983	36.1	34.1	41.4	40.5	44.6	36.1	33.5	31.8	38.1	37.2	41.0	33.1
1982	35.7	33.7	41.3	40.3	44.6	35.8	33.1	31.4	37.9	37.0	40.7	32.9
1981	35.4	33.4	40.9	39.8	44.5	35.8	32.7	31.1	37.8	36.7	40.5	32.7
1980	35.1	33.2	40.8	39.8	43.7	35.3	32.4	30.8	37.4	36.5	40.4	32.3
1979	35.0	33.1	40.7	39.7	44.2	35.4	32.3	30.7	37.4	36.6	40.8	32.5
1978	34.8	32.9	40.5	39.5	43.8	35.0	32.1	30.5	37.2	36.2	40.5	32.1
1977	35.1	33.0	41.4	40.4	45.3	35.1	32.4	30.5	38.1	37.2	41.8	32.2
1976	35.1	32.9	41.7	40.4	45.6	34.8	32.3	30.4	38.3	37.1	42.2	31.8
1975	35.0	32.8	41.7	40.4	45.8	35.6	32.3	30.3	38.5	37.4	42.1	32.5
1974	35.1	32.9	42.1	40.9	46.1	35.1	32.3	30.3	38.8	37.6	42.6	32.1
1973	35.3	33.1	42.4	41.1	46.4	34.9	32.5	30.4	39.1	38.0	42.7	31.6
1972	35.4	33.2	42.4	41.1	46.4	35.3	32.6	30.5	39.3	38.0	43.4	32.4
1971	35.6	33.2	42.7	41.4	46.8	35.2	32.7	30.4	39.4	38.2	43.0	32.3
1970	35.6	33.2	42.8	41.4	47.1	35.4	32.7	30.4	39.3	38.1	43.4	32.2

[1]Includes remarried, number not stated.

EXHIBIT 8

Table 8. Percent distribution of divorces and annulments by age of husband and wife at time of this marriage: Divorce-registration area, 1970 and 1980–90

[Based on sample data]

Age of husband and wife at time of this marriage	1990	1989	1988	1987	1986	1985	1984	1983	1982	1981	1980	1970
Husband						Percent distribution						
All ages	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Under 20 years	11.7	12.1	12.4	12.8	13.7	14.2	14.9	15.4	16.1	17.0	18.0	19.3
20–24 years	38.8	39.3	40.2	40.5	40.8	41.4	41.9	42.5	43.0	44.0	44.0	43.8
25–29 years	22.3	22.0	21.8	21.3	21.0	20.5	20.1	19.7	19.3	18.7	18.4	18.4
30–34 years	11.6	11.1	10.8	10.6	10.4	10.3	9.7	9.3	9.0	8.6	8.1	7.6
35–39 years	6.5	6.5	6.2	6.3	5.8	5.5	5.4	5.1	5.0	4.6	4.5	4.6
40–44 years	3.9	3.8	3.7	3.5	3.5	3.4	3.1	3.2	3.0	2.8	2.8	3.2
45 years and over	5.2	5.3	5.0	5.0	4.9	4.8	4.9	4.7	4.7	4.5	4.2	5.2
Wife												
All ages	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Under 20 years	27.8	28.5	29.6	30.4	31.7	32.6	34.0	35.1	36.6	38.3	39.9	46.1
20–24 years	38.6	38.3	38.5	38.5	38.4	38.7	38.4	38.3	38.2	35.9	35.5	30.3
25–29 years	16.4	16.5	15.9	15.4	14.8	14.4	13.8	13.3	12.7	12.1	11.4	9.5
30–34 years	8.5	8.3	8.1	7.9	7.8	7.2	6.8	6.7	6.2	5.8	5.8	4.8
35–39 years	5.1	4.8	4.8	4.5	4.4	4.0	4.0	3.7	3.6	3.2	3.1	3.4
40–44 years	2.7	2.7	2.5	2.4	2.3	2.3	2.1	2.1	2.0	1.9	1.9	2.3
45 years and over	3.0	2.9	2.9	3.0	2.9	2.9	2.9	2.9	2.8	2.7	2.6	3.5

EXHIBIT 9

Table 9. Median and mean age of husband and wife at time of this marriage by number of marriage: Divorce-registration area, 1970–90

(Based on sample data. Medians and means computed on data by single years of age)

