Whose Fault Was No-Fault Divorce?
The Story behind America’s Most Enduring Oxymoron

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When language aficionado Bo Mitchell judged 461 entries for the “Great Oxymoron Contest” in 1983, he ranked “wedded bliss” in third place. In fourteenth place came “happily married.” Mitchell distinguished two kinds of oxymorons: “linguistic oxymorons, which contain two words with opposite or conflicting meanings” (such as, “Positively no!” or “pretty ugly”) and “sociological oxymorons, which wryly comment on various stereotypes” (such as “military intelligence” or “honest politician”). A generation earlier, it is doubtful that Americans would so readily have considered “wedded bliss” or “happily married” as sociological oxymorons; those sentiments had been sincere, not self-contradictory, in the 1950s. During the late 1960s and early 1970s, however, a momentous series of events transformed the public rapport of marriage dramatically: the institution no longer would be associated with lifelong happiness, except in jest. What had brought about this change in expectations? Much of the answer may be discovered by unpacking the history behind another oxymoron that Mitchell placed near the top of his list: “no-fault divorce.”

Prior to the California Family Law Act of 1969, divorce across the fifty states required an adversarial procedure. A plaintiff filed for divorce, alleging specific faults by the other spouse, who was named

as the defendant. The clerk called the case Doe v. Doe, indicating one spouse “versus” the other. Only upon evidence of statutory grounds for fault—such as adultery, desertion, or cruelty—did the court decide in favor of the plaintiff and grant a decree of divorce. As other states followed California’s lead through the 1970s, fault vanished from the proceedings, and so did the other contextual clues as to the real meaning of “divorce”: the plaintiff became a petitioner, the defendant became a respondent, the case was renamed In re Doe, the venue shifted to the newly established and purportedly user-friendly “family court,” and no one alleged anyone else to be at fault. In fact, even that old-fashioned, pejorative term “divorce” yielded to the matter-of-fact neologism “dissolution of marriage,” devoid of any moral significance.2 This “dissolution revolution” never quite finished its course, however. Instead, the term “no-fault divorce” acquired colloquial acceptance, testifying by its very terminology that without constant reminding to the contrary, people would never believe that divorce could be legitimate apart from fault.

Although California’s new law marked the beginning of the no-fault revolution in the United States, the legislative deconstruction of marriage recently had occurred halfway across the globe, in a political climate quite distinct from the American scene. The Soviet Union pioneered no-fault divorce at the height of the Cold War; how ironic it was that the United States followed soon after. Why would the champion of western democracy adopt a public policy so dissimilar from its own heritage and so congruous with Soviet social engineering?

It turns out that no-fault received support from more than one segment of American society. Radical leftists, liberal theologians, and progressive lawyers each urged a loosening of the marital bond for their own peculiar reasons. Once the movement gathered momentum, even prominent moral conservatives gave up trying to stop it. Along the way, scholars occasionally paused to evaluate the impact of no-fault reform; often research revealed a gap between intentions and consequences, or showcased uncertainties as to the actual legacies of the new legislation,

but not until the 1990s did mainstream scholars call for a return to the formerly unquestionable presumption that marital permanency serves the best interests of men, women, and children, and of the society that they together constitute. By that time, too, a few traditionalists began re-inserting “fault” into the statutory procedures for divorce, but to gain acceptance they had to offer fault-based divorce as merely an optional rider on the otherwise unilaterally dissoluble marriage contract. The “no-fault” slogan already had been repeated for four decades, long enough to ring timelessly true in the national psyche.

