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# **For Love or Money?**

**Effects of Divorce Law on Marriage Sorting**

By Rachel Soloveichik

University of Chicago, Graduate School of Business

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## Abstract

This paper will create a model of how individuals choose spouses in a marriage market with search costs. There are two possible benefits from marriage: 1)'Love': some couples are much happier married than separated, holding material consumption constant; 2)'Insurance': Individuals face uncertain future income. Marriage offers an opportunity to share risk, raising expected utility. When unilateral divorce is possible risk sharing is incomplete because the lucky spouse can threaten to end the marriage rather than pay. This is especially true when the couple does not love each other, so the lucky spouse loses little from ending the marriage. This paper will show preliminary evidence singles respond to easier divorce law by searching harder for a spouse they love, reducing the marriage rates and raising the quality of marriages and reducing the divorce rate in the long-term.

## Introduction

I, \_\_\_\_\_, take thee, \_\_\_\_\_, to be my wedded husband/wife, to have and hold from this day forward, for better, for worse, for richer, for poorer, in sickness or in health, to love and to cherish, 'til death do us part<sup>1</sup>

be unto me a wife in accord with the law of Moses and the Jews, and I will serve, cherish, feed and provide for you on your standard in the manner of Jewish men ... the responsibility of the Ketubah deed, dowry, and extra, I accept upon myself and my inheritors that come after me<sup>2</sup>

The mainstream economic model of households is one where the husband provides financial support in return for the wife's household production. But the Anglican wedding vows express a very different view of marriage, one where the major goal is mutual emotional support for both spouses. The Anglican vows can also be read as promising

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<sup>1</sup> Taken from the Common Book of Prayer, Church of England. Downloaded from [http://sanantonio.weddingvillage.com/culture\\_Vows.html](http://sanantonio.weddingvillage.com/culture_Vows.html)

<sup>2</sup> Translation of standardized Orthodox Jewish marriage contract. The Ketubah deed, dowry and extra was a payment to the woman if the husband died or divorced her. Legal texts specified the household production required from a wife and the financial support the required from the husband. The divorce settlement and consumption within marriage were never updated to reflect higher standards of living, so are now meaningless. <http://www.movinghere.org.uk/galleries/roots/jewish/religiousrecords/marriage.htm>.

risk-sharing, that a household will share good and back luck together. The Anglican wedding vows describe marriage in a society far more similar in law and culture to the United States, even if the obligations are vague they may better describe modern American marriages than the precisely described obligations codified in Jewish culture almost 2,000 years ago. This paper will develop a model focusing on the obligations described in the Anglican wedding vows, except it allows for divorce. The insurance aspect of marriage has received some study<sup>3</sup>, but as far as I know few papers have focused on how divorce law influences the insurance aspect of a relationship<sup>4</sup>.

Economic theory is clear that when the costs of filing for divorce is low there will be more divorces per marriage, holding marriage quality constant, just like any other good. And like any other good individuals are better off when divorce is cheap rather than expensive. Of course society may be better off with costly divorce if there are negative externalities from divorce. Historically divorce by mutual agreement was sometimes extremely costly, for example until 1857 England required an act of Parliament for divorce<sup>5</sup>. By the mid 1960's the cost in the United States of divorce by mutual agreement seems to have been fairly low, even in states that required proof of fault<sup>6</sup>. Economic theory is less clear on the effect of unilateral divorce. Unhappily married spouses are better off because they can leave their marriages regardless of their spouses wishes, but happily married spouses are worse off because they risk being left. If the amount of surplus utility each spouse gets from being married versus single is fixed and not very correlated there may be many more divorces, because before both spouses had to be unhappy to divorce and now only one must be. Generally however the utility from marriage versus divorce is not fixed, a woman who is happier staying in an unhappy marriage if the alternative is

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<sup>3</sup> See for example *The Family as an Incomplete Annuities Market and more pertinent to this paper Marriage and Consumption Insurance. What's Love Got to Do With It?*

<sup>4</sup> *Cohabitation, Marriage, and Divorce in Equilibrium* mentions briefly an idea identical to mine, but they don't develop it further. There are other papers that mention the impact of divorce on risk sharing, but I am not aware of others that explicitly understand that risk-sharing in a marriage is dependent on the ability to enforce the marriage contract.

