1981

No-fault divorce legislation and its impact on state divorce rates

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NO-FAULT DIVORCE LEGISLATION AND ITS IMPACT ON STATE DIVORCE RATES

A Thesis

Presented to

The Faculty of the Department of Sociology

The College of William and Mary in Virginia

In Partial Fulfillment

Of the Requirements for the Degree of

Master of Arts

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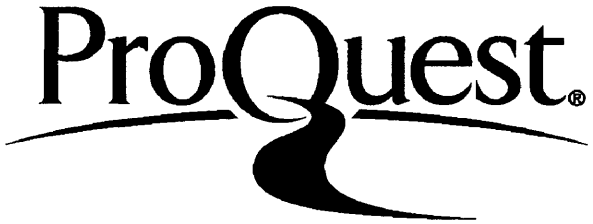
by

Elizabeth Ann Massey

1981



APPROVAL SHEET

This thesis is submitted in partial fulfillment of

the requirements for the degree of

Master of Arts

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Approved, May 1981

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In memory of Kirk Brumback

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ACKNOWLEDGMENTS

I would like to thank the members of my thesis committee for their guidance and support throughout the development of this thesis. Each of them has contributed to my growth as a student of Sociology. Wayne Kernodle, committee chairman, provided helpful comments and suggestions throughout the entire process, from initial discussion of topic selection to final draft. Satoshi Ito and Gary Kreps provided invaluable help in matters of methodology and statistical analysis. Credit for the development of the index used to measure the major dependent variable goes to Gary Kreps. I thank these men for their time and the benefit of their knowledge and experience.

I thank David Reed of the Computer Center at the College of William and Mary for his assistance in the running and debugging of the SPSS programs, and for making the General Social Surveys data accessible to SPSS procedures. Thanks go also to Liz Presgraves for her skill and professionalism as typist for both the initial draft and final copy of the thesis. I thank her also for her broader interest and enthusiasm in the thesis, which made a real difference on numerous occasions.

Finally, I thank the John Massey and Clyde Brumback families for their patience and support all along the way.

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ABSTRACT

This study analyzes empirically the relationship between no-fault divorce legislation and the divorce rates of American states. No-fault legislation is defined to include recent (post-1969) statutes based on the principle of marital breakdown as well as separation grounds for divorce where the requisite period of separation is one year or less. Divorce rates are measured by an index designed to reflect both the magnitude of the rate and the amount of change in the rate during the period 1960-1978. A cross-sectional research design is used involving correlation and regression analysis. It was hypothesized that the presence of no-fault divorce law in a state contributes to an increase in the divorce rate of that state. Additional hypotheses were presented relating each of the additional independent variables to the state divorce rate.

The major hypothesis was not supported. Results indicate that the type of divorce law present in a state does not influence the state's divorce rate. This finding supports previous research on the impact of no-fault legislation on divorce rates. Four other hypotheses were accepted. Migration, unemployment, and age distribution were shown to be positively related to divorce rates; Catholicism was negatively related to divorce rates.

Additional analysis was undertaken in which the divorce law was viewed as the dependent variable and the divorce rate as an independent variable. A weak relationship was found, suggesting that no-fault divorce legislation might be a response to increasing divorce rates rather than a potential catalyst for further increase in the rates. Further empirical research is needed to examine this possibility more fully.

A conceptual framework based on exchange theory and field theory is presented to predict and explain the relationship between divorce law and divorce behavior. Divorce laws are identified as a social barrier to divorce. Utilizing a problems perspective, in which divorce is characterized as a social problem, the relationship between divorce laws and divorce rates is discussed in terms of social control and system stability. Concepts of societal scale and organic solidarity are used throughout to account for the role of social change in understanding the institutions of the law and the family in modern society. Some of the functional aspects of divorce and of no-fault divorce legislation are discussed in the concluding chapter.

NO-FAULT DIVORCE LEGISLATION

AND ITS IMPACT ON STATE DIVORCE RATES

INTRODUCTION

The study of divorce relates to broader issues of system stability and social control. The family in America has been viewed historically as the backbone (Andrew, 1978) or foundation (O'Neill, 1967) of society. As modern society becomes increasingly interdependent the family is undergoing a period of transition (Skolnick, 1973:67) with many of its functions, such as education and provision of certain essential goods and services, now being performed by extra-familial institution and agencies. The focus of the family has shifted toward provision of crucial primary group support for family members (Parsons, in Skolnick, 1973:113, 431). As structural differentiation continues among and within societal institutions the relative importance of each of the institutions for the smooth functioning of the social system increases. Threats to any one of the institutions will have implications for the general social order. Although the "family as foundation" argument is challenged today, the family continues to be recognized as a basic societal institution and consequently family stability remains an essential element of overall system stability.

Today, as in the past, divorce is considered a social problem because it is perceived to threaten the stability of family life. Both formal and informal means of social control are employed to regulate the divorce problem and protect the integrity of the family. Divorce laws are the formalized means of social control of the problem. Since

no-fault divorce legislation represents a major shift in the traditional philosophy regarding the dissolution of marriage and its control, this change has been accompanied by considerable controversy. One recurrent issue has been the potential effect of the new laws on the steadily rising rate of divorce.

The purpose of this thesis is to examine empirically this relationship between no-fault divorce legislation and divorce rates in the United States to determine the independent impact of the law on the state rates. It is recognized that divorce is a complex issue with many legal aspects, including matters of child custody, property division and maintenance (alimony). Consideration of the impact of no-fault legislation on all of these factors is beyond the scope of this paper. For this reason the focus of attention is limited to changes in the bases for marital dissolution (grounds for divorce) in the new and the traditional laws. It is also recognized that marriages can terminate through death of one spouse and through annulment as well as by divorce; and that marital relations can be severed through desertion and separation. The focus here, however, is on absolute divorce, and the terms marriage termination and dissolution are used synonymously with divorce unless otherwise stated.

Chapter one provides an historical perspective of divorce law reform in the United States and illustrates why no-fault divorce represents a significant change in fundamental attitudes toward divorce. Chapter two discusses the concept of no-fault as it is applied currently and several of the factors relevant to its development. In chapter three a conceptual framework based on exchange theory and field theory is presented which offers one interpretation of the relationship between

divorce law and divorce behavior. Previous empirical research on traditional and no-fault laws is reported in chapter four. The research design and methods used in this study are explained in chapter five. Chapter six presents and discusses the findings of the empirical analysis, and implications of the research are discussed in chapter seven.

CHAPTER ONE

HISTORY OF DIVORCE REFORM

Church versus State

Divorce reform in America began with the English colonists. As settlers in a new land they brought with them a body of well-established divorce procedures as sanctioned and implemented by the Church of England. However, separation of Church and State was a fundamental issue for many who came to America and was quickly achieved in matters relating to marriage.

In England, as elsewhere in the Western world, marriage had been under complete Church control since the thirteenth century A.D. (Lichtenberger, 1931:79). Only ceremonies performed by church officials were valid. The bond they created between two persons was considered sacred and indissoluble. Divorce was not permitted; consequently there were no grounds for marital dissolution. The Church did provide alternatives to a failed marriage, however, recognizing the sinful nature of man even within the sacred institution of marriage. In certain cases an annulment could be obtained which declared the marriage invalid from the outset and freed such individuals to marry other persons if they so chose. Impotency, disparity of worship, defect of consent and consanguinity were among causes deemed sufficient to declare a marriage null and void (Lichtenberger, 1931:90). Under other circumstances, many of which later formed the basis for legal grounds for absolute divorce (e.g. adultery,

insanity), a form of legal separation known as divorce from bed and board (divortium a mensa et thoro) resulted in spouses living separate and apart but being unable to marry again because the marital bond between them remained intact. On rare occasion a very wealthy and influential individual received a divorce by private act obtainable only from Parliament or the King. Records indicate that between 1800 and 1836 there was an average of three such divorces granted per year (Friedman, 1973:181). With this exception divorce was unavailable under ecclesiastical law. England was, legally speaking, a divorceless society. In the absence of legal recourse, desertion and adultery were frequent accompaniments of marital breakdown.

This ecclesiastical stronghold was broken from the outset in some of the Northern colonies. Ideologically their sentiments ran parallel to those expressed by Luther during the Protestant Reformation. Declaring marriage to be a normal human institution he repudiated "the sacramental character of marriage as a priestly invention and the exclusive control of the Church as an unwarranted usurpation" (Lichtenberger, 1931:92). Unlike Luther the colonists were successful in translating their beliefs into action and in some areas authority was transfered out of the hands of the Church and into secular channels. Civil contract theory which dominated attitudes toward marriage and divorce prior to the early centuries of the Christian era was once again at the forefront in the colonies.

Following the American Revolution and the end to English domination most of the states, including those in the South, claimed and exercised a legislative prerogative to grant divorce by private act (Rheinstein, 1972:33). At this point authority had passed out of the hands of the

Church and into the state legislatures. In most cases, however, divorce remained available only by private act (special permission) of the governing body. Gradually the states undertook further reform measures as the number of divorces increased and the legislative process came under attack as being cumbersome, arbitrary, costly and lacking in procedural safeguards (Rheinstein, 1972:34). Based partially on the already operative New England model, virtually all the states enacted legislation granting jurisdiction to the civil courts and enumerating specific allowable grounds for divorce, thus creating a legal matter out of a moral issue. One notable exception was the state of South Carolina where the introduction of divorce laws was expressly forbidden by the state constitution (Rheinstein, 1972:53). The other states varied in the laxity of their laws, from New York where adultery became the sole ground, to states having a variety of recognized causes for divorce. These grounds continued to change from time to time through legislative reform. Within states and across states additional grounds were added, existing grounds were deleted, or both.

The Constitutional Amendment

During the 1800s divorce increased sufficiently in this country to stimulate growing alarm among those who perceived this trend as a harbinger of the demise of the family. By the 1890s serious efforts were underway to reduce this threat to the stability of family life. It had long been accepted that protection of the public good and general welfare required governmental oversight in certain areas, including the production, caretaking, socialization and education of children. As the divorce rate continued to increase during the nineteenth century

many moral conservatives began to question whether the state was the proper level of government in which to vest the power to regulate divorce. Many of them preferred placing authority in the Federal government to insure uniform application of laws throughout the nation. The country was faced once again with the issue of jurisdiction and a second major reform movement was underway. The goal of these moralists was to transfer power from the various state legislatures to the Congress in an effort to secure greater control over the divorce laws and thus turn back the tide of the rising divorce rate.

Achievement of the goal would first require an amendment to the Constitution giving Congress the right to act in matters of divorce. As written, the Constitution relinquished authority to the states in all matters not expressly reserved to the Congress. Opponents of the amendment argued in favor of states' rights and the desirability of local control in deciding on appropriate divorce legislation. Those in favor supported uniformity throughout the country in order to eliminate problems associated with a mobile population, including migratory divorce and certain aspects of common law marriages. In 1926, following three decades of reform efforts the following comment was published (reported in Lichtenberger, 1931:203-204):

> . . . The contract of marriage should be a matter of interstate commity and commerce as much as contract for the sale of commodities, or freight rates, or the white slave traffic. Citizens of the United States when moving from State to State take their civil rights with them. A married pair should be able to take their civil status in one State to any other State, especially when that status establishes their position as upright citizens instead of bigamists, or adulterers, and clothes their children with legitimacy or illegitimacy . . . But this is not true in the United States, and a married pair may find themselves

> violators when they leave the situs of their marriage and travel to another State which does not recognize their marriage, or their divorce, or their remarriage.

The Supreme Court had already ruled in Haddock v. Haddock that the Full Faith and Credit clause of the Constitution, which might offer protection in such cases, did not apply in questions of marriage and divorce (Lichtenberger, 1931:204). Thus, the only chance for uniformity was an amendment.

Much of the debate centered around religio-moral issues and the battle was a long one in which both sides faced organizational inadequacies and ideological divisiveness. During the period 1884-1947 some form of Federal amendment on marriage and divorce laws was introduced at every new Congress (Rheinstein, 1972:46). Only one ever reached committee discussion and none was ever brought to a vote. The attempt to pass a Constitutional amendment was generally ineffective and never posed a serious threat to state sovereignty. States retained jurisdiction as the proper authority to legislate divorce within their respective boundaries.

The Uniform Marriage and Divorce Act

Efforts to achieve uniformity were not limited to efforts aimed toward passage of a Constitutional amendment. In 1892 the National Conference of Commissioners on Uniform State Laws (NCCUSL) was established. Its purpose was to propose model legislation on different legal matters for consideration by the various states in hopes of obtaining full support for the bills nationally. Ideally each of the states would agree with the position taken in the bill and voluntarily adopt

it, thus producing national uniformity on issues not subject to Federal control. Marriage and divorce was one area in which model legislation was drafted.

This avenue also failed to lead to the desired uniformity in divorce laws and did not further the goals of the reformers at the turn of the century. A total of seven statutes on marriage and divorce were drafted by 1916 but only a few of the states had enacted any of them (O'Neill, 1967:240). The commissioners eventually turned their attention to other matters. In this perspective the National Conference of Commissioners was not influential in the uniformity reform movement. Several decades later, however, it figured largely in the debate of another major reform effort.

In 1970 the NCCUSL passed a Uniform Marriage and Divorce Act (UMDA). Agreement had been a long time coming as the Commissioners and members of the Family Law Section of the American Bar Association failed to agree on the crucial matter of grounds for divorce. Although the Uniform Marriage and Divorce Act was a thirty-five page document the ABA refused to endorse it largely because of the controversial no-fault provisions for obtaining a divorce. They stated support of no-fault divorce in principle but did not accept the specifics of the Act (Wheeler, 1974:126). Historically the NCCUSL and its bills received much of their prestige from the backing of the ABA so it was anxious to obtain the endorsement to help encourage states to adopt the Act. The UMDA was ultimately approved by the NCCUSL and subsequently served as a basis for legislation in several states. It did not succeed in being adopted by all or even most states but it did come at a crucial time in the

movement toward no-fault divorce and provided a framework for states interested in revising their traditional fault-based laws.