**Russian Roulette: The Gamble of Soviet Social Engineering**

If no-fault divorce is the answer, then what was the question? In the case of the Soviet Union, the question centered on a need to correct the excesses of the Bolshevik Revolution of 1917, which had sought to annihilate marriage as a formal institution. In tsarist Russia, the Orthodox Church had permitted divorce only rarely, and on narrow grounds of fault. The situation changed when Tsar Nicholas II was deposed in 1917. Extending the critique by Marx and Engels that marriage was a bourgeois arrangement by which men “owned” the rights to the productive and reproductive labor of women, Vladimir Lenin decreed that individuals be free to divorce without cause, without mutual consent, and even without informing the other spouse. In effect, marriage lost whatever had distinguished it from cohabitation. In 1918, divorces outnumbered civil marriages five to one in Moscow.³ Writing for *The Atlantic* in 1926, an anonymous woman in Russia described the scene: “Peasant boys looked upon marriage as an exciting game and changed wives with the change of seasons.” The state paid for abortions, even as the number of vagrant homeless children abounded. Continued the Russian woman, “Among the general population and especially among the peasants there is a keen realization of the difficulties, material and otherwise, which have come up as a result of a too literal adoption of the ‘free love’ slogan.”⁴

By the 1930s, Soviet leaders realized that the children of the new,

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⁴ A Woman Resident in Russia, “The Russian Effort to Abolish Marriage,” *The Atlantic*, July 1926.
post-marital generation lacked the kind of socializing experiences that would prepare them for successful adult life; neither schools nor other public institutions could fill the gap where the family once had nurtured the young. A legal reform in 1944 introduced marital breakdown as a prerequisite for divorce, requiring the court to weigh evidence of such breakdown. Unlike in the United States, Soviet law had never enumerated “faults” constituting grounds for divorce. Rather, as the U.S.S.R. Supreme Court ruled in 1949, divorce was granted when “continuation of the marriage clashes with the principles of communist morality and creates abnormal conditions for family life and the upbringing of children.” In practice, this often meant that spousal incompatibility could suffice for divorce between a recently married couple with no children, but that an established couple with children would be obliged to remain married in service to the state. By reinstating marriage as a distinct category from cohabitation, the 1944 decree also reintroduced the bourgeois category of “illegitimate” children. In 1968, the pendulum oscillated once more, this time to re-legitimize all children while also expediting divorces for couples who had no children or who could mutually agree to a plan for the children’s welfare following the termination of their marriage.5

Properly speaking, the Soviet Union never had adopted “fault” divorce, but rather embarked upon an experiment that initially eliminated marriage as both an ecclesiastical and a civil institution and later elevated the voluntary cohabitation of two adults back to something resembling marriage—or at least resembling the kind of marriage that would become typical in the United States during the final three decades of the century: a mutual union of two persons with the option of unilateral dissolution, subject to a few limitations for the sake of protecting the weaker spouse and the children from extreme consequences.

It is doubtful that the Soviet reforms directly influenced American policy making. True, radical leftists such as Margaret Sanger had, in Marxist terms, also lambasted marriage as male capitalistic sexual slavery over women, but this view did not receive significant support in the United States; she instead learned to attack not marriage, but rather

Catholicism, in order to achieve Protestant support for birth control. As for divorce, the Soviet Union and the United States arrived at a similar center point from opposite extremes. The Soviets were retracing their steps from marital disestablishment toward the codification of marriage in an effort to stabilize the social order. When American legislatures adopted no-fault, they did so in response to a different question than the Soviets had been asking; only coincidentally did the Americans arrive at a similar answer. Moreover, whereas the Soviet government forced the church to surrender its regulation of marriage, the American states already had full legal authority over marriage plus reassurance from religious leaders that the time had come for no-fault reform.

**Liberal Theologians: Moving Ahead of the Legal (and Theological) Curve**

In terms of American religion, the history of no-fault divorce proceeded in three stages. Early in the twentieth century, liberals and conservatives broadly agreed that divorce required fault and that remarriage was even less permissible than divorce. By mid-century, liberal theologians broadened the set of faults that justified divorce, with a few voices even calling for no-fault divorce prior to legislative enactment. Finally, in the closing decades of the century, liberals and conservatives again approached a consensus, this time to ratify the new norm of no-fault divorce.

