An examination and evaluation of recent changes in divorce laws in five Western countries: The critical role of values.

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Abstract:

This article describes changes in divorce laws in the United States, England and Wales, France, and Sweden in the areas of obtaining a divorce, spousal support, child support and child custody. Also, the article discusses the relation between individuals' values and their evaluations of the effects of changes in divorce laws on family members, as well as the relation between legal change and cultural values. In addition to providing valuable descriptive information about divorce laws from an international perspective, comparative analyses provide unique insights into the relation between culture and laws pertaining to divorce beyond that provided by an analysis of any single country. This analysis not only provides information about the laws of several Western countries, but also highlights the complex relation between cultural values and the legal aspects of divorce. To further the understanding of this complex relation, the authors' recommend that future researchers must incorporate non-Western countries into their analyses.

Keywords: divorce | family law | child support | custody of children | marriage law

Article:

In this article, we describe recent changes in divorce laws in the United States, England and Wales, France, and Sweden in the areas of obtaining a divorce, spousal support, child support, and child custody. Although there are important differences among countries, there are some common trends. Divorce has become increasingly easy to obtain; spousal support has become less common; efforts have been made to increase child support awards and to improve payment compliance; and shared parental decision-making authority has become increasingly accepted and encouraged. We discuss the relation between individuals' values and their evaluations of the effects of changes in divorce laws on family members, as well as the relation between legal change and cultural values.

There has been a well-documented increase in the divorce rate in Western countries in the last 30 years, although the rate has been relatively stable in the last decade (Phillips, 1988). Paralleling the increase in the divorce rate have been profound changes in the laws that govern divorce and its aftermath. In this article, in keeping with the spirit of the 1994 International Year of the Family, we examine laws related to divorce in several Western countries, including the United States, France, England and Wales, and Sweden. We also propose that it is difficult to determine the consequences of these legal changes on family life because evaluations of these effects by individuals (including researchers and those who review their work) depend on their positions on several value dimensions.

In addition to providing valuable descriptive information about divorce laws from an international perspective, comparative analyses provide unique insights into the relation between culture and laws pertaining to divorce beyond that provided by an analysis of any single country. Because countries have different cultural traditions and somewhat different laws pertaining to divorce, comparative analyses provide an opportunity to explore how cultural values, and changes in values over time, relate to laws regarding divorce. Thus, we conclude this article with some comments about the complex relation between cultural values and legal change.

Our focus is on Western countries because there is more available information on divorce laws in these countries than in non-Western countries. Because divorce for couples with children, relative to those couples without children, is more complex and has led to greater controversy among family policy specialists, we focus our review on divorce laws as they pertain to couples with children.

Before proceeding to the survey of divorce laws, it is important to draw a distinction between marital breakdown and divorce. Marital breakdown occurs when a couple's marriage has deteriorated to the point that it is no longer viable and does not meet the mutual needs of the spouses. Divorce, by contrast, is the formal termination of the marriage in a court of law. Therefore, marital breakdown is a private experience, whereas divorce is a public one. This distinction is a critical one, because marital breakdown does not necessarily result in divorce (Phillips, 1988). Although marital breakdown occurs in all societies, the manner in which couples choose to formally resolve this breakdown differs both within and across countries.

TRENDS IN LAWS PERTAINING TO DIVORCE IN WESTERN COUNTRIES

There are two primary aspects of law relevant to divorce. First, there are laws that regulate how couples obtain a divorce. Second, there are laws that govern the aftermath of divorce, including such matters as spousal support, child support, and child custody. In this section, we review each of these two aspects with respect to the countries of interest.

Laws Pertaining to Obtaining a Divorce

The modem history of divorce law in the United States and Western Europe arguably began in the 1960s, when almost all of those countries that recognized divorce enacted substantially modified procedures and grounds. Prior to 1960, the United States, England and Wales, and France had divorce laws built around the idea that one spouse was at fault for the marital rift (Glendon, 1989; Phillips, 1988). Of the countries surveyed here, only Sweden had a law before 1960 that allowed divorce without an assertion of fault (Rheinstein, 1971).

The United States. At the outset, it should be noted that family law in general and divorce law in particular are determined at the state level in the United States, primarily because of its federalist roots, which emphasize decentralized states' rights (Resnik, 1991). However, because of "migratory divorce" (i.e., couples traveling to states with less restrictive divorce laws than their own), it is difficult for any one state to have a law that makes divorce more difficult to obtain than in other states. By contrast, divorce law is governed nationally in virtually all countries of Western Europe and Scandinavia.

The decentralization of divorce law in the United States makes widespread public debate regarding divorce laws less feasible than in other countries. England and France have had national debates on the provisions of divorce laws, whereas divorce-related issues seldom generate much attention in individual U.S. states (Glendon, 1987; Jacob, 1988). Thus, compared to other countries, the formulation of policy in the United States has not been as dependent upon societal debate and compromise.

Divorce in most American states was based almost exclusively on fault grounds until the 1960s. Fault grounds are those that assess blame against one of the spouses, and typically consisted of adultery, desertion, physical and mental cruelty, long imprisonment for a felony, and drunkenness (Scott, 1990).

After World War II, fault-based divorce laws became increasingly anachronistic, leading to large numbers of migratory divorces and collusion (i.e., couples inventing nonexistent fault grounds) (Jacob, 1988; Scott, 1990). Thus, there was a sharp contrast between the fault-based laws governing divorce and the relatively easy access to divorce that existed in practice (Glendon, 1989). In addition, many involved in the process of divorce (e.g., spouses, judges, mental health professionals) had become increasingly distraught at the adversarial and bitter nature of divorce proceedings (Weitzman, 1985).

Reform of the divorce laws in the United States began in the state of New York, which had a restrictive divorce law that required one spouse to demonstrate that the other had engaged in adultery (Jacob, 1988). The major impetus for reform was that couples often fabricated stories of adultery to meet the letter of the law and judges were often willing to give lenient interpretations of the evidence to support the divorce petitions. The revised law was still based on fault grounds, but added a number of grounds for divorce other than adultery, including cruel and inhuman treatment, abandonment for 2 or more years, confinement in a prison for 3 or more years, and an

agreed-upon separation of at least 2 years (Divorce Reform Law, 1966). Within a decade of passing, there were several changes in the law that made divorce even easier to obtain: The waiting period for obtaining a divorce after a separation was reduced from 2 years to 1, and a mandatory counseling provision (designed to facilitate reconciliations) was eliminated (Jacob, 1988).