Year	Number of marriage of husband						Number of marriage of wife					
			Remarriage						Remarriage			
	Total	First marriage	Total[1]	Second marriage	Third marriage or more	Number of marriage not stated	Total	First marriage	Total[1]	Second marriage	Third marriage or more	Number of marriage not stated
	Median age in years											
1990	24.9	23.1	33.7	32.0	39.0	25.0	22.6	21.0	30.6	29.1	35.3	22.6
1989	24.8	23.0	33.6	31.9	38.7	24.8	22.5	20.9	30.3	28.8	35.0	22.4
1988	24.6	22.8	33.4	31.8	38.5	24.7	22.3	20.8	30.1	28.7	34.9	22.3
1987	24.5	22.8	33.4	31.8	38.2	24.8	22.2	20.7	30.2	28.7	34.9	22.2
1986	24.3	22.7	33.2	31.6	38.0	24.6	22.0	20.6	30.0	28.6	34.7	22.1
1985	24.1	22.6	32.9	31.4	37.9	24.2	21.8	20.5	29.8	28.4	34.6	21.8
1984	24.0	22.5	32.7	31.3	37.5	24.2	21.7	20.4	29.6	28.3	34.0	21.6
1983	23.8	22.4	32.5	31.1	37.7	24.3	21.5	20.3	29.5	28.1	34.1	21.5
1982	23.7	22.3	32.4	31.0	37.6	23.9	21.3	20.2	29.2	28.0	34.3	21.4
1981	23.4	22.1	32.0	30.6	37.6	23.7	21.1	20.0	28.9	27.7	33.9	21.2
1980	23.3	22.0	31.8	30.4	37.1	23.7	20.9	19.9	28.8	27.4	33.9	21.0
1979	23.2	22.0	31.7	30.4	37.2	23.5	20.9	19.8	28.8	27.4	34.0	20.9
1978	23.0	21.9	31.5	30.1	37.1	23.2	20.7	19.7	28.5	27.1	34.1	20.8
1977	23.1	21.9	32.1	30.9	38.1	23.1	20.7	19.7	28.9	27.5	34.7	20.6
1976	23.1	21.9	32.5	30.7	38.6	22.8	20.7	19.7	29.3	27.6	35.2	20.4
1975	23.0	21.9	32.1	30.5	38.8	23.1	20.6	19.7	29.1	27.4	35.3	20.4
1974	23.0	21.8	32.8	30.8	39.1	23.1	20.6	19.6	29.3	27.7	35.5	20.4
1973	22.9	21.8	32.8	31.0	39.3	23.0	20.5	19.6	29.4	27.7	36.3	20.4
1972	23.0	21.8	32.7	30.8	39.0	22.9	20.5	19.5	29.5	27.7	36.8	20.4
1971	23.0	21.8	33.0	31.1	39.8	22.8	20.5	19.5	29.6	27.9	36.1	20.1
1970	23.0	21.8	33.0	31.1	39.8	22.7	20.4	19.4	29.6	27.7	36.8	19.9
	Mean age in years											
1990	27.8	24.2	35.8	34.1	40.6	27.8	25.0	22.0	32.4	31.0	36.5	25.2
1989	27.5	24.1	35.7	34.1	40.5	27.6	24.9	21.9	32.2	30.8	36.5	24.9
1988	27.3	23.9	35.5	34.0	40.2	27.5	24.7	21.8	32.1	30.7	36.4	24.7
1987	27.2	23.9	35.5	34.0	40.2	27.6	24.7	21.7	32.1	30.7	36.5	24.8
1986	27.0	23.8	35.4	33.9	40.0	27.4	24.4	21.6	32.0	30.6	36.2	24.6
1985	26.9	23.7	35.3	33.8	39.8	27.3	24.3	21.5	31.9	30.6	36.4	24.3
1984	26.7	23.6	35.1	33.7	39.6	27.4	24.1	21.3	31.8	30.5	35.7	24.6
1983	26.6	23.4	34.9	33.5	39.5	27.2	24.0	21.2	31.7	30.4	36.2	24.2
1982	26.4	23.3	35.0	33.5	39.8	27.0	23.8	21.0	31.8	30.3	36.1	24.1
1981	26.1	23.1	34.6	33.2	39.6	26.9	23.5	20.9	31.4	30.1	35.9	23.9
1980	25.9	23.0	34.4	33.0	39.0	26.7	23.3	20.7	31.2	29.8	35.9	23.8
1979	25.8	22.9	34.5	33.1	39.2	26.6	23.2	20.6	31.2	29.9	35.9	23.6
1978	25.7	22.9	34.2	32.8	39.0	26.1	23.1	20.5	31.0	29.6	36.0	23.1
1977	25.9	22.9	34.9	33.5	40.0	26.0	23.3	20.5	31.6	30.2	36.6	22.9
1976	25.9	22.9	35.2	33.5	40.4	25.6	23.3	20.5	31.9	30.2	37.1	22.6
1975	25.8	22.9	35.0	33.4	40.5	26.2	23.2	20.4	31.8	30.3	37.0	23.0
1974	25.9	22.8	35.4	33.7	40.9	25.9	23.2	20.4	32.1	30.4	37.5	22.8
1973	25.9	22.8	35.5	33.8	40.9	25.9	23.2	20.3	32.1	30.5	37.6	22.7
1972	25.9	22.9	35.3	33.7	40.7	25.8	23.2	20.3	32.2	30.5	37.9	22.8
1971	26.0	22.9	35.6	33.8	41.3	25.3	23.2	20.2	32.3	30.6	37.7	22.3
1970	26.1	23.0	35.7	34.0	41.2	25.5	23.2	20.2	32.3	30.5	38.0	22.2