The transition between the first two stages may be seen readily in the history of the United Lutheran Church of America (ULCA), which formed during 1917–1918 from a liberal merger—that is, several church bodies agreed to disagree about how best to address the age-old debate between Calvinist predestination and Arminian free will. As to marriage and divorce, however, the ULCA retained a conservative stance, declaring in 1930: “In general, therefore, all divorce is to be condemned, and,

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whenever possible, avoided.” The 1930 convention urged that as pastors instruct their congregations, they should “seek to maintain among them a Christian conscience on divorce.”\(^9\) Both that year and again in 1936, the church prohibited pastors from solemnizing the second marriage of a divorced person, “unless he [the pastor] is convinced that the individual is the innocent party.”\(^10\)

By 1956, the liberal tendencies within the ULCA had begun to show themselves regarding the question of divorce. The national convention now agreed that “Christian love and concern for the welfare of all involved” might at times make reconciliation inadvisable. Remarriage, rather than being permitted only to the innocent party, now could proceed for either party upon receiving sufficient pastoral counsel and displaying “evidence of his [or her] Christian faith.”\(^11\) The 1956 position statement even called for “uniform and constructive marriage and divorce laws” that would avoid “adversary litigation” and permit a smoother “adjustment” once a civil dissolution of marriage seems inevitable.\(^12\)

In 1962, the United Lutheran Church of America merged with several other Lutheran bodies to form the Lutheran Church in America (LCA). Two years later, this new body adopted language identical to the 1956 ULCA statement, calling for a less adversarial approach to the civil dissolution of marriages.\(^13\) In 1967, a committee of the LCA, seeking to “stimulate thought and discussion,”\(^14\) dared to envision divorce without fault-finding:

Divorce proceedings pit two people against each other as adversaries, each having to destroy the other person in order to resolve a problem. The present divorce proceedings, which make one party innocent and

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10. Ibid.
11. Ibid.
12. Ibid.
the other guilty, are at variance with the insights of Christian ethics.  

By 1970, the LCA was ready to take official action; the convention adopted the position that divorce was not intrinsically sinful and at times may even be morally superior to the preservation of a marriage:

To identify the legal action of divorce as sinful by itself obscures the fact that the marital relationship has already been mutually undermined by thoughts, words, and actions. Although divorce often brings anguish to those concerned, there may be situations in which securing a divorce is more responsible than staying together.

The LCA had completely reversed the statements of its predecessor body, the ULCA, from the 1930s: in certain circumstances, divorce would not only be tolerated, but actually preferred, and those circumstances need not involve the assignment of moral fault.

Chronologically, the LCA’s reconstruction of divorce from a rarely permissible and always fault-based termination of marriage to a faultless happenstance coincided roughly with the deliberations of the California Commission on the Family. Under advice from that commission, the California Assembly enacted no-fault reform in 1969, with most states following suit in the 1970s. By 1982, a more moderate church body, the American Lutheran Church (ALC), similarly adopted a policy statement permitting divorce without demonstration of specific fault. Now contemplations of divorce could proceed on the shared recognition that “each party generally bears some responsibility.” With pastoral guidance, the parties would recognize that “a responsible choice” favors “the lesser of several evils in a fallen world,” a formula allowing for divorce.

In 1987, the ALC joined with the LCA and a third association of Lutheran congregations to form the Evangelical Lutheran Church in

15. “A Study Paper on Divorce and Remarriage.”
America (ELCA). In 2009, that body adopted a social statement concerning human sexuality. Although expressing an aspiration for marriage to be “lifelong” and “monogamous,” the resolution avoided any negative judgment concerning adultery or desertion and extended to all persons the “freedom” to marry someone new. In the drafting of this document, a proposed amendment to define marriage as a “lifelong, normative covenant” received significant support but fell short of the required majority.\(^\text{18}\) By that time, of course, many parishioners had already inherited the legacy of legal reforms that had excised fault from the statutory definition of divorce.