The history of reform continues today as states confront the issue of grounds for divorce and respond to recent attempts to remove the concept of fault from the divorce procedure. Attention is presently focused on reform that is designed to change fundamental attitudes toward divorce and divorcing persons. This is a significant and rapidly developing change and represents for our country a new direction in divorce laws.

CHAPTER TWO

THE CONCEPT AND DEFINITION OF NO-FAULT DIVORCE

Definition

In 1969 the state of California passed no-fault divorce legislation as part of its comprehensive Family Law Act, effectively doing away with the divorce process in that state and replacing it with a procedure for the dissolution of marriage. The change was more than a matter of semantics. It represented a new concept in marriage termination and set a precedent for the adoption of similar legislation by other states. During the decade that followed approximately two-thirds of the state legislatures enacted some form of the new no-fault divorce law (see Appendix A). Fifteen states followed California's lead and abolished existing grounds for divorce and substituted a single no-fault provision. Another fifteen states added a no-fault provision to their existing grounds. Other states maintained that existing grounds for divorce, such as separation and incompatibility, already provided similar options and they declined to add the no-fault procedure. Only three states remain where it is not possible to end a marriage without first proving that one's spouse is guilty of marital misconduct. Reform efforts continue in states which have not adopted no-fault divorce procedures and the trend is in the direction favorable to proponents of the new laws.

No-fault divorce laws provide for the dissolution of a marriage upon a finding by the court that the marriage has broken down to the

extent that any reconciliation is unlikely. The premise of fault is eliminated. It is not necessary to show evidence of marital misconduct. The focus of the inquiry is the condition of the marriage relationship rather than the acts and characteristics of the partners involved (Hamilton, 1978:7). Either spouse may file for dissolution using the neutral format "In re the marriage of John and Mary Doe" rather than the familiar "John Doe versus Mary Doe." If it is determined that the marriage is not viable, regardless of reason, it is dissolved. Generally the courts accept as conclusive evidence of marital breakdown the statement of one or both of the spouses that the marriage has failed. In some states counseling and/or an interim period before actual dissolution may be required or may be recommended at the discretion of the court. The no-fault divorce procedure is a dramatic change from the traditional adversary approach in which an "innocent" spouse is granted a divorce from the "guilty" spouse upon proof of marital wrongdoing. Prior to the no-fault laws mutual desire and consent were not legitimate grounds for divorce (Kirkpatrick, 1955:539).

The definition of no-fault divorce is not clear-cut and there is some discrepancy in the use of the term. Clearly the recent reform legislation designed specifically to be fault-free in nature is included in this category. A review of the state statutes by Harper Hamilton included the following legal terminology for conditions existing in the marital relationship which are considered bases for no-fault divorce in the various states: (1) irreconcilable differences, (2) upon finding that the marriage relationship is no longer viable, (3) irremedial breakdown, and (4) unsupportable because of discord or conflict of personalities that destroys the legitimate ends of the marriage relationship

and prevents a reasonable expectation of reconciliation (Hamilton, 1978: 5). These phrases are used interchangeably in discussion and all refer to sufficient cause for divorce according to the recently developed no-fault concept. Two other grounds for divorce are also considered to be fault-free by many researchers and other individuals. They are incompatibility and separation, but there are certain aspects about these two grounds which lead others to exclude them from the no-fault group.

The first incompatibility statutes were adopted a century ago (Sell, 1979:297). They were later replaced by similar statutes which, through court interpretation, were declared to be fault-free in theory. However, the problem of implementation remained. Incompatibility was associated with the traditional fault system and tended to be regarded in that perspective (Sell, 1979:298; Wheeler, 1974:38; Wright and Stetson, 1978:576). It exists as a ground for divorce along with other fault grounds in New Mexico (adopted in 1933), Alaska (1935), Oklahoma (1953) and Kansas (1969) (Sell, 1979:298). Wheeler states, "For the most part courts [in New Mexico, Alaska and Oklahoma] have interpreted the term strictly, refusing divorce where a husband and wife simply do not get along with each other and have required that incompatibility be proven with evidence which could just as well support a finding of cruelty." (Wheeler, 1974:38). Although technically not based on fault these incompatibility statutes in practice do not reflect the spirit of recent reform and are therefore excluded from the no-fault category in this discussion.

Separation as a ground for divorce raises related questions. It has also been on the books in numerous states for many years and several changes have occurred since the first statutes were passed as

early as 1839 (Sell, 1979:299). The trend has been toward reducing the number of years of separation required before it may be used as grounds for divorce. Periods of ten, seven or five years are changed, sometimes in several stages, to shorter periods of five, three or one years. Research by Sell indicates that the length of separation required by a state is a factor in the extent to which separation is used as a ground for divorce (Sell, 1979:300). In general, the shorter the separation period the greater the likelihood separation will be used. Statistical evidence leads Sell to conclude that the one year mark is a dividing line in the "use" pattern of separation (Sell, 1979:300). Currently there are twelve states which have separation grounds as the only alternative to traditional fault grounds. (Eight others have separation in addition to both fault and no-fault grounds.) Six of the states require a period greater than one year, ranging from eighteen months in New Jersey to three years in Arkansas, Utah and South Carolina. The remaining six states require a period of one year, with Vermont requiring only six months separation. All but one in the latter group of states shortened the length of time required by existing statutes sometime after 1970. The one exception, North Carolina, had a one year requirement as early as 1965. The other states either have not shortened the separation time in recent years or have added separation as a new statute but require a separation longer than one year. Based on these facts and time factors those six states having separation of one year or less as grounds for divorce are included in the no-fault category for the purposes of this research. These statutes offer the opportunity to dissolve a marriage without fault-finding procedures and without prolonged periods of waiting before the legal rights of divorce and remarriage

may be exercised. In this manner they "act like" the no-fault laws based on breakdown and not like their sister statutes in other states. The six remaining states are not considered no-fault states.

The issue of what constitutes no-fault divorce is not easily resolved. Researchers disagree. Authors disagree. Zuckman (1975) has recommended separate terminology to distinguish the laws. He suggests that "no-fault" be reserved for the "particular scheme of recent legislation in a handful of states which completely eliminates all fault grounds from collateral proceedings of alimony, child support, property division, and to a large extent, child custody." The term "non-fault" would apply to divorce under "any existing legislation which provides at least one ground for divorce which doesn't require showing a marital misconduct on the part of the respondent spouse." (Zuckman, 1975:6). Whatever the terminology it is important to understand that there are differences in the no-fault laws from state to state and that the definition of no-fault and fault divorce may vary from situation to situation.

Other labels have been applied to no-fault divorce reflecting the way in which the laws work. The labels include "no-grounds divorce" (Wheeler, 1974), "divorce on demand" (Andrew, 1978), and "unilateral divorce" (Krause, 1977). They are applied because legal options often available to the court in its decision-making process, such as investigations into the state of the marriage, mandatory counseling, and/or family court services, are rarely undertaken even where permissible. Glendon notes that these are largely matters of formality and ritual, originally included in the no-fault legislation to insure passage, and later frequently repealed. She describes the process this way: "But

now the principle of breakdown has been accepted, the palliatives of inquest or conciliation necessary to secure passage of no-fault legislation can be seen to be dropping away through repeal or disuse." (Glendon, 1977:235). At the same time fault-based defenses against divorce such as recrimination, connivance, and condonation have been limited so that they are both inappropriate and inadmissible in fault-free dissolution proceedings. This leaves the door wide open to "divorce on demand". One spouse can terminate his/her marriage at will with the statement that it has broken down irretrievably.

The situation is the same under most separation statutes. It is necessary only to demonstrate proof of separation for the requisite amount of time and divorce is granted. Wheeler suggests that this may be a more radical notion than breakdown statutes because it enables an individual to dissolve his or her marriage without even a pro forma investigation by the court (Wheeler, 1974:49). Krause, in an historical perspective, suggests that we have passed from restrictive divorce through consent divorce (long available through collusion) to unilateral divorce (Krause, 1977:274). After several years on the books it is apparent that for all practical purposes no-fault divorce provides in fact, if not in form, divorce on unilateral demand.

The application of these terms is interesting in view of the fact that technically the new laws place more authority than ever in the hands of the judge to deny a divorce request (Glendon, 1977:230). Under the fault system divorce had to be granted if the grounds were proved. Under no-fault laws a judge could conceivably determine that the marriage is not in fact irretrievably broken or that the differences are reconcilable. Although such action is unlikely it would be within the

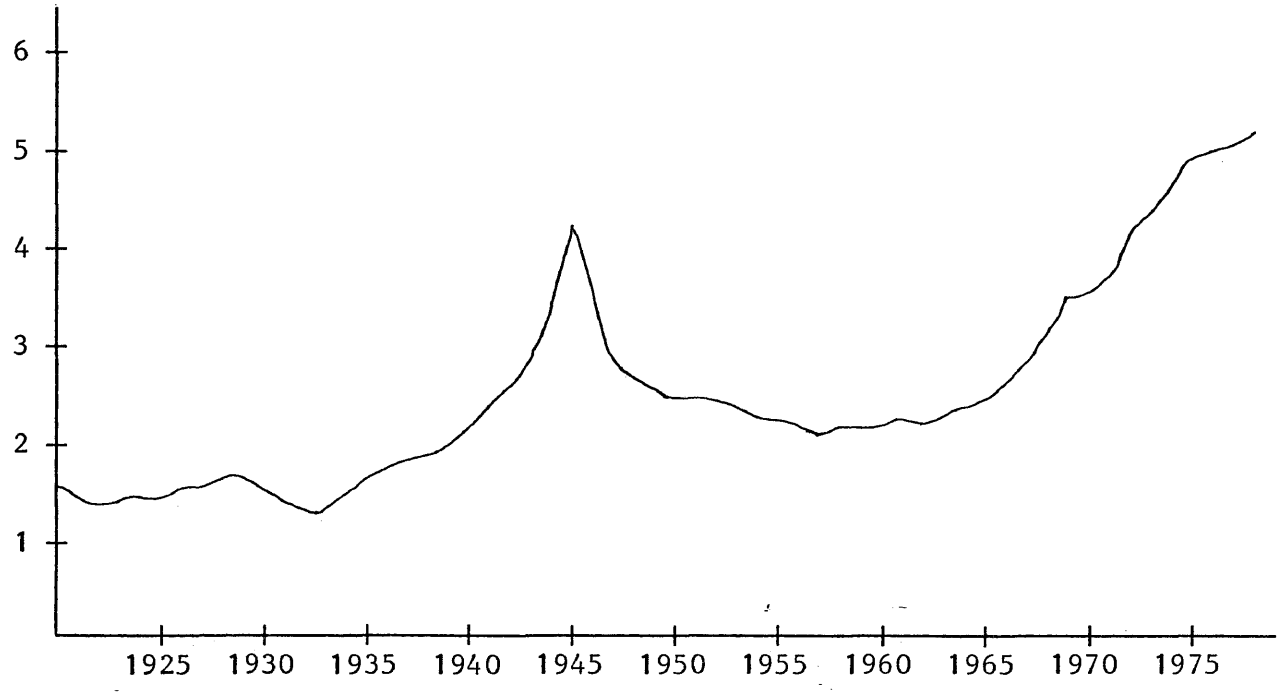
letter of the law. The ambiguity of the wording in no-fault statutes is frequently attacked for this reason. According to Glendon one exception is the state of Washington where the Marriage Dissolution Act of 1973 states that the court must dissolve marriages if both parties allege that the marriage is irretrievably broken or if no denial is entered by one party to such allegation by the other. Colorado is the only other state where divorce must be granted if a petition for divorce is unchallenged.

Factors Related to Its Inception

Divorce law reform during the 1970s was in large part a response to alarm over the steadily rising rate of divorce. Although the general trend in the national divorce rate has been upward since statistics were first collected in 1867, there have been occasional periods of dramatic increase. The post-World War II years were one such period. In 1946 the divorce rate hit a record high of 4.3 divorces per thousand population (Scanzoni and Scanzoni, 1976:457). The rate subsequently fell and leveled off at 2.1-2.3 for a number of years. In 1963 it began another upward climb which by 1975 had brought the rate up to 4.9 (Statistical Abstract of the United States, 1979:84). During that time the rate increased annually, with only two exceptions in 1965 and 1966 (Vital Statistics of the United States, 1965, 1970, 1974:2-6). Within a period of twelve years the divorce rate more than doubled and reached its highest level at that point in the nation's history (see Figure 1, page 19).

Legislative reform was seen as one potential means of dealing with the problem of this growing incidence of divorce. Divorce laws as a mechanism of social control are intended to support the goal of stability

Figure 1. United States Crude Divorce Rate, 1920-1978



Source: United States, Bureau of the Census (1975, 1979) and United States, National Center for Health Statistics (1978).

in marriage and family life. When the goal was not being achieved, as evidenced in higher divorce rates, the argument was made for changing the laws. Lichtenberger labels this approach the legalistic habit of mind, refering to the ". . . almost universal reliance upon law to create or maintain the approved standards . . ." (Lichtenberger, 1931:162). He notes it has been employed at other times in our history when increasing divorce rates led to passage of more stringent marriage and divorce laws. During the 1960s and 1970s there was support in general for change but disagreement as to what changes should be made as demonstrated in the variety of new laws which emerged. In many aspects it appeared to be a no-win situation. Borrowing from Bohannon's list of divorce-related "trite homilies" the dilemma finds expression: <u>easy</u> divorce may lead to casual marriage and the demise of the family; <u>difficult</u> divorce may lead to unhappy and destructive marriages and the demise of the family (Bohannon, 1979:318, emphasis added).

