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Sunday, June 20, 2010

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June 15, 2010, 8:09 pm

By [THE EDITORS](#)



Francois Duhamel/20th Century Fox

Fault or no fault, it was the divorce from hell: “The War of the Roses.”

In 1969, Gov. Ronald Reagan of California signed the nation’s first no-fault divorce law. He later called it the worst mistake of his life. But other states eventually followed California’s lead, and no-fault — under which one spouse can end a marriage, with no proof required of wrongdoing by either party — more or less became law of the land. New York State was the longtime holdout, since South Dakota passed its law in 1985.

That may be about to change. [On Tuesday evening, the State Senate approved legislation](#) that would permit no-fault divorce after a marriage has “irretrievably” broken down for six months or more, without the need to identify a fault, like adultery or abandonment. The package must still pass the State Assembly, which is considering two bills that would adopt some version of no-fault divorce.

New York’s failure to permit more accessible divorce [has long been denounced as archaic](#), but longtime opponents of “liberalization” have included the Catholic Church and the New York chapter of the National Organization for Women.

What should the New York Legislature consider as it works out the details of its no-fault measures? What do we know about the effects of no-fault laws in the rest of the country?

- [Betsey Stevenson](#), economist, University of Pennsylvania
- [Robin Fretwell Wilson](#), law professor, Washington and Lee University
- [Andrew J. Cherlin](#), professor of sociology, Johns Hopkins
- [Barbara Dafoe Whitehead](#), Institute for American Values
- [Marcia Pappas](#), New York president, National Organization for Women

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## Divorce and Domestic Violence



[research.](#)

Back in the 1950s, most states only granted “fault” divorces. In reality, this meant that when a couple wanted a divorce, they simply made up some marital fault, and the judge, with a nod and a wink, granted the divorce. Thus, if your spouse consented to the divorce, you could get one.

No-fault laws have had little effect on divorce rates, but reports of domestic abuse went down in states where one spouse could walk away.

The divorce reform revolution changed all this. The new “no fault” laws did more than just eliminate the need to demonstrate fault. They also allowed you to unilaterally leave a marriage without demonstrating fault.

New York was one of the few states to resist this change from consent-based to unilateral divorce.

My co-author [Justin Wolfers](#) and I have studied the consequences of this change. The first conclusion is startling: changing divorce laws had little, if any, impact on the divorce rate. The divorce rate doubled between 1965 and 1975, but this happened in equal measure in those states adopting unilateral divorce, as in other states.

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## Often, There Is Fault



[Robin Fretwell Wilson](#) is the Class of 1958 Law Alumni Professor at Washington and Lee University School of Law.

Proponents say that the New York Senate legislation — S3890 — is needed to bring New York into line with the rest of the country. New York has allowed no-fault divorce if couples agree on terms and live apart 12 months. S3890 goes further, permitting spouses unilaterally to initiate divorce proceedings in which the court, not the parties, will “resolve” the “major” issues: property division, alimony, child support and custody.

In 30 states, a wronged spouse can ask the court to take all marital misconduct into consideration in awarding alimony. New Yorkers deserve the same protection.

It is no surprise that spouses in non-functioning marriages do not always agree on terms. S3890 removes the choke-hold that mutual agreement places on divorce — at a cost. One party loses control over the terms, and may well receive a worse deal than they would agree to.

By bypassing mutual agreement, S3890 would treat nearly all divorces alike. Under current New York law, fault matters in property distribution and alimony only in rare instances, when “so egregious” as to be “a blatant disregard” of the marriage. Beating one’s wife with a barbell until she is unrecognizable would count, but verbally abusing and striking one’s wife and child while intoxicated would not, even if the abuse required a physician’s care.

Not all reasons for divorcing are equal. Often someone is at fault and that should matter if the law is to do justice.

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*[Andrew J. Cherlin](#) is professor of sociology and public policy at Johns Hopkins University. He is the author, most recently, of [“The Marriage-Go-Round.”](#)*

In the 1970s, when no-fault divorce legislation swept through the country (except for New York), many marriages had begun under the 1950s breadwinner-homemaker bargain. The wives in these marriages had agreed to stay home and raise the children while their husbands earned the family’s income.

New York’s low divorce rate is not the result of its rejection of a no-fault system.

For a decade or two, these wives had dutifully held up their end of the bargain. As a result, their job market skills they had atrophied. If their husbands took advantage of no-fault divorce to leave them, they were often unable to support themselves. Many divorced women of their generation felt betrayed as their standards of living plummeted.

Today there is a new generation of women who have married under a different bargain: Both spouses work and they pool their incomes. In these dual-earner marriages, wives never leave the work force for long, and although most of their husbands have higher earnings, it’s not as hard for women to support themselves if their marriages end. It also helps that laws enforcing child support payments have been toughened and more divorced fathers pay the support they owe.

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## The Voiceless Third Parties



***Barbara Dafoe Whitehead** directs the John Templeton Center for Thrift and Generosity at the Institute for American Values and is the author of [“The Divorce Culture: Rethinking Our Commitments to Marriage and Family.”](#)*

The first no-fault divorce law was signed by Gov. Ronald Reagan in 1969. At the time, no one could have anticipated how this legislation would sweep the nation, how it would work in practice and most importantly, how it would affect the lives of children, the voiceless third parties in divorce.

In a culture of easy divorce, ‘low conflict’ couples split up when they could repair their marriages for the sake of their children.

Today, 40 years later, the situation is different. Millions of families have gone through divorce. Scores of studies have been conducted. Hundreds of books, memoirs and articles have been written. The children of the no-fault divorce revolution have grown up. Simply put, a lot of social learning has occurred.

Because New York is the last state to come to this debate, it has a responsibility to heed the lessons of the past four decades. Chief among them is to keep in mind what we know about the effects of divorce on children.

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## Reject Divorce on Demand



*[Marcia Pappas](#) is the president of the National Organization for Women of New York State.*

Under “divorce on demand” legislation sponsored by Senator Ruth Hassell-Thompson and Assemblyman Jonathan Bing, either party can go into court, say the marriage has broken down, and get a divorce — no grounds are necessary. Approximately 95 percent of divorce cases in New York are resolved by the parties themselves, not by the judge, without going to court. This is the best possible process.

No-fault can take away the bargaining leverage of the non-moneyed spouse — and that is usually the woman.

No-fault takes away any bargaining leverage the non-moneyed spouse has. Currently she can say, “If you want a divorce I’ll agree, but you have to work out a fair agreement.”

That is not “blackmail” as has been claimed by some no-fault proponents. Negotiating the terms of the breakup of a partnership is the way partnerships are dissolved in the business world. Women should have the same protection.

In fairness, any partner to a marriage should be provided with notice that the other partner wants a divorce and given an opportunity to negotiate the terms for the divorce.

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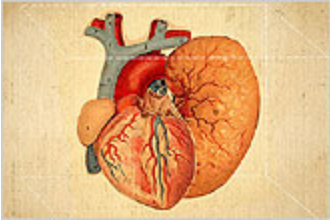
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