<sup>5</sup> *From the Second Sex to the Joint Venture: An Overview of Women's Rights and Family Law in the United States During the Twentieth Century*

<sup>6</sup> *The Silent Revolution* on page 33-4 describes New Yorkers inventing adultery grounds or going to Nevada for six weeks to establish residency and then getting divorced and on page 47 describes how in California one spouse would claim mental or physical cruelty for made up or trivial offenses.

living in poverty may feel differently if she gets enough alimony and child support to live adequately. Similarly a man might be divorcing rather than turning down a job offer if his wife is unwilling to move, but he will stay married if she is willing to move. Spouses can and do negotiate over a wide variety of decisions that effect both of their happiness from the marriage or if divorced. The Coase theorem suggests that if utility is transferable and transactions costs are near zero the divorce rate is unchanged by unilateral divorce. Under mutual divorce a couple divorces if the unhappy spouse can bribe the happy spouse to agree to a divorce, under unilateral divorce a couple divorces unless the happy spouse can bribe the unhappy spouse to stay married. Ability to obtain a legal divorce is valuable, giving that right to the unhappy spouse will make them better off, even if they use it to bargain for better treatment rather than to get a divorce.

The value of allowing easier unilateral divorce depends how society values the welfare of happily married spouses versus unhappily married spouses, this depends on the specifics of the case. The average citizen feels very differently about a case where the happily married spouse is an alcoholic who likes having a wife to hit when he gets back from the bar and a case where the happily married spouse is homemaker with young children who will have to go on welfare if the marriage ends. In this paper happily married individuals are those who suffered bad luck and are currently getting help from their spouse, unhappily married individuals are those who had good luck and are currently helping out their spouse. Both economics and moral intuition agree that transfers from the lucky to the unlucky are a good thing and so easy unilateral divorce is a net harm to society. For preliminary evidence that unilateral divorce has real influence over transfers between the lucky and unlucky see my working paper “In Sickness and In Health? Effects of Divorce Law on Hospitalization and Survival”.

If unilateral divorce is such a bad thing why would states pass laws making unilateral divorce easier? One major explanation is that the Coase theorem oversimplifies by assuming that the divorcing couples negotiate efficiently. The costs of individuals who decide to get a unilateral divorce rather than pay their spouse to consent to a divorce are highly visible and clearly wasted and require the government to spend money on court costs<sup>7</sup>, the loss of insurance within a household is difficult to observe or value. A

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<sup>7</sup> On page 91-2 The Silent Revolution discusses how legislatures were happy to pass

well-meaning but ignorant legislature is likely to view easier unilateral divorce as an overall social benefit, even if the resources spent on fighting over divorces are tiny compared to the value of the household insurance. Another possible explanation is that early research focused on how easy unilateral divorce harmed homemaker wives<sup>8</sup>. Feminist groups had mixed ideologies on this, on one hand they were in favor of transfers to women, on the other hand they preferred that women work in the marketplace even if the women themselves preferred to stay home. So there was no automatic backlash against easy unilateral divorce even when the costs were recognized. A final explanation for the law changes is to recognize that unilateral divorce did not actually become much easier in the 70's. The general change to allow legal divorce at the request of one spouse favored the unhappily married, but there was also a change from common law property to shared property, which had the general effect of favoring the happily married. The net effect on the bargaining power of the happily married is small.

## **The Model**

In reality the decision to marry and how to divide household income and work is a complicated one slowly worked out by a man and a woman together. To simplify the model I will instead assume that women pay a search cost of  $s$  to meet a man, and having met they have a choice between offering him a marriage contract that guarantees him his reservation utility, or going back to search again for a better match. Possible grooms differ in two separate ways: 1) Even though the amount of love an individual marriage will produce not completely known women know the probability distribution of a given match. Some matches are likely to produce happy marriages, others are likely to produce unhappy marriages. 2) Women don't know how much men will earn, but there is a probability distribution and it differs across men. Women also face uncertain earnings. For simplicity assume that work hours are fixed and let love and money be perfect substitutes, so there is only one commodity to worry about.

After a couple marries they learn how much they love each other and how much

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no-fault divorce as long as no additional funding on courts or family services was required.

each one of them will earn and have the option to divorce. They have two ways they could potentially divorce: a) They can divorce by mutual agreement at zero cost; b) Each spouse can divorce without consent of the other at cost  $c > 0$ . If a couple divorces they both get zero value from the relationship, whether they reenter the marriage market or remain single is not important.