**Progressive Lawyers: Charting Efficient Paths to Individual Liberty**

Proponents of divorce reform in California ostensibly hoped to slow the rising divorce rate, eliminate hypocrisy in charges of fault, render court proceedings less confrontational, and foster more equitable outcomes for spouses.\(^\text{19}\) Following legislative hearings in 1964, Governor Edmund G. Brown assembled a Commission on the Family in 1966 to suggest revisions to marriage laws and to explore the establishment of family courts for handling divorce cases. Building upon the state supreme court’s ruling in *DeBurgh v. DeBurgh* (1952), which overturned the long-standing principle that only an innocent party may file for divorce, the commission began to push fault aside, both as a grounds for divorce and as a basis for determining alimony. Recommendations from the commission provided models for several legislative proposals in the late 1960s. By 1969, the assembly had settled upon a new Family Law Act based largely upon the work of Assemblyman James A. Hayne. The act sanitized the language of divorce (which became “dissolution of marriage”) and established fairness rather than fault as the standard for determining “support” (what once had been alimony). Because the legislature emphasized its desire to reduce adversity and foster amicable negotiations in the new family courts, likely opponents to no-fault divorce—such as Roman Catholics—became supporters of what they perceived to be mild

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reform, not a fundamental revolution.\textsuperscript{20}

California’s no-fault law had both an ideological and a personal connection to the Uniform Marriage and Divorce Act promulgated jointly by the American Bar Association (ABA) and the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1974. Herma Hill Kay, a law professor at the University of California who had served on the governor’s commission, worked as a co-reporter with Robert J. Levy, of the University of Minnesota, on the UMDA. Kay was not shy to advocate for a cause she believed in. As a school child in South Carolina, she had boldly stood alone in challenging her classmates’ consensus that “The South Should Have Won the Civil War.” Stunned, her teacher suggested law school. Kay’s subsequent legal career represented a steady crusade for women’s equality.\textsuperscript{21} Kay’s own support for no-fault divorce must be interpreted in this light, even if, as she acknowledged, the state assembly had not prioritized gender equality when enacting the bill she helped to draft.\textsuperscript{22} The governor’s commission, however, had at her urging explored equitable results for property distribution and child custody, and subsequent to the 1969 act Kay herself continued to push for reforms that would shift financial rewards from men toward women.\textsuperscript{23}

First, however, Kay and Levy had to produce a uniform divorce law that both the ABA and the NCCUSL would accept. The two organizations became gridlocked during the early 1970s over the definition of “irretrievably broken,” which was to be the sole criterion by which a court would determine that a dissolution of marriage should be granted. The NCCUSL preferred to leave the term undefined, allowing for judicial discretion. The ABA’s Family Law Section, by contrast, proposed that a demonstration of either physical separation of one year or else serious marital misconduct must substantiate that a marriage was irretrievably broken; these criteria effectively would have re-introduced fault

\textsuperscript{20} Allen M. Parkman, \textit{Good Intentions Gone Awry: No-Fault Divorce and the American Family} (New York: Rowman and Littlefield, 2000), 73–5.


\textsuperscript{22} Parkman, \textit{Good Intentions Gone Awry}, 76.

as grounds for divorce. Levy himself attributed the ABA’s meddling to jealous rivalry: the ABA was trying to take ownership of the NCCUSL’s proposal by modifying it. In any case, the two parties had heated debates and then suddenly reconciled their views concerning divorce, apparently due to the practical necessity of establishing a united front if their reform initiative was to win over state legislatures in the years to come.  

By 1980, thirty-seven of the fifty states had significantly altered their divorce laws toward the no-fault standard of California and the UMDA. While some states permitted both fault and no-fault to operate side by side, the trend clearly was following the path of least resistance.

Cautious Constituency-Builders: The Reluctance of the Religious Right to Address No-Fault Wrongs

No-fault reform has retained its status as the law of the land in part because it derives its justification from both sides of the political spectrum. Even if initially engineered by aloof lawyers and judges, not grassroots partisan reformers, no-fault divorce has strong champions on both the political left and right.Remarkably, the no-fault revolution of the 1970s and 1980s enjoyed bipartisan support despite an undercurrent of disagreement that fomented into a culture war during the 1990s, casting conservatives and liberals into a fierce debate over other moral and social issues—but generally not concerning divorce.