[1]Includes remarried, number not stated.

EXHIBIT 10

Table 10. Median and mean duration of marriage at time of decree by number of this marriage of husband and wife: Divorce-registration area, 1970–90

[Based on sample data]

Year	Number of marriage of husband						Number of marriage of wife				
			Remarriage					Remarriage			
	Total	First marriage	Total[1]	Second marriage	Third marriage or more	Number of marriage not stated	First marriage	Total[1]	Second marriage	Third marriage or more	Number of marriage not stated
	Median duration in years										
1990	7.2	8.1	5.5	6.3	4.6	6.8	8.3	5.5	6.1	4.0	6.8
1989	7.2	8.1	5.7	6.2	4.3	7.2	8.2	5.4	6.0	3.9	7.1
1988	7.1	8.0	5.5	5.9	4.3	7.0	8.1	5.3	5.9	3.9	7.1
1987	7.0	7.9	5.3	5.7	4.0	7.0	8.0	5.1	5.8	3.7	7.0
1986	6.9	7.9	5.1	5.5	3.9	6.9	7.9	5.0	5.5	3.6	6.9
1985	6.8	8.0	4.9	5.4	3.7	6.5	8.0	4.8	5.4	3.5	6.5
1984	6.9	8.3	4.8	5.2	3.6	6.5	8.2	4.7	5.2	3.4	6.5
1983	7.0	8.4	4.8	5.2	3.6	6.6	8.4	4.7	5.2	3.3	6.6
1982	7.0	8.2	4.8	5.0	3.4	6.8	8.2	4.5	5.0	3.2	6.9
1981	7.0	8.1	4.5	4.9	3.3	6.8	8.0	4.4	4.9	3.1	6.8
1980	6.8	7.8	4.4	4.8	3.2	6.5	7.7	4.4	4.8	3.2	6.6
1979	6.8	7.8	4.4	4.8	3.3	6.8	7.7	4.4	4.8	3.0	6.7
1978	6.6	7.5	4.3	4.6	3.2	6.3	7.5	4.3	4.7	3.0	6.4
1977	6.6	7.5	4.6	4.8	3.5	6.4	7.4	4.6	4.9	3.4	6.4
1976	6.5	7.3	4.5	4.8	3.5	6.1	7.3	4.5	4.9	3.4	6.2
1975	6.5	7.3	4.5	4.8	3.6	6.4	7.2	4.5	5.0	3.2	6.4
1974	6.5	7.3	4.6	5.0	3.6	6.4	7.2	4.6	5.0	3.5	6.5
1973	6.6	7.5	4.6	4.9	3.7	6.3	7.5	4.6	5.2	3.6	6.3
1972	6.7	7.5	4.7	5.0	3.6	6.2	7.4	4.8	5.2	3.7	6.3
1971	6.7	7.6	4.9	5.2	3.6	6.5	7.5	4.9	5.4	3.7	6.5
1970	6.7	7.6	4.8	5.1	3.9	6.5	7.6	4.9	5.3	3.8	6.5
	Mean duration in years										
1990	9.8	10.9	7.4	7.8	6.0	9.3	11.0	7.1	7.7	5.4	9.3
1989	9.8	10.8	7.2	7.6	5.7	9.7	10.9	7.0	7.6	5.2	9.7
1988	9.7	10.8	7.0	7.5	5.6	9.6	10.9	6.9	7.5	5.2	9.7
1987	9.6	10.8	6.9	7.4	5.4	9.5	10.8	6.8	7.3	5.0	9.6
1986	9.6	10.7	6.7	7.2	5.3	9.4	10.7	6.7	7.2	5.0	9.5
1985	9.5	10.7	6.7	7.2	5.1	9.2	10.7	6.6	7.1	4.9	9.2
1984	9.5	10.8	6.5	7.0	5.1	9.1	10.8	6.5	7.0	4.8	9.2
1983	9.6	10.8	6.6	7.0	5.1	9.1	10.8	6.5	7.0	4.9	9.2
1982	9.4	10.5	6.4	6.9	4.8	9.3	10.5	6.3	6.8	4.7	9.3
1981	9.3	10.4	6.3	6.7	4.9	9.1	10.4	6.3	6.7	4.7	9.2
1980	9.2	10.2	6.2	6.6	4.8	9.2	10.2	6.3	6.8	4.7	9.2
1979	9.3	10.3	6.3	6.7	5.0	9.1	10.2	6.3	6.8	4.7	9.2
1978	9.1	10.1	6.3	6.7	4.9	8.9	10.1	6.3	6.7	4.6	9.0
1977	9.2	10.2	6.5	6.9	5.3	9.0	10.1	6.6	7.0	5.1	9.1
1976	9.2	10.1	6.5	7.0	5.2	8.9	10.1	6.6	7.0	5.2	9.0
1975	9.2	10.0	6.7	7.1	5.4	9.1	10.0	6.8	7.3	5.1	9.1
1974	9.3	10.1	6.8	7.2	5.2	9.3	10.1	6.8	7.2	5.2	9.4
1973	9.4	10.3	6.9	7.3	5.6	9.2	10.3	7.0	7.6	5.2	9.3
1972	9.5	10.3	7.1	7.5	5.8	9.2	10.3	7.1	7.6	5.6	9.3
1971	9.5	10.4	7.1	7.6	5.6	9.4	10.4	7.2	7.7	5.4	9.4
1970	9.5	10.4	7.1	7.4	5.9	9.4	10.4	7.1	7.7	5.5	9.5