If a woman chooses to marry the value of the relationship is the solution to her maximization problem:

$$V_i = \text{the value of marriage with man } i = \text{Max}(\int u(c_{le_h e_w}^w) p_i(l, e_h, e_w))$$

$$\text{subject to the budget constraint that } c_{le_h e_w}^w + c_{le_h e_w}^h = l + e_h + e_w;$$

$$\text{the no unilateral divorce constraints } c_{le_h e_w}^w \leq e_w + c + l; \quad c_{le_h e_w}^h \leq e_h + c + l$$

$$\text{and the husband's participation constraint } \int u(c_{le_h e_w}^h) p_i(l, e_h, e_w) \geq H_i^*$$

A couple will always divorce if  $l < 0$ , and get 0 love so we can assume  $l \geq 0$ .

This model of bargaining may seem to be cynical, with lucky spouses never willing to give more than they could get if divorced. But from an economic point of view it is remarkably selfless. The lucky spouse doesn't use the threat of unilateral divorce to get more than their outside option, all the surplus from the marriage goes to the unlucky spouse. If the surplus from marriage is that the couple pays lower taxes or saves on car insurance there is no reason for the lucky spouse not to try to hold out for more. But most of the time the surplus from marriage is that a couple loves each other. For example in classic altruism individuals get happiness from knowing that their loved ones are happy. So even if they have complete control of resources they will share, the more they love their spouse the more they will willingly share.

We can characterize how the value of given match changes with various factors.

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<sup>8</sup>Evaluating the Impact of No-Fault Divorce in California

Combining the budget constraint and unilateral divorce constraint yields

$$e_h - c \leq c_{le_h e_w}^h \leq e_h + c + l; \text{ similarly for the wife}$$

The household solves the Lagrangean:

$$L = \int (u(c_{le_h e_w}^w) - \lambda_{le_h e_w} (c_{le_h e_w}^w + c_{le_h e_w}^h - l - e_h - e_w) - \mu_{le_h e_w}^h (c_{le_h e_w}^w - e_w - c - l) - \mu_{le_h e_w}^w (c_{le_h e_w}^h - e_h - c - l) - \eta(H_i^* - u(c_{le_h e_w}^h))) p_i(l, e_h, e_w) \rightarrow$$

$$\partial V_i(c) / \partial l = \int (\lambda_{le_h e_w} + \mu_{le_h e_w}^h + \mu_{le_h e_w}^w) p_i(l, e_h, e_w)$$

$\partial V_i(c) / \partial e_h = \int (\lambda_{le_h e_w} + \mu_{le_h e_w}^w) p_i(l, e_h, e_w)$ , where  $\lambda_{le_h e_w}$  is the marginal value of relaxing the budget constraint,  $\mu_{le_h e_w}^h$  is the marginal value of relaxing the constraint of the husband being able to unilateral divorce and  $\mu_{le_h e_w}^w$  is the same for the wife.

The value of more love in a relationship is  $\lambda_{le_h e_w} + \mu_{le_h e_w}^h + \mu_{le_h e_w}^w$ . Love is always important,  $\lambda_{le_h e_w} > 0$ , but it is especially important if the husband is threatening unilateral divorce, then  $\mu_{le_h e_w}^h > 0$ , similarly if the wife is  $\mu_{le_h e_w}^w > 0$ . Intuitively love, unlike earnings go first to the unlucky spouse, regardless of gender. If the threat of unilateral divorce is binding the unlucky spouse is relatively poor, so they get more utility from additional consumption than the rich spouse. The value of additional earnings for the husband are  $\lambda_{le_h e_w} + \mu_{le_h e_w}^w$ . So the household gets more value from his earnings when the wife is threatening unilateral divorce,  $\mu_{le_h e_w}^w > 0$ , and the husband is relatively poor.

When will the threat of unilateral divorce be binding?

In perfect risk sharing  $u'(c_{le_h e_w}^w) = \eta u'(c_{le_h e_w}^h)$  in all states of the world.

But the household is constrained  $e_w - c \leq c_{le_h e_w}^w \leq e_w + c + l$  and

$e_h - c \leq c_{le_h e_w}^h \leq e_h + c + l$ . So risk sharing can't be perfect when

$$u'(e_w + c + l) > \eta u'(e_h - c) \text{ or } u'(e_w - c) < \eta u'(e_h + c + l)$$

This is more likely to be true if  $e_w \gg e_h$ , or  $e_h \gg e_w$ , in other words

one spouse earns much more than the other. And of course the threat of unilateral is more likely to bind when  $c$  is small, so the lucky spouse doesn't get much less than their earnings.