At the same time legislation was recognized as one factor possibly contributing to the problem of the growing incidence of divorce. After studying California's experience with non-adversary divorce three researchers noted:

> From time to time some of those persons who deal with social problems tend to look upon legislation as the ultimate tool for social reform . . . .
>
> Reality is seldom so comforting. More often than not, the laws are part of the problem rather than part of the solution, a mirror of social confusions and hypocrises. (Schoen, Greenblatt, Mielke, 1975:234)

Arnold Rose (1968) has studied the relationship between law and the causation of social problems and has identified eleven ways in which law helps to cause social problems. Two of these are of particular

interest to the study of divorce and divorce law: (1) a social value was enacted into statute, or it entered into common law, at an earlier period, and is inappropriate to current expectations for behavior; and (2) it encourages certain collusions and perjuries to "get around the law," which are themselves illegal and encourage disrespect for the law (Rose, 1968, 42-43). The relevance of these processes to the development and application of no-fault divorce law is discussed in greater detail below.

The increasing divorce rate, then, contributed to the focus on divorce laws in recent years. It also underscored potential problems inherent in the laws themselves. The states reacted to this in a variety of ways. Most chose to reform their divorce laws and some chose to abolish the old system completely and begin again with new laws.

No-fault divorce legislation was designed in part to correct for perceived shortcomings in the existing laws. Two areas of particular concern were the issues of personal trauma and of system abuse. Advocates argue that the trauma associated with divorce is substantially lessened by eliminating the need to provide proof of marital wrongdoing as part of the dissolution process. The actions of the individuals involved are not subject to public scrutiny. One spouse is not blamed for the marriage breakdown while the other is exonerated. The intention is to provide an efficient, truthful and more dignified avenue for marriage termination. By replacing traditional attitudes of punishment and guilt associated with divorce and divorcing persons with neutral considerations and concern for both spouses, the likelihood of personal bitterness is lessened. The threat of divorce or the refusal to sue for divorce cannot be used by one spouse against another in bargaining for

child custody and other settlement issues since either spouse has access to the court. The less hostile and more civilized atmosphere, as envisioned by those who drafted and supported the bills, is also beneficial to children caught in the divorce process. It should be noted, however, that in matters of child custody, as in alimony and property division decisions, the issue of fault is still alive. Evidence of misconduct is admissible in most states in cases where an out-of-court agreement has not been reached and fault may form the basis for a judgment by the court regarding these corollary issues (Sell, 1979:296-297).

Problems associated with abuse of the traditional divorce process are widespread and well-known. The fault system is attacked as being hypocritical on the grounds that it not only tolerates perjury and collusion but actually encourages such actions (Wheeler, 1974:8). Couples who do not have legally acceptable grounds for divorce but who wish to terminate their marriage frequently fabricate evidence and perjure themselves in court. Such action is commonplace and Wheeler states that most people in the legal profession accept as axiomatic the notion that perjury is the rule in divorce courts (Wheeler, 1974:5). The fact that everyone is involved, including the couples and their lawyers and the judges, results in a sham in the courtroom and contributes to disrespect for the legal process. Timothy Walker discusses this behavior as an example of law accommodation, a pattern of normative deviation that occurs when there is a breakdown in the ability of a law or rule to command adherence on the basis of its own utility (Walker, 1971:267-268). The result is behavior "that operates within the established procedures of a legal system in order to attain the goal provided by the system." The system is accommodated but the procedures are compromised in order to

achieve acceptable results. This compromise has been recognized by others including Max Rheinstein (1972) in his analysis of the "dual law of divorce." The dichotomy between the law on the books and the law in action is a familiar one and is indicative of the compromise nature of many of our laws. Conservatives are satisfied with the strict nature of the letter of the divorce law while others adopt a policy of nonenforcement to bring the law into line with social reality (Rheinstein, 1972: 254). There is still a price to be paid (e.g. perjury) but it is possible to circumvent the law. Increasing and flagrant abuse of the existing fault system was one of the major factors in no-fault reform efforts.

Proponents for change also argue that the adversary approach is inappropriate for divorce proceedings since ninety percent of all fault-based divorce cases are uncontested (Sell, 1979:292; Foster, 1969:113; Wheeler, 1974:4). From this view the fault system further complicates the issue by requiring couples and lawyers to mold the reason for desiring a divorce into one of the legal grounds for divorce recognized by law. For example, evidence indicates that at least seventy-five percent of divorces in fault states are based on the ground of cruelty (Wheeler, 1974:4). Other grounds, more difficult to prove and easier to contest in the absence of legitimate evidence, are less likely to be utilized.

There are other objections to the traditional system less frequently cited in the literature, which also played a part in the movement toward no-fault divorce legislation. The ones discussed above were perhaps the most pressing in the minds of the reformers. They were clearly identified in the Commissioners' Prefatory Note of 1971 to the Uniform Marriage and Divorce Act:

> The traditional conception based on fault has been singled out particulary, both as an ineffective barrier to marriage dissolution which is regularly overcome by perjury, thus promoting disrespect for the law and its process, and as an unfortunate device which adds to the bitterness and hostility of divorce proceedings. (quoted in Kargman, 1973:246)

Although no-fault divorce addresses many of the problems associated with current laws there remains opposition to a wholesale change in the adversary system. Some favor reform without endorsing no-fault divorce. Opposition centers on the statutes themselves and on their potential impact.

Concern over the wording and definition of no-fault statutes hampers reform efforts. Phrases such as "irreconcilable differences" and "irremedial breakdown" are attacked as ambiguous. If taken literally, no divorce would result since conceivably there might always be some small possibility of eventual reconciliation (Wheeler, 1974:21). Beyond a few written statements intended to clarify the meaning, the court has great discretion in applying the law. The fact that few cases have arisen involving a challenge to the meaning of the statutes does not preclude continued opposition to this aspect of the law.

Safeguards appear minimal to many conservatives. The phrases "divorce on demand" and "unilateral divorce" cause alarm among such opponents of the no-fault laws. They argue that such a system violates the state's interest in preserving stable marriages since procedurally no efforts are undertaken to verify breakdown or encourage reconciliation. The fact that there is no defense available to an unwilling partner in the dissolution process is another point cited. Inherent in those considerations is a fear that there will be a rush to dissolve a potentially

viable marriage prematurely, accompanied by an increase in the termination of intact but threatened marriages. It parallels the "open door" argument discussed by Kirkpatrick (1955), e.g.: where divorce is easily available, divorce traffic will increase. Opponents are concerned that the new laws will only increase the divorce rate.

In general the advent of no-fault divorce has been characterized as an example of the law catching up with reality. Concepts of marriage and family life and the mores governing such relationships have changed and continue to change dramatically during this century. Changing sex roles, greater geographic and social mobility, (especially for women), emphasis on personal freedom and individualism, increasing economic independence of family members, and the influence of pragmatism on attitudes toward the permanence of marriage are some of the factors contributing to the more fluid and pragmatic nature of marriage and the family. Prior to recent reform efforts marriage and divorce legislation did not correspond with the realities of contemporary marriage, thus the need for law accommodation. They were reflective of a time when lasting marriages were highly valued and restrictive divorce measures were instituted to punish those who desired to break up a marriage for any reason. As more opportunities open up outside the marriage relationship, its permanence becomes increasingly less attractive to some individuals and the security it once provided becomes less crucial. The result was a noticeable culture lag in which family law had failed to respond to the needs of the modern family (Lichtenberger, 1931:6, 259; Bohannon, 1979: 319; Dean and Kargman, 1966:273). No-fault divorce represents an effort to remedy the lag and bring the legal and social realities of divorce into alignment.

Despite the fundamental legal and ideological changes incorporated in no-fault divorce it has been surprisingly well received (Wheeler, 1974:30). A diversity of states with a wide range of social and political characteristics have accepted the concept partially or in toto and have functioning no-fault legislation in place today. Wheeler notes that the diversity of states with no-fault indicates that the success or failure of reform efforts in each state depends in large part on the potential skill and energy of the people behind it (Wheeler, 1974:153). For this reason special interest groups may significantly influence a decision in their favor in one state while exerting little or no pressure on legislators in another state. In California, for example, the Catholic Church did not object to passage of the Family Law Act while similar legislation has been hampered in other states by opposition from the Catholic leaders and lay persons. In some states, including California, no-fault laws have passed on the first attempt. In other states, Idaho, for example, repeated efforts have failed to pass reform measures. These examples illustrate that the experience of each state will be different from that of other states. Trend analysis does suggest that eventually each state will have some form of no-fault divorce on its books and in action.[1]

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[1]It is noted here that after this study was completed the researcher learned that Pennsylvania has amended its divorce law, adding irretrievable breakdown to its existing fault grounds (Purdon's Pennsylvania Legislative Service, 1980:51). This change, because it is so recent, would not alter the findings of this study. It is particularly significant, however, since Pennsylvania was one of the three states which had not recognized the principle of no-fault divorce, even by its most liberal definition, in its laws. The new law became effective July, 1980.

CHAPTER THREE

CONCEPTUAL FRAMEWORK

The impact of no-fault divorce legislation on divorce rates can be more fully understood in the broader context of the relationship between divorce law and family stability, utilizing divorce rates as a measure of family stability. Two theoretical models provide a means for studying the relationship between laws and stability. These models are exchange theory and field theory, the relevance of both to the study of divorce having been established in previous research (Lewis and Spanier, 1979; Scanzoni, 1972; Levinger, 1965; Kuo, 1974). Lewis and Spanier (1979:285) note that the key concepts of attractions and barriers used in field theory are compatible with exchange theory. This basic compatibility enables one to draw from both bodies of literature, which will be done here.

In the exchange model divorce behavior is understood in terms of an individual's assessment of the rewards and satisfactions of the marriage relationship in comparison to its associated costs and the potential for rewards in alternative circumstances. Field theory focuses on the attractions to the marriage relationship and the barriers against its breakdown. Costs and rewards (barriers and attractions) exist both within the marriage relationship and externally to it. There are both costs to remaining in the marital dyad and costs to leaving the dyad. Similarly, it is posited that there are rewards gained from marriage

and rewards to be gained by terminating marriage. The decision to obtain a divorce is the result of consideration of each of these four types of forces which act upon the individual and the relative strengths of these forces. These models are particularly appropriate for this study because they clearly acknowledge the extradyadic factors which operate in the divorce process as well as the intradyadic factors. Behavioral tendency cannot be predicted by knowledge of the individual alone because each behavior requires a facilitating environment (Yinger, in Kuo, 1974:77). It is necessary to account for the entire field, or social matrix, in understanding divorce behavior and factors affecting family stability.

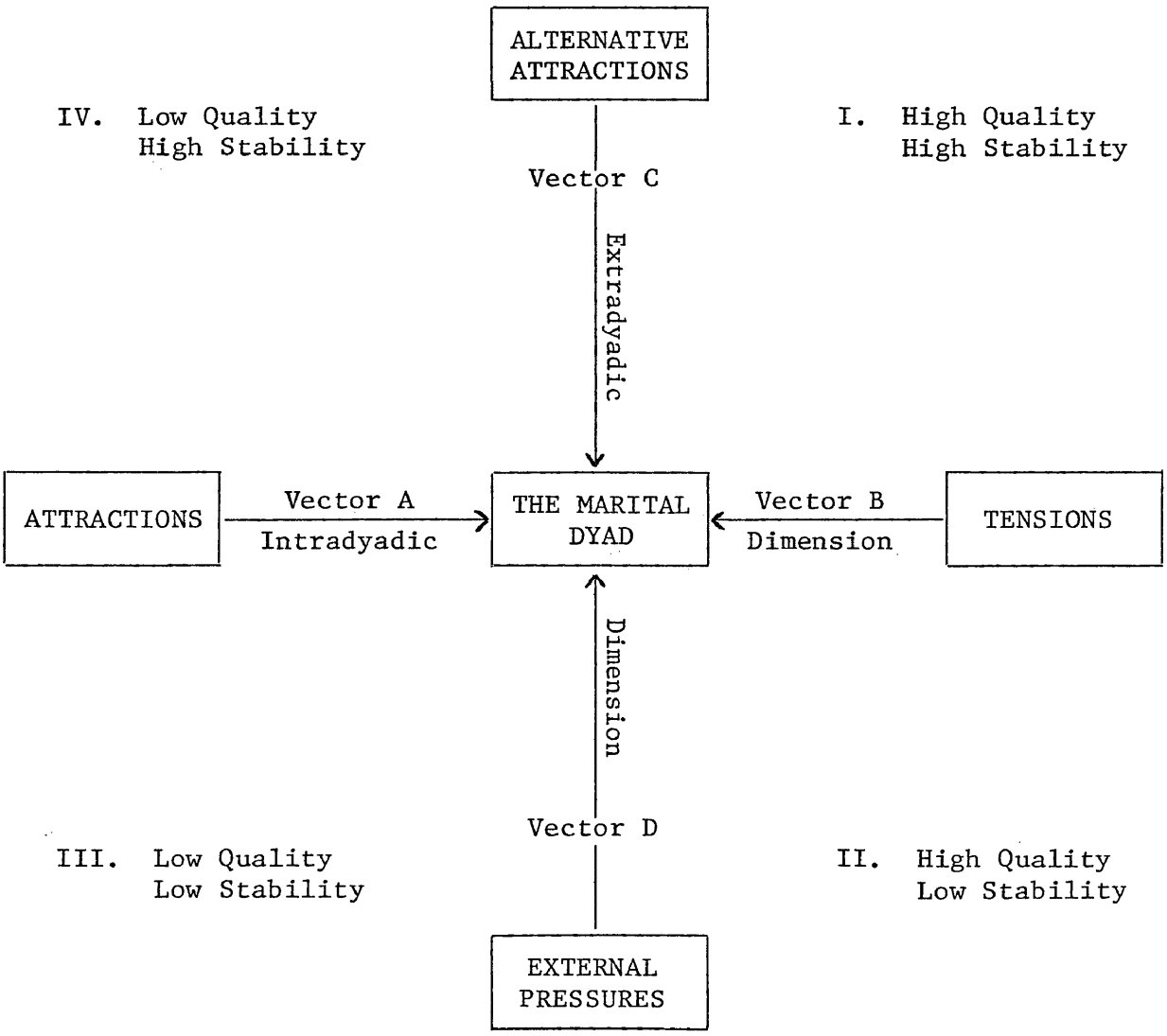
Divorce laws are a part of the external environment and thus influence family stability, presumably by increasing the cost of divorce. The laws have been labeled variously as a source of barrier strength (Levinger, 1965), as a restraining force against divorce (Kuo, 1974), and as a threshold variable which mediates between marriage and separation (Lewis and Spanier, 1979). Because they are a conservative societal control designed to protect viable marriages, they stand between an individual and his or her desire to terminate the marriage. That is, it is not possible to avoid the law if one wishes a divorce.

