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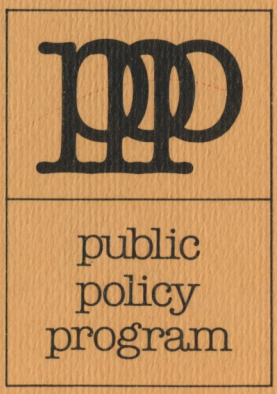
DIVORCE, THE LAW AND SOCIAL CONTEXT: FAMILIES OF NATIONS AND THE LEGAL DISSOLUTION OF MARRIAGE

Francis G Castles and Michael Flood

Discussion Paper No.22, January 1991



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Abstract

This paper seeks to establish the extent to which the incidence of divorce and the character of the law regulating the legal dissolution of marriage can be accounted for by historical continuities and cultural traditions in distinctive 'families of nations'. The research brings together the diverse traditions of comparative law and comparative sociology, and uses both to come to grips with the questions of why divorce rates vary from country to country and why there has been such a massive increase in the divorce rate in the post-war era. A multivariate model of cross-national divorce outcomes suggests the strong influence of historical continuities within distinctive 'families of nations' on divorce outcomes in the 1960s and a much enhanced influence of social context variables on the character of the law in the next two decades.

Introduction

The cross-national research on the determinants of divorce which is reported here has a very particular focus. It is a contribution to a much wider research project on whether so-called 'families of nations' are a major force shaping patterns of public policy in advanced capitalist societies.[1] The family of nations concept is a new - or a better word might be, rediscovered - concept in sociological and public policy analysis. It harks back to an academic tradition, popular in political science, sociology and law in the early decades of this century, which insisted that, in order to comprehend the variety of policy outcomes to be found in modern states, it was necessary to trace back their roots to commonalities shared by groups of nations in virtue of a shared history, culture, legal tradition and language. In this view, it mattered that nations were English-speaking, Scandinavian or Germanic and it mattered because that attribution told us something about contemporary policy outcomes.

In the post-war era, comparative research in all the disciplines concerned with public policy has largely abandoned this approach and adopted a paradigm, the origins of which are more exclusively sociological. From this more recent perspective, the proper task of comparative analysis is to reduce "proper names to explanatory variables" (Przeworski, 1987, 38-39). The proper names in question are those of nations and the task, as construed in the literature, has involved demonstrating that cross-national variation is substantially attributable to the impact of structural variables, whether of a social, economic, demographic or political nature. The guiding hypothesis of the families of nations project is that, despite its many valuable contributions to our understanding, this 'sociologising' of comparative public policy analysis has possibly led to an unwarranted neglect of the importance of historical continuities and their attached cultural and legal dimensions. Proceeding from identified policy commonalities within groups of nations with

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prima facie shared national attributes, it seeks to establish the degree to which these policy outcomes must be seen as a consequence of historical continuities. As we shall see, the incidence of divorce and the character of the laws governing the legal dissolution of marriage are features of advanced capitalist societies in which such commonalities are extremely apparent.

Public Policy in the Domestic Sphere

The decision to divorce is an action in the domestic sphere based largely on private considerations and, hence, a very proper subject for sociological analysis. It is also, however, a decision much constrained by public policy enunciated through legal enactments. Indeed marriage and the conditions under which it may be terminated is one of the oldest arenas in which the law has been used to regulate relations amongst citizens. Even under Roman law, where marriage was essentially a private contract to be dissolved at the behest of either party, certain formalities had to be observed, such as the delivery by one party to another before witnesses of a document expressing the intention to terminate marriage and, in cases where the future of children or the division of property were in dispute, issues were settled by the courts. As Kitchin (1912, 2) points out, "the first known case of Roman divorce was therefore said to have been in the interests of public policy".

Divorce, irrespective of the extent to which it is considered a private matter, is necessarily a public concern for at least three reasons.

First, the dissolution of marriage raises important issues of social protection, including, first and foremost, the duty of the collectivity to protect children and, in some times past, including under Roman law, and a major consideration in most contemporary divorce legislation, the duty to ensure the protection from exploitation of the weaker party by the stronger.

Second, the termination of marriage involves both issues of public morals and political economy. Governments have always seen it as their role to reinforce religious or community standards concerning the

proper observance of marriage and have often been concerned with the possible demographic consequences of increased marital instability. Today, they are extremely aware of the economic burdens imposed on the state by disruption of matrimonial ties and the effectiveness of family law and family services are frequently evaluated with an eye to cost-benefit analysis (see, for instance, Wolcott and Glezer, 1989, 5-6).

Finally, divorce is an issue of public policy because changing social and economic circumstances may outmode existing laws and motivate strenuous demands on the part of concerned groups for reform. As later sections make clear, the post-war era has witnessed a massive movement for divorce law reform in the countries of advanced capitalism and with it a very substantial increase in the divorce rate in most of these countries.

Not only is divorce law a matter of public concern, it is also an area of extreme cross-national variation. Indeed, as a major authority points out, it is arguably the field of private law in which national diversity is most glaring (Rheinstein, 1972, 8). This paper therefore proceeds from the perspective that the divorce rate and the changes that have taken place in it over time are public policy outcomes susceptible to comparative analysis in a manner similar to others that have been treated in the comparative public policy literature that has, in recent years, become a progressively more important component of both sociology and political science.

The volume of divorce occurring at any time may be seen as the consequence of the complex interplay of social and economic forces influencing individual behaviour, and of legal enactments, simultaneously shaped by citizen demands made on governments and collective views as to the moral and economic repercussions of change. There are, however, *a priori* reasons why we might expect public policy outcomes in the arena of family law to be responsive to a somewhat different balance of forces from those with which we are familiar in the spheres of economic and social policy. Because the decision to seek a legal dissolution of marriage is personal, the aggregation of such decisions in the divorce rate does not involve the direct intervention of government. Rather the intervention is an indirect one which conditions the probability that

applications for legal dissolution are actualised. This means that the law enjoins what shall not be permissible rather than stipulating what actions the government will take. Whereas public policy analysis is most usually concerned with the positive interventions of governments or the consequences of laws in terms of 'who gets what, when and how'[2], here we shall be concerned with the character of laws as policy outputs, *sui generis*, empowering individuals to adopt certain courses of action and preventing others.

Moreover, the moral dimension of marriage implies that cultural and attitudinal dimensions of social behaviour are inherently likely to have a greater impact on outcomes than in many other public policy arenas. Religious beliefs and social customs stipulating the proper conception of marriage will clearly influence law-makers and the same factors will help to shape individuals' decisions to stay within or seek relief from the marital state. The transmission of such beliefs and customs occurs through processes of socialisation within the family and community and are, in general, subject only to gradual change. That, in turn, implies a degree of historical continuity within nations over time and, within groups of nations sharing a common culture and some common historical experience, the likelihood that laws regulating marriage, attitudes as to circumstances justifying the dissolution of marriage and the rates of divorce that are their joint consequence will be in some measure similar. In the context of this research endeavour, seeking to establish the extent to which public policy outcomes in contemporary states manifest patterns of similarity within 'families of nations' defined by their historical and cultural affinity, the domestic arena of marriage and the family constitutes a critical case, for if such patterns are not apparent here, they are scarcely likely to be evident to any greater degree in economic or social policy arenas, which are so much more obviously responsive to the changing character of structural constraints.

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[2]This also applies to many aspects of the increasingly explicit adoption of integrated packages of 'family' policy, where the state intervenes to provide a whole series of services to the family with the dual objectives of providing social protection and maintaining family stability (see Kamerman and Kahn, 1978). Clearly, some aspects of family policy in this sense may be relevant to the incidence of divorce, a point discussed somewhat more fully in a later section.

Families of Nations and the Law of Divorce

In order to comprehend the nature of the relationship between families of nations and divorce rates, it is necessary first to define the boundaries of groupings of nations in terms of the historical development of the law relating to the dissolution of marriage. As we shall see, three of the grouping which emerge from such an analysis are quite similar to, but not identical with, the groupings of English-speaking, Scandinavian and German-speaking nations that were commonly used as the organising format of comparative studies of an earlier era.

The development of the law of divorce in Europe and the nations of European settlement is, as we might expect, quite inseparable from religion and the major historical watersheds in the process of secularisation, the Reformation and the French Revolution. Prior to the Reformation, the law regulating marriage in Europe was the canon law of the Roman Catholic Church, essentially based in the indissolubility of nuptual bonds. The only significant reliefs from the marital state were the possibility of annulment or judicial separation without the right of remarriage, the latter under a variety of circumstances rendering the sharing of 'bed and board' intolerable, but usually intolerable only to men. In England and Ireland, alone of the countries of Europe, the canon law remained almost entirely untouched until well into the 19th century, although, in England, divorce by Private Act of Parliament alleviated its stringent application for the very rich (see Stone, 1990).