The reform movement continued in California (Weitzman, 1985). The Family Law Act of 1969 provided for divorce for the "irremediable breakdown" of the marriage if there were "irreconcilable differences" between the spouses (California Civil Code, 1983). Thus, California was the first state in the United States to enact a "no-fault" divorce law. The framers of the legislation were careful to assert that they did not intend to make divorce easy to obtain; their intent was to permit divorce only after there was considerable evidence that the marriage could not be salvaged and after the spouses were provided with counseling that might lead to reconciliation (Jacob, 1988).

Legislative reform quickly spread. By 1985, no state remained that allowed only fault-based divorce (Glendon, 1989). As of this writing, fault grounds for divorce have been abolished in 20 states and the remaining states have some form of mixed grounds compromise: fault grounds combined with breakdown, separation, incompatibility, or mutual consent. The vast majority of states allow mutual or unilateral no-fault divorce with virtually no waiting period (Walker & Elrod, 1993). Only in a few states is the waiting period for divorce when only one spouse applies more than 1 year (Walker & Elrod, 1993). Even with procedural delays and waiting periods (if they exist), spouses can divorce much more quickly now than in the previous, fault-based system. In addition, no state has a "hardship clause," which allows the court the option of denying a divorce petition if granting the divorce would result in hardship for one of the spouses.

England and Wales. England and Wales are properly considered as one entity, because both adhere to British law (Stone, 1990). Therefore, references to English law also refer to Welsh law.

Until 1857, divorce in England was available almost exclusively by act of Parliament or by the Church of England in the ecclesiastical courts (Cretney & Masson, 1990; Stetson, 1982). The Matrimonial Causes Act 1857 created a Court for Divorce and Matrimonial Causes and gave the court jurisdiction to consider and grant divorces. While the procedure changed, the substantive ground for divorce remained essentially the same: adultery (Cretney & Masson, 1990). Interestingly, a wife could not rely solely on adultery to seek a divorce; she had to allege some other marital offense as well (Stone, 1990). Despite the change in the locus of decision making from Parliament to the courts, divorce was still very difficult to obtain for those who were not wealthy.

Adultery remained the only legally recognized basis for divorce until the Matrimonial Causes Act 1937 added as additional fault grounds the following: cruelty, desertion for a continuous period of 3 years or more, and "incurable insanity." Within a short time after enactment of the

1937 Act, it became clear that the fault-based system was unrealistic; an increasing number of divorcing couples were simply colluding and inventing grounds for divorce to fit the statute (Cretney & Masson, 1990; Stone, 1990). By 1951, a Royal Commission was assembled to consider a reform (Cretney & Masson, 1990). Members could not agree on what course to take, with one group urging abandonment of fault grounds and a move toward recognizing the idea of irremediable marital breakdown and the other seeking to maintain the status quo (Stone, 1990).

Reform came about in the mid-1960s when two groups considered the divorce law and issued influential recommendations. The Archbishop's Group, formed by the Archbishop of Canterbury and including clerics and lay members of the Church of England, called for recognition of "irretrievable matrimonial breakdown" (Archbishop's Group, 1966). The Law Commission, consisting of judges, lawyers, and legal scholars, agreed with the Archbishop's Group that the time had arrived to allow divorce on faultless grounds (Law Commission, 1966). The major difference between the two groups was the church group's preference for a divorce procedure that relied upon extensive participation by judges and the secular group's reluctance to further burden the judiciary (Glendon, 1989). The recommendations of the two groups ultimately formed the foundation for the Divorce Reform Act 1969.

The English Divorce Reform Act 1969 was a dramatic change and it proved influential in continental Europe and in the United States. With the Act, Parliament did not, however, actually abolish fault grounds for divorce. Section 1(1) of the Divorce Reform Act 1969 declares that, henceforth, the only basis for divorce would be "irretrievable breakdown." Section 1(2), however, describes the five ways irretrievable breakdown can be proven and three are traditional fault grounds: adultery, desertion, and cruelty.

Liberal though it was, the Divorce Reform Act 1969 was cautious in important ways. Mutual consent divorce was available only after a couple had lived apart for 2 years unless the couple could show exceptional hardship; unilateral no-fault divorce required a 5-year separation unless the petitioner showed particular hardship or exceptional depravity by the respondent (Glendon, 1987). Even though substantial obstacles remained, many more couples in England and Wales sought divorces after the 1969 Act (Cretney & Masson, 1990). Interestingly, though, most of these divorcing couples (more than two-thirds in 1984) have continued to rely on fault grounds, perhaps because this is the easier route to obtaining a divorce (Glendon, 1989).

The Divorce Reform Act 1969 required judges to inquire into the facts of each divorce petition. However, by the mid-1970s, serious inquests were rarely held in cases of uncontested divorce and it was typical for a divorce to be merely an administrative act performed by a clerk (Cretney & Masson, 1990). Although the law provides English courts with the option of denying a divorce petition (used only by spouses who have been separated for at least 5 years) in cases where divorce would lead to "grave financial or other hardship," divorces are seldom denied on this ground. This defense is rarely successful because the hardship must be shown to have resulted

from the legal divorce itself, above and beyond any hardship resulting from the separation that has inevitably occurred before.

A 1984 amendment to the English divorce law decreased from 3 or 5 years to 1 year the required term of separation and eliminated the exception for hardship (Cretney & Masson, 1990). Thus, divorce is commonly available after only a year's separation, and, in some fault cases, even less (Glendon, 1989).

The progression to simpler divorce in England and Wales is not without its critics, perhaps because Britain has the highest divorce rate in Western Europe (Glendon, 1989). Freeman (1991a) suggests that, due to pressure from many who believe that liberal English divorce laws are leading to a crumbling of British and Welsh family life, there will likely be a more restrictive divorce law enacted in England in the near future. The Law Commission has recommended that couples be required to wait an extra year for a "period of consideration and reflection." This period is designed to insure that the marriage is indeed irreparable. To aid in their deliberation, couples would be encouraged to participate in counseling and mediation services.

