

**TWELVE MAJOR ARGUMENTS FOR THE
REPEAL OF UNILATERAL NO-FAULT DIVORCE**

1. A Fundamental Redefinition of Marriage.

The redefinition of marriage started with no-fault divorce legislation, *not* when it was redefined as a genderless institution. The introduction of no-fault was the point at which we, as a society, said that marriage is no longer an institution centered around the wellbeing of children, but is instead a vehicle for adult desire and fulfillment.¹ No-fault divorce has done more to destroy the family than gay marriage ever will.² We cannot accept no-fault divorce and complain that *Obergefell* redefined marriage.³ The increasing acceptance of no-fault divorce means that cohabitation, adultery, same-sex marriage, and polygamy are all becoming normalized and legitimized as alternative ways to organize family life.⁴ No-fault legislation fundamentally changed the structural architecture of family organization long before the LGBT movement became mainstream.

2. The Abolition of Marriage as a Civil and Legal Institution.

Unilateral no-fault divorce renders civil marriage the legal equivalent to *dating*.⁵ One spouse can decide to leave at any time without cause simply because they are no longer happy or feel fulfilled. For the aggrieved spouse, there is no defense against the no-fault grounds. Consequently, divorce is guaranteed 100% of the time when initiated by one spouse and one spouse alone. Divorce is granted on demand for any reason and for no reason at all. This neither offers legal protection for the aggrieved spouse and children, nor does this offer any of the rest of us confidence that marriage is a legally enforceable institution. Unilateral divorce means that marriage as a legal institution is devoid of stability and predictability, the two fundamental attributes of the rule of law. Due to no-fault legislation, a civil marriage fails to provide any legal protections to either party. This is because the no-fault statute is a self-executing law.

3. Disincentivizing Marriage, Especially for Men.

What exactly does marriage offer men today? Men know that there is a good chance they will lose their friends, their respect, their space, their sex life, their money – and if all goes wrong – their family. They do not want to enter into a legal contract with someone who could effectively take half their savings, pension, property and access to children when the honeymoon period is over. Men are not wimping out by staying unmarried or being committed phobes. They are being smart, rational, and prudent by avoiding marriage altogether given the existing incentive structures.⁶

4. Legalization of Adultery.

No-fault divorce is nothing more than a technical legal procedure that grants individuals the right to perpetually re-marry and the license to multiply their sexual partners without any formal accusation, finding or charge of adultery as grounds for dissolving the initial marriage (i.e. enabling adultery *de facto* under the guise of law).⁷

¹ Katy Faust, Founder of “Them Before Us”.

² Matthew Krause, Texas House Representative.

³ Carl R. Trueman, Presbyterian Theologian.

⁴ Article from patriotpost.us “Marriage Debate becomes one over Polygamy” posted Feb. 26, 2020.

⁵ “Civil marriage is virtually meaningless in a regime of unilateral and no-fault divorce in which the norm of permanence disappears,” Orthodox priest Fr. Johannes Jacobse.

⁶ Helen Smith, Ph.D., author of “Men on Strike”.

⁷ Fr. Josiah Trenham, Orthodox Priest.

“[UNILATERAL] NO-FAULT DIVORCE IS OUR MOST DANGEROUS SOCIAL EXPERIMENT”

5. Forcibly Altered Legal Status without Participation or Defense.

Unlike fault-based divorce (via default) or mutual no-fault divorce (via consent), unilateral no-fault divorce alters the legal status of an aggrieved spouse without their ability to participate in the decision being made about them. This is called “forced divorce” or “government-imposed divorce”; this permanently alters a person’s legal status and corresponding social and property rights in society without any capacity to avoid or contest this legal action.

6. Enrichment of State Governments and the Mercantile Class.

All that happens in a no-fault regime is that the focus of fault shifts from the divorce grounds to the question of which spouse should get custody.⁸ Since unilateral divorce guarantees [private] divorce attorneys an open market, lawyers can focus exclusively on custody/property disputes and inflame conflict in order to accrue billable hours and exploit vulnerable families for profit and financial gain. The entire divorce industry apparatus stands to gain from guaranteed unilateral divorce (i.e. divorce attorneys, expert witnesses, CPS, social workers, psychologists, counsellors, therapists, the prison system, etc.). Moreover, Title IV-D is a federal law that, in part, requires every state to manage a child support enforcement program. To help fund these programs, the federal government provides money to each state. In other words, states receive federal kickbacks for adjudicating child custody/support issues, and in turn have a financial incentive to promote divorce. No-fault is the preferred vehicle for achieving this.