The great change brought about by the Reformation for a large part of the rest of western Europe was not so much any immediate change in the stipluations of canon law, but a transfer from ecclesiastical to civil jurisdiction and the rejection of the principle of indissolubility, which over a period of centuries permitted some extension of the grounds of divorce, but only where such grounds might be deduced from scriptural text. Adultery was the ground that obviously had such biblical provenance, although, of the Protestant divines, only Calvin saw mens' adultery as justifying the same opprobrium as that of women (Rheinstein, 1972, 22). Moreover, in virtually all the countries of western Europe excluding England and Ireland, but including the Catholic areas

untouched by the Reformation, the French Revolution and the subsequent carry through of its principles into the Napoleonic Civil Code, marked some reversion to the gentler notions of Roman law in its later Christian development, departing still further from the concept of the indissolubility of marriage and in principle permitting divorce by mutual consent and the convertibility of judicial separation into divorce.

The influence of the Code Napoleon was relatively short-lived in several of the more Catholic countries, leaving a reasonably clear division of European families of nations by the early 19th century: the countries where the canon law was essentially unchanged (England and Ireland and the Italian principalities and France, these latter reverting to Catholic ecclesiastical practice with the Restoration), the countries where Protestantism was conjoint with the influence of certain of the ideas stemming from the French Revolution (essentially Scandinavia and the German-speaking nations) and the countries in which the mutual consent notion was more than somewhat trammelled by restrictions imposed by Catholic influence (Belgium and the Netherlands). In addition, outside Europe, the varied laws of the United States were dominated by the Reformation ethos unalloyed by the reformist spirit of the revolution in France, but strongly affected by canon law influences inherited from the common law of England.

Further developments over the course of a century led to a further differentiation of types of divorce law, so that, in the pre-war decades of this century it is possible to distinguish five reasonably distinct families of nations.[3] First, there was an English-speaking family, excluding Ireland and with the USA as a partial exception. These nations essentially imported the law of England, prohibiting divorce except on the grounds of adultery (permitted under English law only from 1857), still

[3] A simpler distinction, common to earlier work in comparative law, would be between Anglo-American, Nordic and Romano-Germanic legal systems. This typology, regarded by Glendon as illuminating in understanding the character of national differences in both the contemporary law of abortion and divorce, is an illustration that the 'families of nations' concept we utilise in this chapter and volume is neither new nor alien to the analysis of legal systems (Glendon, 1987). The Romano-Germanic system apart (which our typology of five families of nations further subdivides), the two other systems identified in the comparative law tradition are identical to the families of nations used throughout this study.

interpreted more permissively for men than women. As Kitchin (1912, 231-33) notes:

> "The colonies and dominions of British origin which enjoy responsible government commenced, like America and the Crown colonies, with the English law and all its ecclesiastical anomalies. In Canada the law has been allowed to remain for the most part as it was...In Australia and New Zealand the English Divorce Act was put into force between 1860 and 1873, and has in those dominions always operated against all attempts to introduce a more liberal and equitable law."

Moreover, this standardisation of divorce laws in the colonies was an outcome of conscious policy design, with the British government "anxious that (laws) continue to conform to English law and practice", since otherwise there might have been "problems of recognition of divorce decrees from one jurisdiction to another" (Phillips, 1988, 436). In the Australian and New Zealand colonies, some changes were introduced in the late 19th century, including the equal standing of women and some extension of the grounds of divorce, but before 1919, when New Zealand introduced separation as a ground, divorce in all the English-speaking dominions was based firmly on the concept of fault, with adultery the fault *par excellence*.

Until this time, perhaps the easiest way to characterise the development of divorce law in England and its dominions would be to say that it had entered into its Reformation phase two centuries or more after the same development had occurred in north-western Europe. In the United States, the far earlier Reformation impulse had led to a vast proliferation of the grounds for complaint, but fault remained firmly entrenched as the guiding principle of the system, with adultery the one ground common to all states circa 1931 and with only around a third of the states having any provision for separation as a ground and, then, usually separation only for a very lengthy period (see Vernier, 1932, 3-4, 61, 70 71).

In the countries where the Reformation spirit was combined with the secularising tendency of the French Revolution, a degree of divergence developed between the Scandinavian countries of homogeneous Lutheran faith and the German-speaking countries. In the Scandinavian countries, Lutheranism and liberalism combined to make divorce progressively a private matter with the burden of proof that marriage had failed resting on the separation of the parties for several years. In the case of the Scandinavian nations, just as much as the English-speaking ones, an historical diffusion of ideas can be readily identified, culminating in high-level intra-Nordic meetings between leading jurists leading to very similar liberal laws being promulgated in the second and third decades of the 20th century in Denmark, Finland, Iceland, Norway and Sweden.

In Austria and Germany, over a long period of evolution, and with reversions to fault only provisions, separation also became an important ground, but lack of consent by the respondent was an absolute bar, whereas the normal practice of the Scandinavian countries was "to accept the fact that one party petitioned for judicial separation as sufficient proof of the marriage being as profoundly and permanently disrupted as required" by the law (Rheinstein, 1972, 144). Switzerland was unlike the other German-speaking nations in that non-specific grounds amounting to mutual consent and a restricted right of unilateral petition[4] were allowed by the courts, practices owing something to the Napoleonic code, more still to an exceptionalism in marriage law persisting throughout the period of canon law and, perhaps, also reflecting Calvin's views on the equality of the sexes before God and the law.

What distinguishes the rather more loosely articulated German-speaking family was an uneasy combination of indigenous trends towards divorce by mutual consent, exhibited in the Prussian Civil Code of the late 18th century as well as in Switzerland, and a bifurcation of Protestant and Catholic laws of marriage. Protestant beliefs permitted some relief from marriage on grounds of misconduct, whilst Catholic doctrine remained firmly grounded in the notion of indissolubility. For instance, the law in force in Austria for much of the 19th century and through to the 1930s,

4 From 1907, the courts had the discretionary right to disallow a petition where the non-consenting partner was not guilty of a fault.

distinguished between Catholics, who were legally barred from the divorce remedy, and the adherents of other religious beliefs, to whom it was available on various grounds including "irremediable aversion" after a period of separation (Phillips, 1988, 432). The eventual combination in all the German-speaking countries of statutory grounds based on mutual consent or separation by consent and an effective bar in the absence of such consent expresses a compromise between these several contrasting traditions. In Austria and Germany, it also reflected another, more directly 'family of nations', influence, in that the 1938 law of divorce applied to all of Greater Germany and encouraged separation by consent on eugenic grounds. Stripped of other more blatant racist and eugenic elements, the 1938 legislation persisted in both countries until reforms in the 1970s.

A few other nations retained elements of the Code Napoleon. Belgium and the Netherlands each had a much tramelled right of mutual consent. France, reintroduced some aspects of the Code in 1884, although without the mutual consent provisions. These three countries constitute a separate legal tradition and for us a separate family of nations, as do the two most Catholic countries under examination here, Ireland and Italy, where canon law continued to reign supreme, with no provision for the dissolution of marriage save for judicial separation.

In Table 1, we present a tabulation of divorce law provisions in 1960 and ensuing reform in the period 1960-76. In the table, we code the liberality of the law on the following basis:[5]

> 3 = No-fault grounds permitting uncontested proceedings after 3 years or less with contestation delaying the process for no more than 2 further years.
>
> 2 = Mutual consent with no substantial restrictions or 3 years separation as ground for uncontested divorce.

[5] For an alternative categorisation of post-1960 divorce laws only, see Glendon, 1987, 68.

1 = Other more restrictive legislation.

0 = Most Restrictive/i.e. no national divorce legislation.

The rationale for this coding is that liberal access requires both a relatively short period to establish incompatibility or marital breakdown, that proceedings should not require the necessity of demonstrating the marital failings of either party and that divorce should be available irrespective of the consent of both parties. Reasonably unrestricted mutual consent, as in Switzerland, and separation on the basis of agreement, as in Germany and Austria, constitute halfway houses, allowing a guilt free dissolution of marriage for those able to accommodate their differences, although no remedy for others. Other more restrictive arrangements and those resting exclusively on fault permitted divorce under some circumstances, but invariably with great anguish and often at considerable financial cost.

