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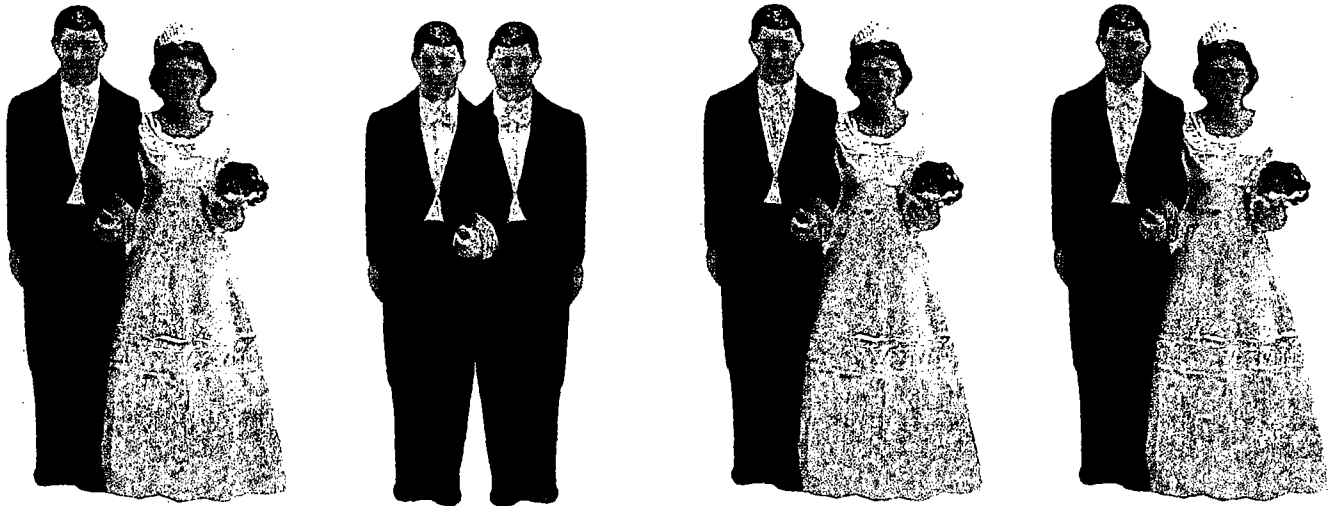
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THE NEW REPUBLIC

The Geezer Vote • Richard Posner on Habermas • Samuel Beckett, Freedom Fighter

For Better or Worse?



The War Over Marriage (and Divorce)



Andrew Sullivan | Hanna Rosin | Jonathan Rauch

n | Emily Bazelon



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Braking Divorce

FOR THE SAKE OF CHILDREN

BY WILLIAM A. GALSTON

How would we alter the law and practice of divorce in the United States if we were truly guided by the best interests of children?

We have good reason to be worried about the current state of marriage and divorce in this country, and the implications for the young. Between 1960 and 1980, the U.S. divorce rate surged by nearly 250 percent. It has since leveled off at a rate that is by far the highest in the industrialized world. About half of all marriages undertaken today will end in divorce.

Since the 1960s, the number of children directly touched by divorce has jumped from 485,000 to one million a year. The percentage of children living in mother-only households has more than doubled, and about 40 percent of such children have not seen their fathers during the past year.

Research suggests that where there has been physical abuse or extreme emotional cruelty, a divorce can be less harmful for children than if the parents had remained married. But where divorce follows lower-intensity conflict—and this covers at least half of all divorces—most children will be much better off if the marriage is maintained. Even after correcting for the effects of pre-divorce conflict and income loss after divorce, it becomes clear that divorces in non-abusive cases have a negative effect on children in a number of key areas: school performance; psychological illness; crime; suicide; out-of-wedlock births; adult work performance; and the propensity to become divorced. There is also evidence that the experience of divorce diminishes trust in people and institutions, and impedes the capacity of individuals to form stable, lasting relationships.

As recently as 30 years ago, every state had fault-based divorce laws. The standard grounds for divorce included adultery, physical abuse, mental cruelty, desertion, imprisonment, addiction, and insanity. The first no-fault divorce statute was signed into law by then-Governor Ronald Reagan of California in late 1969. By 1974, 45 states had adopted some form of no-fault.

Evidence is accumulating that no-fault laws themselves accelerated the pace of divorce. A 50-state survey recently published in the *Journal of Marriage and the Family* concluded that "the switch from fault divorce law to no-fault divorce law led to a measurable increase in the divorce rate." Legal changes coincided with economic and cultural shifts. Compared to 30 years ago, Daniel Yankelovich finds, today's Americans place less value on obligation to others, on sacrifice, and on self-restraint. We place more value on individualism, on self-expression, and on personal choice.

A result is that we are far more accepting of divorce than we were 30 years ago. We are far more likely to say that mar-

riage is first and foremost a means to personal happiness. And we are far less inclined to believe that parents in a less than fully satisfactory marriage ought to make an effort to stay together for the sake of their children. Up to the early-1960s, more than half of Americans thought that parents had an obligation to make this effort. By the 1990s, that figure had declined to less than one-fifth.

There are three points at which we may be able to reduce divorces involving minor children. The first occurs at or before the threshold of marriage. It is stunning how many schools talk about sex while failing to discuss marriage in any sustained manner. It is a legitimate function of public education to treat marriage seriously as a human and social institution. Religious institutions also ought to intervene more often to support marriage. If every church and synagogue took as one of its principal tasks the thorough preparation of young people for marriage, it could make a significant difference. There is evidence that this strategy works best when all the religious institutions within a community unite around this objective in a mutually reinforcing way.

The second point of intervention occurs during marriage. At a minimum, we should systematically re-examine our economic and social policies (and our tax code) with an eye to creating a marriage-friendly environment. In addition, religious institutions should offer programs for couples who want to renew their vows or confront problems that could lead to marital dissolution if left unaddressed.

The third key point of intervention occurs at the threshold of divorce. We should institute significant changes in the current regime of no-fault divorce laws, in effect creating a two-tier system. For couples without minor children, current law can be left in place. For couples with minor children, we should eliminate unilateral no-fault—where one person can readily obtain a divorce without the others' consent—and return to an updated fault system, with the alternative of a five-year waiting period. And even in cases where both parties consent, there should be suitable braking mechanisms: mandatory pause of at least a year for reflection, counseling, and mediation.

Is our society willing to put the well-being of children first, even when it may conflict with adult desires? The next generation will decide how well we have answered this question, and they will judge us accordingly.

William A. Galston is a professor at the University of Maryland and former assistant to President Clinton for domestic policy. This article is adapted from remarks to the Center of the American Experiment, in Minneapolis, which has published the entire speech as "Rethinking Divorce."

vigor and zip with which we attack our educations, careers and the Electric Slide? Nothing and nothing. (If they could just stop referring to it as "getting him to marry you" like "getting him to give you a kidney"; there is something in it for him, after all.)

The secret of a book like this, though, is that the advice it dispenses has nothing to do with being black (even if the problem it addresses does). That's just niche marketing, like the "ladies" tool set, complete with bilious pink handles and frilly cozy-covers that so thoroughly pissed me off at Sears a few years ago. These books? Hammers with kente cloth handles.