The extent to which the law acts as a barrier will presumably depend on its relative importance for the individual in the cost-benefit analysis and on its own strength as a barrier. That is, restrictive laws exert a greater restraining force than more lax laws because they make divorce more difficult to obtain. No-fault divorce legislation, generally assumed to be a liberalization of divorce laws, should decrease the strength of this barrier to divorce: this in turn should

lower the overall cost of leaving and increase the likelihood of divorce behavior.

The dynamics of the relationship between divorce law and divorce behavior can be demonstrated graphically using an exchange typology developed by Lewis and Spanier (1979).

Figure 2. An Exchange Typology of Marital Quality and Marital Stability



Source: Lewis and Spanier (1979:286).

This typology is the result of their extensive theory construction efforts to relate marital quality to marital stability. In the diagram the horizontal axis is the quality axis and represents the interpersonal aspects of the marriage/divorce decision. The vertical axis is the stability axis, accounting for those environmental or broader societal level factors present in decision-making. Marital stability was defined by the researchers simply as the formal or informal status of a marriage as intact or nonintact. The position of a marital dyad on the grid depends on the relative strengths of the four vectors. Specific couples change position over time as forces in the psychological and sociological environment change. Any change which drops the position below the horizontal axis increases the likelihood of separation and divorce. Passage of no-fault divorce legislation reduces the overall pressure to remain married by decreasing the strength of external pressures, vector D. The result is a downward shift on the vertical axis. For some number of couples this means a move into the low stability quadrants and greater potential for divorce. Areas not experiencing the legal change would not be subject to that decrease in pressure and couples would be stable on the extradyadic axis. All else being equal no increase in divorce rate would be expected in those areas.

A similar argument can be made using Kuo's (1974) field theory analysis. He states that a divorce decision is made if and when the individual perceives that the total driving force toward divorce is greater than the restraining force against divorce. This situation is expressed in the relational statement: $(DI + DD) > (RI + RD)$ (Kuo, 1974:15-16) where:

DI = driving forces away from marital integration
DD = driving forces toward divorce
RI = restraining forces for marital integration
RD = restraining forces against divorce.

No-fault divorce legislation, by reducing the magnitude of the restraining force against divorce, decreases the sum of the restraining forces and therefore increases the likelihood that driving forces in the direction of divorce will become relatively more forceful and lead to an increase in the number of marriage terminations.

Figure 3 gives an indication of the types of factors associated with the different forces discussed above. The comparison of concepts in field theory (Kuo) and the exchange typology (Lewis and Spanier) is made by this writer.

Figure 3. Types of Forces Influencing Divorce Behavior and Sample Associated Factors

TYPE OF FORCE		SAMPLE ASSOCIATED FACTORS[a]
Kuo	Lewis and Spanier	
DI	Tensions	Lack of communication, values discrepancy
DD	Alternative attractions	Preferred alternative sex partner, wife's opportunity for independent income
RI	Attractions	Companionship, mutual affection, sexual gratification
RD	External pressures	Legal constraints, proscriptive religion, cultural norms

[a]From Kuo (1974), Lewis and Spanier (1979) and Levinger (1965).

It seems reasonable to assume that marriages already characterized by low quality might be likely to end in divorce in an atmosphere of reduced external pressure. However, the typology of Lewis and Spanier (1979) and the work of Kuo (1974) suggest that marriages of relatively high quality also become subject to divorce. This issue is addressed by Lewis and Spanier (1979:288). The researchers note that quadrant II marriages (high quality, low stability) are rare, but suggest the plausibility of an increase in the proportion of these marriages in the future. They attribute this to the possibility that relatively happily married individuals may choose to terminate their marriage in preference to even more attractive alternatives. No-fault divorce might facilitate such a predisposition on the part of both partners in a marriage.

Discussion so far has focused on the effect of no-fault laws on intact marriages at the time the law became effective. It has been suggested that passage of no-fault divorce laws will increase the divorce rate by reducing the salience of one of the social obstacles to divorce. It is further suggested that the presence of no-fault divorce is conducive to higher divorce rates because the law continues to act in a barrier-reduction manner on intact marriages, leaving them more open to the possibility of divorce in the future. It also results in a lower configuration for external pressures in new marriages which are formed after the law has been operative.

It is possible that there may be noticeable short-term effects in addition to the more general long-term impact of no-fault divorce. This would happen in a situation where many couples were already vacillating between maintenance of their marriage and terminating it.

Passage of no-fault would act to bring them into a high divorce risk configuration. This backlog of marriages would then become unstable and produce a sudden sharp rise in the divorce rate. The rate would then level off again at a point between the pre-reform and immediate post-reform rate. This J-curve effect would be noticeable, for example, where a significant proportion of couples desired a divorce but were unable or unwilling to prove grounds and follow through with the adversary process.

Exchange theory and field theory offer a social-psychological approach to the study of human behavior with a focus on the individual. Of necessity the present study focuses on states as the unit of analysis and not the couples or married partners within the state. However, there are some measurable characteristics of states which make it possible to determine the extent to which the environment might be conducive to divorce decisions and thus to divorce behavior. It is recognized that states are composed of heterogenous populations. By using state-level data the relative presence or absence of the various factors studied can be documented and a composite picture for the state developed. This shift from micro- to macro-level is not ideal but is acceptable for present purposes since changes in divorce law are a statewide phenomenon.

In summary, the relationship of divorce laws to marital stability and divorce behavior has been examined within the framework of an exchange typology developed by Lewis and Spanier (1979). This typology is compatible with the concepts of field theory, which is also relevant to the study of divorce. It is suggested that the presence of

no-fault divorce legislation in a state leads to an increase in the divorce rate of that state.

Numerous other factors also effect the divorce rate. Based on previous research and the theoretical orientation presented here, the following additional hypotheses are made:

1) State divorce rates vary inversely with the state's
   a) percent of population with ethnic affiliation
   b) percent of population Catholic
   c) percent of families with children present
   d) percent of population high school graduates
   e) per capita income

2) State divorce rates vary directly with the state's
   a) migration rate
   b) percent in manufacturing of civilian labor force
   c) percent of population urban
   d) percent participation in labor force by women
   e) percent of civilian labor force unemployed
   f) percent of population 18-64 years old
   g) crude marriage rate

Approximately half of the factors represented in these hypotheses are posited to exert their greatest influence on the extradyadic (vertical) axis in the Lewis and Spanier typology. These factors are ethnicity, Catholicism, migration, industrialization (manufacturing) and urbanization. In general this group of variables influences barrier strengths against divorce. Extant empirical analyses demonstrate a clear impact on the divorce rate by these variables, and this influence must be accounted for in the present attempt to determine the independent impact of the legal variables used here on the divorce rate. Presence of children, education, income, unemployment, and labor force participation by

women constitute a second group of variables, identified here largely because of their influence on the intradyadic dimension (horizontal axis) in the exchange typology. Their influence on divorce rates are less clear from the empirical literature but this influence should also be recognized and controlled statistically in this study. There are undoubtedly additional variables which contribute to changes in divorce rates. It is believed that, within the limits of availability of state-level data, the ones included here represent major factors relevant to both the personal and the environmental aspects of divorce decisions. Further discussion of the hypothesized nature of the relationship of each of the variables with state divorce rates, along with comments on operationalizations of the variables, are included in Chapter Five.

CHAPTER FOUR

PREVIOUS STUDIES

The relationship between divorce law reform and divorce rates is a relatively unexplored area in divorce study. The literature indicates that most of the studies related to marital instability as measured by divorce rates have dealt largely with socio-economic factors and have approached the issue from a micro-level orientation with emphasis on the individual. Consideration of law as a variable useful in explaining variation in divorve rates is infrequent, as is macro-level analysis with a focus on states as the unit of study.

Early research efforts focused on grounds for divorce as an indicator of divorce law. As early as 1891 Willcox documented the lack of any clear relationship between either the number of grounds for divorce in a state, or a change in that number, and the state divorce rate (Lichtenberger, 1931; O'Neill, 1967; Rheinstein, 1972). Subsequent studies (Lichtenberger, 1931:181-186; Kirkpatrick, reported in Stetson and Wright, 1975:541) revealed a similar lack of relationship. In the fault-based system there was little empirically-supported reason to expect that legislative changes in the grounds for divorce would result in changes in divorce rates. This is in line with Willcox's overall conclusion, that ". . . the immediate, direct and measurable influence of legislation is subsidiary, unimportant, almost imperceptible" (in Lichtenberger, 1931:185-186).

In the mid-1970s a report was published by Stetson and Wright (1975) which was significant for at least three reasons. It recognized the need to incorporate legal variables along with the familiar nonlegal variables in a study of divorce rates. It also employed a more sophisticated measure for the divorce law variable, although noting measurement difficulties as a possible weakness in the study. Finally, the report produced findings contrary to those of previous research.

The Stetson and Wright (1975) research indicates that divorce policy per se does have an independent effect on state divorce rates. Using a regression model with states as units of analysis, Stetson and Wright examined the relationship between state divorce rates for the year 1960 and three groups of independent variables. Each of the three groups, economic development, social costs of divorce, and divorce policy permissiveness, had multiple indicators. There were two measures of divorce policy permissiveness. The statute law index reflected the number of grounds available for divorce. The implementation index, developed by Broël-Plateris, reflected the permissiveness of actual implementation of the statutes by the courts. The partial correlation coefficients for the law index and implementation index, controlling for all other independent variables, were .47 and .61 respectively. These were higher than comparable coefficients for any of the other variables. From their study Stetson and Wright drew three major conclusions: (1) a strong relationship exists between permissiveness of divorce laws and divorce rates; (2) the relationship remains when effects of variations in economic development and social costs are controlled; and (3) the effect of economic and social processes on divorce rates are substantially reduced when permissiveness of law and

implementation are controlled. Based on the data they suggest that permissiveness of state divorce laws is a major determinant of state divorce rates. This is the only study encountered by this reviewer which shows some aspect of the divorce law to be a factor in state divorce rates.

Applicability of the Stetson and Wright research to current studies of divorce laws and rates is limited by the operationalization of the divorce policy variables. The law index for each state is based on the presence or absence of five specific grounds for divorce. Because the new divorce laws eliminate grounds for divorce this is not an appropriate index for prediction in no-fault states. The implementation index raises serious methodological questions. It is based on responses from a panel of sixty-eight "experts in family law" throughout the United States (Stetson and Wright, 1975:541). In the absence of better measures it is an important step toward accounting for variation in implementation of the law. However, the scale was developed in 1959 and it is unclear what changes would result if new surveys were administered. Efforts to apply comparable indices appropriate for use in no-fault and fault states have not been reported. The concept of implementation is likely to remain an important factor, methodologically accounting for the difference between the "law on the books" (statute law) and the "law in action" (implementation) discussed by Rheinstein (1972) and others.

Three studies deal specifically with the impact of no-fault divorce legislation on divorce rates. This is not surprising in view of the historical pattern of oversight concerning the effect of the laws and also the recent emergence of the no-fault concept in state policy.

Each of the studies tested the hypothesis that the presence of no-fault divorce laws in a state leads to an increase in that state's divorce rate. None was able to support the hypothesis.

Wright and Stetson (1978) also conducted an empirical study to determine whether the introduction of marital breakdown as a basis for divorce has contributed to increases in divorce in the United States. The study covered the years 1960-1974. The researchers first determined which states adopted no-fault laws and which did not during that time. It is noted that they used a strict definition of no-fault, excluding states with separation and incompatibility grounds as not representative of the principle of marital breakdown evidenced in the new laws. State divorce rates for the reform group were adjusted, using the mean rate for no-reform states, to account for annual changes that presumably would have occurred as a result of normal increase. Results indicate little support for the hypothesis that breakdown provisions lead to an increase in divorce rates (Wright and Stetson, 1978:578). This finding held up under additional rate adjustments to correct for any linear trend that might be influencing the data.

Wright and Stetson (1978) approached their research with the concept of no-fault divorce as a liberalizing measure, which is the view generally expressed in the literature. Since the data reveal no impact of the new laws on the state divorce rates they question the assumption that the laws actually make the divorce process more permissive. This follows from their finding in 1975 that measures of permissiveness of divorce laws are strongly related to divorce in the various states. They note the influence of other issues also regulated by divorce law (e.g. residency requirements, custody) and the difference in the laws

from state to state as possible factors which prevent breakdown provisions from exerting a permissive influence on the divorce process.