In 1960, the correspondence between the liberality of the law and its historical evolution in distinct families of nations is extraordinarily clear. The Scandinavian group of nations is wholly consistent in its liberalism and the German-speaking group in its halfway status. Only New Zealand, in the English-speaking group, has sufficiently departed from fault principles to allow a designation of partial liberalisation. Both the Code Napoleon and canon law families are wholly consistent in the degree of liberal access permitted in their divorce statutes.

By 1976, however, there had been a very substantial degree of divorce law liberalisation throughout much of the western world, and the distinctiveness of these legal families of nations had to some degree been eroded. The English-speaking nations experienced the greatest shifting from essentially fault-based systems to systems in which the no-fault element was paramount or the only ground available. This process is again, at least in some part, attributable to a diffusion in legal practice, the stimulus to which were the recommendations of a Church of England report under the title *Putting Asunder: A Divorce Law for Contemporary*

Table 1: Legal Barriers to Divorce and Divorce Law Reform, 1960 and 1960-76.

Country	1960 Law	Score	1976 Law and subsequent reform	Score	Change Score
English-speaking:					
Australia	Fault or 5 years separation	1	Irretrievable breakdown of marriage (1975)	3	2
Canada	In most provinces, only adultery	1	3 years separation (5 years where petitioner deserted respondent) (1968). Irretrievable breakdown (1985).	3	2
New Zealand	Fault or 3 years separation, but only with consent	2	Legal separation for 2 years/de facto for 4 (1963). Irretrievable breakdown (1981).	3	1
England & Wales	Fault	1	Fault or two years separation with consent/ 5 without (1969).	3	2
USA	Varied laws in different states/ various stipulations of fault with long separation a ground in a minority of states	1	Liberalisation in New York (1966), California (1970). By 1985 18 states had pure no-fault divorce/with incompatibility as sole ground/22 combine fault with marital breakdown	3	2
Scandinavian:					
Denmark	Fault or 3 years separation	3	Some further liberalisation (1969).	3	0
Finland	Fault or two years separation	3	Some furtther liberalisation (1969).	3	0
Norway	Fault or 1 years legal separation with consent/ 2 without	3	Some further liberalisation (1969).	3	0
Sweden	Fault or 1 years legal separation/3 years de facto	3	Wish of one or both partners to end marriage/ 6 months delay where objection or small children (1973)	3	0

German-speaking:					
Austria	Fault or 3 years separation, but only with consent	2	Unchanged, but later reform in 1978.	2	0
Germany	Fault or 3 years separation, but only with consent	2	1 years separation/3 without consent (1976)	3	1
Switzerland	Fault or non-specific grounds amounting to mutual consent	2	No change	2	0
Code Napoleon:					
Belgium	Fault or mutual consent (much restricted by eligibility and cost)	1	Fault or unrestricted mutual consent (1969) or separation of 10 years (1974)	2	1
France	Fault	1	Misconduct or unrestricted mutual consent or separation for 6 years (1975)	2	1
Netherlands	Fault or mutual consent after 5 years legal separation	1	Lasting dislocation - immediate on joint petition /3 years on unilateral petition (1971)	3	2
Canon Law:					
Ireland	No divorce	0	No change	0	0
Italy	No divorce	0	Legal separation for at least 5 years/6 if without agreement (1970). Some further minor changes (1975).	1	1

Sources: On European nations, except Denmark, Chester, 1977. On Australia, Canada, Denmark and New Zealand, Law Reform Commission of Canada, 1975. On the USA, Weitzman, 1985. Some further information on dates of later reforms, from Phillips, 1988, 562.

Society, which, departing from the long history of the Church in England, based its views not on how the 'doctrine of Christ should be interpreted and applied within the Christian Church but on what the Church ought to say and do about secular laws of marriage and divorce' (Mortimer Commission, 1966). The report's main recommendation was that 'the doctrine of breakdown of marriage should be comprehensively substituted for the doctrine of matrimonial offence as the basis for all divorce'. This dramatic change in religious doctrine, issued with the imprimatur of the Archbishop of Canterbury, was a spur to and a platform for reform throughout the English-speaking world (except Ireland) and beyond. In England and Wales, Australia, Canada and New Zealand, and a number of the American states, starting with New York, relatively liberal grounds for dissolution of marriage by separation were instituted by the late 1960s. In 1970, the world's first divorce law based solely on irreconcilable breakdown of marriage was introduced in California and by the 1980s exclusively no-fault provisions had been adopted in Australia, Canada, the Netherlands, New Zealand, Sweden, and some 40 per cent of the American states.[6]

The dramatic reform process in this largely English-speaking group of nations meant that the distinctive liberal character of the Scandinavian family of nations had disappeared by 1976, with both groupings now being essentially similar in basing marital dissolution substantially on no-fault grounds. Outside the English-speaking countries, the only liberalisation of comparable magnitude occurred in the Netherlands. This change made it an atypical member of the Code Napoleon legal family, since change in Belgium and France was more muted, combining fault provisions with a more unrestricted criterion of divorce by mutual consent. The German-speaking family of nations also ceased to be characterised by common provisions, since Germany adopted liberal separation laws, whilst Austrian and Swiss law remained essentially unchanged. Finally, change also occurred in one of the two remaining canon law nations, when Italy adopted somewhat restricted legislation

6 If one was to offer a more fine-grained typology of the liberality of contemporary divorce laws, these might feature as a separate category. Glendon suggests that by the mid-1980s, the United States, taken as a whole was second only to Sweden, where most divorces are granted on application, in respect of making marriage freely terminable (Glendon, 1987, 64).

permitting divorce in 1970 which was subsequently reaffirmed by a hotly contested popular referendum in 1974. Of the countries under survey here, only Ireland had no law of divorce in 1976.[7] Indeed, the 1937 constitution forbade the making of laws for the dissolution of marriage and a 1986 referendum to reverse that position was soundly defeated.

This necessarily summary presentation cannot be interpreted in any other way than as confirming the existence of quite distinct families of nations in respect of the historical and cultural continuity and development of the law of divorce in European nations and nations of European settlement at least until the 1960s. But the historically conditioned similarity of the law as an output of government is no guarantee of a comparable similarity of outcomes in terms of aggregate divorce rates and divorce rate change. That depends both on the way in which the law is interpreted and the influence of social and economic factors on the individual propensity to seek dissolution of the marital bond. In the next section, we seek to locate the degree of correspondence between legal outputs and divorce outcomes.

On Divorce Rates and Divorce Rate Change

Table 2 presents data on average divorce rates for 17 nations for the periods 1961-68 and 1976-83 and the change in the divorce rate occurring between these periods. Of the countries normally featuring in comparative public policy studies, only Japan is omitted on the ground of the inappropriateness, in an analysis where a crucial focus of causation is presumed to be variation in religious belief systems, of including a nation with a wholly incongruent cultural development in that respect. The periods selected are deliberately chosen with a view to providing a test of the impact of the provisions of the law in 1960 and 1976 as set out in Table 1.

Rheinstein argues that, in countries that have proceeded far along the path of economic modernity, but where the contemporary intellectual

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[7] Divorce *a mensa et thoro* ("from bed and board") or judicial separation, inherited directly from the jurisdiction of the ecclesiastical courts, is permitted on grounds of adultery and cruelty (see Shatter, 1981).

Table 2: Divorce Rates and Ranks, 1961/68 and 1976/83, and Divorce Rate Change, 1961/68-1976/83 in Diverse Families of Nations

Family of Nations	1961-68			1976-83			Change		
	Country	Rate	Rank	Country	Rate	Rank	Country	Rate	Rank
English-speaking	USA	2.5	1	USA	5.1	1	USA	2.6	1
	Australia	0.7	8	UK	2.9	2	UK	2.2	2
	NZ	0.7	8	Australia	2.8	3	Australia	2.1	3
	UK	0.7	8	Canada	2.6	6	Canada	2.1	3
	Canada	0.5	14	NZ	2.4	8	NZ	1.7	6
Scandinavian	Denmark	1.4	2	Denmark	2.7	5	Denmark	1.3	8
	Sweden	1.3	3	Sweden	2.5	7	Sweden	1.2	9
	Finland	1.0	5	Finland	2.1	9	Finland	1.1	10
	Norway	0.7	8	Norway	1.7	12	Norway	1.0	11
German-speaking	Austria	1.2	4	Germany	2.8	3	Germany	1.8	5
	Germany	1.0	5	Austria	1.8	11	Switz	0.8	14
	Switz	0.9	7	Switz	1.7	12	Austria	0.6	15
Code Napoleon	France	0.7	8	Neth	1.9	10	Neth	1.4	7
	Belgium	0.6	13	France	1.7	12	France	1.0	11
	Neth	0.5	14	Belgium	1.5	15	Belgium	0.9	13
Canon Law	Italy	0.0	16	Italy	0.2	16	Italy	0.2	16
	Ireland	0.0	16	Ireland	0.0	17	Ireland	0.0	17
Correlations with scores for liberalism of legal provision and change in liberalism:		r	rho		r	rho		r	rho
including USA		**0.45**	**0.70****		**0.77****	**0.83****		**0.71**	**0.72**
excluding USA		**0.85****	**0.85****		**0.91****	**0.83****		**0.66**	**0.67**

Definitions: Divorce rate = divorces per thousand of the population averaged for the periods, 1961/68 and 1976/83. Change = the difference between the divorce rate 1961/68 and the divorce rate 1976/83.