Los Angeles psychotherapist Ronn Elmore, the author of *How To Love a Black Man*, offers insightful advice boiled down to snappy one-liners; reading the book feels like watching an infomercial, but for something useful. Obviously successful at his chosen line of work, Elmore offers a running patter that is far and away the most entertaining and easily digested of the lot. His word usage is pleasantly snappy, though not in the least "black"—he says "darndest" sans quotations marks, but "half-assed" is just that, self-consciously bracketed. In any event, the mostly sound advice in both books is easily applied across cultures.

It is Chapman's book alone that sheds light on the problems specific to black men and women; thank God she doesn't embarrass herself scattering hip-hop terminology "willy-nilly." Hers was the only book I actually *read* for its own sake and intend to spend more time with. She made me check myself. She talks about the unrealistic expectations we saddle each other with because of the "Entitlement Syndrome" (which, no doubt, will be gleefully pounced upon by the right). Some blacks, she posits, expect their partners to make up for everything their parents and society couldn't or wouldn't give them and to which they feel entitled; these kinds of expectations can be, to say the least, rough on a relationship. Do others have the same problems? Yes, but they don't play themselves out in the same ways.

Being one of those East Coast elites that the dead-white-men-in-training at *National Review* so hypocritically dismiss, I am not embarrassed to say that I do not read self-help/relationship books, and I do not adhere to the idea that if it's black it must also be good. Can I now go so far as to admit that I was nonplused to find, in the black aisle at Crown Books, Ellison's *Invisible Man* next to Elmore's *How To Love a Black Man*? Baldwin's *The Fire Next Time* next to Boyd's *Girlfriend to Girlfriend*? What have they in common besides melanin and the alphabet?

My snobbery aside, these books reflect the prevailing angst of the critical mass of blacks who have struggled their way up the national food chain and into the middle class. *Girlfriend to Girlfriend* may not be great literature, but the dearth of black men is a crisis I live with daily. I would fear for my people and for my country if *Native Son* could still be written today.

DEBRA DICKERSON is a lawyer in Washington.

The movement to save marriage.

SEPARATION ANXIETY

By Hanna Rosin

For the past three years, family values crusaders have been like wandering tribes, fervent and armed but with no place to go. In a euphoric moment after Clinton's election, the tribes united when left-wing communitarians joined their erstwhile conservative foes: a Democratic president declared the answer to poverty was "stable, intact families," and Donna Shalala, parroting the famous *Atlantic Monthly* article, professed that Dan Quayle was right. But the bipartisan convergence deprived both sides of an enemy. "We were lost," sighs David Blankenhorn, from the liberal Institute for American Values. "We had no momentum."

Then this year came a revelation, "like a bolt of lightning," recalls Blankenhorn. The enemy, he and his colleagues realized, was divorce law and, more specifically, "no-fault" divorce reform of the '70s, which allows couples to end their marriage without blame. Instead of having to choose from a menu of sins—adultery, mental cruelty, desertion, imprisonment—no-fault freed a new generation to break up simply because of "irreconcilable differences." "When you change the laws to make divorce quick and easy, you don't need a Ph.D. to know what will happen," he adds. "You'll erode the American family."

Blankenhorn's epiphany sparked a string of conversions. In January, Iowa's Republican governor, Terry Branstad, launched the "Campaign for the Family" and drafted a bill requiring stronger grounds for divorce. Then, on Valentine's Day, a Michigan state representative, Republican Jessie Dalman, introduced a bill overturning the state's no-fault law, arguing that it "cheapens commitment and degrades lifelong love." By April, eighteen states had followed, introducing laws forcing marriage deserters to confess their sin or stick it out. In the meantime, Democrats in Washington turned up the rhetorical heat: in *It Takes a Village*, Hillary Clinton writes that she is "ambivalent about no-fault divorce when children are involved." And her husband agrees, telling congressmen at his national prayer breakfast in February, "It may be that it ought to be a little harder to get a divorce. . . ."

The new divorcephobes accept as an axiom that the no-fault reform wrecked a generation of marriages. "To me, this is like debating whether the earth is round," says Blankenhorn. But the truth is more complicated. The reform may have contributed to a rise in divorce rates—but only compared to the pent-up, atypical '50s. Outside this historical blip, the rate has been steadily climbing since the Civil War, worldwide. The end of

marriage begins not with Dr. Spock, but with John Milton, who in his "Doctrine and Discipline of Divorce" declared that without it marriage sours into "drooping and disconsolate household captivity." The more worrisome phenomenon these days is that fewer families form in the first place—a trend that nixing no-fault is likely to encourage by scaring off the already marriage-shy.

How did divorce, once seen as the path to personal happiness, start looking like the seed of America's destruction? The turn begins in the '80s with a defector from the feminist line. When Harvard professor Lenore Weitzman polled 228 women divorced under California's 1969 no-fault statute, she expected to find reduced levels of bitterness and acrimony. Instead, she stumbled on what she called the "new poor," a class of disillusioned women whose incomes had dropped 70 percent after their marriages ended.

Weitzman's portrait of female suffering permanently complicated the easy equation between divorce and women's autonomy, although it's now thought to be exaggerated; the standard figure for income loss has been revised down to 30 percent. It took research on another set of victims—children—to really jumpstart the anti-divorce movement. The study on children most often quoted by divorcephobes is "Growing Up With a Single Parent," published last year by professors Sara McLanahan of Princeton and Gary Sandefur of the University of Wisconsin. The two researchers concluded that, regardless of the race or education of the parents, children who grow up in single-parent homes fare worse at every stage of life: they get lower grades from middle school on and are more likely to drop out of high school; they get worse-paying jobs and are more likely to be unemployed and even to end up in jail. "The evidence is clear," they concluded. "Children who grow up with one parent are definitely worse off."

This research did for the anti-divorce movement what secondhand smoke did for tobaccophobes: it created innocent bystanders. "Children are the quintessential vulnerable citizens. They need and deserve our help," wrote William Galston, Clinton's former domestic policy adviser and an early disciple of the anti-divorce movement. He could now frame the issue in terms only a brute could argue with. "In the end it comes down to a moral question: Is our society willing to put the well-being of children first, even when it may restrain our passion for unfettered autonomy?" What politician could resist? Jessie Dalman's press packet includes a copy of a hand-scrawled letter from a grateful tyke: "Dear Honorable Jessie Dalman, I wanted to write to you and let you know I am supporting you and your stand of divorce reform and I am praying for you. Love, Drew."

Drew may be convinced, but the researchers who interviewed his cohorts are baffled. "That sounds like a bad idea," says Sandefur, when asked about the anti-no-fault movement. "People who get divorced probably should get divorced. The worst thing for kids is to be around a constant state of warfare." McLanahan is equally bewildered. "It's a bit of a sham," she says. "Just

an easy fix that will appeal to voters."

To prove no-fault's pernicious influence, the Galstonites rely on a study published last year in the *Journal of Marriage and the Family*, which showed that the divorce rate increased by 15 to 25 percent in the three years following the switch to no-fault in forty-four of the fifty states. But, as Andrew Cherlin, another researcher often cited by Galston, points out, they're missing the first rule of statistics: correlation does not prove causation. The divorce rate has been rising steadily since the 1800s, and it surged in the early '60s—fifteen years before no-fault laws were widespread. The sudden spike in the three years following the reform came from a backlog of cases.