France. The history of French divorce law largely reflects what has been called "les deux Frances," the conservative, Catholic France and the individualistic, liberal France (Stoljar, 1989). In the first decade after the Revolution, French divorce law was inordinately liberal for its time, as it allowed divorce with mutual consent or for incompatibility (Rheinstein, 1971). The pendulum soon swung to the other extreme and between 1816 and 1884, French law did not recognize divorce, although couples could be granted a judicial separation (Phillips, 1988). The 1884 law that reintroduced divorce included three bases: adultery, sentence for a serious crime, and grave violation of marital duties (cruelty or abuse) (Glendon, 1989). The law remained unchanged for the next 92 years.

Soon after the English Divorce Reform Act 1969, the French government began considering a similar major divorce reform. Again, there were "les deux Frances," with the liberals seeking a purely no-fault system and the conservatives arguing that such legislation would lead to horrendous consequences for wives and Western societies in general (Glendon, 1989). The result of the cultural struggle was the 1975 law (Civil Code, 1975, France).

The mixed-grounds law recognizes two forms of divorce by mutual consent: "divorce-convention" and "divorce-resignation." The former is a divorce to which both spouses agree and the latter one is initiated by one spouse and acquiesced to by the other (Glendon, 1989). Divorce-convention is the more popular, although it is by no means a simple or quick divorce procedure. A couple seeking divorce-convention must present to a judge a detailed plan for the economic and custodial consequences of the divorce, and court supervision of the divorcing couple can, in practice, be extensive (Civil Code, 1975, France; Ietswaart, 1989). Divorce-resignation was intended primarily to accommodate a spouse who accepts the divorce but for religious or ethical

reasons chooses not to participate actively (Glendon, 1989). It also requires extensive judicial supervision.

A third no-fault ground for divorce in France is "prolonged disruption of the life in common." With this form of divorce, one spouse can divorce the other if there has been a separation of at least 6 years or the divorced spouse has been mentally ill for at least 6 years (Civil Code, 1975, France). This article of the amended Civil Code was the most controversial. Conservatives forecast innumerable divorces in which middle-aged men cast off their wives for younger women (Glendon, 1989). Although, initially, this form of divorce was chosen quite often by couples, it is seldom used at present, probably because it is quite costly (Glendon, 1989). The petitioner is assumed to be at fault and is, therefore, at a disadvantage with respect to the financial aftermath of divorce.

Finally, the 1975 reform retained the traditional fault grounds, but in a modified form. Only two such grounds remain: violation of the duties and obligations of marriage and sentence for a serious crime (Civil Code, 1975, France). The traditional grounds--adultery, cruelty, desertion--fall under the ambit of the former. As with the English, French couples in practice continue to rely heavily on fault grounds in seeking divorce, although mutual consent divorce is becoming increasingly popular (Ietswaart, 1989; Rubellin-Devichi, 1990), particularly in liberal Paris (Glendon, 1989).

French law also has a hardship clause, which, according to Glendon (1989), is used more often by judges in the French provinces than by English judges. Furthermore, the seriousness with which the French take divorce is evidenced by the broad way that they interpret hardship. Hardship is not just based on financial considerations, as it is almost exclusively in England (Cretney & Masson, 1990), but also on physical and mental well-being (Glendon, 1989). However, in Paris, again reflecting "les deux Frances," judges seldom use the hardship clause.

Although French divorce law has incorporated many of the liberal reforms that characterize the United States and Britain, the process of obtaining a divorce in France remains lengthy and subject to considerable judicial control. Although several varieties of divorce are available, a segment of the population remains opposed to divorce for religious reasons. When serious marital difficulties arise, these individuals may make use of the separation provisions in French law, which have remained important even after divorce was legalized in 1884 (Glendon, 1989).

Sweden. Whereas the decade between 1966 and 1976 marked dramatic changes in divorce laws in much of the Western world, in many ways, the changes emulated what had occurred decades earlier in Sweden. Swedish divorce law remained largely unchanged between 1734 and 1915 (Rheinstein, 1971). The pre-1915 law followed the precepts of the Lutheran State Church, allowing divorce only on the strict fault grounds off adultery or desertion. However, monarchs liberally granted divorces and couples found other ways to obtain divorces (e.g., migratory divorces in Copenhagen) (Glendon, 1989).

A law revision commission examining the divorce issue in 1913 determined that the proper basis for divorce should be breakdown of the marriage and that marriages that have broken down should not be held together by external force (Glendon, 1989). The ensuing 1915 Marriage Code of Sweden introduced three no-fault grounds, while retaining the traditional fault grounds and adding several (Rheinstein, 1971). Under the most popular of the no-fault grounds, spouses petitioning together for divorce had only to prove that they had been separated for a year (Rheinstein, 1971). Nevertheless, many divorces were still premised on fault grounds, which Rheinstein (1971) attributed to the greater speed with which such divorces were granted and the possible financial and child-related (i.e., custody) benefits for the petitioning party.

In 1969, the Swedish Minister of Justice empaneled a committee to draft a new, more progressive divorce law that would never force a person to continue to live in a marriage against his or her will (Bohndorf et al., 1970; Sundberg, 1975). The committee prepared a law that eliminated fault grounds and set the maximum waiting period at 6 months. Although the maximum waiting period was 6 months, most divorces were .to be immediate (Marriage Code, 1973, Sweden). The law was based on the principle that the wishes of either of the spouses should always be respected (Anderson, Churchill, & Hampton, 1973). According to Glendon (1989), several other Scandinavian countries followed Sweden's lead, although with minor variations, such as Finland's mandatory 6-month waiting period.