7. Unprecedented Interference by the State into Private Life.

The shift from fault-based divorce to no-fault divorce is the shift from the state’s exercise of “police powers” to the state’s role as “*parens patriae*” [parent of the nation]. Whereas under the fault-based divorce system, the state’s role was to merely exercise its power to control and regulate persons and property through the law to promote the common good and public morality of society. With the introduction of no-fault, the state assumes the role of *parent*. This enables the government to assume a parental responsibility through direct intervention into the family unit in order to “protect” children and adults whose welfare may be at risk. From the moment of divorce onward, the state exercises direct control over the management of family affairs to include financial, medical, physical, psychological, educational and religious decisions on behalf of every individual involved. No-fault has become a means not simply of ending a marriage, but of seizing monopoly control over property and above all children, who become political instruments conferring leverage backed by penal sanctions.⁹

8. Erosion of Public Morality.

Under the no-fault regime, there are no social rights or public moral standards. There is no longer a system that stigmatizes marital misconduct and illicit behavior exercised within the marriage relationship. For example, adultery, abandonment and domestic violence are no longer condemned as social violations since the no-fault regime is, at best, indifferent to these behaviors which were previously condemned by society through *declaratory relief*. In many cases, the illicit behaviors are rewarded by the allotment of favorable custody and property orders given to the offending spouse as spouses who try to contest a divorce are viewed as obstacles to efficiency.

⁸ Dr. Jordan Peterson, interview with Helen Lewis on British GQ.

⁹ Dr. Stephen Baskerville, author of “The New Politics of Sex: The Sexual Revolution, Civil Liberties, and the Growth of Governmental Power” (2017) and “Taken Into Custody: The War Against Fathers, Marriage, and the Family” (2007).

9. Stunted Personality and Identity Formation.

Unilateral divorce short-circuits the development and cultivation of personality. The loss of familial identity as a result of widespread divorce has led to a major identity crisis for individuals, communities and the nation as a whole. As a result of the disintegration of strong social ties including the loss of identity formerly inherited and developed within the family system, the atomistic individual has now decided to create his/her own identity through the force of their own isolated and subjective will. This takes the form of self-identifying name changes, pronoun preferences, sexual orientation preferences, physical mutilations, biological alterations, gender dysphoria, and subjective speech. State governments then affirm these self-harming identities by way of no-fault divorce thereby transferring custodial care away from parents to the secular state. Unilateral divorce not only accelerates the disintegration of social coherence required for a stable social order, but it also eliminates any safeguards such as placing legal limitations or requiring the consent of a reluctant spouse that would otherwise curtail divorce or at least stigmatize it. It also usurps the protective barrier of “the family” as an important intermediary between the individual and the state, thus leaving individual family members vulnerable to direct state control.

10. Toxic Individualism.

No-fault divorce assumes that one person alone can make a permanently destructive and lifelong decision on behalf of the entire family without consensus or legal ramification. Consensus and cooperation are discouraged by our existing family law code. In particular, the no-fault law operates on the philosophical assumption that personhood exists separate and apart from the interconnectedness of natural family relationships; that the family is nothing more than a conglomeration of atomistic individuals rather than a microcosmic society that reveals a distinct community, culture and economy of its own.

11. Repugnant to Christian Ethics.

Not only is divorce disavowed in Christianity as sinful, but no-fault specifically undermines a few key purposes of marriage: (1) procreation and rearing of children, (2) spiritual development and a means of sanctification, (3) a context for healing past relational wounds, (4) reconciliation of the sexes, (5) development of personality, (6) formation of identity, and (7) the manifest image of Christ and His Church. These cannot be accomplished if one spouse is given full authority to dictate a dissolution of marriage unilaterally on behalf of the entire family.

12. Question of Constitutionality.

Many have argued that petitioners lack standing because no generally prescribed injury-in-fact is alleged when a no-fault law is invoked. Because no-fault laws do not require the allegation of injury-in-fact, they also do not provide any defense, which fundamentally violates due process.¹⁰ This argument is credible as unilateral no-fault divorce was overturned by India’s Supreme Court in 2017 which concluded that “it violates constitutional morality” as it is arbitrary to allow one party to “break down a marriage whimsically and capriciously.”¹¹ Additionally, the no-fault law becomes effectual when one spouse alleges the “irretrievable breakdown” of marriage. As a result, the law does not regulate any form of action, behavior, or conduct. Instead, the no-fault law regulates and ultimately endorses the *viewpoint* that the marriage is irretrievable. Thus, no-fault laws are arguably viewpoint-based statutes that discriminate on the basis of viewpoint.

¹⁰ Shelby Sharpe, constitutional and civil rights attorney.

¹¹ See https://main.sci.gov.in/supremecourt/2016/6716/6716_2016_Judgement_22-Aug-2017.pdf.