Like it or not, the country is accustomed to divorce; the only thing squelching no-fault will do is to recreate the sham of another era, when couples who wanted to divorce were obliged to invent affairs and abuse. "In New York, where adultery was the only grounds for divorce, people set up an appointment in a hotel room with a model and a photographer," recalls Herbert Jacob, a professor at Northwestern University who studies divorce. "If the judge wanted mental cruelty, your lawyer would tell you to say he called you names. If the judge wanted physical cruelty, the lawyer would recess, and you'd come back in a few minutes and say he slapped you."

Family boosters balk when they are called retrograde, and even the most conservative among them have learned to defend the reform in feminist terms. "We only want to return justice to marital dissolution," says Kristi Hamrick of the right-wing Family Research Council. "Returning fault gives women a powerful weapon." If the abandoned wife can pin blame on her husband, goes the argument, she can wangle a better settlement. But even this new twist is grounded in Victorian wisdom. "There's a lot of truth in the stereotype," Hamrick continues. "A gentleman decides to change his old wife for a new trophy model, so he writes one check and leaves. Our way gives the woman back some power." In fact, in up to 65 percent of cases, it's the woman who asks to get out of the marriage. And the image of the vulnerable wife rendered helpless by divorce is out of date: in the age group most likely to divorce, 30 percent of women had jobs in 1960; now, three-quarters do.

A truly feminist, pro-child divorce reform would look something like this: dock alimony and child support automatically from the sole or primary wage-earner's paycheck, and let whoever has primary custody of the children keep the house. To punish trophy hunters, force them to support the first set of children at the same living standard as the second. This was the radical track Weitzman, who opposed returning to a fault system, suggested in her book and still supports: "Society's views of marriage are reflected in its post-divorce laws," she says. "If we don't reward a mother with alimony, what we are really saying is we don't care about someone dedicating her life to supporting a family."

Since the days of Weitzman's research, state laws have advanced—by splitting pensions, for example, or sham-

ing deadbeat dads. Wisconsin even ensures mothers tax-supported child support. But most states are far behind for what some researchers suspect is a sinister reason: many legislators are divorced men. As Galston points out, the first no-fault statute was drafted by California Assemblyman James Hayes, who divorced his wife of twenty-five years to marry a younger woman. Fourteen of the fifteen people who testified for the law were men; ten were divorced.

For Galston, drawing attention to the sins of the overclass is a matter of playing fair, making sure "family values" does not become another way to demonize the poor: "This change is about us, not them," says Galston. But the movement's greatest fault is confounding "us" and "them." In Maggie Gallagher's *The Abolition of Marriage*, there is a chapter describing the author's apocalyptic visions of a "post-marriage" society. It opens with Raphael Rypel, a Haitian schoolboy shot dead in the playground. This happened in Crown Heights, but "there is no escape from Crown Heights," Gallagher writes, "because every neighborhood in America is just like it," by which she means that every neighborhood in America is an open sore left by divorce culture. The poor children there are no worse off than Melissa, a smart and pretty pre-law student who, as a child of divorce, is haunted by fears of abandonment. "Even most concentration camp survivors grow up to be law-abiding citizens," Gallagher memorably puts it, explaining why outward success is deceptive.

To show that divorce doesn't discriminate, Gallagher cites a well-known study by Judith Wallerstein, in which sixty mostly affluent California families were tracked for ten years. Only one-third of the divorced dads chose to pay for their children's college; 60 percent of the children did worse in school than their fathers. If these white, educated, upper-middle-class children can't hack it, Gallagher suggests, just imagine what happens to the black and poor. She seems to forget that it's only in white, middle-class America that too much anxiety seems as bad as too little money. Comparing the two is like saying if Woody Allen can't keep his family together, imagine what will happen to the rest of us.

It's hard to imagine the family faithfuls really believe that changing divorce law is the best they can do for the Raphael Rypels of this world. At least for the politicians of the movement, dragging the Rypels into the debate is useful for other reasons. Governor Branstad of Iowa began our conversation by citing the usual litany of doomsday statistics: "Poverty, drug abuse, juvenile delinquency, the crime rate, are all associated with the breakup of the traditional family." But in his "Campaign for the Family" it's not the juveniles he is concerned about. "If a child grows up angry in a broken home and feels like nobody loves them, it's likely they'll become a drug addict and rob you."

And, if it's not the underclass he's worried about, Branstad can rest easy. In the last few years, there's been a yuppie stampede to America's altars: a 1993 University of Pennsylvania study found female college graduates were marrying younger than they did in the '70s. We've always

been the most marriage-happy Western country, and lately we've started to celebrate it with a vengeance. In movies, books and syrupy newspaper features, America is suddenly awash in nuptial splendor. Screen hits of the '70s celebrating wives unshackled by divorce—*An Unmarried Woman*, *Kramer vs. Kramer*—have been replaced by parables of couples who stick together through affairs, alcoholism and streams of verbal abuse: *Flirting with Disaster*, *Something to Talk About*, *When a Man Loves a Woman*, *Leaving Las Vegas*, "Married With Children." In bookstores, *The Creative Divorce*, a best-seller of the divorce decade, has been superseded by *The Good Marriage*, Judith Wallerstein's book of secrets to making love last.

It's a shift the Galstonites, in their self-styled Jeremiad pose, recognize. "The people of your generation, the children of divorce, are displaying a yearning for stabilization," Galston explains. "Faced with the reality of divorce, Generation X is expressing the ardent hope that 'This won't happen to me.'" Then, pausing for a sip of coffee, he lets me in on the cosmic secret: "Sociologists think this might be the Great Awakening."

Heralding it in is a burgeoning cottage industry of marriage supporters, the cheerleaders for the anti-no-fault movement. Across the country, groups dedicated to ending the plague of divorce are spreading the gospel of a new kind of sustainable union—the "good-enough marriage." Christian columnist Michael McManus is the Johnny Appleseed of this pro-marriage movement. The concept of no-fault offends him, he says, because it promotes the kind of starry-eyed romantic expectations no marriage can fulfill and prompts couples to give up too quickly. "Abraham did not get along with Sarah," he says. "No marriage is perfect."

McManus and his acolytes are convincing churches across the country to implement what they call "community marriage policies"—an elaborate network of marriage support where those considering divorce are barraged by caring peer couples who have come back from the brink. In the last year, the number of pledging communities has jumped from fourteen to forty-two, McManus says. First to implement the scheme was Modesto, California, well-known as a laboratory of experimental spirituality. The policy seems to have worked there: since it began a decade ago, divorce is down 7 percent, although the population increased by 40 percent. Couples who apply to marry in one of the Modesto churches must go through as many as ten two-hour counseling sessions and take a personality test designed to detect fault lines. About 10 percent of these couples break their engagements.

McManus's miracle program is *Retrouvaille*, an intense peer counseling system founded in Quebec in the '60s, which claims to save 90 percent of the 5,000 floundering couples who participate each year. The program operates on a kind of reverse Tolstoy principle—all unhappy families are unhappy in the same way. They all fail because of "poor communication," because husband and wife "mistake feeling for thought." Couples trained

in the Retrouvaille method repeat their intimate tragedies in rehearsed monotone: McManus, for example, tells me with no hesitation that, though both his parents were alcoholics, he "grew up a whole person" because they stayed together. In the Retrouvaille world, no marriage is too broken; McManus has patched together alcoholics, abusers, even one wife and her bisexual husband who'd been having affairs for eight years.