Other Western countries. Although we focus on the United States, England and Wales, France, and Sweden, there are several other notable features of Western divorce law. Three predominantly Catholic countries have somewhat more restrictive divorce laws than those already reviewed. Italy had no provision for divorce until 1970 (Phillips, 1988). In its present form, the Italian divorce law combines fault and no-fault grounds, but remains one of the most restrictive in Europe (Phillips, 1988). Spain first recognized divorce in 1981, and now its laws recognize both fault and no-fault bases for divorce (Glendon, 1989). Ireland, alone among Western nations, does not allow divorce (Dillon, 1993)

Summary. There are a number of trends evident in the laws pertaining to obtaining a divorce in Western countries. Most countries have moved away from traditional fault grounds in the last 30 years, although their practical experiences suggest that those grounds will remain important and utilized. Laws in most U.S. states, England and Wales, France, and Sweden more readily accept the notion that marriages may be "irretrievably" damaged through no fault of either spouse. Rather than requiring continuation of such marriages, current laws seem to be designed to allow marriages to end with less acrimony than they did under fault-based divorce laws.

Laws Pertaining to the Aftermath of Divorce

While most of the reforms already noted worked to make divorce more easily attained, a reverse trend has occurred in the area of postdivorce support and child custody decisions. In most Western countries, less restrictive divorce laws have been associated with greater state interest in

the legal effects of marriage termination (Glendon, 1989) and increased state intrusion into family life (Jacob, 1988).

One theme pervades the area of economic and custodial issues following divorce: With the waning of fault-based regimes, courts face more difficult decisions because there are fewer "guilty" spouses against whom to make awards. In place of the standard of benefiting the "victim" and punishing the "guilty," courts must now attempt to reach decisions that are equitable and just to both parties.

Below, we review the current status of laws regulating spousal support, child support, and child custody in the surveyed countries. Although these areas are theoretically separate, they are often combined in practice (e.g., spousal support and child support are intertwined when divorced couples have young children) (Glendon, 1989). Furthermore, these issues must be considered within the context of the antra's social assistance programs, which provide more support to divorced families in European and Scandinavian countries than in the United States.

The United States. Property settlement in the United States is marked by considerable discretion by the court and the divorcing couple. Two systems predominate, the common law system and the community property system (Jacob, 1988).

More than 40 states retain the common law system. Historically, common law property division allowed each spouse to retain what he or she had before becoming married and what he or she gained during the marriage by gift, inheritance, or personal earnings (Chambers, 1985; Krause, 1977). That which is jointly acquired marital property is divided, usually according to some form of equitable distribution (Phillips, 1988).

Community property laws, at least in theory, require that separately acquired property as well as jointly acquired marital property be evenly divided (Oldham, 1992). After recent legal reforms, however, the distinction between the common law and community property systems has, in many respects, become blurred. Most states now allow courts to equitably divide some or all of the property owned by the parties at the time of divorce. In fact, states in the United States are similar to England in not drawing a clear distinction in practice between marital assets and spousal support. For example, spouses may be given more property if they are granted less spousal support or vice versa.

Although courts in most states retain discretion in matters of spousal support (Glendon, 1989), most states now regard alimony as rehabilitative and short term (Oster, 1987). Although fault has generally been eliminated from consideration in obtaining a divorce, some states have retained fault grounds for property division (Jacob, 1988). Missouri, for example, has a no-fault divorce law, but has retained fault as a consideration in property division.

Particularly in those states that do not consider fault in the division of property, no-fault divorce works to reduce blame assessment, which may reduce benefits to wives who would likely have

received larger support packages in the past under fault-based divorce laws (Jacob, 1988). As a re-suit, awards of alimony have become increasingly rare (Oldham, 1992), with only 10% to 20% of divorced spouses receiving spousal support awards (Garrison, 1990).

Noncustodial parents in the United States are often ordered to pay child support, but the amounts are typically low. Further, child support awards are often unpaid (Buehler, in press), an observation based primarily on the reports of custodial parents. However, it should be noted that the extent of the noncompliance problem depends on the custodial status of the informant; Braver et al. (1993) found that noncustodial parents reported paying 84% of what they owed in child support, compared to custodial parents' reports that they received only 68% of what they were owed. Nevertheless, even if one bases the extent of the noncompliance problem on reports from noncustodial parents, children in the United States receive less financial support from their noncustodial parents than they have been determined to need, although the extent of this problem has improved with the passage of recent legislation.

The federal Child Support Enforcement Amendments of 1984 (1984) required states to establish mandatory wage withholding if payments were more than 1 month late, to establish numeric formulas and guidelines for the determination of child support awards (although judges were not required to use these), and to set up several procedures designed to improve compliance. The federal Family Support Act of 1988 (1989) further strengthened the 1984 Child Support Enforcement Amendments. This Act required states to pass laws that made the child support guidelines mandatory and established mandatory withholding of all support payments by January 1, 1994 (Garfinkel & Melli, 1990). According to O'Donnell (1990), the 1988 Act is likely to help accomplish the goals of the 1984 Amendments--uniformity of award amounts, adequacy of awards, and compliance. Currently, courts are establishing rules for when and how they can depart from the child support award formulas mandated by the Family Support Act (Melli, 1992).

The presumption that children would fare best if they lived with their mothers following divorce was reflected in both the laws and practices of most states until the 1970s. Since that time, most states have enacted statutes that are not based on maternal preference, but are gender neutral in that they are based on the "best interests" of the child. Furthermore, increasing numbers of states are allowing and encouraging joint custody (Jacob, 1988; Walker & Elrod, 1993), which involves both parents having decision-making authority for their children even if the child lives predominantly with one parent. California, as the first state to institute a statute that favored joint custody (Weitzman, 1985) was again the pioneer. In practice, however, despite the fact that state laws emphasize joint custody to varying extents (Weitzman, 1985), an overwhelming majority of custody awards are made solely to mothers (Maccoby, Buchanan, Mnookin, & Dombusch, 1993).

England and Wales. In the last 20 years, English and Welsh property division law has become similar to the laws of most American common law property states in a major respect: discretion

(erethey & Masson, 1990). Judges and registrars who settle property matters on divorce have a number of options, which can create unpredictability for the couple (Grossen, 1986).

