Marriage, No-Fault divorce, and "Family Law" in America

by Bill Wood

Introduction

This paper is founded primarily on US Supreme Court decisions and various Maxims of Law. [1] Maxims of Law were chosen because they are the most respected and their authority the most certain in matters of law. [2] As demonstrated herein, these fundamental "bedrock" principles of law and foundational US Supreme Court decisions have been abandoned. In the realm of the family, we no longer have a legal system, or a justice system, it has denigrated to a completely political system clothed with the appearance of law through rules and statutes. "The entire arena of Family law has become a domain of Constitutional violations and usurpation of civil rights." [3] Municipal court judge Richard Russell of New Jersey taught at a seminar in 1994 openly stating, "Your job is not to become concerned about the constitutional rights of the man that you're violating… Throw him out on the street, give him the clothes on his back and tell him, see ya around… We don't have to worry about the rights." [4]

Outline in brief

I) Society has an interest in supporting Marriage
II) "No-fault" is not Law, it is a purely political function clothed with the appearance of law.
III) Judicial Duty, Power, and Function in applying the law REQUIRES a fault based decision.
  A) It is a Judges Duty, Power, and Function to make TWO fault based threshold decisions:
    1) Is the marriage sufficiently "broken" to warrant the divorce consideration?
    2) After a determination that the marriage is sufficiently "broken" the judge MUST decide whether the divorce is IN SOCIETY'S INTEREST (which is a HIGH hurdle).
IV) No-fault statutory challenges are Federally actionable
V) No-fault is a "ministerial act" and strips a judge of immunity
VI) No-fault is a legislative function requiring processing by the legislature
  A) No-fault must be found unconstitutional or be turned over to the legislature for processing

I) Society has an interest in supporting Marriage

"Marriage is one of the 'basic civil rights of man,' fundamental to our very existence and survival." [5] Marriage is the highest consideration in law. [6] "Marriage is a coming together for better or… worse… and intimate to the degree of being sacred... promot[ing] a way of life,… a harmony in living,… a bilateral loyalty… [I]t is an association for as noble a purpose as any…" [7] "It is… [the most important social relation]… the first step from barbarism to incipient civilization, the purest tie of social life and the true basis of human progress." [8] Marriage [is] more than a contract; [it is] the most elementary and useful of all the social relations…" [9] "Marriage [creates] the most important relation in life, [has] more to do with the morals and civilization of a people than any other institution… [The legislature] prescribes… the *duties* and *obligations* it creates… and the *acts* which may constitute grounds for its dissolution… [10] In Marriage, "public interests overshadow private -- *one which* ***public policy holds specially in the hands of the law for the public good*****…**[11] The relation of husband and wife is… formed subject to the power of the State to control and regulate [the] relation and the property rights… [as long as it] *does not violate those fundamental principles which have been established for the protection of private and personal rights against illegal interference*." [12] Strong families and marriages are the foundation of every country --, the traditional family is the spinal chord of societal muscle with children as its nerve center. It has been well known for over 100 years that marriage breakdown leads to criminal conduct, as noted by professor Willoughby, on the Rights and duties of American Citizenship;

> *Not only is the family first, the most abiding, and the most intimate of all social unions…it is the most important.. [W]ithout it none of the larger social groups… could be successfully organized, or… maintained… The family is the school of all the virtues. Within its circle is first awakened the spirit of*

> *obedience, love, self-sacrifice, and proper ambition. If a man [is] a good husband or father or son, the presumption is that he will be a good citizen... [H]ome conditions of criminals give overwhelming proof of the enormous influence which… family life has... It is… the first effort of the church, as well as of the state, zealously to guard against any influences which will tend to render family life less perfect... [T]he importance of the question of divorce... is not a matter wholly between husband and wife, but is one to be considered both in reference to the children, and to society at large. In these days it is generally recognized that in certain cases... a dissolution of the marriage tie should be permitted. But these cases should be so strictly defined and limited that the family tie shall not be loosened nor the marital bonds made so weak as to be easily severed at the whim… of the parties united by them.* [13]

II) "No-Fault" is not Law, it is a political function clothed with the appearance of law.

Adding statutes, rules, and procedures to a political system does not suddenly transform it into law, no matter what label it is given. The law, by its very essence and nature requires a remedy [14] for a wrong,[15] and that wrongdoers are to be punished and not rewarded.[16] Without these basic premises, the system is NOT law. [17] "No-fault," allows the wrongdoer to escape punishment and be rewarded for their wrongs. [18] A person violating their sacred vows in a marriage can now use the "no-fault law" to punish the other party through the one-sided destruction of their vows [19] and obligations without punishment. [20] The full weight, power, and force of the state's judicial machinery is forced upon the non-moving party to ensure that the party seeking the destruction of their marriage prevails in their quest without consequence. The idea of "taking advantage of one's own fault" is reprehensible to the entire principle and concept of law, yet "no-fault" is the most insanely outrageous example of this legally prohibited evil. [21]