McManus is lit by a kind of cultish fervor that pities all who do not possess it. One Friday afternoon, the 6'7" preacher is crammed into a chair at a Washington studio, the pro-marriage guest on a trashy low-budget show called "NewsTalk" being filmed in New York. The subject is "Should couples stay together for the sake of the children?" and the other guests are divorced women and couples who have saved their marriage. When a divorced mother describes why her marriage was irretrievable, McManus leans over to me and whispers, "She hadn't heard of Retrouvaille." When the talk-show host doesn't mention Retrouvaille, McManus throws a fit: "What are you doing? Talk about Retrouvaille. R-E-T-R-O-U-V-A-I-L-L-E. That's why I came. They told me I could. . . ." He is cut off, and a production assistant is called in. "But they told me they would talk about it," he says petulantly. "All you want to do is focus on the negative."

This patient patronizing, waiting to erupt into angry judgment, is not unique to the religious preachers of the pro-marriage movement. In what communitarian guru Michael Lerner calls his "Progressive, Ethical Covenant

with American Families," the manifesto for a two-day workshop held in April, he confuses political platforms ("Reduce the work week") with moral ones such as "Support people to work through difficulties in relationships" and "Support single people and those leaving oppressive relationships." These seem innocuous and obvious enough, until you get to the dogmatic details: divorce is a result of the "supermarket mentality" and "market consciousness" of America. Yet, at the same time, "we want to reject attempts to stigmatize the decision to leave an oppressive relationship," given "the distortions in human relationships fostered by the legacy of patriarchy and the dynamics of a society dominated by materialism and selfishness." The actual advice must be irrelevant, since the two platforms are exactly contradictory; what's important is achieving that perfect pedagogic pitch.

Across the states, it's this tone that is winning out over substance. Most of the no-fault repeal bills are in embryonic stages, and, at best, a few will squeak through this year. In Iowa, Governor Branstad has given up on repealing no-fault this session but is fighting for a series of community forums discussing "the importance of strong families" and a requirement that divorcing parents attend re-education classes to learn about the impact of divorce on their children. It's like McManus becoming incensed that schools teach "math and science but not marriage." But at least McManus has been to the brink and back and understands that marriage is a messy business. For the rest, it's just a matter of night school. •

The case for gay (and straight) marriage.

FOR BETTER OR WORSE?

By Jonathan Rauch

Whatever else marriage may or may not be, it is certainly falling apart. Half of today's marriages end in divorce, and, far more costly, many never begin—leaving mothers poor, children fatherless and neighborhoods chaotic. With timing worthy of Neville Chamberlain, homosexuals have chosen this moment to press for the right to marry. What's more, Hawaii's courts are moving toward letting them do so. I'll believe in gay marriage in America when I see it, but if Hawaii legalizes it, even temporarily, the uproar over this final insult to a

JONATHAN RAUCH is the author of *Demosclerosis: The Silent Killer of American Government* (Random House).

besieged institution will be deafening.

Whether gay marriage makes sense—and whether straight marriage makes sense—depends on what marriage is actually for. Current secular thinking on this question is shockingly sketchy. Gay activists say: marriage is for love, and we love each other, therefore we should be able to marry. Traditionalists say: marriage is for children, and homosexuals do not (or should not) have children, therefore you should not be able to marry. That, unfortunately, pretty well covers the spectrum. I say "unfortunately" because both views are wrong. They misunderstand and impoverish the social meaning of marriage.

So what is marriage for? Modern marriage is, of

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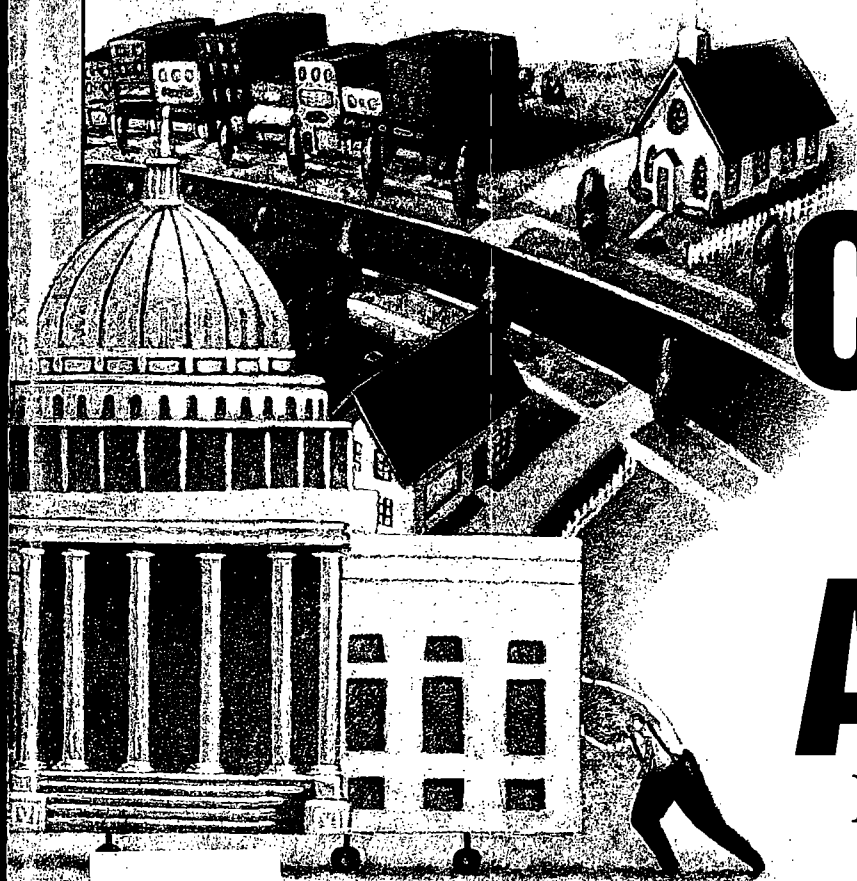
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TO: Carol H. Rasco
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TO: Elizabeth E. Drye

FROM: Elizabeth E. Drye
Domestic Policy Council

SUBJECT: Marriage mtg. debrief

We had a good meeting with Bill Galston, Elaine and Bruce. JBA had to leave early to do CT MOU, so here's the wrap up.

We started the meeting where we left off last time -- affirming that we're most comfortable with Galston's proposals to strengthen pre-marital education/counseling and create a more family-friendly work and tax environment. We are not pursuing further his recommendations for changing no-fault divorce laws, settlements, etc. We also don't expect to be able to move Treasury on tax changes in the next couple of weeks, but Elaine is going to talk to Larry Summers anyway.

There are three possible fora in which the President might want to make a statement on family/divorce -- the 6/7-8 WH Conf. on Character Education, a possible 6/10 commencement address in California (could be at a junior college or high school); and the VP's family conference June 24. Etzioni's conference is a good forum for talking about education in schools and churches, but it's a Saturday event unlikely to get much press. Elaine and Bill agreed to try to put on paper a more comprehensive statement that POTUS would make at one of the latter two events.