The Matrimonial and Family Proceedings Act 1984 set forth more than a half dozen considerations, ranging from the standard of living of the parties before the breakdown to the conduct of the spouses if it would be inequitable to ignore such conduct. As in the United States, property settlement and spousal support are generally treated together. As Glendon (1989) indicates, even though spousal self-sufficiency is an explicitly stated goal, English law more readily imposes financial obligations after divorce on ex-spouses than do the laws of many other Western nations.

The 1984 amendments did not constitute a substantial change, but were designed to change the guiding principle underlying financial matters following divorce. Instead of trying to place the spouses in the same financial position that they would be in had the divorce not occurred, a new principle was developed: the courts were to give "first consideration" to any minor children in making financial arrangements. Although English courts had already been giving minor children primary consideration, the amendments were designed to underscore the importance of this trend (Glendon, 1989). Unfortunately, as in the United States, the financial provisions have not worked well in England. Most single mothers and their families move into poverty following divorce (Eekelaar & MacLean, 1986).

Recognizing this problem, the English government published a "White Paper" on child maintenance, which advocated instituting predictable child support formulas, relieving the custodial parent of the burden of collecting payments, and more rigorously enforcing support orders (Freeman, 1991b). In 1991, the Child Support Act 1991 was enacted to address these issues. The Act limits court discretion in determining child support award levels by establishing a formula that is to be used in most cases, sets up a Child Support Agency to find nonpaying parents and to improve compliance, and establishes the principle that children should share their parents' standard of living (Freeman, 1992).

With respect to child custody, the Children Act 1989 was adopted to integrate and simplify much of British law as it applied to children. A major premise of the Act is that the best interests of the children are paramount in all proceedings (Elliott, 1991). The Act codified a new concept in English law, "parental responsibility," maintaining as its theme the notion of "parenthood as a continuing or enduring status" (Bainham, 1990, p. 209). The Act regards children no longer as their parents' property, but rather as their parents' responsibility. Thus, the expectation is that both parents will retain parental authority following divorce and that the courts will be concerned primarily with determining the residence of the children (i.e., residence orders) (Duquette, 1992). Based on the preferences of most divorcing couples, most children live with their mothers (Cretney & Masson, 1990).

France. French property division law has remained largely unchanged from the years before the 1975 reform. Ordinarily, spouses evenly split marital property, unless they decide otherwise by marital contract or divorce settlement (Glendon, 1989). Beyond this commonality, French law provides for differing systems of financial consequences for the different types of divorce.

The thrust of the law is aimed at spousal support obligations. Under the pre-1976 fault system, only the "innocent" spouse could be granted support (Glendon, 1989). Because one of the themes of the 1975 reform was the end of acrimony in divorce, the law bluntly stated that divorce ends any support obligations.

There remains, however, a system of compensatory payment, usually set forth by agreement between the spouses (Glendon, 1989; Ietswaart, 1989). These are lump-sum payments, which are made at the time of divorce, to minimize postdivorce conflict between the spouses. Even though such payments are rare (only about 10% of divorced wives receive either spousal support or a compensatory payment; Glendon, 1989), when they are made, they are not intended to be punitive; rather, they seek to mitigate the disruption the divorce creates for each party (Civil Code, 1975, France). Because most debtors do not have the assets to make lump-sum payments, the compensatory payment--when it is ordered--is typically made in periodic installments (Glendon, 1989). Because these payments are rarely ordered and judges are never required to order them, the law illustrates the French emphasis on spousal self-sufficiency following divorce.

In the case of divorce on joint petition, the law requires that the parties submit with the petition an agreement describing the economic effects of their divorce (Civil Code, 1975, France). A judge has great discretion to reject a financial agreement if he or she finds it inequitable (Civil Code, 1975, France; Glendon, 1989). Because of this judicial discretion and the fact that all marital assets must be liquidated so that they can be divided at the time of the divorce (a time-consuming process), many French couples who agree on the terms of the divorce do not proceed by joint position (Glendon, 1989).

The cessation of support obligations does not apply in the case of divorce for prolonged disruption of the life in common. The French law imposes a full duty of support on the "guilty" spouse until the other remarries or cohabits with another (Glendon, 1989). This support order can be changed at any time as the resources and needs of the ex-spouses change.

Child support is similar for all types of divorce. Because parents remain financially responsible for their children following divorce, nonresidential parents must contribute financially to the support of their children. Child support is awarded in 75% of divorces involving minor children and is collected through a relatively efficient system whereby payments are automatically deducted from the debtor's wages. However; as in the other countries surveyed, the amounts awarded are often less than that needed to raise children and there is a substantial noncompliance problem (Glendon, 1989; Ietswaart, 1989). Noncompliance may arise when a debtor is unemployed or is difficult to locate due to frequent changes in his or her place of employment.

When a debtor defaults, a 1984 statute dictates that public agencies will make the required monthly payments (up to a certain amount) and take over the responsibility of collecting the unpaid amount of support.

As of 1987, the French Civil Code did not specifically refer to "custody" but rather allowed parental authority to remain with both parents (similar to joint custody in the United States) or with only the "custodial" parent (Glendon, 1989). Despite this provision that both parents can retain authority over their children, as in the other countries surveyed in this article, most child custody determinations in France result in maternal placement (Glendon, 1989; Ietswaart, 1989).

Sweden. As with acquiring a divorce, Sweden is more permissive in dealing with the effects of divorce than other Western countries. Swedish law espouses a "clean break" theory of divorce, by indicating that each spouse should be responsible for his or her own support following divorce. As a result, spousal support payments are almost nonexistent (Glendon, 1989).

In Sweden, like other Nordic countries, all property, no matter the source, is subject to even distribution following divorce (Glendon, 1989). There are exceptions, however, when a court finds that such distribution would be inequitable. Additionally, under certain conditions, the spouse who most needs it will be awarded the dwelling and its basic contents (Glendon, 1989). To further illustrate the individualistic nature of Swedish law, unlike in many U.S. states, pensions are considered "special property" of individual spouses and are not divisible upon divorce.