Source and notes: United Nations, Demographic Yearbook, various dates. ** = significant at .01 level.

climate is either conservative or pluralistic, the divorce law of the statute books will be strict, but will simultaneously tend "to become a dead letter" (Rheinstein, 1970, 128). This helps to explain, for the 1960s at least, the most obvious anomaly we encounter in contrasting the provisions of divorce laws with divorce rates in the countries under survey here: the fact that the United States, with legislation based very largely on various definitions of matrimonial offence, had a divorce rate almost twice as high as any other western nation throughout the period under review. The United States, for much of this century, has constituted the most dramatic instance of legal interpretation being at variance with statute law.[8] Collusion, the withholding of information from the courts or the presentation of false information by both parties, became a standard practice, and although in itself a bar to divorce, the evidence presented by the parties was scarcely ever contested or investigated by the courts. This amounted to a practice of divorce by mutual consent in many states and was compounded by the practice of 'migratory divorce', allowing divorces conducted under the liberal interpretations of some states and nations to be recognised under most circumstances even in states where the grounds for divorce were much stricter. In effect, then, by 1960, and indeed for much of this century, the practice of the law, in contradistinction to its letter, was as liberal as that of any other country in the western world, although the law generally forced those seeking legal dissolution to dissemble or travel to obtain the relief it formally prohibited.

The effect of the American discrepancy can be readily ascertained from the correlations between divorce law liberalism and divorce rates in 1961-68 appearing at the bottom of Table 2. Including the United States, the relationship is only marginally significant; excluding that country, it is extraordinarily strong, accounting for some 70 per cent of divorce rate variation. Excluding the USA, the coherence of our five families of nations is very strong indeed; the highest and the lowest in the remaining English-speaking group differing only by .2, in the

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[8] Others were Sweden and Denmark, before the liberalisation of family law in the first decades of the century, and France, where the law of 1884 was progressively interpreted in such a way as to permit *de facto* mutual consent. In Italy, the recognition in 1902 of divorces made abroad offered a channel for legal dissolution, amounting by the 1920s to 10% of the annual number of judicial separations (see Sgritta and Tufari, 1977, 258).

German-speaking group by .3, and in the Code Napoleon group by .2. Only in the Scandinavian group is there any significant variation, with Norway registering a divorce rate half that of Denmark.

Almost exactly the same story can be told of the period 1976-83, although the discrepancy between the correlations including and excluding the USA is less, at least partly because of that country's intervening process of legal reform. The absolute gaps within the families of nations have increased somewhat in line with the more than twofold increase in the average divorce rate as between 1961-68 and 1976-83, but only two countries are out of synchronisation with the others in their grouping: once again Norway, now joined by Germany, the only member of the German-speaking family to have substantially changed its statutes by 1976. Change over time, again, follows the same pattern. The USA is, on this criterion of evaluation, a typical member of the English-speaking family, with New Zealand being furthest from the group norm, as one might expect of the nation that had effected the least legal change in the period. The charge of 'English-speaking awfulness' noted in other researches emanating from the family of nations project with regard to low rates of economic growth and low social security (see Castles, 1990) can also be levelled here, with five English-speaking nations featuring amongst the six nations to experience the greatest increase in divorce rate in this period. By contrast, change in the Scandinavian group was much more moderate, although the pattern of change was equally coherent. In the other families, only Germany within the German-speaking group and the Netherlands within the Code Napoleon family diverged substantially from the rank ordering of other members. Both were nations in which legal change had been more rapid than in the rest of the relevant grouping.

With the exception of the American case, the evidence presented here supports the notion that statute law is an important determinant of the frequency of the legal dissolution of marriage, although it would be mistaken to deduce from that fact that liberal laws destroy marriage, since there is a well-grounded empirical literature showing the inverse relation between divorce and judicial and *de facto* separation (see Rheinstein, 1972, 277-316). What can be deduced from the evidence is

a strong *prima facie* case for the influence of long-term cultural factors transmitted through the historical continuities of distinct legal families of nations in this arena of domestic policy.

The case is only *prima facie* for at least two major reasons. First, the lesson of our earlier investigations of apparent family resemblances amongst nations tells us that similarity is frequently dissolved when we come to examine the impact of social and economic structures on policy outputs and outcomes. Such a possibility is highly consonant with the view of many those who study comparative law, like Rheinstein, who suggest that the law is ultimately a reflection of its social context and is either reinterpreted or swept away where it remains too long incongruent with that context. Second, our account so far has concentrated on legal outputs and has not considered the social and economic variables that may be associated with the individual decision to seek legal remedies. Even the relatively high correlations recorded at the bottom of Table 2 leave sufficient scope for explanations of divorce rates and especially divorce rate change in terms of the impact of structural variables on individual behaviour. Perhaps, more crucially, we have some reasons to believe that what, in terms of simple bivariate relationships, appears as the shaping influence of legal families of nations may simply involve a masking of other kinds of relationships manifesting themselves at the individual level. Of the cultural factors shaping the law, that which has featured most prominently in our historical account has been the evolving impact of doctrinal differences between religious faiths, but religious beliefs in the population are not separate or necessarily different from those which shape the decisions of the legislators of statute law. It could well be that that, in investigating the direct effect of religious belief on behaviour, we may discover that divorce rates would be little different irrespective of the effect of laws; that, to cite but one possible example, the divorce rate in Ireland might well be negligible because of the dominance of the Catholic faith, even if there were no legal prohibition on the dissolution of marriage in that country. This might speak for a rather weak variant of the families of nations view resting on the importance of cultural factors, but would be destructive of the stronger variant pointing to the significance of long-term historical continuities. It is to issues of this kind we now turn our attention.

On the Correlates of Divorce

There is a substantial empirically based sociological literature on the contextual factors associated with divorce in particular nations, a literature which, in recent decades, has gained much of its impetus from a growing awareness of the need to distinguish the macrostructural from the microsociological dimensions of the process of divorce. It is generally acknowledged that mono-causal explanations of recent divorce trends are insufficient and inaccurate, and that we must seek multi-causal explanations, both because the factors influencing marital stability are many and because macrostructural and microsociological factors simultaneously impinge on individual decisions to seek a legal dissolution of marriage (see Hart, 1976).

However, the increasing sophistication of the sociological literature has not carried through to the generation of a comparably sophisticated empirically based corpus of cross-national research. The reasons are not difficult to discern. Differences and changes in legal systems have been seen as central variables in explaining national differences in divorce rates and divorce rate change, but the very fact that different nations have different laws has equally been seen as a major barrier to systematic comparison using the methods of applied social research. In consequence, what cross-national research there has been has tended to adopt a historical and legal approach rather than the more quantitative methods of sociology and comparative public policy analysis. Moreover, the predominant focus of most research in the field has been on the post-war growth of the divorce rate that has been a phenomenon of virtually all western societies, and this has encouraged those with an interest in international comparisons to stress factors common to many nations - for instance, general attitudinal and ideological shifts associated with secularisation and modernisation (see Ambert, 1980, 54-57; Goode, 1963, 81 and Price and McKenry, 1988, 7) - rather than factors pertinent to the substantial differences between nations as revealed in Table 2. Finally, the awareness of the desirability of an approach combining macrostructural and microsociological factors has in itself been a discouragement to cross-national research, which necessarily

relies very heavily on routinely collected aggregate data that by their nature obscure the subtle interaction between these classes of causation whilst being inherently biased toward macrostructural explanation. For instance, feelings of marginality within a social network (Hart, 1976, 171) may be an important contributory factor to discontent within a marriage at the microsociological level, but no comparable cross-national data on such attitudes exists. Nevertheless, the impact of marginality is likely to be picked up by a host of more macrostructural factors, such as the process of urbanisation which disrupts such networks or the trend toward lessened fertility which may disturb traditional patterns of interaction within communities, allowing only a very broad-gauge interpretation of the causal mechanisms involved.