> *"A law that punishes… for an innocent action…; a law that destroys, or impairs, the lawful private contracts of citizens; a law that makes a man a judge in his own cause; or a law that takes property from A and gives it to B.* ***It is against all reason and justice for a people to intrust a Legislature with such powers; …therefore, it cannot be presumed that they have done it. [T]he nature and the spirit, of our State Government, amount to a prohibition of such acts of legislation; and the general principles of law and reason forbid them.*** *The legislature may enjoin, permit, forbid, and punish; they may declare new crimes, and establish rules of conduct for all its citizens in future cases; they may command what is right, and prohibit what is wrong; but they cannot change innocence into guilt; or punish innocence as a crime; or violate the right of an antecedent lawful private contract; or the right of private property. To maintain that our Federal, or State, Legislature possesses such powers, if they had not been expressly restrained, would, in my opinion, be a political heresy altogether inadmissible in our free republican governments."* [22]

"[W]e are brought up to believe that people should be held accountable for their actions, and that courts should establish such accountability and consider it." [23] "Constitutional government is a government by law." [24] "The very essence of civil liberty… consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection… [E]very right, when withheld, must have a remedy, and every injury its proper redress… The government of the United States has been emphatically termed a government of laws, and not of men. **It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right.**" [25] A right without a remedy is no right at all, and a constitution without a competent judicial arbiter of what lies fair and foul under its strictures is no constitution at all.[26]

"No-fault" has become a sick, deranged, and twisted part of the "Family Law" system [27] with its roots in anti-American Marxist Communist family destruction politics. This system is no longer law, it is the Marxist political butcher of marriage and family.[28] **"Destroy the family," as the Communist Lenin said, "and you destroy society."** [29] Family lawyers, feminists, and other radical anti-marriage groups "who… revolt against the family are… simply revolting against mankind." [30] "Family law" is not about the family either, it is an intentional misapplication of its real nature as Divorce law. There are frighteningly direct parallels to Marxist Communism and our current "no-fault" destruction of family and marriage, as noted in The Atlantic Monthly from 1926;

When the Bolsheviki came into power in 1917 they regarded the family… with fierce hatred, and set out… to destroy it… [W]e had to give [the family] a good shakeup, and we did,' declared… a leading Communist. [O]ne of the first decrees of the Soviet Government abolished the term 'illegitimate children... by equalizing the legal status of all children, whether born in wedlock or out of it… The father of a child is forced to contribute to its support, usually paying the mother a third of his salary in the event of a separation… At the same time a law was passed which made divorce [very quick]… at the request of either partner in a marriage…

[Marriage became a game where it] was not… unusual… for a boy of twenty to have had three or four wives, or for a girl of the same age to have had three or four abortions. [T]he peasants… bitterly complained: 'Abortions cover our villages with shame. Formerly we did not even hear of them.'

Many women… found marriage and childbearing a profitable occupation. They formed connections with the sons of well-to-do peasants and then blackmailed the father for the support of the children. In some cases peasants have been obliged to sell [everything] in order to settle such… claims. The law has created still more confusion because… women can claim support for children born many years ago.

During the winter of 1924-1925 some of the older Communists accused the younger generation… of indulging… in loose connections; they blame the girl students for practising frequent abortions… Russian women students… [noted] that love was almost the only cheap amusement left to them and demanded that they be given… free abortions that factory women enjoy… Both in the villages and in the cities the problem of the unmarried mother has become very acute and provides a severe and annoying test of Communist theories.

…Another new point was that wife and husband would have an equal right to claim support from the other… The woman would have the right to demand support for her child even if she lived with several men during the period of conception; but, in contrast to previous practice, she or the court would choose one man who would be held responsible for the support. ***Commissar Kursky seemed especially proud of this point because it differed so much from the 'burgeois customs' of Europe and America.***

Another speaker objected to the proposed law on the ground that some women would take advantage of its liberal provisions to form connections with wealthy men and then blackmail them for alimony.[31]

"Family Law" courts and "no-fault" are the legal equivalents of Marxist Communist "family abortion centers" for "marriage termination". Would most Americans, or even most judges and lawyers identify themselves as Marxist Communists? This is the foundation of our modern "Family (political) Law".

I would challenge judges to exercise "Judicial Independence" and award sole custody of the children to the party NOT seeking a divorce when the grounds for the dissolution are for no good reason.[32] It's time for judges to uphold the LAW as it has been understood for hundreds, and even thousands of years and abandon this FRAUD labeled "No-fault" in the "Family Law" arena. The legal system's distaste for marriage, family, and America couldn't be clearer than in this area of the [political] "law".

III) Judicial Duty, Power, and Function in applying law REQUIRES a fault based decision.
It is "judicial duty to exercise... independent judgment," [33] of deciding the case according to... the law and the facts," [34] "to guard whatever liberties will not imperil the paramount national interest," [35] and "to enforce the demands of the Constitution." [36] "[Judicial power] determines the rightfulness of acts done; [legislative power] prescribes the rule for acts to be done. The [judicial] construes what has been; [legislative] determines what shall be." [37]

"[E]videntiary hearings [are] judicial functions." [38] "[Judicial Power is] the right to determine actual controversies arising between diverse litigants, duly instituted in courts of proper jurisdiction," [39]

granting the “power to entertain the suit, consider the merits and render a binding decision thereon.” [40] It is “[J]udicial authority to examine the weight of evidence [for the preservation of] the right of personal liberty... [is] judicial duty... The principle applies when rights... of person or... property are protected by constitutional restrictions... [J]udicial duty to exercise an independent judgment does not require or justify disregard of the weight which may properly attach to findings upon hearing and evidence." [41] It is an “imperative [judicial] duty... to consider and weigh the matters stated and to [make a determination] as an inherent attribute of judicial power..." [42] “A fundamental requirement of due process is ‘the opportunity to be heard’… which must be… at a meaningful time and in a meaningful manner.” [43] “No-fault” prevents the “opportunity to be heard” by making one party’s testimony meaningless.