When unilateral divorce becomes easier love becomes more important in a relationship. Intuitively if unlucky spouses have no legal right to help they are dependent on the lucky spouse voluntarily helping them, which will only occur if they love them. At

the same time households gain less from the husband and wife having uncorrelated incomes. Before income benefited the household identically whether earned by the lucky or unlucky spouse, so a household benefited from lower aggregate risk. Now the lucky spouse is unwilling to share income, so low aggregate risk doesn't translate into low individual risk.

Women still in the marriage market now get higher payoffs from finding a man who they love very much and lower payoffs for finding a man whose income is uncorrelated with theirs. The effect on search time is ambiguous, they will reject more men because they don't love them enough and less men because their income is too highly correlated. Recent research by Imran Rasul<sup>9</sup> finds easy divorce is associated with a drop in marriage rates, suggesting the net effect is to increase search time. Intuitively this is reasonable because the major factors determining income variance and correlation are occupation, industry, employer and education, which are easily determined in a first date. In contrast a couple often needs to date for months before they can determine whether they are likely to love one another.

## Predictions

### Predicted Affect of Divorce Law on Ease of Unilateral Divorce

	Cost of Unilateral Divorce
State allows unilateral divorce	-
State has no-fault property settlement	-
State requires separation before unilateral divorce	+
State has marital property law	+
State has all property law	+

This model makes predictions about the ease of divorce affects the average surplus of marriage. This is hard to test without any further assumptions about what is the surplus to marriage and how to measure it. In this model individuals divorce if the surplus from their relationship is less than 0. A reasonable starting point might be to assume that the same couples who are likely to divorce are also likely have higher marriage surpluses if

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<sup>9</sup> The Impact of Divorce Laws and Marriage

they do stay married. So factors that increase the divorce rate increase result in a less happy marriage. This is true as long as the variance of love in a marriage is not strongly negatively correlated with the expectation. The need not always be true, in many stories the heroine has to choose between a man she knows she will have an adequate marriage with but not love passionately and somebody who she may love passionately in the long term or may hate long term, but is probably reasonably true.

A more difficult complication is devising a measure of what couples expect future divorce law to be when they marry. The naïve econometrician might assume that people assume the current divorce law will remain unchanged, but during the 70's and early 80's states were rapidly changing their divorce laws to unilateral divorce with marital or all property settlement. This was probably obvious even to the many people who weren't quite sure what their state's current divorce law was. A better method for individuals to predict future divorce laws would be to assume that their state would almost certainly change to unilateral divorce with marital or all property, but be uncertain whether there would be the state would also pass no-fault property settlement or separation requirements. And once a state passed no-fault property settlement or separation requirements they were unlikely to change them. Between 1968 and 1988 no state abolished no fault settlement or separation requirements and only 3 states reduced their separation requirements. On the other hand states are now moving to make divorce harder by having an option of covenant marriage, so it isn't clear that in the 70's and 80's individuals shouldn't have expected unilateral divorce or communal property to be abolished.

## **Data**

The data used to first check the effect of divorce law on marriage sorting come from the 1980 Census. I used a 1.25% sample of all white women born in the United States whose first marriage was between 1965 and 1980. Unfortunately the Census only records the year of first marriage, so nothing can be done about later marriages. I restrict the sample to white women because during the 1965 to 1980 period blacks were undergoing far larger changes in their attitudes toward divorce and children outside of marriage, so they should not be combined in a regression. The sample is restricted to marriages after

1964 because the model used in this paper assumes the cost of divorce by mutual consent is near zero, which is much more likely to be true regardless of state law after 1964 than before. The sample is restricted to women born in the United States because that makes the effects on birth state and resident state more comparable.