Research by Mazur-Hart and Berman (1977) provides additional evidence that divorce rates are not significantly influenced by the passage of no-fault divorce legislation. Their study, based on the state of Nebraska, used an interrupted time-series quasiexperimental design with separate analysis for four control variables. While the frequencies of divorce in Nebraska increased systematically during the time studied, the increase appeared to be totally unrelated to the no-fault legislation (Mazur-Hart and Berman, 1977:309). Two variables, length of marriage and age at divorce, showed short-term effects. Long-term effects were revealed for the race variable, which was used in this study as an indicator for socio-economic status. Divorce levels among blacks increased following the inception of no-fault divorce. The authors postulate that no-fault divorce has helped to relieve the financial burden of divorce in Nebraska and therefore has contributed to an increase in the number of divorces among lower income families.

A third study of no-fault divorce law reform and increasing divorce rates is that of Kenneth Sell (1979). The most recent of the studies reported here, Sell uses a four-way classification of all states for the period 1968-1976.[2] By his categorization incompatibility and separation statutes are defined as no-fault in addition to the recent breakdown

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[2]The states are grouped by type of divorce law as follows: (1) no-fault grounds only; (2) fault grounds only; (3) mixed: incompatibility added to fault grounds -- defined so that irreconcilable differences, irretrievable breakdown, and incompatibility are used interchangeably; and (4) mixed: separation added to fault grounds. Sell notes that five states have both separation and incompatibility added to fault grounds and he lists these states separately.

statutes. Noting that adequate post-change data are not available at this time for a time-series study, Sell limited his analysis to "eye-balling" the plotted divorce rates and a comparison of mean rates for the change and no-change states. He considers statistical tests inappropriate for the data because of the assumptions necessary for these tests (Sell, 1979:302). His results indicate that fault-only states had the smallest increase in divorce rate during the period studied but that this increase did not differ substantially from the increase found in each of the other groups of states. Sell concluded that changes in the grounds for divorce do not substantially increase the divorce rates in the fifty states.

The empirical evidence suggests that changes in divorce laws have not contributed significantly in either a positive or negative direction to the rate of divorce in the various states.

CHAPTER FIVE

METHODOLOGY

The basic research question addressed in this thesis is: "Does the presence of no-fault legislation in a state contribute to an increase in the divorce rate of that state?" The finding of a positive relationship between a measure of the divorce rate and an indicator of divorce law would suggest an affirmative answer. States were used as the unit of analysis because regulation of divorce law is a matter of state control and changes occur at this level. The number of cases is forty-five (N=45). Four states, Arkansas, Indiana, Louisiana, and New Mexico are excluded from analysis due to incomplete reporting of basic divorce rate measures. Nevada is excluded because of its extreme divorce and marriage rates which are two and nine times higher, respectively, than the next highest comparable state rates.

A cross-sectional design with simple correlation and multiple regression analysis was used. Sub-programs in the Statistical Package for the Social Sciences (SPSS) provided data analysis. Raw input data were collected for each state from published reports, chiefly those of the United States Bureau of the Census (see Appendix B for details). Twenty-seven variables were identified. Nine were measures of divorce rate, the dependent variable. There were two indicators of divorce law, the independent variable. Remaining variables served as independent control variables. A complete zero-order correlation matrix was

generated. From this matrix the strongest predictor variables were chosen for further analysis in stepwise multiple regression equations. Inclusion criteria for control variables in regression analysis were not predetermined.

The crude divorce rate (CDR), the number of divorces per thousand population, was used in measuring the dependent variable. One limitation of the CDR is that the population on which it is based includes persons not "at risk" in divorce, such as children and older single persons. Data necessary to compute more precise measures, such as the refined divorce rate or standardized rates, were not available by state. However, the similarity in long-term trends reflected by both the crude rate and the refined rate suggest the basic validity of the CDR (Scanzoni, 1972:8).

Four divorce rate variables were identified initially: DIVORCE1, the 1960 CDR; DIVORCE2, the 1978 CDR; RATECHNG, the amount of change in CDR 1960-1978; and QRTILE, the quartile ranking by 1978 CDR. Changes in the divorce rates for the period 1960-1970 were included to account for any pre-reform trends evidenced in the state rates which may have continued on into the 1970s. Changes in rates beginning in 1970 and continuing through 1978 would reflect any shifts brought about by legislative reform. The upper limit is set at 1978 because divorce rates for subsequent years are not yet available. The eighteen year period also reflects the fact that legislative reform may be a result as well as a cause of increasing divorce rates. To examine this possibility and to discover if the longer period may have biased the results, separate analyses of divorce rate measures were obtained for each of the

decades. The amount of change in CDR 1960-1970 was labeled CHNG60S. The corresponding change for 1970-1978 was labeled CHNG70S.

An index labeled DIVSCORE was created by obtaining the product of the values for RATECHNG and QRTILE. In the event that the component variables were moderately correlated with each other the divorce score index would provide a useful measure for the dependent variable, reflecting both the magnitude of the divorce rate and the amount of change in the rate over the period studied. This composite measure would be preferable to the other indicators which could capture only one aspect of the divorce rate. A comparable index for the 1970s (SCORE70S) was also created.

Definition of the independent variable raises some questions (see Chapter 2). Some definitions of no-fault divorce are more inclusive than others. In this research six groups of states were identified on the basis of the type of divorce law on the books in the state:

1 = Breakdown (no-fault) Only (N=15)
2 = Breakdown plus Fault (N=14)
3 = Separation $\leq$ 1 year plus Fault (N=6)
4 = Separation $>$ 1 year plus Fault (N=4)
5 = Incompatibility plus Fault (N=3)
6 = Fault Only (N=3).

This classification was labeled DIVLAW. These six groups were then collapsed into a three-way classification (DIVLAWR):

1 = Breakdown Only (N=15) = 1 above
2 = Mixed (N=20) = 2 and 3 above
3 = Fault Only (N=10) = 4-6 above.

Fifteen independent (control) variables were used in the study. See Table 1, page 45 for a complete variable list with labels and operational definition. Below is a brief discussion of the predictor variables and additional information about their measurement and reason for selection.

Table 1. Variable List and Operational Definitions

Variable	Operational Definition
DIVORCE1	crude divorce rate, 1960
DRATE70	crude divorce rate, 1970
DIVORCE2	crude divorce rate, 1978
CHNG60S	amount of change in CDR, 1960-1970
CHNG70S	amount of change in CDR, 1970-1978
RATECHNG	amount of change in CDR, 1960-1978
QRTILE	quartile ranking by CDR, 1978 (1 = low, 4 = high)
DIVSCORE	product of RATECHNG and QRTILE
SCORE70S	product of CHNG70S and QRTILE
NUMGRNDS	total number of grounds for divorce, 1978
DIVLAW	categorization by type of divorce law(s), 1978 1 = Breakdown (no-fault) Only 2 = Breakdown plus Fault 3 = Separation $\leq$ 1 year plus Fault 4 = Separation > 1 year plus Fault 5 = Incompatibility plus Fault 6 = Fault Only
DIVLAWR	recoded categorization by type of law(s), 1978 1 = Breakdown Only (1 above) 2 = Mixed (2 and 3 above) 3 = Fault Only (4-6 above)
RACE	quartile ranking by percent of total population black, 1976
ETHNIC	percent of population with parentage of foreign stock, 1970
CATHOLIC	percent of population Catholic, 1979
CHILD18	percent of families with own children under 18 years present, 1970
ONECHILD	percent of families with one child under 18 years present, 1970

Variable List and Operational Definitions
(continued)

Variable	Operational Definition
GE4CHILD	percent of families with four or more children under 18 present, 1970
WOMLABOR	percent participation in labor force by women, 1978
UNEMPLOY	percent of civilian labor force unemployed, 1978
INCOME	per capita, 1975
EDUCATN	percent of population high school graduates, 1976
INDUST	percent in manufacturing of employed civilian labor force, 1970
URBAN	percent of population urban, 1970
MIGRATN	percent net change of population, 1970-1977
MGRATE	crude marriage rate, 1978
AGE	percent of population 18-64 years old, 1978

Two of the variables might be considered "risk" factors which help compensate for inadequacies in the CDR. The proportion of the population aged 18-64 is one measure. This age is most at risk in divorce decisions. Due to insufficient data it was not possible to break age (AGE) down into additional categories. A summary category was accepted. Marriage rates (MGRATE) were also obtained on the assumption that more marriages means more potential divorces.

Three of the control variables have been identified as social cost factors in previous divorce studies (Stetson and Wright, 1975; Fenelon, 1971). Their impact on divorce rates is well documented. Ethnicity (ETHNIC) and Catholicism (CATHOLIC) represent social and religious barriers to marriage termination. High in-group solidarity and social control act to reinforce traditional norms of family stability. The measure of Catholicism used here is percent of the population Catholic. It is based on religious affiliation and does not reflect devoutness, frequency of church attendance or other aspects of religious commitment. Other denominations could not be included because of insufficient data. However, proscriptions against divorce are strongest in the Catholic church and are only now beginning to be relaxed. Fenelon (1971) provides strong evidence of the importance of migration rates (MIGRATN) in explaining divorce rates. In areas where the population is relatively mobile social integration is weak and the impact of social norms and constraints is reduced.

The processes of urbanization (URBAN) and industrialization (INDUST) operate similarly to the migration factor. These variables are indicators of the increasing scale of society as discussed by the social area model as it relates to urban development (in Timms, 1971:123-210). As

societal scale, or modernization, increases, structural changes occur within the society which affect the scope of interaction and dependency among the members of that society. The three indicators of this process used here act indirectly to reduce the social costs of divorce by contributing to a breakup of traditional family patterns and functions. They also result in lower levels of community integration and its associated network of influence.

Less research has been done on the presence of children in a marriage as a source of barrier strength against divorce. Jacobson and Monahan (in Levinger, 1965:24) report that childless couples are more likely to separate than parental couples, and Renne (in Scanzoni and Scanzoni, 1976:376) found that persons currently raising children are more likely than those not currently raising children to report marital dissatisfaction. While children may increase the cost of remaining in marriage an obligation to dependent children apparently acts as a barrier to divorce. As societal emphasis on familism gives way to individualism the strength of that barrier can be expected to fluctuate. Presence of children might also increase the cost of divorce by complicating the divorce process with issues of child custody, visitation rights and financial support. There were three indicators for this variable, one determining the proportion of the population having children under eighteen years of age present (CHILD18) and two others based on the number of children present (ONECHILD, GE4CHILD). In his economic analysis of divorce Becker (1977) identifies children as "marriage-specific" capital. Their utility or reward value is substantially decreased outside of the marriage context. According to this perspective, the more

children one has the greater the cost of divorce and the greater the reward of marriage.

Several socio-economic factors are important. Income (INCOME) is inversely related to divorce rates according to studies which include an income measure (see Levinger, 1965:21-23). Higher incomes enable couples to increase the attractions to marriage by having or doing those items and activities which are considered rewarding. The concept of desertion as the "poor man's divorce" would seem to contradict this and suggest that lower income couples would be less likely to divorce due to financial constraints. As more couples stay above poverty level the economic feasibility of divorce improves. This view of desertion is even more questionable today because of the 1971 Supreme Court ruling in Boddie v. Connecticut that access to divorce courts cannot be denied due to inability of the petitioner to pay for the divorce (Kargman, 1973: 246; Glendon, 1977:230). Race (RACE) is a factor which is difficult to analyze independently because it is so closely associated with income. It has been measured here by quartile ranking because census data for percent of population black includes twelve missing values. Education (EDUCATN), like income, is inversely related to divorce rates (Scanzoni and Scanzoni, 1976; Scanzoni, 1972; Levinger, 1965) and positively related to marital quality (Lewis and Spanier, 1979). It is generally explained in terms of increased opportunities for rewards and satisfaction in the marriage. The relationship between education and divorce is sex-related (Glick, 1975; Scanzoni, 1972:18-19). Scanzoni (1972) notes that for both men and women high school graduation contributes to marital stability. The indicator for education used here is the percent of the population who are high school graduates. The median number

of school years completed was an unacceptable measure because the range for all states was 0.8 years.

Two variables not generally included in divorce studies are women in the labor force (WOMLABOR) and unemployment (UNEMPLOY). The percent of women in the labor force is increasing. It is suggested that this variable is positively associated with divorce rates. Participation in the labor force will reduce to some extent the strength of economic dependency as a barrier to divorce for women while increasing the strength of alternative attractions. This factor parallels changes in traditional sex-based family roles and responsibilities. As this occurs there is also the potential for increased marital tension. Unemployment affects income, also, and would be expected to indirectly increase divorce rate measures for this reason. It is generally a short-term factor. This might be particularly significant in no-fault states because relatively little time elapses before divorce is granted. Otherwise the tensions caused by temporary unemployment might have abated sufficiently to cause an individual or couple to reconsider the divorce decision. To the extent that unemployment is considered long-term and/or is viewed as a chronic problem it can act to increase marital tensions and the driving force away from marital integration.

CHAPTER SIX

FINDINGS AND DISCUSSION

Divorce Score and Divorce Law Indices

The zero-order correlation matrix for selected variables is given in Table 3, page 53.[3] Correlation coefficients quoted in the text are taken from this matrix. Analysis of the relationship between the component variables of the divorce score index showed the rate of change in the divorce rate (RATECHNG) and the quartile ranking by divorce rate (QRTILE) to be moderately correlated (r = 0.584). This index (DIVSCORE) was used as the measure of the dependent variable in subsequent regression analysis. In order to have a comparable divorce rate measure for the period 1970-1978 when no-fault laws were in effect, a second index (SCORE70S) was used in limited additional analysis. It is noted that the component variables for this index, CHNG70S and QRTILE, were only weakly related (r = 0.259).