[1] Includes remarried, number not stated.

EXHIBIT 11

Chart 4—*Grounds for Divorce and Residency Requirements*

STATE	No Fault Sole Ground	No Fault Added to Traditional	Incompatibility	Living Separate and Apart	Judicial Separation	Durational Requirement
Alabama		X	X	2 years	X	6 months
Alaska		X	X		X	30 days
Arizona	X	X[1]			X	90 days
Arkansas		X		18 months	X	60 days
California	X				X	6 months
Colorado	X				X	90 days
Connecticut		X		18 months	X	1 year
Delaware	X			6 months		6 months
D.C.	X			1 year	X	6 months
Florida	X					6 months
Georgia		X				6 months
Hawaii	X			2 years	X	6 months
Idaho		X			X	6 weeks
Illinois		X		2 years	X	90 days
Indiana		X			X	60 days
Iowa	X				X	1 year
Kansas		X	X		X	60 days
Kentucky	X			60 days	X	180 days
Louisiana		X[1]		6 months[2]	X	6 months
Maine		X			X	6 months
Maryland		X		2 years		1 year
Massachusetts		X			X	None
Michigan	X				X	6 months
Minnesota	X			60 days	X	180 days
Mississippi		X				6 months
Missouri		X		1-2 years	X	90 days
Montana	X		X	180 days	X	90 days
Nebraska	X				X	1 year
Nevada			X	1 year	X	6 weeks
New Hampshire		X		2 years		1 year
New Jersey		X		18 months		1 year
New Mexico		X	X		X	6 months
New York		X		1 year	X	1 year
North Carolina		X		1 year	X	6 months
North Dakota		X			X	6 months
Ohio		X	X	1 year		6 months
Oklahoma			X		X	10/90 days
Oregon	X				X	6 months
Pennsylvania		X		2 years		6 months
Rhode Island		X		3 years	X	1 year
South Carolina		X		1 year	X	3 months (both residents)
South Dakota		X			X	None
Tennessee		X		2 years	X	6 months
Texas		X		3 years		6 months
Utah		X		3 years	X	90 days
Vermont		X		6 months		6 months
Virginia		X		1 year	X	6 months
Washington	X					1 year
West Virginia		X		1 year	X	1 year
Wisconsin	X				X	6 months
Wyoming		X[3]	X[4]		X	60 days

1. Covenant marriage statutes establish specific grounds for divorce for covenant marriages.
2. Two years for covenant marriages.
3. "Aggrieved party" included.
4. Irreconcilable differences.

EXHIBIT 12