### Likelihood a Woman is Still Married to Her First Husband<sup>10</sup>

	Resident State				Birth State			
State allows unilateral divorce	0.030		0.031		0.026		0.017	
	0.021		0.021		0.021		0.021	
No-fault property settlement	0.081	***	0.075	***	0.086	***	0.083	***
	0.024		0.025		0.025		0.026	
Separation before divorce	-0.027		-0.032		0.038		0.043	
	0.038		0.039		0.037		0.037	
Marital property system	-0.016		-0.015		-0.006		0.002	
	0.025		0.032		0.030		0.030	
All property system	0.034		0.014		-0.012		0.001	
	0.034		0.035		0.034		0.034	
Controls for age and education and birth control law	No		Yes		No		Yes	

\* p<.1, \*\* p<.05, \*\*\*p<.01

The only statistically significant legal change is in the correct direction, women seem less likely to get divorce when they married under no-fault settlement, lending some support for the hypothesis. But the signs of the others are inconsistent, making it difficult to be sure that this is a real effect.

Clearly divorce is well known to be associated with bad marriages. But divorce is often determined by unpredictable events well after the marriage, so it may not be a good measure of what a couple expected at the time they married. One common factor that is associated with high divorce rates and bad marriages is a premarital conception. The theoretical reasons why a couple who have a premarital conception might have a bad marriage are outlined in *An Economic Analysis of Marital Instability*, intuitively the costs of not getting married are much higher, so even people who predict bad relationships are

<sup>10</sup> Binary logistic regression of the likelihood a woman is still married to her first husband. All regressions control for year of marriage, state and whether abortion was legal. The further controls were exact age at marriage, education level at the Census and whether the state allowed the woman to get birth control and abortions without parental consent in the year of marriage and the year before. Standard errors are not corrected for clustering by state. Women legally separated are counted as divorced, avoiding direct effects from separation requirements.

likely to marry, and their predictions are often accurate. Even though premarital conceptions are accidents they are preventable by abstinence or high quality birth control, so individuals can easily respond to divorce law.

### Likelihood a First Marriage was a “Shotgun” marriage<sup>11</sup>

	Resident State				Birth State			
State allows unilateral divorce	0.035		0.028		0.051	**	0.031	
	0.025		0.026		0.025		0.026	
No-fault property settlement	-0.065	**	-0.077	***	-0.064	**	-0.098	***
	0.028		0.029		0.029		0.030	
Separation before divorce	0.003		0.003		-0.024		0.003	
	0.044		0.046		0.043		0.045	
Marital property system	-0.015		0.004		-0.014		0.003	
	0.035		0.037		0.034		0.035	
All property system	-0.042		-0.024		-0.030		-0.027	
	0.036		0.038		0.036		0.037	
Controls for age and education	No		Yes		No		Yes	

Once again the only statistically significant result is in the correct direction, women seem to take more care to avoid being forced into bad marriages when divorce law is easy. But here the point estimates for other factors are against expectations, so it’s hard to be sure anything meaningful. An additional problem with this sample is that we only know the year and quarter of birth for children within the household. If the husband gets primary custody the child is not linked with the mother in the Census, so she is not considered to have had a shotgun marriage. This creates problems because child custody is bargained over in divorce, and is likely to be affected by divorce law. But this will actually bias against finding results because men are likely to want and get custody of older children, so a change to easy divorce law will reduce the estimates of shotgun marriage in the past, making within state comparisons unreliable. This could be checked by restricting the sample to marriage in the last five years, where women are almost certain to get custody, it will be done in future work.

<sup>11</sup> Ibid for note 10 on technique. The Census in 1980 recorded the quarter of birth for everybody in the household and links children to their probable biological mother. Women were assumed to be in shotgun marriage if they married between 2 quarters before the birth to 2 quarters after the birth. Approximately 4% of women had first births more than 2 quarters before marriage, they were excluded from the sample.

## **Further Work**

This model makes a number of predictions about how love, luck and law interact. The best way to test this would be to get a dataset with information about how couples rate their marriage, whether they are experiencing unexpected unemployment or poor health and what their current divorce law is. This is available from the Health and Retirement Study, a comprehensive longitudinal survey that asks a wide variety of questions about the life of older people. I have not used the dataset because the Census is a much easier dataset to work with and the state of residence for the Health and Retirement Study is not publicly available, making it a much longer process. Eventually I hope to use this dataset to better study how couples respond to shocks.

This model also assumes that couples have no control over the distribution of their future income or needs, and little control on how much surplus they gain from marriage. In reality individuals have a choice of many different careers, some of which are much riskier than others. And even though negative shocks can't be completely prevented they often can be reduced by taking precautions (not driving drunk and getting crippled, not making fun of the boss behind his back) or purchasing insurance against bad risks. Couples also have some control over how correlated their risks are, for example if both spouses work for the same dot-com they have little insurance gain from marriage.

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