As expected from previous studies (Lichtenberger, 1931; Kirkpatrick in Stetson and Wright, 1975) the number of grounds for divorce in a state (NUMGRNDS) showed little or no relationship to any of the divorce rate measures (r = -0.014 to -0.109). This variable distinguishes

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[3]Correlation coefficients, means and standard deviations are not reported for the decade-specific divorce rate variables which were used only in limited additional analysis. Statistical information for these variables (SCORE70S, CHNG60S, CHNG70S, DRATE70S) is available by request from the author.

Table 2. Means and Standard Deviations for Selected Variables

Variable	Mean	Standard Deviation
DIVORCE1	2.253	1.110
DIVORCE2	5.256	1.487
RATECHNG	2.998	0.741
QRTILE	2.511	1.121
NUMGRNDS	6.489	4.424
DIVLAW	2.444	1.531
DIVLAWR	1.889	0.745
RACE	2.511	1.121
ETHNIC	14.847	9.518
CATHOLIC	19.276	13.128
CHILD18	56.091	3.156
ONECHILD	17.893	1.175
GE4CHILD	10.431	1.872
WOMLABOR	50.998	4.420
UNEMPLOY	5.753	1.513
INCOME	4741.178	725.374
EDUCATN	67.593	7.241
INDUST	22.951	9.170
URBAN	65.718	14.931
MIGRATN	9.411	8.158
MGRATE	10.644	2.581
AGE	70.367	2.164
DIVSCORE	8.002	4.783

Table 3. Zero-Order Correlation Matrix for Selected Variables

	DIVORCE1	DIVORCE2	RATECHNG	QRTILE	NUMGRNDS	DIVLAW
DIVORCE1	1.000					
DIVORCE2	.882	1.000				
RATECHNG	.255	.681	1.000			
QRTILE	.882	.954	.584	1.000		
NUMGRNDS	-.070	-.055	-.014	-.088	1.000	
DIVLAW	-.191	-.201	-.115	-.215	.518	1.000
DIVLAWR	-.191	-.179	-.075	-.175	.713	.921
RACE	.027	-.038	-.125	.023	.136	.090
ETHNIC	-.423	-.371	-.103	-.378	-.081	-.046
CATHOLIC	-.538	-.541	-.272	-.558	.077	.046
CHILD18	.010	.154	.296	.161	-.033	.124
ONECHILD	.151	.228	.227	.267	.172	.118
GE4CHILD	-.126	-.101	-.011	-.109	-.017	.095
WOMLABOR	-.128	-.003	.196	-.018	-.208	.050
UNEMPLOY	.140	.269	.328	.249	-.021	-.049
INCOME	.031	.168	.298	.098	-.177	.143
EDUCATN	.063	.167	.252	.152	-.394	-.048
INDUST	-.360	-.356	-.180	-.320	.337	.076
URBAN	.018	-.012	-.048	.043	-.153	-.054
MIGRATN	.586	.732	.584	.676	-.130	-.100
MGRATE	.533	.507	.214	.511	.116	.176
AGE	-.272	-.304	-.200	-.300	-.155	-.146
DIVSCORE	.689	.932	.844	.911	-.109	-.185

Zero-Order Correlation Matrix for Selected Variables
(continued)

	DIVLAWR	RACE	ETHNIC	CATHOLIC	CHILD18	ONECHILD
DIVLAWR	1.000					
RACE	.070	1.000				
ETHNIC	-.031	-.388	1.000			
CATHOLIC	.039	-.301	.852	1.000		
CHILD18	.174	-.369	.009	-.164	1.000	
ONECHILD	.199	.545	-.389	-.477	.301	1.000
GE4CHILD	.118	-.627	.104	.063	.703	-.356
WOMLABOR	-.019	-.248	.134	.113	.525	.062
UNEMPLOY	-.035	.102	.195	.056	.261	.339
INCOME	.043	-.124	.398	.253	.416	.136
EDUCATN	-.152	-.608	.454	.251	.431	-.399
INDUST	.166	.499	.038	.260	-.299	.221
URBAN	-.070	.217	.542	.400	-.109	.047
MIGRATN	-.096	-.295	-.195	-.394	.433	.166
MGRATE	.226	-.054	-.512	-.588	.235	.233
AGE	-.242	.340	.333	.420	-.740	-.136
DIVSCORE	-.164	-.086	-.272	-.470	.258	.237

Zero-Order Correlation Matrix for Selected Variables
(continued)

	GE4CHILD	WOMLABOR	UNEMPLOY	INCOME	EDUCATN	INDUST
GE4CHILD	1.000					
WOMLABOR	.307	1.000				
UNEMPLOY	-.022	-.057	1.000			
INCOME	.062	.472	.502	1.000		
EDUCATN	.410	.522	-.023	.597	1.000	
INDUST	-.381	-.200	.085	-.241	-.478	1.000
URBAN	-.311	-.031	.187	.436	.332	.131
MIGRATN	.274	.203	.271	.286	.322	-.503
MGRATE	.140	.069	-.110	-.215	-.076	-.349
AGE	-.742	-.163	-.079	.023	-.126	.347
DIVSCORE	-.041	.117	.330	.267	.280	-.351

	URBAN	MIGRATN	MGRATE	AGE	DIVSCORE
URBAN	1.000				
MIGRATN	-.093	1.000			
MGRATE	-.307	.467	1.000		
AGE	.350	-.534	-.506	1.000	
DIVSCORE	.022	.750	.428	-.291	1.000

clearly between breakdown states (NUMGRNDS = 1 or 2) and states retaining fault ($4 \leq$ NUMGRNDS ≤ 15); however, it does not distinguish adequately between fault-only states and mixed states, all of which have multiple grounds for divorce. It was eliminated from additional study for these reasons.

Output from the multiple regression on DIVSCORE is presented in Table 4, page 57. Three variables (RACE, GE4CHILD, URBAN) whose correlation with DIVSCORE was less than 0.10 are excluded, as are variables explaining less than one percent of the variance in the dependent variable (ONECHILD, WOMLABOR, MGRATE, INDUST). Three additional variables (ETHNIC, INCOME, CHILD18) were eliminated on the basis of high collinearity with other included variables as described below:

ETHNIC with CATHOLIC, r = 0.852
INCOME with EDUCATN, r = 0.600
CHILD18 with AGE, r = -0.740.

Multiple regression analysis reveals that the divorce law index is the least important predictor variable in the regression equation (Table 4, page 57). A standardized unit increase in the divorce law measure has virtually no effect on the divorce score index (BETA = 0.072). This lack of relationship had been suggested in the correlation analysis. It was also apparent in the regression on the 1970s divorce score index (BETA = .068, R^2 = .484, not shown) and on the 1970s divorce rate change (BETA = .098, R^2 = .286, not shown). Despite holding constant the impact of the other variables, indicators of the divorce law and the divorce rate appear to be unrelated. The major hypothesis that the presence of no-fault divorce leads to an increase in state divorce rates is not accepted. Evidence indicates that no-fault laws neither increase

Table 4. Multiple Regression Analysis on the Divorce Score Index

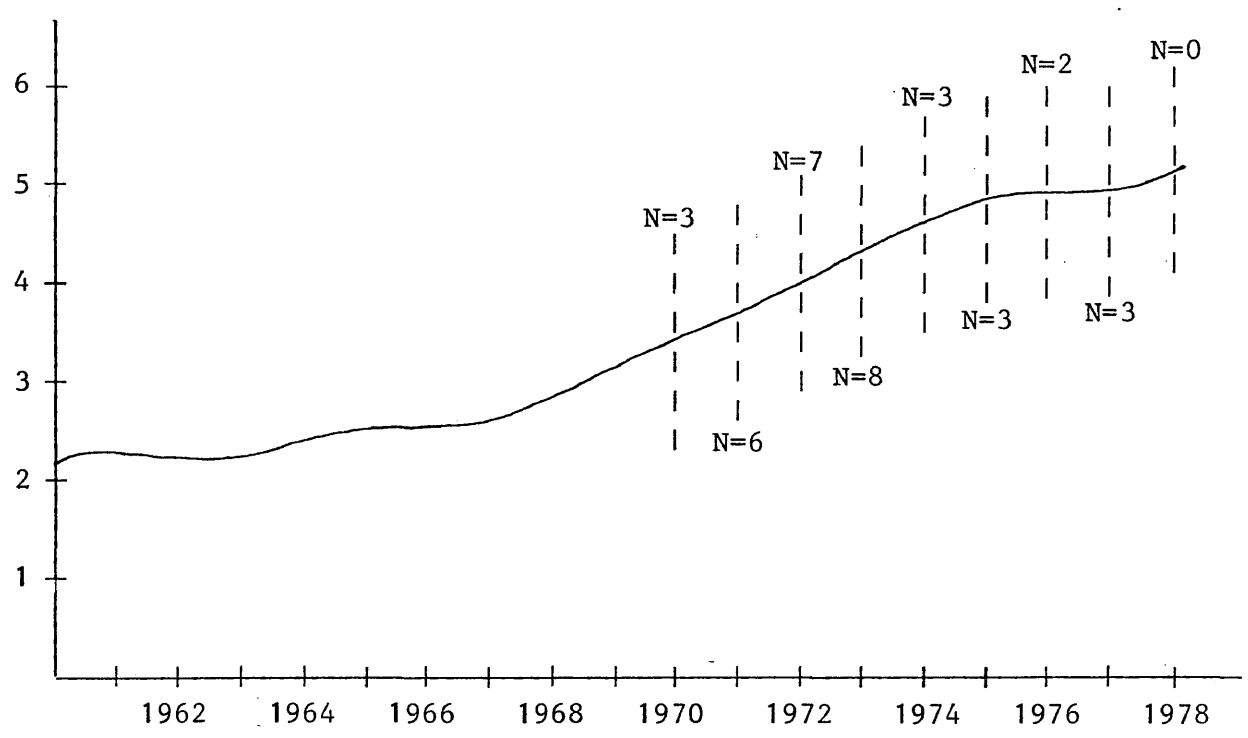
Variable	Zero-Order Correlation Coefficient (r)	Standardized Regression Coefficient (BETA)
MIGRATN	.750	.614
CATHOLIC	-.470	-.405
AGE	-.291	.299
UNEMPLOY	.330	.250
EDUCATN	.280	.233
DIVLAWR	-.164	.072

$R^2 = 0.710$

nor decrease the divorce rate. This lack of relationship is demonstrated graphically by the smoothness of the curve in Figure 4, page 59.

This finding supports previous research on the impact of no-fault legislation on divorce rates (Mazur-Hart and Berman, 1977; Wright and Stetson, 1978; Sell, 1979). Wright and Stetson (1978) further suggested that no-fault divorce legislation is not a permissive law, based on their earlier finding (1975) that measures of permissiveness of divorce laws are strongly related to state divorce rates. If this suggestion is correct then the divorce law index used here (DIVLAWR) represents a nominal level scale because no hierarchy of liberalization exists. On the other hand the suggestion is questionable since measures of the permissiveness indices used by Stetson and Wright (1975) assume a fault-based system. The law index is based on the number of certain specified grounds for divorce on the books in a state; but no-fault divorce eliminates grounds for divorce. The implementation index is based on the comparative laxity with which the statute law is administered; but there is reason to suspect that there might be little variation in implementation of no-fault statutes. Apparently the courts in general do not exercise the discretion they have in implementing the new laws (see Chapter 2, page 16). At the same time corollary issues of custody, support and property division still vary among the states having breakdown statutes. Permissiveness could continue to make substantial differences in these aspects of the dissolution laws. Previous discussion using the exchange typology assumes that the laws are permissive and therefore that they reduce the barrier strength of legal constraints. If they are not permissive then the null hypothesis would have been predicted. In the absence of permissiveness indicators applicable to both traditional

Figure 4. United States Crude Divorce Rate 1960-1978,[a] With Number of States Enacting No-Fault Legislation Per Year[b]



[a]United States, Bureau of the Census (1975, 1979) and United States, National Center for Health Statistics (1978).
[b]Sell (1979:203).

laws and no-fault laws there remains a question as to whether no-fault laws liberalize the divorce process. Other explanations are needed to help understand the lack of relationship between laws and rates.

The conceptual framework introduced in chapter three suggests that one alternative explanation relates to public awareness of the laws. Both field theory and exchange theory are based on the individual's perception of the total environment and his assessment of the cost-benefit ratio in decision-making. Laws must be present in the decision-making process in order to influence it. A study of the impact of new laws requires the assumption that individuals are aware of the significance of the changes made. Research by Deckert and Langelier (reported in Sell, 1979:301) indicates that following Canadian divorce law reform forty-two percent of the Quebec residents studied were not aware of the changes that had been made. Of those who were aware of the changes, ninety-one percent reported they were not influenced by the prospect of more liberal laws. Sell suggests that the situation in the United States would probably be similar to that in Quebec, although there is no research evidence to support or invalidate that suggestion. Implications from Rheinstein (1972) support the assumption. Rheinstein points out that compromise between the law on the books and the law in action under the fault system was worked out quietly among judges, lawyers and divorcing persons (Rheinstein, 1972:254). It was not open to public view because of the ethical issues involved in acknowledged perjury and other law accommodation procedures. To some extent the change to no-fault divorce may have been an extension of this backroom process in which those directly involved sought a more acceptable solution to the problem. It was not possible in this study to measure at the state level the extent

of publicity about divorce laws or to determine the amount of public awareness of legal reform. It is only noted here that any potential impact of laws on divorce rates may be a function of public awareness, and that indirect evidence suggests that the awareness is low. In this case no-fault laws could not act to reduce the social barrier to divorce, which in turn could not increase the likelihood of divorce decisions.

The Deckert and Langelier study (in Sell, 1979) indicates that even when awareness is adequate, the influence of reform is not extensive. Only ten percent of the Quebec respondents claimed to be influenced, and we do not know in what way they were influenced. Any barrier reduction accompanying reform appears to be quite slight.