The speech would set forth the data on divorce trends and divorces' effects on children, and let the data speak for itself. POTUS would embrace some modest steps forward, while calling for a national dialogue (or something similar) on the issue. The speech would look something like the following:

- Families are the foundation of strong communities.
- Marriage's has profound economic and social benefits (Elaine has new relevant Census report data).
- divorce trends (objective discussion of data on divorce rates and attitudes)

- divorce's consequences for children. (Galston data on range of effects)
- What we can do:
 - Urge schools to teach marriage as well as sex ed.
 - Urge religious institutions to strengthen premarital counseling
 - Possibly embrace one of the 750 relevant bills currently pending in state legislatures (Galston's

Forthcoming in the Public Interest
(Summer 1995)

Divorce American style

WILLIAM A. GALSTON

JAMES and Janne Hayes were married in 1941 as 19-year-old college students. They had four children. With one brief exception, Janne Hayes never worked outside the home. After 25 years of marriage, she filed for divorce under California's fault-based divorce code and was awarded the family home, custody of the two minor children, \$650 per month in alimony until death or remarriage, and \$175 per month in child support until the children reached adulthood.

In 1972, James Hayes filed a petition to end his financial obligations to his wife on the grounds that his financial condition had changed. (He had also remarried.) To bolster his claim, he quoted from the California Assembly Judiciary Committee Report on the 1969 California no-fault statute, enthusiastically signed into law by then-Governor Ronald Reagan:

When our divorce law was originally drawn, women's role in society was almost totally that of mother and homemaker. She could not even vote. Today, increasing numbers of married women are

a [woman's]

employed, even in the professions. In addition, they have long been accorded full civil rights. Their approaching equality with the male should be reflected in the law governing marriage dissolution and in the decisions of courts with respect to matters incident to dissolution.

James Hayes prevailed. Child support was ended and alimony cut by more than half. A year later, he was back in court and won another reduction in alimony. The judge told Janne Hayes to get a job.

An oft-told tale, but with a twist: Assemblyman Hayes was the chairman of the California Senate Judiciary Committee that drafted the no-fault statute and wrote the report he subsequently quoted in his brief. His was not an isolated case. A few years earlier, then-Governor Edmund G. Brown established a Commission on the Family, which recommended the elimination of fault as grounds for divorce. Of the 15 citizens who testified before the commission, 14 were men; 10 were divorced.

The no-fault divorce revolution of the past quarter century was not in any simple sense the product of a male conspiracy. Many women's groups, lawyers, judges, academics, and family-practice professionals strongly favored this change, on the ground that it was needed to end (as one supporter put it) "the hypocrisy of strict divorce laws administered by a lenient process." And public opinion began swinging toward more relaxed laws in the mid 1960s.

The benefits of no-fault divorce were immediate, especially for men seeking an easier exit from long-established marriages. An understanding of the costs emerged more slowly, through painful experience and the gradual accretion of research. The principal victims have been women in long-established marriages, along with minor children. There has also been a broader casualty: the idea of marriage as a presumptively permanent relationship—as a structure of incentives for individuals to contribute to the well-being of the family, and a framework of reasonable expectations of reciprocal benefits over the lifetime of the partnership. And pervasive divorce has imposed large costs on society as a whole. For example, children's post-divorce psychological and behavioral problems have multiplied the challenges facing teaching, and jurisdictions at ev-

ery level of the federal system have had to invest huge sums in child-support enforcement.

Today, public opinion is swinging back toward more restrictive divorce law. (Support for tougher laws is strong among young adults, many of whom directly felt the consequences of divorce as children.) Proposals to roll back no-fault are already under consideration in the legislatures of Iowa and Michigan, with more states likely to follow.

The casualties of divorce

We have good reason to be worried about the current state of marriage and divorce in America. in 1960 ~~in 1960~~ the rate of divorce was no higher than it had been in 1940, and not much higher than in 1920. (There was a spike right after World War II, but it quickly subsided.) Then, between 1960 and 1980, the rate of divorce surged by nearly 250 percent. Since then, it has stabilized, but at a rate that is the highest by far in the industrialized world. About half of all marriages undertaken today are likely to end in divorce. Forty percent of all first marriages will suffer that fate, compared to only 16 percent in 1960. Upwards of 60 percent of all remarriages will not endure.

To be sure, the rate of divorce has been trending upward fitfully for more than a century. Still,

Three-fifths of all divorces involve minor children. The number of children directly touched by divorce each year has doubled, from 485,000 in 1966 to ~~more than~~ about one million today. The percentage of children living in mother-only households has also more than doubled. About 40 percent of children living in such households have not seen their fathers during the past year; only one in six sees them more than once a week.

about

fathers absent

Children typically encounter difficulties in the wake of divorce. The conventional wisdom is that these negative effects are attributable to two factors that are distinguishable from divorce itself: steep income losses after divorce and intra-family conflicts before divorce. This is not entirely wrong: Pre-divorce conflict accounts for about half the observed post-divorce difficulties for boys and somewhat less than half for girls. And economic decline accounts for about half the remaining damage.

But the conventional wisdom of the 1970s and 1980s is not

headed by over-matched as all as divorced women)

the whole truth. Since 1990, a number of leading researchers—Frank Furstenberg, Andrew Cherlin, Sara McLanahan, Gary Sandefur, and Nicholas Zill, among others—have assembled large quantities of original data and subjected it to rigorous analysis. Here is the consensus of their findings:

There is a critical distinction between divorcees involving physical abuse or extreme emotional cruelty and those that do not. Minor children in the former category are on balance better off than those whose parents had remained married. But the opposite is the case for the children in the latter category, where divorce follows lower-intensity conflict. Correcting for the effects of both income loss and pre-divorce conflict between parents, researchers concluded that divorce in these cases has an independent, negative effect on the well-being of minor children along a number of key dimensions: school performance, high-school completion, college attendance and graduation, labor-force-attachment and work patterns, depression and other psychological illnesses, crime, suicide, out-of-wedlock births, and the propensity to become divorced. There is also evidence that the experience of divorce diminishes trust (in other individuals as well as institutions) and impedes the capacity of children, once grown, to form stable, lasting relationships. And there are significant gender differences: Boys tend to "act out" their feelings of abandonment and resentment, while girls turn inward and become depressed. The negative effects on boys typically are seen early on; for girls, the effects are frequently not felt until adulthood.

significant
dependent
variables.

Here's how Furstenberg and Cherlin summarize the implications of this emerging understanding:

It is probably true that most children who live in a household filled with continual conflict between angry, embittered spouses would be better off if their parents split up—assuming that the level of conflict is lowered by the separation. And there is no doubt that the rise in divorce has liberated some children (and their custodial parents) from families marked by physical abuse, alcoholism, drugs, and violence. But we doubt that such clearly pathological descriptions apply to most families that disrupt. Rather, we think there are many more cases in which there is little open conflict, but one or both partners finds the marriage personally unsatisfying.... A generation ago, when marriage was thought of

DIVORCE AMERICAN STYLE

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as a moral and social obligation, most husbands and wives in families such as this stayed together. Today, when marriage is thought of increasingly as a means of achieving personal fulfillment, many more will divorce. Under these circumstances, divorce may well make one or both spouses happier; but we strongly doubt that it improves the psychological well-being of the children.

Children are not the only victims of divorce. While Lenore Weitzman's ~~[Author ID?]~~ claim that women suffer a 70 percent decline in their standard of living after divorce is no longer widely accepted, the Panel Study of Income Dynamics has documented a 30 percent drop, as compared to a 10 to 15 percent increase for divorced men. And there are health consequences. According to David and Susan Larson, ~~[Author ID?]~~,

Divorce and the process of marital breakup puts people at much higher risk for both psychiatric and physical disease. Being divorced and a non-smoker is only slightly less dangerous than smoking a pack or more of cigarettes and staying married.