We acknowledge the very real limitations imposed by this latter difficulty, but nevertheless seek to devise a model for the cross-national analysis of divorce rates and divorce rate change by combining key social context variables with our earlier categorisation of the legal impediments to divorce in different nations as presented in Table 1. It is our view that this categorisation, by providing a quantitative index of the liberality of national divorce laws and their liberalisation over time, permits us to overcome the problem of the barrier to systematic cross-national research constituted by the existence of diverse legal hurdles to the dissolution of marriage in different nations. The resulting model should make it possible to establish, at least within the broad-gauge terms dictated by the available data, whether a legally defined families of nations approach retains its heuristic value when the law is contextualised by its social setting. The first stage in the process of model-building is to test against cross-national data some of the hypotheses which feature most conspicuously in national studies. These hypotheses may be broadly grouped under the headings of modernisation, secularisation, demographic factors and policy constraints. In light of the difficulty of distinguishing the impact of macrostructural from microsociological factors on the basis of the available data, we pay more than the usual lip service to the standard caveat of applied social research, that what we are establishing in examining the correlates of divorce are associations between variables and not definitive causal explanations.

In accounting for divorce trends in the last two centuries, long-term economic or materialist factors have been widely identified as fundamental in creating the conditions for an increasing tendency to divorce. The three most crucial trends are the shift in the economic base of households, a growth in married women's formal and practical economic independence, and a growth in women's employment opportunities and labour-force participation (Phillips, 1988; Price and McKenry, 1988 and Halem, 1980). This last factor has been particularly influential in some interpretations of post-war divorce rate change and is an instance where the same variable has been used to generate both macrostructural and microsociological interpretations. Thus, quite apart from labour force participation's effect in facilitating female economic independence, North American studies have established that a husband's sporadic employment and low wages, relative to his wife's employment and wages, are key determinants of marital instability (Cherlin, 1979; Ambert, 1980).

The three major economic trends identified in the literature are all part of an overall process of *modernisation*, which Goode (1963), focusing on the joint impact of the processes of industrialisation and urbanisation, has shown to be highly influential as a force transforming the structure and stability of the family. Socio-economic modernisation variables are the standard fare of sociological and comparative public policy analysis and in what follows we examine the degree of association between divorce rates and GDP per capita (an indicator of the shift in the economic base of households towards greater affluence), the size of the service sector (an indicator of the expansion of an economic sector particularly associated with female employment), the size of the non-agricultural labour force (a broad indicator of the modernisation of the social structure and disruption of traditional patterns) and urbanisation (indicating the shift away from traditional ways of living). It should be noted that the model we develop here, which rests on the analysis of successive national cross-sections and the change taking place between them, does not allow an investigation of the impact of short-term economic fluctuations on the propensity to divorce (see Cahen, 1968 and Rowe and Krishnan, 1980). Because of the hypothesised special importance of female opportunities for independence, we utilise female

labour force participation (the most direct indicator of women's potential to maintain their economic independence) as a variable potentially capturing a separate dimension of the modernisation process.

Secularisation is, of course, another factor strongly associated with the process of modernity and may be seen as the attitudinal component of that process. The most common shift discussed is the erosion of religious sanctions upholding marriage or negatively sanctioning divorce. In light of our earlier discussion of the formative influence of relgious belief in shaping the law of divorce, it is unsurprising to find the major variable singled out as expressing this trend is the relative strength of different Christian denominations, with the strongest emphasis on the basic divide between Protestantism and Catholicism (Chester, 1977; Halem, 1980). In our analysis, we use Catholic adherence, hypothesised to be a negative predictor of divorce rates and divorce rate change, as the key test variable. Unfortunately, speculation as to the positive impact on divorce rates of further normative shifts of a secularising kind, including individualism, liberalism and hedonism (Ambert, 1980; Price and McKenry, 1988), cannot be tested here for lack of suitable cross-national data.

Demographic factors may be related to divorce either quasi-automatically as factors influencing the proportion of the population eligible to divorce or as factors with a more substantive bearing on marital instability. In the first category, we include the crude marriage rate (i.e. per 1000 of the population) as a means of controlling for the fact that the crude divorce rate, the only cross-nationally available measure of our dependent variable, may well be strongly influenced by the proportion of the population that is married. More substantively, fertility has been hypothesised to be linked to divorce in virtue of a propensity for those with few or no children to find it easier to escape from the bonds of matrimony. It has also been argued (Hart, 1976, 77; Fergussson et al, 1984, 539, 542; Norton and Glick, 1979) that this propensity is likely to be increased if the age at marriage is relatively young. Below we examine the degrees of association between both fertility rates and early marriage (percentage of brides below the age of 20) and divorce rates.

A final factor much discussed has been the impact of policy constraints, in particular the availability of welfare payments to single mothers and the welfare state payments available to mothers and children more generally. Hart (1976, 71) hypothesises "that access to this meagre income is an important element in the increasing availability of divorce, particularly for couples at low income levels". However, Moles, in a later assessment, reviews both census data studies and longitudinal analyses of this possible welfare-dissolution link, and finds either inconsistent or inadequate evidence (although stronger evidence for a welfare-remarriage link) (Moles, 1979, 172-78). Albrecht et al (1983, 54-55) describe similar disagreements in the findings of Cutright and Scanzoni, Bahr and Hannan. We would like to test this hypothesis by cross-national comparison because wide differences in national welfare systems suggest that any effects are likely to be more pronounced in such a context. There are, however, insuperable difficulties in obtaining data on the generosity of expenditure to single parents for a sample of nations anything like as extensive as the 17 under examination here.[9] The best proxy we can use is family transfers as a percentage of GDP (available for all our nations except Belgium), but we note that, since some part of such transfer expenditure is, in varying degrees, intended to preserve the integrity of complete families, any interpretation of the resulting correlates would have to be speculative in the extreme.

Table 3 presents the bivariate correlations between these 10 contextual variables and divorce rates and divorce rate change. With the exception of Catholic religious affiliation, where data is only available for 1970 and 1980, the independent variables are lagged, in that 1960 and 1976 data are correlated with average divorce rates for the periods 1961-68 and 1976-83 respectively. This is necessary, since some of these variables at least - most conspicuously, female labour force participation and family transfers - might, in part, be inferred to be as much caused by as causes of divorce. Given that the USA's divorce rate is of a distinctly higher order of magnitude than that of the other nations included in the

[9] We do have data for 10 countries on the percentage of lone families defined as poor post-transfers (see Mitchell, 1991) and this hardly supports the welfare availability hypothesis. Quite outstandingly, the three of the four most divorce prone countries of Table 2 - the USA, Canada and Australia - qualify as those providing the worst deal for lone parents, with poverty rates ranging from 45.7 to 38.7 per cent.

TABLE 3:Bivariate Correlations Between Divorce Rates, Divorce Rate Change and Contextual Factors

	GDP	Services	Non-agricultual Labour Force	Urbanisation	Female Labour Force	Catholic	Marriage Rate	Fertility	Early Marriage	Family Transfers
1960 variables with 1961-68 divorce rate										
including USA	.67**	.34	.37	.08	.38	-.45	.46	.01	.54*	-.40
excluding USA	.49*	-.02	.29	.05	.56*	-.55*	.41	-.44	.29	-.29
1976 variables with 1976-83 divorce rate										
including USA	.69**	.66**	.70**	.39	.49*	-.55*	.58**	-.40	.30	-.17
excluding USA	.60**	.58**	.73**	.56*	.57*	-.67**	.24	-.57*	.15	.10
change in variable with change in divorce rate										
including USA	.17	-.29	-.71**	-.21	.50*	.63**	.39	-.73**	-.48*	.34
excluding USA	.10	-.19	-.70**	-.15	.50	.52*	.23	-.67**	-.38	.36
1960 variables with change in divorce rate										
Including USA	.73**	.76**	.75**	.53*	-.12	-.56*	.45	.37	.78**	-.36
excluding USA	.64**	.70**	.74**	.57*	-.14	-.57*	.38	.25	.71**	-.27

Sources: GDP from Summers and Heston, 1988. Civilian employment in services, civilian employment in the non-agricultural sector and female labour force as a percentage of female employment from OECD,and notes, 1988. Percentage in Catholic religious affiliation from Barrett, 1982 (only 1970 and 1980 data available). Fertility rates and urbanisation from United nations, 1989. Marriage and divorce rates per 1000 of the population and early marriage (percentage of brides below the age of 20) from UN Demographic Yearbook. Family transfers as a percentage of GDP calculation from Varley, 1986 (data from Belgium missing). * = significant at .05 level; ** = Significant at .01 level.

comparison, and that its status as an statistical 'outlier' might be expected to bias some of the relationships to a marked degree, correlations are reported both including and excluding that country. This expectation is strongly confirmed in respect of the size of the service sector and fertility in the earlier period and the marriage rate in the later period.