A second alternative explanation for the lack of relationship between laws and rates involves the direction of causality. No-fault legislation may be a consequent of increasing divorce rates rather than a cause of further increase. To check this possibility a multiple regression analysis was obtained using the divorce law index (DIVLAWR) as the dependent variable (Table 5, page 62). Twenty-five percent of the variance in the law index could be explained by the combined impact of the variables. The divorce score measure, used here as an independent variable, had the second largest BETA in the equation, contributing a standardized decrease of 0.329 of the standard deviation of the law variable. This suggests that divorce rates do influence the divorce laws of a state. The negative direction of the relationship indicates that states with higher divorce rates are more likely to have lenient (no-fault) divorce laws.

Consideration of the separate divorce rate variables for the 1960s (CHNG60S) and the 1970s (SCORE70S, CHNG70S) provides additional

Table 5. Multiple Regression Analysis on the Divorce Law Index

Variable	Zero-Order Correlation Coefficient (r)	Standardized Regression Coefficient (BETA)
AGE	-.242	-.256
INDUST	.166	.234
MGRATE	.226	.330
DIVSCORE	-.164	-.329
ONECHILD	.199	.175
EDUCATN	-.152	.128

$R^2 = 0.255$

information. The impact of these variables on the divorce law index is less than that revealed by the general divorce score index discussed above (Tables 6-8, pages 64-66). However, the results show that among the decade-specific variables the greatest influence on the laws is found in the amount of change during the 1960s (BETA = -0.220). Furthermore, the direction of the impact of the change during the 1970s is positive (BETA = 0.108), suggesting that those states with higher amounts of change during the 1970s were more likely to be states having restrictive laws. The signs and relative strengths of the zero-order correlation coefficients for the 1960 and 1970 rate change variables with the divorce law index are the same as the BETA coefficients ($r = -0.216$ and $r = 0.158$, respectively). This information suggests that no-fault legislation, where enacted, may tend to suppress the growth in state divorce rates.

The reader is cautioned that in none of the regression equations was more than twenty-five percent of the variance in divorce laws policies explained, and that the divorce rate measures accounted for only a small fraction of that percentage. The net impact on the law index is quite small. It must be remembered that although the first no-fault laws were enacted in 1970, most were passed in subsequent years. The impact of the CHNG70S variable still cannot account for this time differential. More sophisticated measurement techniques and the passage of more time are needed to clarify this relationship.

Historically, as divorce rates increased over the years there was a subsequent but parallel trend toward more restrictive laws (Lichtenberger, 1931:171). (The exception to this trend, noted by Lichtenberger, has been the grounds for divorce, one aspect of divorce law which has not become more stringent.) This relationship between increasing

Table 6. Multiple Regression Analysis with Decade-Specific Divorce Rate Measures on the Divorce Law Index: 1970s Divorce Score Index

Variable	Zero-Order Correlation Coefficient (r)	Standardized Regression Coefficient (BETA)
AGE	-.242	-.280
INDUST	.166	.286
MGRATE	.226	.287
SCORE70S	-.046	-.140

$R^2 = .199$

Table 7. Multiple Regression Analysis with Decade-Specific Divorce Rate Measures on the Divorce Law Index: 1960s Divorce Rate Change

Variable	Zero-Order Correlation Coefficient (r)	Standardized Regression Coefficient (BETA)
AGE	-.242	-.281
INDUST	.166	.260
MGRATE	.226	.241
CHNG60S	-.216	-.192

$R^2 = .218$

Table 8. Multiple Regression Analysis with Decade-Specific Divorce Rate Measures on the Divorce Law Index: 1970s Divorce Rate Change

Variable	Zero-Order Correlation Coefficient (r)	Standardized Regression Coefficient (BETA)
AGE	-.242	-.265
INDUST	.166	.281
MGRATE	.226	.220
CHNG70S	.158	.115

$R^2 = .195$

rates and legal reform relates to the "legalistic habit of mind" also discussed by Lichtenberger (1931:162). Society identifies a social problem, enacts legislation to control the problem, and expects the law to affect behavior. This pattern of legislative reaction continued in divorce law despite evidence indicating that the restrictive laws did not influence divorce rates. The no-fault laws appear to be in part a continuation of this trend. They may be characterized as a reaction to increasing divorce rates rather than a catalyst for further increase. States experiencing relatively high divorce rate increases during the 1960s were likely to pass no-fault legislation. These states in turn experienced relatively low divorce rate increases during the 1970s, a result not seen in the effect of the earlier restrictive measures.

The conclusion drawn from this research is that there is a relationship between divorce laws and divorce rates but that it is demonstrated when the laws are viewed as an effect of increasing rates rather than a potential cause of them.

Remaining Independent Variables

Multiple regression analysis shows that migration, unemployment and age distribution of the population are positively related to the divorce score index (Table 4, page 57). For this reason hypotheses 2a, 2e and 2f (page 34) are accepted. The regression analysis also shows a negative relationship between Catholicism and the divorce score index, which leads to acceptance of hypothesis 1b (page 34).

The hypothesis concerning the relationship between the divorce rate and the proportion of the population with a high school education is not accepted because the direction of the relationship is opposite from the

predicted direction. A possible explanation for the increase in divorce score accompanying increases in the education measure is the greater accessibility to alternative attractions outside the marriage. In states where more people have a high school diploma the wherewithal to obtain rewards from other sources increases. There is no way to tell whether states with high education scores have more residents with advanced education, a factor which is associated with increasing marital instability for women (Glick, 1975). Also, education shows an impact significantly different from income (BETA = -0.284, not shown in Tables) although the two variables are highly correlated (r = 0.600) and act similarly in micro-level studies. This difference in impact is due in part to the fact that income is an aggregate measure in which husbands would be expected to contribute the larger proportion, while education level is an individual characteristic in which spouses are often similar. Furthermore, the relationship between education and divorce is influenced by sex and duration of education. Its complexity as a predictor variable may account for part of the difference revealed in empirical analysis.

The remaining hypotheses cannot be accepted. The predictive ability of the other independent variables is not sufficient to suggest a relationship between them and state divorce rates. It is noted, however, that the direction of the relationships is as predicted (except for the variable ONECHILD) even though the strength of the relationships suggest little or no impact on the dependent variable.

The discrepancy in the expected and the actual direction for the proportion of the population having one child at home may be a function of the length of marriage, a variable not measured in this study. Couples having one child are more likely to be in the early years of

marriage which are disproportionately divorce-prone years (see Becker, 1977:1144). The variable reflecting the presence of any number of children at home (CHILD18) does reveal the expected relationship with the divorce score (BETA = -0.221, not shown).

Migration is the strongest predictor of divorce rates (r = 0.750; BETA = 0.614). The strong positive relationship between migration and divorce has been reported and discussed in previous research (Fenelon, 1971; Pang and Hanson, 1968). It is explained by Fenelon (1971) in terms of a social cost model similar to the framework used in this paper. He notes that system stability, social integration and absence of population change are all interrelated. A mobile population is relatively less integrated and therefore less subject to social restraints in general and the impact of social costs of divorce in particular. Social barriers are not strong to begin with in these areas and therefore are less likely to inhibit divorce decisions.

The reason for this is better understood through a consideration of the distinction between primitive (mechanical) societies and modern (organic) societies as discussed by Durkheim (1933). The former are characterized by a strongly held collective conscience, little division of labor, and solidarity through common values. The latter exhibit individuated consciences, and functional interdependence which forms the basis for social solidarity. Thus, individualization increases as modernization of society continues and the scope of social control vis-à-vis shared values concurrently decreases. There are more and more items and events subject to evaluation by the collective conscience at the same time that there is less consensus on that collective conscience. The net result is greater latitude for individual behavior in areas

where the division of labor (and thus the organic solidarity) is most advanced.

A comparison of the multiple regression analysis on the divorce score and on each of its component variables indicates that basically the same factors are important in explaining variations in all three measures (Table 4, page 57; Table 9, page 71; Table 10, page 72). Education drops out of the equation for RATECHNG and QRTILE, while MGRATE is included in QRTILE prediction. None of these changes are extensive. The drop in BETA for Catholicism on the rate change variable is expected since the rate is not increasing significantly among Catholics.

Regressing the independent variables on the divorce law index produces a different set of predictor variables (Table 5, page 62). Age distribution is the only variable common to all four regression equations. This suggests that a different set of dynamics are operating on the law variable than on measures of the divorce rate.

Migration and Catholicism, which together account for almost sixty percent of the variance explained in the divorce score index (R^2 = 0.592, not shown), are not present in the divorce law equation. The salience of the two variables, and to some extent unemployment, suggest that social solidarity factors are important in understanding divorce rates. Where social barriers against divorce are high, the divorce rates are low.

The influence of social integration is seen indirectly and to a lesser extent in the regression on divorce law where industrialization is a factor. For historical reasons the northeast section of our country has been the most industrialized. These states also are generally characterized by high population stability and high proportions of

Table 9. Multiple Regression Analysis on the Divorce Rate Change, 1960-1978

Variable	Zero-Order Correlation Coefficient (r)	Standardized Regression Coefficient (BETA)
MIGRATN	.584	.613
UNEMPLOY	.328	.212
AGE	-.200	.268
DIVLAWR	-.075	.120
CATHOLIC	-.272	-.138
INCOME	.298	.048

$R^2 = 0.435$

Table 10. Multiple Regression Analysis on the 1978 Quartile Ranking by Divorce Rate

Variable	Zero-Order Correlation Coefficient (r)	Standardized Regression Coefficient (BETA)
MIGRATN	.676	.542
CATHOLIC	-.558	-.332
AGE	-.300	.266
UNEMPLOY	.249	.192
MGRATE	.511	.199

$R^2 = 0.627$

Catholic residents. They tend to have restrictive divorce laws. In fact, only one of the breakdown-only states (DIVLAWR = 1) is found in the northeast or east north central regions. Most of these states have mixed grounds for divorce. The predicted impact on the law index by industrialization would have been a negative relationship. This is because of the increasing interdependence of the major institutions of society as growth and development continue. Increasing individualism, and decreasing dependence on the family, are generally considered to be associated with industrialization. They are also assumed to be related to reduction in barrier strength of social constraints against divorce. The positive BETA in the regression could be a result of collinearity with the MIGRATN and CATHOLIC variables discussed above.

Marriage rates and the presence of one child at home are two variables with an impact on the divorce law not seen on the divorce rate. These factors suggest the salience of values of familism. States with high scores on these measures have more persons "at risk" in liberalization of divorce laws. Married couples and parents have a vested interest in ensuring the continuation of marriage and family stability and the rewards they gain from this stability. In a separate analysis conducted as part of this research an effect of marital status was found on attitudes toward divorce law.[4] Data gathered by the National Opinion Research Center (NORC) as part of its General Social Surveys for the years 1974-1978 indicate that when asked if divorce should be easier or more

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[4]The data discussed are taken from the General Social Surveys (GSS) Cumulative Codebook (NORC, 1978) and are available on file tape at the Computer Center of the College of William and Mary. They are responses from a national sample of English-speaking persons 18 years of age or older drawn independently each year as described in the codebook. Responses are not available by state but are used here because they

difficult to obtain than it was at the time of the interview, forty-eight percent of all respondents answered that it should be more difficult (Table 11, page 75). However, over half of the married and widowed respondents gave this answer. The proportion of divorced, separated and never-married persons expressing this opinion was lower than the average.

Results from the divorce law regression and the NORC data analysis are mutually supportive if one is willing to assume that public policy is related to public opinion. Theoretical and empirical research indicates that this is a valid assumption (Luttbeg, 1974). Legislators in states having higher proportions of married persons and lower proportions of divorced persons would be less likely to support lenient divorce laws because of the unfavorable social climate.

While there is some overlap in the dynamics influencing the law index and the rate index, there appears to be a difference in emphasis. The divorce score index relates more directly to extradyadic factors associated with levels of social integration. This finding supports the assumptions in the exchange typology presented in Chapter Three (page 27). Divorce rates are higher in states where external pressures are lower. These states have larger proportions of couples located in quadrants II and III (low stability), with a greater concentration in quadrant III since the intradyadic tensions accompanying unemployment can contribute in part to marital dissatisfaction and shift the position toward lower

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provide an indication of attitudes throughout the country. Although some researchers question the validity of public opinion polls, this writer concurs with Scanzoni (1970:27) that following years of survey research there is no indication that any sector of the population tends to falsify information, and that in fact there appears to be "remarkable candor" on even the most sensitive issues. The responses in the GSS are accepted as a valid reflection of public opinion about divorce laws.

Table 11. Attitudes Toward Divorce Law by Marital Status (Percentages, 1974-1978)

Divorce Law[a]	Marital Status[b]					
	Married	Widowed	Divorced	Separated	Never Married	All Respondents
Easier	26.6	19.5	38.4	55.6	44.8	30.2
More Difficult	51.8	57.4	34.8	24.1	35.5	48.0
Stay Same	21.6	23.1	26.8	20.3	19.7	21.8
Total	100.0	100.0	100.0	100.0	100.0	100.0
N =	4728	688	477	232	1009	7135[c]

Source: National Opinion Research Center (1978).

[a]Question 153. (DIVLAW): Should divorce in this country be easier or more difficult to obtain than it is now?

[b]Question 3. (MARITAL): Are you currently--married, widowed, divorced, separated, or have you never been married?

[c]Marital status not given for one respondent.

quality. The difference in dynamics between the divorce rate and the law variables can be seen in the fact that the divorce law index varies more with intradyadic factors relating especially to preservation of rewards of marriage and presence of a family lifestyle. Graphically, states with restrictive laws are likely to have more couples located in quadrants I and II, where marital quality is high, than are states with lenient laws.