Divorced men are twice as likely to die from heart disease, stroke, hypertension, and cancer as married men in any given year. Divorced women are two to three times as likely to die from various forms of cancer.

Law, economics, and culture

What caused the explosion in the rate of divorce over the past 30 years is much debated. Economics may have played a role: Women surged into the paid workforce in unprecedented numbers. Male salaries and wages declined, both absolutely and relative to those of women.

It was also a period of profound cultural change. Daniel Yankelovich has recently charted some of the key shifts. Compared to 30 years ago, Americans today place less value on obligation to others, on sacrifice, and on self-restraint. By contrast, we place more value on individualism, on self-expression and self-realization, and on personal choice.

These shifts are correlated with important changes in attitudes toward children, families, and marriage. Americans are far more accepting of divorce today than 30 years ago. We are

early no-fault
supporter

↓ in income

for many years a
research psychiatrist
at the National
Institutes of Health

Courses

wages ↑ & ↓

far more likely to say that marriage is first and foremost a means to personal happiness. And we are far less inclined to believe that parents in a less than fully satisfactory marriage ought to make an effort to stay together for the sake of their children. Up to the mid 1960s, about half of all Americans thought that parents had an obligation to make this effort. By 1991, that figure had declined to about 20 percent.

But this period of rapid economic and cultural change has been accompanied by a period of rapid change in the law of divorce. As recently as 30 years ago, every state had a fault-based system. The standard grounds for divorce included adultery, physical abuse, mental cruelty, desertion, imprisonment, alcohol or drug addiction, and insanity. Within five years of the passage of California's 1969 no-fault statute, 45 states had followed suit. By 1985, the last bastions had crumbled; every state had either replaced its old fault system or had added important no-fault options.

It is tempting to conclude that the movement toward no-fault divorce is the product of the economic and cultural changes, and that it has had no independent effect on divorce rates or outcomes. This view was largely unchallenged until about a decade ago. But the tide is turning. While full scholarly returns are not yet in, evidence is accumulating that once instituted, no-fault laws further accelerated the pace of divorce. A 50-state ~~statistical~~ survey published in the *Journal of Marriage and the Family* concluded that "the switch from fault divorce law to no-fault divorce law led to a measurable increase in the divorce rate." This effect is especially powerful for older couples in marriages of 25 years and more. ~~In fact,~~ It seems increasingly likely that no-fault divorce laws gave added impetus to the economic and cultural trends already well underway in the 1970s.

There is also evidence that no-fault divorce law directly impacted the post-divorce economic circumstances of women. In circumstances in which divorce is not consensual, no-fault weakens the bargaining position of the spouse who wants the marriage to continue. The movement from fault to no-fault has been correlated with an increase in male-initiated divorces. [Author: Do we know what % of no-fault divorces are male initiated?] In an important 1986 study, Elizabeth Pe-

published in the
American Economic Review

(This study used a range of statistical techniques to distinguish between long-term trends and temporary surges representing pent-up demand for divorce, on the one hand, and the enduring effects of the shift to no-fault on the other.)

haven't
in able
obtain
all statistics.

DIVORCE AMERICAN STYLE

No information, so I
provided a fuller cite
to her article

ters [Author: ID?] showed that wives fare best in states that restrict unilateral no-fault and worst in states that grant it on demand. Moreover, the egalitarian norm underlying no-fault has led to the presumption (in some states a legal requirement) that marital property be divided equally—a dramatic shift away from the prior system in which women typically received the bulk of the property.

The now-vanished fault system afforded some protection for women who chose (in economic terms) to "specialize" in household responsibilities. Protection was necessary because the ~~opportunity~~ cost of this decision is (on average) a permanent reduction of earnings potential in the paid workforce. The adoption of no-fault divorce has had two predictable effects. Older women caught in the transition, with no opportunity to adjust, found themselves much worse off after divorce. Younger women adjusted by accelerating their movement toward economic independence. While the growth of real wages accounts for most of the increase in female labor-force participation between 1950 and 1980, no-fault divorce has been shown to have had an independent effect on women's paid labor since then.

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There are theoretical reasons to give weight to such findings. Easier divorce laws produce an "investment effect"—the diminished propensity to invest time or resources in relationships that don't hold out the promise of security. There is also a "demonstration effect": Once a practice becomes pervasive in a community, individuals at the margin—those who might go one way or another—may be pushed in a particular direction by the behavior of those around them.

And finally, there is the "destigmatization effect." There is no question that no-fault divorce laws symbolized the spreading belief that divorce presented no particular moral problem, that there was, in the moral as well as legal sense, no fault. As Harvard law professor Mary Ann Glendon has observed, in moving away from the legal standard of fault, we also set aside the moral standard of responsibility.

First principles of legal reform

Many scholars who share my discomfort with the condition of the American family do not believe that public policy can

Insert

Many leading researchers now espouse the view that children would be better off if there were fewer divorces stemming from lower-intensity conflict between adults. In Marriage, Divorce, Remarriage, for example, Cherlin says that "I don't think a divorce under these conditions helps children." In a recent interview, Sandefur states that "Most parents divorce because of conflict between themselves that doesn't affect the kids that much. In other words, if the mothers and fathers stayed together, they might not particularly nejoy themselves, but the kids would be better off if they could work together as effective parents."

In light of recent research findings, the real issue is not whether children would benefit from lower divorce rates; they would. The issue is whether public policy can help bring about this result at all--or whether it can do so at an acceptable cost.

~~do much to improve it. They~~ see economic and cultural change as the main causes of higher rates of divorce and legal change as the reflection of these deeper shifts. Furstenberg and Cherlin speak for many others when they say, "Although we would support public efforts to strengthen marriage, we are inclined to accept the irreversibility of high levels of divorce as our starting point for thinking about changes in public policy." By contrast, my analysis stresses the extent to which legal change has independently intensified the effects of economic and cultural change. Of course, there are limits to what another round of divorce-law reform could accomplish. But the evidence now available does not permit us to conclude that law is powerless to affect conduct.

It would be odd if it were. The law of divorce determines the barriers to, and costs of, exit from marriage. Indeed, theory predicts what observation confirms: At the margin, lower barriers to exit produce a larger number of departures. Some couples will stay married, regardless of the legal regime; others will get divorced, even at enormous cost; but many in the middle zone of discontent will be influenced by the perceived difficulty of ending an unsatisfying, but not disastrous, relationship.

Other scholars and activists resist a new round of divorce-law reform not because they believe law is impotent but rather because they fear it could only achieve its objectives at excessive moral cost: individual freedom lost; self-development thwarted; couples trapped in loveless relationships; women exposed to even higher levels of abuse.

But these fears rest on the assumption that the only alternative to the status quo is a return to the law as it existed prior to 1969. This is a false choice: there are many reform possibilities that do not involve "turning back the clock." Besides, I am unaware of any evidence linking no-fault divorce to lower levels of spousal abuse.

There is one real disagreement, however. The recent movement for divorce-law reform rests on the belief that, in marriage as elsewhere, the past quarter century's emphasis on self-fulfillment has gone too far and that we must seek a new balance between rights and responsibilities. Those who are comfortable with the moral sensibilities of the 1960s and 1970s

understandably will resist these changes. The debate over divorce is thus one facet of the broader national discussion over the limits to individualism.