Although basically nonintervening in other aspects of divorce, Swedish law retains myriad regulations concerning child support postdivorce. Periodically, updated guidelines are provided to judges to keep them informed about child-maintenance costs (Glendon, 1989). The child support awards are indexed to inflation and may be modified when the circumstances of one or both of the parents change. Sweden has a rigorous and successful enforcement system. When the debtor defaults, the government advances child support payments to the custodial parent and assumes responsibility for collecting the payments. A further buffer for children is that Sweden has more forms of public family assistance than do other non-Scandinavian countries, including generous child allowances, housing allowances, and public health insurance. Recently, new models have been proposed to refine and update the important system of "maintenance allowances" to children in single-parent families (Saldeen, 1991).

As in the other countries surveyed, most children remain in the custody of their mothers following divorce (Glendon, 1989). New legislation in the area of child custody has recently been passed that encourages "cooperative discussions" between parents to foster mutual compromise (Saldeen, 1992).

Summary. In terms of the legal effects of divorce, there is a clear movement toward requiring greater spousal financial independence in all of the countries surveyed. Support, if it is granted, is thought to be a short-term aid to help the needy spouse achieve financial independence.

With respect to child support, the nations surveyed have all taken steps to improve the plight of children following divorce. All have strengthened their commitment to the notion that both parents should remain financially responsible for the support of children following divorce. Recent changes have attempted to make child support awards more uniform and more adequate through the use of clearer guidelines and formulas and to improve compliance by noncustodial parents through improved enforcement. France and Sweden have adopted procedures to ensure that children receive the necessary financial support if noncustodial parents do not comply with their orders.

However, there are variations among the countries in how well single-divorced-mother families are supported. France and Sweden, with their greater levels of public assistance, have been relatively more successful than the United States and England in providing for single, unemployed mothers (Eekelaar, 1991). The United States emphasizes spousal independence, but has been faulted for not establishing the economic support system necessary to realize this goal (Glendon, 1989).

In the area of child custody, most nations have adopted the principle that custody decisions should be based on the "child's best interests." While many nations have adopted gender-neutral child custody laws that encourage shared decision making (e.g., joint custody), the experience of all surveyed Western nations is that most couples prefer to give the mother the primary decision-making authority following divorce.

THE EFFECTS OF LEGAL CHANGES ON FAMILY MEMBERS: AN IMPORTANT QUESTION WITHOUT A CLEAR ANSWER

An important question naturally follows from a survey of how divorce laws have changed over time: What are the effects of these changes on the family lives of parents and children following divorce? As meaningful a question as this is, it defies an objective, empirically based answer. In this section, we argue that there is no single, un-ambiguous reply to this question because the answer is inextricably intertwined with the values of those who review the available evidence.

Although researchers have examined the effects of various provisions of divorce law, they often reach conflicting conclusions. Furthermore, those who interpret the work of researchers (e.g., policy specialists, legal scholars) have drawn differing conclusions from the available empirical studies. In addition to the typical reasons why differing conclusions are drawn in an area (e.g., differing research methodologies, measures, and statistical procedures), we argue that the values of researchers and those who interpret their work influence the inferences they draw from a body of knowledge (Belsky & Eggebeen, 1991; Fine, Schwebel, & Myers, 1987; Miller, 1992). To demonstrate this point, we provide three examples of instances when individuals have reached different conclusions regarding the effects of changes in divorce laws on family members.

Examples of Differing Conclusions About the Effects of Changes in Divorce Laws

Frequency of divorce. Although there is widespread agreement that divorce rates rose substantially in the last 30 years in all of the countries surveyed in this article (Glendon, 1989), there is a lack of consensus on the extent to which the increases in divorce rates were fueled by the advent of no-fault divorce laws. On the one hand, some have argued that these increases in the prevalence of divorce are unrelated to legal changes. These scholars have noted that increases in divorce rates began before the no-fault movement (Phillips, 1988); that spouses live longer today than they did in earlier times, which increases the chances of marital conflict (and divorce); that the declining role of marriage and family as a basis for economic security has raised spouses' expectations and standards for what they should obtain from the institution of marriage and weakened the commitment of some spouses to marriage (Phillips, 1988); and that the easy access to marriage that characterizes present marriage laws increases the divorce rates because unprepared and incompatible spouses--who might not have married in the past--are at high risk for divorce.

On the other hand, others have suggested that changes in the divorce laws have played a role in increased divorce rates. It is possible that easier legal access to divorce has contributed to the changing view of marriage as a contractual relationship that exists as long as it satisfies both parties rather than as a lifelong commitment (Glen-don, 1989; White, 1990). This changing view of marriage, in turn, may increase the likelihood of divorce. In fact, some researchers have concluded that no-fault divorce led to increases in divorce rates in some countries (Balakrishnan, Rao, Lapierre-Adamcyk, & Krotki, 1987).

Financial aftermath of divorce for mothers with custody. There is considerable consensus that single mothers suffer the largest share of financial loss following divorce (Ietswaart, 1989; Phillips, 1988; Weitzman, 1985). However, differing (although not necessarily mutually exclusive) explanations have been posited for how changes in divorce laws affected this phenomenon: (a) The proliferation of no-fault divorce laws was responsible for the deterioration in mothers' financial standing (Weitzman, 1985); (b) mothers' postdivorce financial difficulties began before the no-fault divorce reform movement. and, thus, were determined by factors other than changes in divorce laws (Garrison, 1990); and (c) mothers' financial hardships postdivorce are partially caused by a lack of occupational opportunities for women (Fineman, 1991; Seltzer & Garfinkel, 1990).

Effects on children of laws governing custody. This debate centers on the relative benefits of two different norms: a mother-custody norm, which implies that mothers are granted sole custody unless extenuating circumstances (e.g., the mother is judged to be unfit) dictate otherwise and a gender-neutral, "best interests of the child," norm, which implies that the child should be in the custody of whichever parent (or both parents) will best provide for the child's needs. Two legal scholars had an illustrative interchange concerning the relative merits of each standard (Chambers, 1984; Fine-man & Opie, 1987). Although each used social science data to support the positions taken, they reached differing conclusions. Chambers (1984) concluded that there was insufficient evidence to support a change in legislation away from a gender-neutral standard,

whereas Fineman and Opie (1987) concluded that there was insufficient evidence to refute the notion that mothers were better custodial parents than fathers.