In California, Republicans united with Democrats in supporting no-fault divorce. A leading sponsor of the bill was Republican state senator Donald Grunsky, known as a “prominent conservative.” The law was signed by Governor Ronald Reagan, a conservative Republican who had risen to national attention for his endorsement of Barry Goldwater at the 1964 Republican National Convention. Ironically, Goldwater made a name for himself as a militant anti-communist, and yet Reagan’s

signature brought California into line with Soviet marriage reforms. Also ironic, Reagan, himself divorced and remarried, would be swept into the U.S. presidency in 1980 by a coalition of religious traditionalists known as the “Moral Majority.”

Founded by the television evangelist Jerry Falwell in 1979, the Moral Majority listed as third among its founding principles that “We are pro-traditional family.” Translated into action, this statement meant campaigning against abortion, pornography, homosexuality, and the Equal Rights Amendment, while seeking to restore school prayer. Strangely, the Moral Majority was virtually silent about divorce. Standard histories of Falwell’s movement do not even list “divorce” in the index.27

In 1988, Pat Robertson, another television evangelist, campaigned for the Republican presidential nomination under a banner of “traditional family values.” Although his candidacy failed to secure the endorsement of his party, his followers reorganized themselves around the Christian Coalition, a nonprofit organization established in 1989. The Coalition advocated for public displays of the Ten Commandments, opposed obscene works funded by the National Endowment for the Arts, attacked Darwinism, and implicated abortion and homosexuality with the decline of American society. As with the Moral Majority, however, the Christian Coalition seldom addressed divorce.

These are but a few of the pro-life, pro-family organizations that touted the benefits of marriage but barely mentioned divorce. The fact that the divorce rate is higher in “red states” than in “blue states” may have something to do with the inability of conservative organizations (both political and religious) to gain traction for the repeal of no-fault divorce.28 If not crusaders for it, conservatives at least have become complicit in accepting no-fault; it is increasingly difficult to distinguish which side conservatives favor in what remains of the debate. Pat Robertson, for example, suggested in 2011 to 700 Club viewers that the

The Family in America  Winter 2015

spouse of someone with Alzheimer’s disease may seek a divorce. He reasoned that severe mental illness is “a kind of death,” thus satisfying the marital vow “until death do us part.”

No-Fault Reform in Hindsight: Did Marriages Now End More Smoothly?
When the New York Times published a ten-year retrospective on California’s no-fault divorce law in 1979, a few supportive voices were quoted, followed by numerous critics. The American Bar Association’s Doris Jonas Freed claimed “no-fault divorce has helped everybody,” but others concluded that men, women, and children each had suffered harm. “Women were better off under the adversary system, because they used to get the home, furniture, and car,” explained Professor Karen Seal of Grossmont College, El Cajon, California. “For older women,” added Trish Somers, of the Older Women’s League, “no-fault divorce has been a disaster,” since it leaves them without either husband or alimony in a competitive career environment for which a long-time homemaker is ill prepared. The Displaced Homemaker Center in Oakland was attempting to fill the need for divorcées, while Fathers Demanding Equal Justice in Los Angeles advocated for dads who had lost custody of their children. A study of over 4,000 California divorce cases revealed that “men got custody in only 7 percent”—almost always in those rare instances in which women voluntarily forfeited the children.