Methodological Considerations

The findings and discussion presented in this chapter are based on macro-level analysis of state divorce rates and laws. It cannot be concluded that the same control variables will be important factors in predicting the likelihood of termination for particular marriages. Furthermore it cannot be implied that divorce law reform does not influence individual divorce decisions. The findings here relate to characteristics of states and deal with the environmental aspects of divorce decisions.

The cross-sectional design eliminated the need for some of the procedures used in previous quasiexperimental and modified time-series designs (Mazur-Hart and Berman, 1977; Wright and Stetson, 1978). For example it was not necessary to make adjustments, as Wright and Stetson (1978) did, on reform states' divorce rates based on an averaged measure of increase in no-reform states. It did introduce discrepancies in time of variable measurement. Scores were obtained on some variables as early as 1970, while others reflect data from as late as 1978. However, the time of measurement for each variable is consistent for all states. The fact that a diversity of research designs produced the same results suggests that the finding of no effect of the adoption of no-fault

divorce laws on increasing divorce rates is not a methodological artifact.

It might be suspected that the use of the RATECHNG variable in construction of the divorce score index biased the results by relying only on scores at the extremes of the period studied without accounting for variations in rates within that time frame. In the early stages of research the divorce rates for each state during the eighteen year period were ploted and the graphs examined for the anticipated J-curves (see page 33) and for any other patterns or irregularities which might appear. With very few exceptions the rate patterns were strikingly consistent within each state and across states. Beginning approximately in 1965 there has been a steady rise in state divorce rates continuing through 1978. In Kentucky, Illinois, Alabama and Arizona the smoothness of this upward trend was interrupted for a few years early in the series, after which the overall pattern was in line with the national trend. Specific reasons for these irregularities were not known but they appeared to be unique to these states and they did not provide sufficient reason to suspect that the rate change variable would mask information relevant to the purposes of this study.

Furthermore, the graphs failed to reveal the occurrence of short term effects of the no-fault reforms. Increases in California have been attributed to the drop in native Californians "migrating" to Nevada for a divorce and returning home afterward. The notoriously high Nevada divorce rate did drop following passage of no-fault in California and continues to drop today despite the national trend upward. As in other states, however, this trendline was already established prior to the advent of no-fault legislation. This does suggest, however, that migratory

divorces and the vitality of divorce "mills" in general may decrease as divorce becomes more readily available throughout the nation. Immediate post-reform changes in other state divorce rates did not represent substantial or sustained changes in the slope of the divorce rate, leading to the conclusion that short-term effects, where present, are minimal.

CHAPTER SEVEN

IMPLICATIONS

Implications for Future Research

There is substantial evidence to support acceptance of the null hypothesis concerning the impact of no-fault divorce on state divorce rates. Additional study of this relationship at this time is not likely to produce different results although it would help clarify some of the relationships among the dependent and independent variables examined. Because permissiveness of law is the only law-related factor with a demonstrated impact on divorce rates it would be helpful to develop a measurement technique for this variable applicable to both fault and no-fault legislation. If available, such a measure would permit an updated examination of the significance of this relationship. It is also suggested that a measurement technique permitting empirical analysis of public awareness of divorce legislation might help explain variation in the impact of legislative reform. Finally, this research suggests that it would be fruitful to focus on divorce law policies as a dependent variable in order to better understand the relationship between divorce law and divorce rates. This approach appears to be unexplored in the empirical literature, although Zuckman (1975:15), Wright and Stetson (1978:580) and others suggest without further comment the possibility that laws are a result rather than a cause of increasing divorce rates and changing family lifestyle. Additional study in this area is needed

to provide further evidence about the presence of this relationship and the dynamics involved in it.

Policy Implications

The findings of this study offer additional support for proponents of no-fault divorce legislation and reassurance to those who oppose it out of fear that it will magnify the problem of high, ever-increasing divorce rates. Whatever other impact it may have on divorce in the various states, no-fault divorce is not likely to influence the divorce rate of states. Legislators in states which have not adopted no-fault reform can benefit from this knowledge as they consider the possibility of future reform in their respective states.

At the same time all states must be aware of the phenomenon of unanticipated consequences associated with any legislative reform. Rose (1968:35) notes that laws are attempts to deal with social problems; that they usually transform the problem in some unanticipated way; and that in the process they often create new social problems. A good example of this is the traditional fault-based divorce laws, which resulted ultimately in disrespect for the legal process and sham in the courtroom. Many opponents of no-fault laws would suggest that the phenomenon of divorce on demand is the first indication of an unanticipated transformation of the divorce problem, but others would maintain that this result was both anticipated and accepted at the outset. No-fault legislation is still a new concept in divorce law. It has not been further delineated through court interpretation and rulings on definition and application. Its impact at the individual level is unclear. Time will be an important factor. Attention must be given to potential consequences

as they become evident before the full impact of the new policies can be determined. Proceeding with caution appears to be a reasonable course of action in view of the historical and empirical evidence.

The view of divorce law as an example of culture lag appears to be a realistic one. By the nature of the control function of laws, they lag behind social change. Fault-free procedures for the dissolution of marriage is an opportunity for the law to catch up with reality. The new laws recognize the emergence of a new concept of marriage and the family for which the traditional fault-based divorce process is inappropriate. As the new ideas become entrenched, new laws compatible with the new social reality will be required. This is a necessary and desirable step if the current attitudes toward marriage and family life prevail.

It is further suggested that the utility of the new laws goes a step beyond allowing law to catch up to reality. It also permits the development of society to continue uniformly. From the Durkheimian perspective it might be said that the traditional divorce laws prevented the expression of individual consciences in modern society by subjecting all individuals to inappropriate societal control. The new laws do not seek to punish individuals for offensive marital wrongdoing because divorce is no longer considered an obvious social evil the way it once was. No-fault legislation seeks to regulate the dissolution process rather than inhibit the dissolution of marriages. It changes the nature of the law more toward the restitutive type found in societies characterized by organic solidarity (Durkheim, 1933:111). Since the components of society are interdependent, this change toward organic solidarity in the legal arena enables all society, including the institution of marriage and the family, to evolve more fully.

The tendency to rely on law to solve social problems has been recognized. However, it has been pointed out numerous times (Mowrer, 1924; Levinger, 1965; Wheeler, 1974; Glendon, 1977) that divorce is the symptom, not the disease; the effect, not the cause of marital breakdown. The actual causes of divorce are outside the domain of the law and are neither produced by it nor subject to any considerable degree to its control (Lichtenberger, 1931:208). If the goal is to control the divorce problem then it will be necessary to focus attention of the dynamics involved in the causes of marital breakdown and ways to intervene in the process of breakdown before it is complete. Recognizing the limitations of the law in its ability to influence divorce helps explain why restrictive laws have been less effective than one might anticipate. The implication for policy-makers is not to fear relaxation of these laws. Levinger (1965:28) suggests that increases in barriers (divorce laws included) is actually the least effective means of making a lasting increase in marital cohesiveness because barrier maintenance does not increase the internal attractions of marriage.

Public opinion polls, professional journals and popular magazines all reflect the perceived need for change in divorce procedures. No-fault divorce appears to have much to recommend it. Without abandoning the control function of law and without approving of divorce it provides a less painful and more realistic mechanism for terminating marriages which cannot be saved. Its success in much of the nation is likely to recommend it to other areas, especially in the absence of workable alternative reform measures.

A long-range policy implication can also be made based on the evidence presented. It is possible that uniformity in divorce law may be

achieved passively a century after active attempts first failed to bring it about. The trend toward adoption of no-fault divorce laws, begun in the 1970s, continues in the early 1980s. In time all states may at least include a breakdown provision in their divorce laws. These statutes are already quite similar with respect to "grounds" for divorce, recognizing perceived marital breakdown as sufficient cause. They differ on divorce-related issues of child custody and support, property division, et cetera. However, recent concern and publicity over interstate custody disputes may rekindle desire for greater uniformity. Uniformity may never be completely realized, but a fair approximation may result from continuing no-fault reform. This would be another success story for the National Conference of Commissioners on Uniform State Laws, even though the final form would most likely differ from the Uniform Marriage and Divorce Act first approved in the 1970s.

Implications for Family Stability

Increasing divorce rates have been viewed both historically and empirically as an indicator of increasing family instability in the institution of marriage and the family. Factors contributing to one were also associated with the other. Because no-fault divorce legislation has not further increased state divorce rates it is concluded that this new approach to divorce does not pose a threat to family stability. As a mechanism of social control the no-fault laws attempt to maintain the social order, just as traditional fault-based laws did for so many years. The difference is that the institutions of marriage and the family have undergone considerable change since the first laws were enacted. The new laws reflect these changes; the older ones do not.

It must be recognized that marriage and the family are undergoing social change. It is not surprising that definitions, attitudes and controls appropriate to one time period will become inappropriate generations later. This is particularly true as the pace of social change continues to accelerate. Divorce, once an anomaly, is now considered a necessary adaptive feature of the family in the larger social system. Bohannon (1979:311) suggests that it is actually a back-up institution to the family, permitting essential functions to be performed in the wake of the dissolution of a family unit. In addition, divorce has been characterized as a time of regrouping (Bohannon, 1979:310). This is an important point because it underscores the fact that only through divorce can remarriage be possible. Persons trapped in unviable marriages are able to establish new family units when permitted the opportunity to regroup. Remarriage rates indicate that, increasingly, formerly married persons are taking advantage of the opportunity to remarry. Data reveal that in 1960 the number of marriages per one thousand divorced or widowed brides over thirteen years of age was 32.7. In 1970 the number was 36.6 and by 1978 it had climbed to 40.0 (Statistical Abstract of the United States, 1980). These positive consequences of divorce are increasingly recognized. By easing the restrictions on obtaining divorce the no-fault laws also ease the transition out of unstable marriages and into potentially stable relationships. Family stability as a concept is not endangered by this transition, although a particular marriage or family is dissolved in the process.

The net effect of all these changes, suggested by O'Neill (1977:73) is that divorce has become more a clinical issue than a moral problem. Glendon discusses this phenomenon in terms of the "dejuridification" of

marriage and divorce, a process involving a return to forms of social control other than legal rules concerning the formation, dissolution, and organization of married life (Glendon, 1977:321). She believes that recent legislative reform implies a shift in the posture of the State with respect to the family comparable to the shift which occurred when the State first assumed jurisdiction from ecclesiastical authorities. She argues that the State is actually more heavily involved in family matters than ever, but in a different way. Now government agencies are especially involved with the economic consequences of dissolution and with the welfare of children from both legal and de facto families (Glendon, 1977:324). The viewpoint expressed by O'Neill, Glendon, and others suggests that the process of increasing functional interdependence and increasing latitude for the individual conscience continues today.

This discussion is not meant to imply that divorce is now a socially acceptable phenomenon which causes no qualms for modern society. There is still opposition to legal reform and to total social acceptance of divorce and divorced persons. The compromise nature of our law illustrates this. Even with respect to the no-fault legislation there has been compromise, with many states choosing an "add-on" approach to the reform. We have not "solved" the problem of divorce, but we have redefined it and deal with it from a different perspective. Consequently the atmosphere is generally more conducive to more liberal laws.

The fact that remarriage rates are relatively high and increasing suggests that the increase in divorce rates has not damaged the viability of marriage and the family. Both are highly valued today, as in the past. However, Scanzoni (1968) suggests the existence of a paradox in the values of many persons today. In a comparison of ongoing marriages

and dissolved marriages he found that participants from both groups held values of permanence and pragmatism in marriage, and they held these values simultaneously. In this study and in others this fact must be remembered in drawing implications. It is neither safe nor fair to assume that high divorce rates indicate a wholesale rejection of family lifestyle and lifelong marriage ideals. It does suggest that increasingly people are finding it necessary to take the pragmatic view of marriage and justify divorce behavior on the basis of personal needs and satisfactions. Identification of this paradox provides further proof that family stability remains an ideal even as the concepts of marriage and the family evolve.

The significance for the individual of the no-fault concept is great. The societal impact is not destructive of family stability. This was the intention of the reformers.

APPENDIX A

LIST OF STATES BY DIVORCE LAW CATEGORY, 1978

I. No-Fault Only

California	Kentucky	Missouri
Iowa	Nebraska	Minnesota
Florida	Nevada*	Delaware
Oregon	Washington	Montana
Colorado	Arizona	Wyoming
Michigan		

II. Mixed

Breakdown plus Fault

Texas	Connecticut	Mississippi
Alabama	Georgia	Tennessee
Idaho	Maine	West Virginia
New Hampshire	Massachusetts	Indiana*
North Dakota	Rhode Island	

Separation $\leq$ 1 year plus Fault

North Carolina	Wisconsin	Vermont
New York	Maryland	Virginia

III. Fault Only

Separation > 1 year plus Fault

Utah	New Jersey	Louisiana*
South Carolina	Ohio	Arkansas*

Incompatibility plus Fault

Alaska	Kansas	New Mexico*
Oklahoma		

Fault Only

Illinois	Pennsylvania**	South Dakota

*Not included in empirical analysis.
**Added breakdown to existing grounds effective July 1980.

APPENDIX B

SECONDARY SOURCES USED IN DATA COLLECTION

Statistical Abstract of the United States, 1979:

RACE (derived)	INCOME
ETHNIC	EDUCATN
WOMLABOR	MIGRATN
UNEMPLOY	AGE

1970 Census of the Population:

URBAN	ONECHILD
CHILD18	GE4CHILD

County and City Data Book, 1977:

INDUST

1980 Catholic Almanac:

CATHOLIC

Monthly Vital Statistics Report/Advance Report--Final Divorce Statistics, 1978:

DIVORCE2

Monthly Vital Statistics Report/Advance Report--Final Marriage Statistics, 1978:

MGRATE

Vital Statistics of the United States, 1970:

DIVORCE1

Hamilton, Harper. The No-Fault Divorce Guide:

NUMGRNDS (derived)	DIVLAW (derived)

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