Recent studies that have compared children's adjustment in different custodial arrangements have generally found few differences (Kline, Tschann, Johnston, & Wallerstein, t989; Maccoby et al., 1993). However, this question is extremely complex and difficult to investigate (see a discussion by Maccoby et al., 1993) and there is some evidence that it is the amount of parental conflict in the postdivorce family, rather than the custodial arrangement per se, that is most strongly related to children's and adolescents' postdivorce adjustment (Kline et al., 1989).

These three examples illustrate that it is extremely difficult to scientifically confirm a given position pertaining to how legal changes affect family life. As noted, this difficulty is not only due to the theoretical and methodological challenges in investigating such complex relations, but also because individuals have differing values that lead them to draw differing conclusions . We now turn to an examination of the specific values that may play a role in how one evaluates the effects of legal changes on family members.

Values that Influence Evaluations of the Effects of Changes in Divorce Laws

A number of specific value dimensions are considered below, presented in order from the most general to the most specific.

Individual rights. On one end of this continuum is the view that individual rights are of paramount importance and that the social good is of secondary concern. On the other end of this dimension is the view that it is the social good that is of critical importance, whereas the rights of individuals are of secondary import. The countries surveyed in this article differ on this dimension. The United States, as a collective entity, emphasizes the notion of individual rights. In fact, the United States Supreme Court, in Boddie v. Connecticut (1971), came close to supporting a constitutional right to divorce, a right that cannot coexist with hardship clauses (Glendon, 1987). Sweden also places a high value on individual rights, but has an extensive public support network.

According to Glendon (1989), the United States and Sweden base their laws on an "ideology of tolerance" (p. 297). Instead of taking a moral stance on family-related issues, these countries tolerate a wide range of diverse behaviors and orient their laws to provide an outer bound on what is acceptable behavior. By contrast, England and France place relatively less emphasis on individual rights than do the other countries considered here. Lawmakers in these countries tend to devise laws to correspond to social behavior and beliefs.

View of marriage. On one end of this continuum is the view that marriage is gender based, with husbands as the breadwinners and wives as the homemakers. According to this view, marriage involves a lasting commitment between two individuals whose interdependence during marriage leaves at least one spouse dependent on the other following divorce. On the other end of the

continuum is the view of marriage as a partnership between two equal individuals who, although interdependent during marriage, have the potential to be independent after divorce (Fineman, 1991). According to this view, marriage is a partnership between two individuals that can be ended at will by either party.

Nature of marital breakdown. The traditional view of marital breakdown was reflected in the view that one spouse, through his or her transgressions, was responsible for marital rift. This perspective implies that the "guilty" spouse should be financially responsible for the plight of the "innocent" spouse. By contrast, the more recent view is that marriages can break down in the absence of one spouse being clearly responsible. This view is consistent with a family systems notion of marital disruption, which holds that the system as a whole may deteriorate without any one partner being specifically responsible.

Spousal self-sufficiency. On one end of this continuum is the view that ex-spouses should work toward the goal of being independent from each other following divorce. This "clean break" view is based on the notion that individuals will be better off in the long run if they must establish their independence immediately after divorce. On the other end of the continuum is the belief that, for some spouses (typically women), longstanding devotion to work within the home and absence from the labor force for an extended period of time make self-sufficiency an unachievable goal. According to this view, power differentials that existed during marriage continue after divorce and these differentials place many women at a substantial disadvantage in the labor force.

Children's needs and the financial well-being of the noncustodial parent. On the one end of this continuum is the view that children's needs should be given the highest priority following divorce and that these needs should be met before those of either of the biological parents. On the other extreme of this dimension is the perspective that the noncustodial parent should be allowed to maintain a reasonable standard of living so that he or she can begin the process of adapting to life after divorce.

To illustrate how these differing perspectives are embodied in policy decisions, we note that three models have been used to determine child support award levels (Rettig, Christensen, & Dahl, 1991): (a) the costs approach, which suggests that parents should share what are assumed to be the fixed and measurable costs of raising a child; (b) the income shares approach, which suggests that a child should share the standard of living of each parent following divorce (i.e., children receive a level of support based on the sum of both parent's incomes, with each parent contributing a prorated portion); and (c) the taxation approach, which suggests that the child support award level should be based on a proportion of the noncustodial parent's net or gross income. The income shares and taxation approaches are more consistent with protecting the financial well-being of children than is the costs approach, whereas the costs approach is closer to the view that noncustodial parents' welfare should be protected.

The role of government in assisting family members after divorce. On the one end of this continuum is the view that divorce is a private family matter and that the individuals involved--rather than the government--should be responsible for providing for themselves. On the other extreme of this dimension is the perspective that children and custodial parents' needs are so great that government intervention is warranted to insure that they have an adequate standard of living. Sweden and, to a lesser extent, France and England have public welfare systems that are more consistent with the latter view than are the systems in states within the United States.

Parents' involvement in decision making following divorce. On one end of this continuum is the view that it is generally best for children when courts allow parents free choice about who will have decision-making authority regarding the child. A corollary of this view is that, because most couples in all of the countries surveyed choose to give mothers sole child custody, childrens' best interests are advanced when they are in the custody of their mothers. On the other end of this dimension is the perspective that it is preferable for both parents to remain actively involved with their children following divorce, and that granting both parents decision-making authority is one means to achieve this end. According to this view, although parents' initial preferences are relevant, parents should be actively encouraged to accept joint custody arrangements.

THE RELATIONS BETWEEN CULTURAL VALUES AND DIVORCE LAWS

The previous section suggested that the inevitable influence of values makes it very difficult to provide an objective evaluation of the effects of changes in divorce laws on family members. This recognition of the importance of values may also shed light on how changes in divorce laws occur and how legal changes, once they are instituted, may influence cultural values. In this section, to gain some insight into the process of how divorce laws change over time, we explore the nature of the relation between cultural values and divorce laws.

