

No-Fault Economics: A Consideration of Divorce Law in the United States

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Abstract: This paper critiques the neoclassical analyses of divorce. It begins with a short history of divorce in the United States, focusing on the era when no-fault divorce became in vogue and then on social trends today that are characterized as a backlash against this system. After analyzing mainstream neoclassical analyses and focusing on their shortcomings (all of which result from trying to model complex phenomena), it reconsiders these analyses by highlighting that they never include long-term costs of divorce, such as its effect of human capital formation on children. It concludes by arguing that many of the problems existed under a state-enforced fault system and later under a state-enforced no-fault system would have been minimized had the state never intervened in the marriage market in the first place by forcing the terms of marriage. It suggests that these terms, which took centuries to evolve, were best set by private institutions.

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