In 1983, U.S. News and World Report noted that one marriage was dissolved in America every twenty-seven seconds—totaling one million per year, twice the number from two decades prior. According to Sanford Katz, a Boston College law professor, divorce litigation comprised nearly half of all civil filings in the nation, often “as complicated as commercial and corporate cases.” Judge Rex Sater of Santa Rosa, California, observed that “under no-fault divorce people can’t vent their hurts in court. Instead, they fight over junk.” Questions of child custody, who gets


the dog, and how to measure the “good will” value that a wife contributed to her husband’s law firm while working as secretary began leading to such acrimonious disputes that some judges ordered an “investigative accountant” to determine who acquired what while they were together, as a prelude to deciding who should be entitled to what when they split. Compromises such as joint custody of children presented the appearance of simplicity, but in practice these arrangements involved countless disputes over the details each time a child transitioned between the parents’ split homes. One California judge even awarded a couple joint custody of their pet cockapoo—an exceptional instance that nonetheless bore testimony to the depravity of the new normality. In St. Louis, it was a fierce parental dispute over child custody rather than a pet that prompted four kids to hire their own lawyer against both mom and dad. Of course, not all cases of the early 1980s involved so much commotion; with over 200 divorce cases per judge in Detroit, and judicial delays pushing from months into years, many couples desiring to “call it quits” were opting for streamlined mediation—an approach that proved to be faster, though not always less expensive.31

Social science scholarship reinforced the reports of the popular press: no-fault divorce may have eliminated fraudulent charges of fault, but it had not improved the lot of divorced persons. Research concerning California “consistently” demonstrated that “divorcing mothers are faring more poorly under the no-fault system.” Absent the “moral leverage of fault,” women had little negotiating power left when suing for alimony.32 On a more theoretical level, no-fault reforms had disturbed the old calculus by which self-interested parties were channeled into behavioral choices that served the common good; under the new regime, self-interest led toward self-destruction, both for individuals and for the community. Under the no-fault regime, “the benefits to the party ending the relationship may be less than the costs of dissolution to the


party wishing to maintain the union, and yet the dissolution will occur.” Unilateral divorce, by tipping the scales in favor of the party suing for severance, had disrupted the forces of the marriage market in favor of dissolution, even when such an outcome would be economically inefficient by rational models of analysis.33

The inevitable results of no-fault divorce, yoked tightly together, were a rise in the economic disparity between marital and divorced households and a rise in the divorce rate.34 That being said, some studies suggested no-fault reforms have had no appreciable impact upon divorce rates.35 Other researchers, however, concluded that “more divorces occur in a regime of no-fault divorce”—23% more by one projection. Studies failing to detect a correlation between no-fault reform and higher incidences of divorce had, according to this account, failed to adequately define terms, to employ “controls” for comparison, or to consider short-term and long-term impacts separately.36 Amid a diversity of statutory definitions and judicial practices, it was particularly difficult for researchers to separate states into fault versus no-fault, and to identify the effective dates by which a state moved from one category to another.37 As the century drew to a close, other researchers suggested that both the adoption of no-fault reform and the rise in divorce rates (some of which preceded the adoption of no-fault) share a common cultural source, rather than the former causing the latter.38

In 1987, the chief architect of California’s new family court edifice,
Herma Hill Kay, published a retrospective appraisal that attempted to salvage the reputation of no-fault divorce. Acknowledging current scholarship that identified “women in ‘traditional’ marriages” as the most injured “victims of the no-fault revolution,” she called for further reform rather than faulting no-fault. As a remedy, Kay proposed that divorcing homemakers should receive credit for the “investment in human capital” that they have made by empowering, through fulfillment of domestic responsibilities, the husband to pursue higher education and work his way up the career ladder. Against evidence of the short-term economic devastation suffered especially by women following no-fault divorce, Kay suggested that in the long term women “are more likely to experience an improved quality of life following divorce than are men.” Even so, the bald facts remain undeniable: “Women and children have borne the brunt of the transition that took place in California’s legal regulation of the family between 1970 and 1987.” Rather than considering repeal, or even a partial retraction, of no-fault, Kay instead wrote encouragingly of California’s 1987 reform that rendered nonmarital cohabitation a legally sanctioned alternative to marriage.39