The data in Table 3 strongly affirm a link between a range of contextual factors and both the level of and the change in the divorce rate. With the single exception of family transfers, every variable is in some respect statistically significantly related to features of the post-war divorce phenomenon in this range of advanced capitalist societies. Moreover, the direction of the reported associations with the average level of divorce in both 1961-68 and 1976-83 is generally as might be expected from the hypotheses derived from the literature. The modernisation variables are, with only one very minor exception (service sector size in 1960 excluding the USA), positively associated with the divorce rate. Catholic affiliation is uniformly a significant negative predictor of divorce rates and female labour force participation is only slightly less uniformly a positive predictor. With the exception of the sample including the USA for the earlier period, fertility is always negatively associated with the level of divorce. Both marriage rate and early marriage correlate positively with divorce rates, although the former relationship is more consistently statistically significant. Although not quite significant, we note that the association for family transfers in 1960 is negative, possibly to be counted as evidence against the welfare availability hypothesis or, equally probable, a reflection of the problematical way in which that hypothesis is operationalised here. Finally, it is extremely noticable that the overall impact of social context variables is far greater in the later than the former period. For the 1960 variables, only one relationship is significant at the .01 level in the sample including the USA and none achieves that level in the sample excluding that country. For the 1977 variables, however, four achieve that level in both samples and two more are significant at the .05 level. This increasing influence of social context variables is a point to which we shall return later in our analysis.

When we come to change, we discover rather more departures from the relationships hypothesised in the literature. Two relatively minor anomalies are encountered in respect of the demographic variables: the fact that a decline in the rate of early marriage was marginally associated with an increase in the divorce rate, and that it was the countries which in 1960 had the highest levels of fertility that had the highest subsequent increase in divorce rates. Both findings somewhat contradict our expectations concerning predicted patterns of change, but only in the case of early marriage in the sample including the USA to a degree which is statistically significant. A further anomaly is the positive association between change in Catholic affiliation and divorce rate change. Most probably, this is a consequence of a spurious relationship thrown up by the very minor changes in religious affiliation over the course of a decade which left the cross-national variation in strength of Catholicism wholly untouched, with the correlation between the 1970 and 1980 values of the variable being no less than .99.[10]

A much more interesting set of anomalies seems, on the surface at least, to characterise the associations between change in the degree of economic modernity and change in the divorce rate. With the exception of GDP and female labour force participation, change in modernity is negatively associated with a change in the divorce rate and, in the case of non-agricultural labour force change, very significantly so. On this basis, it would seem that the more rapidly countries were modernising their economic and social structures, the *less* their divorce rates increased. A clue to understanding this counter-intuitive finding is to be discovered in the final part of the table, showing the very high correlation between all the 1960 economic modernisation variables and divorce rate change in the ensuing period. In other words, it was in the nations that were already modern in 1960 that the divorce rate grew most rapidly, and the apparent paradox of the change relationships is accounted for by the fact that it was these early modernisers that experienced least

[10] However, it is just possible that it is indirectly indicative of a positive relationship between large-scale migration and an increase in divorce, insofar as the only countries to experience any appreciable increase in Catholic affiliation (1% or more) were the Anglo-Saxon countries of mass migration (the USA, Australia and New Zealand), which in the immediate post-war decades attracted a somewhat disproportionate number of Catholics to their shores .

change in their social and economic structures thereafter. The seeming paradox here is one of convergence, shown at its most dramatic in a correlation (for all 17 countries) between the 1960 non-agricultural labour force and 1960-76 change in the same variable of no less than -.96. The same phenomenon would also be apparent in the case of GDP if that variable were measured as an economic growth rate rather than as here by the change in the size of GDP (see Castles and Dowrick, 1990). That might suggest to some that a negative association between economic growth and divorce rate change should be interpreted in terms of marital dissatisfaction caused by declining economic expectations. However, we reject such an interpretation. If we were to interpret the non-agricultural labour force association in the manner suggested as appropriate for economic growth, it would imply that the increasing disruption of the social structure caused by the shift out of agriculture was conducive to increased marital stability. The latter interpretation is clearly nonsensical and we prefer the clear evidence of the final lines of Table 3 that all these relationships demonstrate the lagged impact of economic modernity on marital behaviour. Although the demonstration of such a lagged effect goes beyond what is stated in the literature, it certainly does not contradict it, and is unsurprising to the degree that we might reasonably expect changes in the economic base of society to take time to filter down to a level where they would impact on fundamental norms influencing marital behaviour.

On Paths to Divorce

Given the relatively small number of cases on which our comparative analysis is based, it is not possible to include all 10 contextual variables in the final multivariate elaborations of our model, which follow the advice of Kitson and Raschke (1981, 30) that such multivariate designs are the best way forward for understanding "the simultaneous and relative impact of a number of variables". Our criteria for inclusion are based on theory and the character of the family of nations concept we are seeking to explore. We wish to include at least one economic modernisation variable, since hypotheses linking modernisation to changing social behaviour are at the very core of the sociological enterprise. We choose the size of the non-agricultural labour force as our key variable in this

respect because an examination of correlation matrices for both periods shows that this variable alone is consistently strongly associated (in excess of .70) with all the other economic modernisation variables in both periods. In that sense, it seems appropriate to regard the size of the non-agricultural labour force as the pivotal variable best expressing the multi-faceted aspects of the modernisation process. It is also important to include female labour force participation as an indicator of what is also, almost certainly, a separate dimension of the modernisation process. In support of the view that female labour force participation is unlike other components of modernisation, we note a negative relationship (-.40) between that variable and the size of the non-agricultural labour force in the earlier period supeseded by a small positive one (.27) in the later period. In fact, the relationship between economic modernisation and female independence is almost certainly not a linear one. Phillips, convincingly, suggests a three stage process, whereby the traditional family economy, in which women's work on the land created a complementarity of tasks and mutual dependence, was replaced in the early modernisation phase by women's dependence based on the performance of home tasks, with greater female independence only resulting from the later shift of married women into manufacturing and service employment (Phillips, 1988, 590-92). Hence, in order to capture the impact of the major trends presumed by the literature to have shaped the trajectory of divorce rate, it is necessary for our model to focus on the special factors influencing women's economic independence as well as on broader correlates of economic modernisation.

At least 2 additional variables have to be included in our model in order to make it possible to confront a legal family of nations explanation with one based on social context. On the one hand, we have to include our operationalisation of the extent of the liberality of the law in order to assess the separate impact of legal provisions and, on the other, we need to include a test for the impact of secularisation, the variable that we might most readily assume could explain the character of the law without some reference to a continuity of legal procedures inherited from the past. As pointed out previously, if our negative indicator of secularisation, the strength of Catholic affiliation, were capable of accounting for the vast proportion of the cross-national variance in divorce laws, it would at best

argue for a weak variant of the family of nations concept, insofar as it would demonstrate that legal policy outputs were a clear reflection of cultural factors. However, it would simultaneously argue against the stronger variant of the families of nations concept: that these outputs, and the divorce outcomes to which they contribute, can only be understood in terms of the historical continuity and distinctiveness of legal forms in different groupings of nations.

These 4 factors - economic modernisation, female independence, secularisation and the liberality of the law - exhaust the number of variables it is possible to include in a reasonably coherent statistically based model of divorce rates and divorce rate change. Fortunately, they are simultaneously the variables which our calculations in table 2 and 3 show to be most strongly and consistently associated with divorce outcomes. Welfare availability, whether because of the way we have measured it or because of the weakness of the basic hypothesis, did not manifest any degree of significant association with the divorce phenomenon. The demographic variables are, at best, inconsistent in their relationships with the level of and change in divorce rates, being only rarely at all strongly associated with both level and change and frequently manifesting quite divergent associations depending on the inclusion or exclusion of the USA. A few of the associations between demographic variables and change are, however, quite strong. In particular, declining fertility and high levels of early marriage in 1960 are both highly associated with an increase in the divorce rate and it is possible that, in consequence, there will be some misspecification of our model insofar as it pertains to change.