Families are composed of individuals with interests that converge only in part. We should divest ourselves of the romantic conception of perfect harmony, in which arrangements that serve the interests of husbands equally serve the interests of wives or of children. What is good for men who have worked outside the home all their adult lives may not be good for those women who have never done so. What is good for one or both parents may not be so good for minor children. And what may seem desirable for some families may have negative consequences for society as a whole.

The question before us is how best to deal with these tensions. During the past generation, we have encouraged, or at least tolerated, the development of a divorce law that has favored adults over children, and economically advantaged workers (usually male) over dependent spouses (usually female). The time has come to redress the balance, in a manner that requires individuals to assume greater responsibility for the interpersonal and social costs of their actions.

In the current cultural context, it is hard to make a case for restricting personal choice when the consequences of that choice affect only independent adults who are capable of asserting and defending their own interests. I am thinking in particular of marriages which both spouses work and there are no children. Yet there is still a strong case to be made that the law should protect vulnerable individuals and the general interests of society.

Within this framework, I would propose three goals: First, we should endeavor to reduce the number of divorces, particularly, but not exclusively, those involving minor children. Second, when such divorces are unavoidable, we should seek to mitigate the consequences for children. Third, we should restore a level playing field—and adequate protections—for women who choose the role of full-time mother.

Points of intervention

There are three points at which we can intervene to reduce the incidence of divorce. The first occurs at or before the

threshold of marriage. It is stunning how much time public education spends on sex while failing to discuss marriage in any sustained manner. It is a legitimate function of public education to treat marriage seriously as a human and social institution. Religious institutions have a role to play here too. For the overwhelming majority of Americans, marriage remains a sacrament and still takes place under the aegis of religion. If every church and synagogue took as one of its principal tasks the thorough preparation of young people for marriage, it could make a significant difference. There is some evidence that this strategy works best when all the religious institutions within a community unite around this objective in a mutually reinforcing way.

These educational efforts should be reinforced by the law. In most states it is much harder to get a driver's license than a marriage license. At a minimum, each state should impose a reasonable waiting period (at least one month, but preferably three) and require couples to show that they have completed a program of counseling (religious or secular) preparing them for marriage.

*Waiting period
Counseling*

The second point of intervention occurs during marriage. At a minimum, we should systematically reexamine our economic and social policies (and our tax code) with an eye to building a marriage-friendly environment. The private sector can contribute as well, through flex-time, telecommuting, job-sharing, part-time work with better benefits, and generous leave policies for family emergencies. Religious institutions should offer programs for couples who want to renew their marriages or to confront problems that could lead to marital dissolution if left unaddressed.

The third key point of intervention occurs at the threshold of divorce: We should change the current no-fault regime. As many observers have noted, the American law of divorce lurched from one extreme, where fault had to be demonstrated in nearly all cases, to the other extreme, where in most states either spouse can terminate the marriage without the other's consent. The sensible, moderate alternative—no fault-divorce by mutual consent—was all but ignored. Only two states (New York and Mississippi) require mutual consent. In 40 states, divorce may be obtained after a separation of one year or less.

regardless of the other spouse's opposition. Given the stated intentions of the reformers, this is especially curious: The "hypocrisy" to which they objected arose when husbands and wives colluded to manufacture fault that would pass legal muster. The mutual consent option would eliminate the need for such maneuvers.

And states should certainly eliminate unilateral no-fault divorce for couples with minor children—and return to an updated fault system (one that, for example, takes into account what we've learned over the past two decades about spouse abuse). As an alternative to fault in unilateral cases, states could establish a five-year waiting period. ~~[Author: Please elaborate — 5 year waiting period before a unilateral no-fault divorce is allowed to go through?]~~ And even in cases where both parties consent, there should be suitable braking mechanisms: a mandatory pause of at least a year for reflection, counseling, and mediation.

States should also provide legal backing for couples who want to create their own frameworks for stabler marriages. Numerous experts—Mary Ann Glendon, Elizabeth Scott, and Maggie Gallagher, among others—~~have advocated~~ premarital agreements ("precommitments") as ways for couples to bind themselves in advance to extended waiting periods between separation and divorce, to mandatory mediation and counseling, and to various economic deterrents. Such agreements are especially important when state law doesn't build these protections into marriage for all couples. But, in most jurisdictions, Scott points out, the enforceability of such agreements is open to serious doubt. States should address this by defining precisely the types of premarital agreements they will enforce.

before a
non-consensual
no-fault divorce
is allowed to
occur.

Save the children

Even if divorce involving minor children cannot be prevented, there are steps we can take to mitigate the consequences. We have learned a great deal in the past decade about why divorce hurts children. I rely especially on the recent work of McLanahan and Sandefur, which identifies three principal causes of harm:

- diminished income—roughly a 30 percent drop for chil-

dren and the custodial parent;

- diminished parenting time from the non-custodial parent (usually the father) who detaches himself from his children and from the custodial parent (usually the mother) who has to combine work inside and outside the home;

- disruption of established ties—to friends, neighborhoods and communities, and educational institutions.

With regard to the economics of divorce, I believe (following Mary Ann Glendon) that we should adopt a "children first" principle. Issues of property division should not even be discussed until adequate provision is made for the economic needs of children. ~~State child support guidelines should attempt to maintain children's pre-divorce living standards to the maximum feasible extent.~~ When children opt for post-secondary education and training, child support should cover a reasonable share, at least until age 21. In addition, we need to get far more serious about child-support enforcement. Important legislation has been adopted in the past decade to enhance the capacity of states to work cooperatively, but we can and must go farther.

With regard to the second goal—maximizing post-divorce parental involvement—there should be a presumption in favor of joint legal custody whenever feasible. When it is not, non-custodial parents should enjoy the most liberal possible visitation rights, and those rights should be strictly enforced. (Few states now do so.)

This is important, in part, because ~~research~~ suggests that many non-custodial parents delay or withhold child-support payments when they feel that their visitation rights have been impaired by the custodial parent. A 1991 Census Bureau report indicated that 79 percent of fathers with visitation rights were current on child support, versus only 44.5 percent who had neither visitation nor joint-custody rights. Of those with joint custody, more than 90 percent were current. ~~So~~ In addition to reducing the parenting deficit, maximizing the post-divorce involvement of both parents with their children would help mitigate economic harms as well.

Finally, to minimize disruption of vital social ties, minor children must be allowed to remain in their pre-divorce neighborhoods and communities whenever possible. For many fami-

"children first" principle

→ child support enforcement

some evidence - anecdotal and statistical -

More research is needed to clarify the causal relations underlying these issues. Still, it seems plausible that

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lies, the home is the only significant item of property to be divided between the divorcing parties. Nonetheless, the goal of allowing children to remain in their homes during the period of greatest vulnerability should trump the goal of the immediate equal division of property. This means that judges should have the option of excluding the home from the property settlement for an extended period—perhaps until the children have departed for college or entered the paid workforce. A few states have begun moving in this direction; the rest should follow. ✕

Fairness for women in longterm marriages

In addition to safeguarding the interests of children of divorce, we should also be mindful of the interests of a certain category of women. As I noted earlier, no-fault divorce especially harmed women in longterm marriages. This is, of course, morally unacceptable. In short, the law should not penalize women who have chosen to spend much of their adult lives working inside the home. At the very least, such women should not be pushed into straitened circumstances by divorce. But that is what's happening in all too many cases.