Four years after Kay’s reappraisal, Robert J. Levy, who spearheaded the crafting of the Uniform Marriage and Divorce Act, offered his own evaluation of the path paved by no-fault reform. Like Kay, Levy acknowledged that “many women, especially homemakers, have paid a price for changes in the social acceptability of divorce.” He also admitted to a “vast increase in the amount of litigation and, consequently, in attorneys’ fees.” However, Levy concluded that on balance the UMDA had made “the divorce process considerably more honest” and helped to focus attention on “the right issues”—property distribution and child custody—rather than allegations of fault.40 Proponents of no-fault had promised that the reform would simplify and streamline divorce

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proceedings.\textsuperscript{41} By the 1990s, the track record of twenty-some years showed otherwise, as both Kay and Levy admitted: the allegations had simply shifted from past wrongdoings (adultery, desertion, or cruelty) to current wrongdoings (fraudulent disclosures of earnings and assets, failure to comply with visitation agreements, and the list went on).

By the turn of the century, evidence had accumulated that neither women nor men were bearing the brunt of divorce; rather, their children suffered most of all. Children desperately need fathers, concluded Professor David Popenoe of Rutgers University, and not just any fathers—married fathers, specifically.\textsuperscript{42} Marriage involves putting children’s needs ahead of adults’ wants; divorce does the opposite, with devastating impacts upon all three parties, discovered Popenoe’s colleague Barbara Dafoe Whitehead.\textsuperscript{43} From 1997 to 2009, Popenoe directed the National Marriage Project, which subsequently relocated to the University of Virginia under the directorship of sociologist W. Bradford Wilcox. A steady flow of research reports from this institute consistently has identified the risks that divorce, as well as cohabitation, impose upon children and adults alike.\textsuperscript{44}

In the third decade of the no-fault regime, scholars also realized that children do not so readily “outgrow” the negative impacts of their parents’ divorce. After initially interviewing children of divorce in the early 1970s, psychologist Judith Wallerstein conducted a follow-up study in the 1990s. She discovered that as children of divorce transitioned into adulthood, they suffered insecurity, with their anxieties soon being confirmed by an inability to form stable relationships of their own. Not until their mid-thirties, and now often embarking on a second marriage, did typical children of divorce begin to achieve a semblance of psychosocial

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\item \textsuperscript{42} David Popenoe, \textit{Life Without Father: Compelling New Evidence that Fatherhood and Marriage Are Indispensable for the Good of Children and Society} (New York: The Free Press, 1996).
\item \textsuperscript{43} Barbara Dafoe Whitehead, \textit{The Divorce Culture: Rethinking Our Commitment to Marriage and the Family} (New York: Knopf, 1997).
\item \textsuperscript{44} See the archived reports of the National Marriage Project at www.nationalmarriageproject.org.
\end{itemize}
stability; many others never married at all.\textsuperscript{45} In 2012, a conference synthesizing the work of economists, historians, psychologists, sociologists, and theologians revealed that adult children of divorce struggle in myriad ways, as the broken promises of their parents leave them hesitant to trust and unable to become trustworthy for their own marriages.\textsuperscript{46} The previous year, scholars at Pennsylvania State University concluded that the so-called “good divorce”—one involving minimal conflict observed by the children and maximal cooperation by parents for post-divorce childrearing—often fails to protect children from the harms associated with more acrimonious instances of marital dissolution.\textsuperscript{47} (Is research really necessary to reveal that children can see straight through the cliché, “Your father and I just don’t love each other anymore, but don’t worry, we will always love you”?)