However, this is rather less probable in respect of divorce levels, with early marriage and the marriage rate only being significantly positive predictors for the samples including the USA. We surmise that the USA's exceptionally high marriage and early marriage rates throughout the period may well have contributed to that country's exceptional divorce rates to some degree, but note that these factors contribute little to understanding variance in the remainder of the sample. Fertility in the later period in the sample excluding the USA is significantly associated with the divorce rate, but over time this variable has become markedly

more strongly associated with our measure of economic modernisation, the size of the non-agricultural labour force (in 1960 only .05, by 1976 .66). In other words, fertility only becomes a predictor of the divorce rate once it also becomes a part of the syndrome of socio-economic modernisation. In this necessarily broad-gauge model of the impact of social context, it may be that any independent effects of fertility are to some extent picked up by other modernisation variables included in the model.

Figures 1-4 present versions of our preferred model of divorce outcomes for the periods 1961-68 and 1976-83 and for change over the period as a whole. The figures consist of path diagrams showing, by means of standardised regression coefficients, the strength of the associations between variables in a theoretically derived ordering of probable causal influences. In Figures 1 and 2, given the USA's status as an outlier, we estimate separate equations for the samples including and excluding the USA. In respect of change, where the USA ceases to be an outlier, this is no longer necessary and Figures 3 and 4 are derived from data for the entire sample.

The theoretical argument implicit in these path diagrams is that economic modernisation and secularisation are prior influences impacting on the size of the female labour force and that all three impact on the law of divorce which, in turn, regulates possibility of the legal dissolution of marriage. Such a causal ordering has very important implications for the families of nation concept. To the extent that we are able to account for variance in the divorce rate by the direct influence of the three social context variables alone, it is possible to discount explanations resting on the impact of distinctive legal families of nations. A similar conclusion would also be justified if we could offer a full account for the distinctiveness of variance in the law, even if the law were shown to be closely associated with variance in divorce rates. In the first instance, we could argue that the law was irrelevant and, in the second, that it was merely a reflection of social forces.

In order to establish a *prima facie* case for the importance of families of nations as a determinant of policy outcomes, we would need to

Figure 1: Paths to Divorce, 1961-68

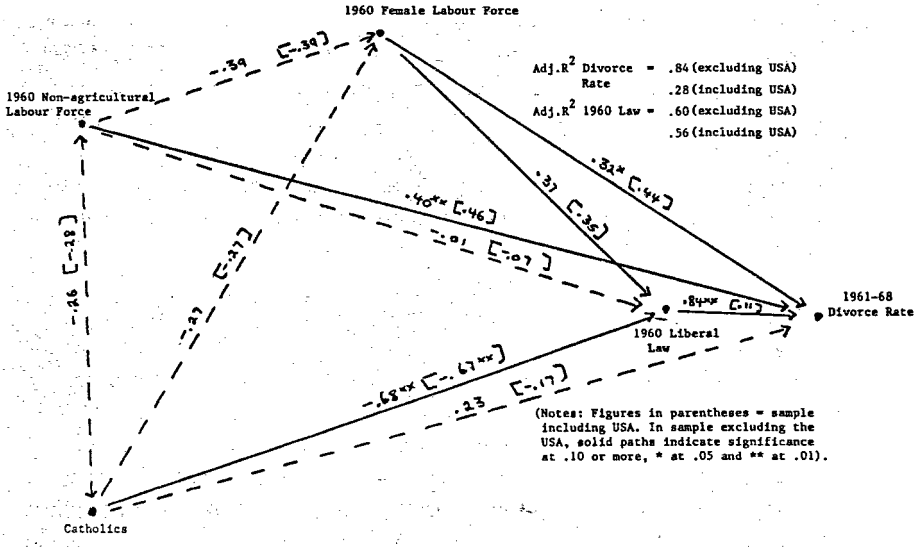


Figure 2: Paths to Divorce, 1976-83

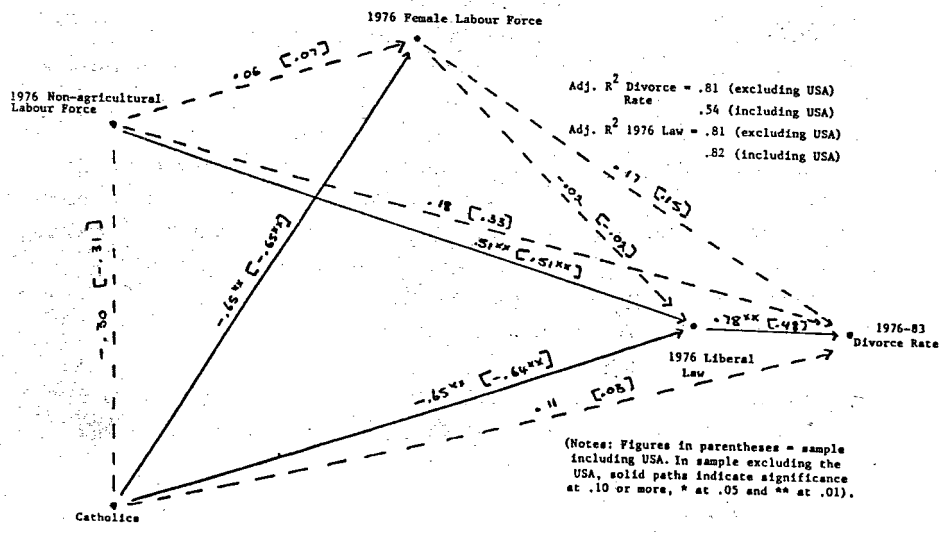


Figure 3: Paths to Divorce Rate Change, 1961/68–1976/83

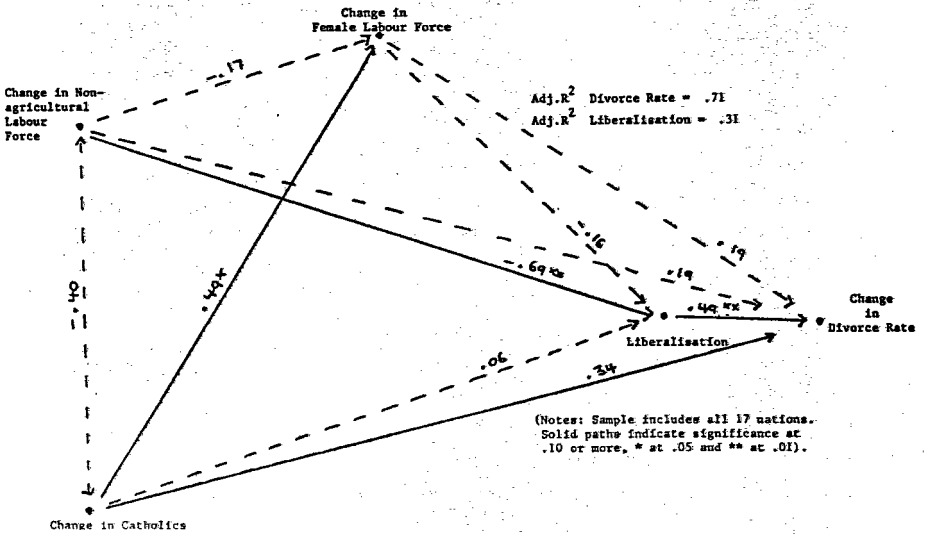
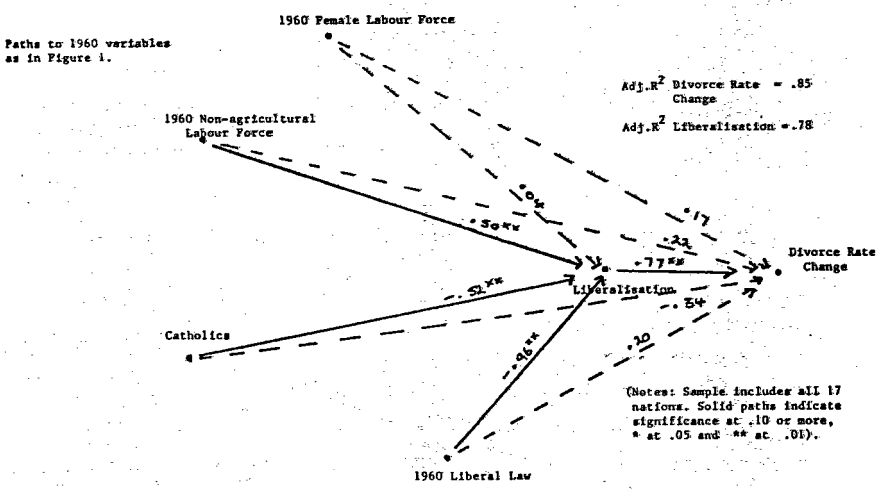