No-fault is part of the problem, but issues unrelated to the grounds for divorce also contribute to unfair outcomes. As many experts have observed, the law of divorce has failed long-married women twice over—by allowing men expanded opportunities for non-consensual divorce and by not specifying appropriate terms of financial rectification. The exercise of judicial discretion within the no-fault framework has failed to protect the vulnerable. Settlements based on the principle of formal equality have not recognized the fact of structural inequality.

Two changes could help address this situation. First, the possibility of long-term alimony (which has all but vanished from contemporary settlements) should be restored for women who have invested heavily in the marriage at the expense of their opportunities outside the home. Deborah Rhode and Martha Minow ~~(author ID?)~~ have set forth a sensible principle to guide such awards:

professor of law
at Harvard University

professor of law
at Stanford
University

Spouses who have sacrificed their own earning potential for the family's well-being or their partner's advancement should have a claim for compensation that is commensurate with their contributions and their sacrifices. The longer the marriage and the less adequate a spouse's independent resources, the greater that claim should be.

Second, even when fault is not legally relevant as grounds for divorce, it may well be appropriate to take it into account in determining fair settlements. As Herma Hill Kay ~~author~~ puts it,

The fault doctrine may have served to lend emotional vindication to the rejected spouse, as well as a measure of financial protection and status as the preferred custodian of children. If so, greater justification may be required in those cases for eliminating that doctrine from the related areas of support, property distribution, and child custody.

The proposed changes in settlements involving children and women in long-established marriages would protect the economic interests of these two vulnerable groups. The changes would also put men on notice that the financial responsibilities they will bear after divorce are considerable and longterm. It is not unreasonable to expect, then, that the combination of new limits on no-fault and more stringent settlement principles will have a deterrent effect, reducing the incidence of divorce.

The moral challenge

The law, however, is a limited instrument of social policy. At some point, highly demanding laws become less effective than those that are less restrictive. The identification of the optimal level of legal restraint is a matter of art rather than science. Experience suggests that the optimum will fall well short of our hopes.

In the end, the future of marriage in America hinges on a handful of moral questions. Are we willing to put the well-being of children first, even when this conflicts with adult desires and restrains our current passion for unfettered autonomy? Are we willing to honor claims of justice and fairness in the case of those who have sacrificed personal advancement for the good of the family? And are we prepared to recognize

Professor of Law,
University of
California, Berkeley)

the kind of contentment that stems not from the gratification of momentary impulse but from loyalty to commitments that endure? Only when we are able, as a society, to return affirmative answers to these questions will reforms in the law of divorce have a real chance of success.

BRIEFING BOOK MEMO

May 22, 1996
1:45 pm, CHR's Office

FROM: Elizabeth Drye

SUBJECT: Follow-up meeting on Family and Divorce

PARTICIPANTS: Galston, Kamarck, Reed, Drye

PURPOSE:

I suggest we use this meeting to narrow the list of initiatives we should explore in this area, and to agree on any timeframes for setting an agenda. Galston's paper has numerous suggestions. Bruce, you, Elaine, and I agreed at our last meeting we should focus on activities that prepare couples for marriage or help married couples stay together -- what Galston calls the first and second points of intervention -- and that we should steer away from interventions at the "thresholds of divorce" (e.g. eliminating unilateral no-fault divorce laws). I ran into Elaine Tuesday and she liked the idea of using our meeting to choose a short list of items to focus on.

Galston's short and long papers are attached for reference.

Elizabeth

Braking Divorce

FOR THE SAKE OF CHILDREN

BY WILLIAM A. GALSTON

How would we alter the law and practice of divorce in the United States if we were truly guided by the best interests of children?

We have good reason to be worried about the current state of marriage and divorce in this country, and the implications for the young. Between 1960 and 1980, the U.S. divorce rate surged by nearly 250 percent. It has since leveled off at a rate that is by far the highest in the industrialized world. About half of all marriages undertaken today will end in divorce.

Since the 1960s, the number of children directly touched by divorce has jumped from 485,000 to one million a year. The percentage of children living in mother-only households has more than doubled, and about 40 percent of such children have not seen their fathers during the past year.

Research suggests that where there has been physical abuse or extreme emotional cruelty, a divorce can be less harmful for children than if the parents had remained married. But where divorce follows lower-intensity conflict—and this covers at least half of all divorces—most children will be much better off if the marriage is maintained. Even after correcting for the effects of pre-divorce conflict and income loss after divorce, it becomes clear that divorces in non-abusive cases have a negative effect on children in a number of key areas: school performance; psychological illness; crime; suicide; out-of-wedlock births; adult work performance; and the propensity to become divorced. There is also evidence that the experience of divorce diminishes trust in people and institutions, and impedes the capacity of individuals to form stable, lasting relationships.

As recently as 30 years ago, every state had fault-based divorce laws. The standard grounds for divorce included adultery, physical abuse, mental cruelty, desertion, imprisonment, addiction, and insanity. The first no-fault divorce statute was signed into law by then-Governor Ronald Reagan of California in late 1969. By 1974, 45 states had adopted some form of no-fault.

Evidence is accumulating that no-fault laws themselves accelerated the pace of divorce. A 50-state survey recently published in the *Journal of Marriage and the Family* concluded that "the switch from fault divorce law to no-fault divorce law led to a measurable increase in the divorce rate." Legal changes coincided with economic and cultural shifts. Compared to 30 years ago, Daniel Yankelovich finds, today's Americans place less value on obligation to others, on sacrifice, and on self-restraint. We place more value on individualism, on self-expression, and on personal choice.

A result is that we are far more accepting of divorce than we were 30 years ago. We are far more likely to say that mar-

riage is first and foremost a means to personal happiness. And we are far less inclined to believe that parents in a less than fully satisfactory marriage ought to make an effort to stay together for the sake of their children. Up to the early-1960s, more than half of Americans thought that parents had an obligation to make this effort. By the 1990s, that figure had declined to less than one-fifth.

There are three points at which we may be able to reduce divorces involving minor children. The first occurs at or before the threshold of marriage. It is stunning how many schools talk about sex while failing to discuss marriage in any sustained manner. It is a legitimate function of public education to treat marriage seriously as a human and social institution. Religious institutions also ought to intervene more often to support marriage. If every church and synagogue took as one of its principal tasks the thorough preparation of young people for marriage, it could make a significant difference. There is evidence that this strategy works best when all the religious institutions within a community unite around this objective in a mutually reinforcing way.

The second point of intervention occurs during marriage. At a minimum, we should systematically re-examine our economic and social policies (and our tax code) with an eye to creating a marriage-friendly environment. In addition, religious institutions should offer programs for couples who want to renew their vows or confront problems that could lead to marital dissolution if left unaddressed.

The third key point of intervention occurs at the threshold of divorce. We should institute significant changes in the current regime of no-fault divorce laws, in effect creating a two-tier system. For couples without minor children, current law can be left in place. For couples with minor children, we should eliminate unilateral no-fault—where one person can readily obtain a divorce without the others' consent—and return to an updated fault system, with the alternative of a five-year waiting period. And even in cases where both parties consent, there should be suitable braking mechanisms: mandatory pause of at least a year for reflection, counseling, and mediation.

Is our society willing to put the well-being of children first, even when it may conflict with adult desires? The next generation will decide how well we have answered this question, and they will judge us accordingly.

William A. Galston is a professor at the University of Maryland and former assistant to President Clinton for domestic policy. This article is adapted from remarks to the Center of the American Experiment, in Minneapolis, which has published the entire speech as "Rethinking Divorce."