A theme underlying our analysis is that there is a complex relation between cultural values and divorce laws. Perhaps the strongest evidence that supports this claim is the observation that divorce laws cycle over time between restrictiveness and openness. In the selected Western countries surveyed here, divorce laws have changed from more restrictive to more open (and possibly to more restrictive again in the near future) in the face of changing cultural values in different epochs in history. For example, French laws changed from being very liberal before and immediately after the French Revolution, to being quite conservative from 1816 until 1884, and again to being more liberal after 1975. More recently, the 1960s and 1970s, in all of the Western world, were years of political turmoil, when formerly accepted social conventions were challenged and often rejected. Concurrently, in all of the Western countries surveyed in this article, divorce laws became more open and less restrictive. In the 1980s and early 1990s, there has been an increased challenge to the liberal reforms of the 1960s and 1970s and, to varying degrees in the different countries, conservative causes have gained support (e.g., the recent calls for a return to "family values" in the United States). At the same time, there has been some

suggestion that divorce laws will become somewhat more restrictive in some of the surveyed countries (Freeman, 1991a).

Our review of divorce laws, as well as the demonstration that these laws change cyclically over time, suggests that the complex relation between cultural values and laws affecting divorce involves multiple causal mechanisms. Although an extensive discussion of these mechanisms is beyond the scope of this article, a brief description is presented below to illustrate the complexity involved. At the risk of oversimplification, two causal directions are illustrated below: cultural values causing legal change, and legal changes causing changes in cultural values.

Cultural values causing legal changes. In this causal direction, cultural forces eventually become sufficiently powerful to lead to legal change. These cultural forces are complex and intertwined and include the following: popular opinion regarding divorce; legislators' desires to make the law more consistent with the behavior of couples whose marriages have broken down (i.e., reducing the need for spouses to fabricate stories of adultery); changes in the extent to which certain religious denominations accept that marriages may dissolve; the desires of professionals involved in divorce to make the process less adversarial; changes in the ideological and political persuasions of legislators in power; and the impact of special influence groups, such as fathers' fights and women's rights groups (Glen-don, 1989; Jacob, 1988; Phillips, 1988).

It is interesting to note that some of these cultural forces can be sufficiently powerful to lead to legislative change in the absence of supportive public opinion. For example, Italian law was changed to recognize divorce in 1970; although public opinion was opposed to divorce at that time (Phillips, 1988). Further, even the frequent occurrence of marital separation may not be sufficient to precipitate reform. Even though divorce is not legal in Ireland, marital breakdown and separation is a common occurrence (Dillon, 1993). Thus, even when social custom suggests that marriages can and do deteriorate, the Irish ideal that divorce should be prohibited was strong enough to defeat a referendum that would have legalized divorce in 1986 (Dillon, 1993).

To what extent are writings from social scientists an important cultural force that influences legal change? Although there is relatively little written that documents this influence, there is some evidence that some conceptual writings and empirical studies have had a role in legal change. An influential book by Goldstein, Freud, and Sol-nit (1979) argued, based on psychoanalytic theory, that stability in the child's early relationships should be the primary factor to consider in child placement settings. Because of their emphasis on stability, they argued that only one parent should have custody of the child. This book became quite influential and was widely cited in court decisions pertaining to custody and visitation (Jacob, 1988), although it was based on a conceptual and not a data-based analysis. A book by Roman and Haddad (1978) that took the opposing stance--that fathers should be allowed to have greater involvement in their children's lives through joint custody--stimulated discussion of joint custody in legal circles but was not cited as often in legal cases as was Goldstein et al's book (Jacob, 1988).

There is also some evidence that empirical studies have had some influence on legal reform. Wallerstein (1980) and Hetherington, Cox, and Cox (1978) found that children from divorced families fared best when they maintained contact with both parents, if the ex-spouses could cooperate around childrearing issues. According to Johnston (1993), these findings were used to support the positions of those who advocated for the development of joint custody legislation in California. In addition, there is also some indication that advocates of particular legislative changes may interpret research findings in such a way that supports their positions. For example, findings that suggested that children fared better when they were in their mothers' custody than when they were in mandatory joint custody arrangements (Johnston, Kline, & Tschann, 1989) were misused to justify the position that joint custody in general, whether mandatory or optional, was less beneficial to children than was sole custody (Johnston, 1993; see also Simon, 1991).

Legal changes affecting cultural values. In the other causal direction, legal changes may evoke changes in cultural values over time. According to Glendon (1989), laws that reflect the temporary resolution of conflicting interests often come to "have a life of their own, producing 'logical' and 'necessary' consequences" (p. 34). For example, although the rapid movement to no-fault divorce that took place in the United States was certainly fueled by changes in cultural values (e.g., increased support for individuals' rights to leave a marriage, women's rights, spousal independence, and marital breakup without "guilt"), the no-fault divorce laws clearly contributed to changed perceptions of marriage and divorce. As opposed to the belief that marriage is a lifetime commitment that involves continuing responsibilities of each spouse to the other, the perception that marriage is a contract between equals that can be terminated at will by one spouse has become increasingly common (Glendon, 1987; White, 1990).

Again, to demonstrate the complexity of the relation between cultural values and legal change, legal changes do not always have a dramatic effect on cultural values and practice. For example, despite the legal changes that have supported and even encouraged various forms of joint custody following divorce, the vast majority. of couples in all of the countries surveyed in this article continue to choose to empower the mother with sole custody (Cretney & Masson, 1990; Glendon, 1989; Maccoby et al, 1993).

CONCLUSIONS

We undertook this review of changes in divorce laws not only to provide information about the laws of several Western countries, but also to highlight the complex relation between cultural values and the legal aspects of divorce. To further our understanding of this complex relation, we recommend that future researchers incorporate non-Western countries into their analyses. At the same time, we recognize that language barriers and the lack of information about these countries make this a formidable task.

Although we have argued that research cannot provide unambiguous, objective answers to questions related to the effects of changing divorce laws, we do not wish to discourage

researchers from examining these important issues. Rather, we recommend that researchers and those who review their work make a concerted effort to become conscious of their value stances on the dimensions outlined earlier in this article, to assess how these value positions are influencing their inferences about the effects of changes in divorce laws, and to explicitly state their values when they communicate about these issues. If these recommendations are followed, the dialogues among researchers, policy planners, and the general public may become more open and informative, international analyses of divorce laws may become even more useful than they presently are, and more effective divorce legislation can be implemented.

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