Figure 4: Antecedents of Liberalisation and Divorce Rate Change



demonstrate first that laws, the variance of which we have already shown to be closely associated with a long-term historical development in distinct families of nations, are at once a crucial factor in accounting for observed variation in divorce rates and, at the same time, only in part themselves accounted for by social context. In the 1961-68 path diagram presented in Figure 1, this does appear to be the situation we confront. There are three significant predictors of divorce rates in the generally succesful model for the smaller sample, which accounts for some 84 per cent of the variance in divorce rates. Two are contextual factors, the size of the non-agricultural labour force and of female labour force participation, with the latter rather the more important. However, even when we control for both these contextual variables, much the strongest predictor is the degree of liberality of the law, the law itself being less than adequately accounted for by the model variables, with only around 60 per cent of the variance explained. The only statistically significant predictor of liberality is the negative impact of Catholic affiliation. One simple indicator of how important the influence of the law was at this date is the decline in explained variation of the model from 84 per cent to 57 per cent when it's impact is removed. So for 1961-68 the story is that the law is the single most important influence on variance in divorce, that the law itself only to a very minor degree reflects the extent of economic modernisation, and that only secularisation, the cultural dimension of modernisation, produces a strong and statistically significant path to divorce via variance in divorce law. We note, unsurprisingly, that whilst paths to the 1960 liberal law are almost identical in the samples including and excluding the USA, the model including the USA is wholy unsatisfactory as an account of the 1961-68 divorce rate.

If it is possible to make separate cases for both a cultural and historical family of nations approach in the 1960s, the latter case is much diminished for the later period. In the period 1976-83, as shown in Figure 2, it is the law alone which is a significant predictor of divorce rates in the model excluding the USA (the full model is again unsatisfactory, although not to quite the same degree) and variance in the law of divorce is now itself adequately accounted for by the effects of economic modernisation and secularisation. The big changes in the

structure of the relationships between the earlier and the later period are the replacement of the direct association between economic modernisation and divorce rates by an indirect relationship mediated by the nature of legal provision and the disappearance of the somewhat more tenuous links between female labour force participation and both divorce rates and legal provision. The latter set of changes is interesting in casting some doubts on the hypothesis of a link between women's independence, as conferred by labour market position, and the propensity to seek dissolution of marriage. It is possible that the tendency might be more pronounced if the model were not lagged, which could suggest that divorce itself contributes to enhanced female labour force participation, but, as it stands, it would appear that much of the quite strong bivariate association between the two variables is accounted for by the increasingly strong negative relationship between Catholicism and women's labour force participation. Although, within the structure of the model, the law is now the only direct influence on outcomes, it is an influence mediating these other effects, and removing the law from the model now only reduces the degree of explained variance from 81 per cent to 71 per cent.

A more direct insight into the processes that took place over the period as a whole can be gained from figures 3 and 4. Figure 3 shows how change in social context and the law impacted on change in the divorce rate. Only one significant path to divorce rate change emerges, with change in the non-agricultural labour force highly negatively associated with the liberalisation of the law, which is the only substantial predictor of change in the divorce rate.[11] As explained previously, the counter-intuitive effect of the shift out of agriculture is to be accounted for by the dramatic convergence of this indicator of economic modernisation. This is clearly demonstrated in Figure 4 which illustrates the antecedents of liberalisation of the law and subsequent divorce law change. Here it is shown that liberalisation occurred precisely in those

[11] The only other paths in Figure 3 of any importance are the positive associations between change in Catholic affiliation and both change in the divorce rate and change in female labour force participation. As argued earlier, the relationship with divorce rate change (see exposition in the section *On the Correlates of Divorce*), may well be spurious, although it could be that the spuriousness arises (see footnote 10) because change in Catholic affiliation stands as an indirect proxy for the impact of migration on divorce rate change.

nations which were the most economically modernised in 1960 and in which the influence of Catholicism was least, leading to a dramatic shift away from prior legal forms, so that the liberality of the law in 1960 was a strong negative predictor of the change that took place thereafter.

In other words, with the exception of the cultural continuity by which Catholicism negatively conditioned legal barriers to dissolution of marriage, the trajectory of legal transformation was shaped by a reaction to the contradiction of outdated laws persisting under conditions of economic modernity. That contradiction, assessed in terms of the discrepancy of the size of the non-agricultural labour force in 1960 and the liberality of the law at the same date, was at its greatest in the United Kingdom, the United States, Belgium, the Netherlands, Australia and Canada, in descending order of economic modernisation, as measured by the size of the non-agricultal labour force. Only Belgium of these 6 countries failed to make the transition from fault-based divorce laws to ones based largely on separation or irretrievable breakdown of marriage in the period 1960-76 and Belgium is the only one of these countries in which Catholicism is the predominant Christian denomination. Moreover, given that the liberalisation of the law is the only significant predictor of change in divorce rates over the period, this concrete identification of the countries in which the contradiction was most apparent explains why the phenomenon of 'English awfulness' is so strongly associated with divorce rate change in the period. Pre-eminently, it was in the English-speaking world that this contradiction between divorce law and modernity existed, a finding wholly consistent with the analysis of other researches emanating from the family of nations project in which it is demonstrated that many of the singularities of the English-speaking family of nations have stemmed from their early modernity.

The major deficiency of the account offered here is, of course, its failure to account for divorce rates in the United States, the country in which divorce was much the most prevalent in both periods. On the other hand, the same model which fails to explain the level of the American divorce rate is wholly adequate as an account of changes over the period in the sample as a whole. That suggests that the model may

not itself be inadequate, but rather that the exceptionalism of the United States may relate either to additional factors specific to the American experience or some misspecification of the character of that experience in terms of the variables constituting the model. In respect of the former, demographic factors may well be of some relevance insofar as that country manifests much the highest marriage and early marriage rates of any country in this study. A further factor, unfortunately difficult to pursue in a comparative study of this kind, is the suggestion that the United States is characterised by a particularly individualistic ethos, conducive to a search for greater self-fulfilment in marriage (see Weiss, 1975). In respect of the latter, we may hark back to the exceptional disparity between the practice and the letter of the American law of divorce. Although we do not wish to build it into a major point, we note with some interest that, were we to classify the USA in terms of the practical permissiveness of its laws in 1960 and 1976, scoring it as being as liberal as the Scandinavian nations at the former date and one step more so than any nation except Sweden in 1976 (for a justification of the latter, see footnote 5 above), the path diagrams for the sample including the USA become far more like those for the sample excluding that country. What that would imply, of course, is that, in terms other than the strict stipulations of the law, the USA is incorrectly classified as a typical member of the English-speaking family of nations, perhaps unsurprising of a country where the letter of its laws prior to 1960 expressed their very strong Reformation and English origins, but which was simultaneously the undoubted 'first new nation' in the sense that the forces of economic modernisation and secularisation had emerged untrammelled by the inherited class and status distinctions of the old world (see Lipset,1963).

The story that most appropriately seems to follow from the overall analysis of divorce rates and divorce rate change is one of the explanatory significance of legal families of nations in the earlier period and the decline of that concept's explanatory utility in the subsequent period. In 1960, the law and its practice in all the nations other than the USA reflected both the degree of secularisation of contemporary populations, as manifested in allegiance to the Catholic faith, and the diversity of barriers to the legal dissolution of marriage that had developed in a

number of distinct groupings of nations over centuries of historical development. Only to a quite marginal degree did it reflect the impact of more material manifestations of modernisation, and then it was women's capacity to exert their independence through employment rather than the general modernisation of the socio-economic structure which counted. What appears to have occurred in the 1960s and 1970s was a dramatic breakthrough of the impact of economic modernisation on the law, although one still somewhat constrained in the countries where Catholicism was strongest. The mechanisms of that breakthrough are not stipulated in the model presented here and could only be located with any precision by a comparative study of the ways in which various facets of economic modernisation shaped a normative reevaluation that encouraged diverse groups within the non-Catholic churches and the population at large to press for legal reform. It was these reforms which finally undermined the continuity and persistence of the legal families of nations that had hitherto exercised so potent an influence on public policy in the domestic arena of marriage. A full account of the sources of national diversity in divorce outcomes prior to those reforms and of the starting point for the trajectory of the reform movement itself is not possible unless we start from an understanding of the divorce phenomenon which allows of the notion of the historical continuity of distinct families of nations.

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