Despite mounting evidence that divorce harms children, while also imposing economic and psychological burdens upon men and women, Herma Hill Kay persisted at the dawn of the new century in celebrating the no-fault revolution yet again. Specifically, she credited divorce reform and related measures with the empowerment of women to assert their own identities and to exercise greater control over their own bodies (through abortion rights secured by \textit{Roe v. Wade} and its progeny; Kay avoided mention of an aborting woman’s destructive control over the unborn child’s body, although she did lament that “our culture identifies mothers, rather than fathers, as the primary caretakers of infants and pre-school aged children”). Looking toward the future, Kay applauded the American Law Institute for its latest work-in-progress, \textit{Principles of Family Dissolution}, which further blurred the boundary between cohabitation and marriage while also sponsoring same-sex divorce (even for same-sex couples who were merely cohabiting, prior to the legalization


\textsuperscript{47} Paul R. Amato, Jennifer B. Kane, and Spencer James, “Reconsidering the ‘Good Divorce,’” \textit{Family Relations} 60 (2011): 511–24.
of same-sex “marriage”). “The ALI Principles,” wrote Kay, “will have a positive effect on the way we think about marriage by providing a legal framework that enables couples to design their family relationships to suit their individual aspirations as they evolve over time.” Marriage, for Kay, was not a covenant by which two persons join as one, but a “common project” by which two autonomous adults “seek to enjoy intimacy” without any presumption for permanency.48

If demography determines truth, then Kay’s position cannot be challenged. Divorce and remarriage now are ubiquitous in America.49 Divorce is perhaps the one thing all Americans, regardless of politics or theology, have in common—in the extended family if not in the immediate family. Increasingly, cohabitation also defines the American social structure while married-for-life adults and the children of married-for-life adults have become minorities. Men and women aged twenty to twenty-four are more likely to be cohabiting than to be married, and fewer than half of all men aged twenty-five to forty-four are married to their first wife.50 Consider, also, the perspective of the children whom these adults raise—or abandon. Even during ages nine through eleven, when children are most likely to have both parents living with them and married to each other, fewer than two thirds of all children experience such a family. Over half of all children will experience part of their childhood being raised with at least one biological parent absent—seldom from death, usually from divorce, and increasingly from cohabitation followed by unofficial divorce.51 The natural family has become a minority status.52

It is no wonder that pastors shy away from preaching against divorce in the pulpit or teaching about it in Bible classes. Even pastors who

personally desire to promote reconciliation rather than divorce realize that many of their parishioners have already decided differently. Many more have relatives whose lives have been entangled by a web of divorces and remarriages, often with a fair mix of cohabitation, too. The children of divorce populate youth groups. All of these factors can lead pastors to ask themselves, how is it even possible to broach the issue without offending someone? They therefore hesitate, and then choose silence. As long as many can remember, this has always been the case. As early as 1988, half the staff directors appointed to the Lutheran Layman’s League—an affiliate of the conservative Lutheran Church Missouri Synod—were “divorced and remarried,” a fact which its board dismissed as irrelevant to their work as Christian mentors. The “no fault” message has successfully removed the stigma from marital dissolution.

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Where does the American family find itself after nearly fifty years of no-fault divorce—that legal enshrinement of individual adult autonomy, of unilateral decision-making that imposes itself upon the other spouse and the children? Research is just now beginning to reveal how the tragedies of divorce persist into the third generation—as the impact of no-fault reform passes now to the grandchildren of those who first sowed its seed in the 1960s and 1970s. For example, “Kids’ Divorce Stories,” on the Marriage Ecosystem website sponsored by the Ruth Institute, collects first-hand accounts from the rising generation as they reflect upon the choices of their parents, who in turn inherited the new divorce culture ushered in by no-fault reforms. By listening to these voices, young men and women now have the opportunity to evaluate the decisions of those who have traveled the road before them—decisions by conservatives and

liberals alike, by lawyers and theologians, by specialists and laypeople, by a broad spectrum of Americans who by either action or acquiescence participated in the no-fault revolution.

Prudence demands a better path. If today’s young people can be equipped with tools for forgiveness and reconciliation, then their collective actions may be able to remove “wedded bliss” from a list of oxymorons and restore it as the cornerstone of both civilized society and genuine personal fulfillment. To accomplish this, however, the rising generation will require mentoring from the minority of natural families who still remain and encouragement from another minority group: fractured families who have reunited to become whole with one another again.

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