“‘The equal protection of the laws’ places all upon a footing of legal equality and gives the same protection to all for the preservation of life, liberty, and property, and the pursuit of happiness” [44] yet “no-fault” seeks to destroy this fundamental principle of American Jurisprudence. The concept of “Family Law” violates the court’s DUTY “to prevent its process from being abused… and to protect its officers… so as to defend and preserve its jurisdiction… [in] the equitable powers of courts of law over their own process, to prevent abuses, oppression, and injustice, are inherent…” [45] What if a judge were to exercise Judicial Power, determine the controversy, consider the merits and determine there are not reasonable grounds to grant the divorce denying a no-fault petition? Upon appeal, would the court then abandon the long-held fundamental premise of Judicial Power and complete the transformation of the courts into an administrative extension of a highly political legislature, even to the point of “re-structuring” the courts into Marxist family “termination” centers? “No-fault” contravenes judicial power by foreclosing a judge’s DUTY to “determine actual controversies or consider the merits.” No-fault removes divorce as a legal issue and entangles the courts in the politics of Marxist inspired family destruction.

III) A) 1) Is the marriage sufficiently "broken" to warrant the divorce consideration?

A Tennessee Law review on no fault makes an important assertion about reconciliation noting it “has two positive aspects. It provides a workable criterion for judicial application and it furthers the interest of the state in preserving viable marriages.” [46] A Washington Law Review, quoting judge Alice O’Leary notes:

> *The judge presided over 4,000 hearings, and was convinced that “at least half of the people who start divorce suits are really hoping that something will stop them before it is too late. They insist they want a divorce, but at the same time they are wishing that someone will step in and straighten things out. The tragedy is that in most cases nobody does… Our Country’s shocking divorce rate, the highest in the world, could be cut to a great extent if we tried to cure sick marriages by treatment instead of rushing them into the **execution chamber of divorce**.”*
>
> *Divorce seekers believe it will “solve all their problems, but they are shocked and bewildered when they discover that it not only failed to cure everything, but started a whole new set of problems and heartaches.”*

Judge O’Leary then notes that most “of the shattered marriages and broken homes are needless tragedies. There are few insoluble basic differences in most of the cases. Impulse, pride, anger, stubbornness and misunderstanding lead couples into divorces which deep down they do not really wish. **There is considerable evidence that almost half of the divorces could have been averted if someone had stepped in at the right moment and talked sense to the parties.**” [47]

A recent study showed 86% of unhappy marriages that stuck it out were able to turn their marriages around within 5 years and subsequently claimed they were happy, or very happy;[48] the study also indicated that “[a] bad marriage is nowhere near as permanent a condition as we sometimes assume." "Divorce often causes a bitter dispute between the parents, even worse than before the divorce was decided upon. Two-thirds of angry divorces remain that way after 5 years of being separated, and one-quarter to one-third of those divorces that were initially in good spirits had degenerated to open

conflicts." [49] "When divorces can be summoned to the aid of levity, of vanity, or of avarice, a state of marriage frequently becomes a state of war or strategem." [50]

III) A) 2) After a determination that the marriage is sufficiently "broken" the judge MUST decide whether the divorce is IN SOCIETY'S INTEREST (which is a HIGH hurdle).

"[S]ociety has an interest in the maintenance of marriage ties, which the collusion or negligence of the parties cannot impair;' [so that] a divorce suit, while on its face a mere controversy between private parties… is… a triangular proceeding sui generis, *wherein the public, or government, occupies… the position of a third party*… [51] "[Marriage] is an institution… which in its purity the public is deeply interested, for it is the foundation of the family and of society, without which there would be neither civilization nor progress." [52] "The parties to a marriage do not comprehend… all the interests that the relation contains. Society sanctions the institution and creates and enforces its benefits and duties." [53] "Marriage being a public institution of universal concern, and each individual marriage or its dissolution affecting the rights, not only of the husband and wife, but of all other persons, the court sitting in a divorce case should regard the public as a party thereto." [54]

"[T]he state [has an] interest in safeguarding marital fidelity... [against] the evil [of infidelity]... The State... does have statutes, the constitutionality of which is beyond doubt, which prohibit adultery and fornication... [55] [T]he Court's holding… in no way interferes with a State's proper regulation of sexual promiscuity or misconduct." [56] "State regulation has included bans on incest, bigamy, and homosexuality, as well as various preconditions to marriage, such as blood tests. Likewise, a showing of fault on the part of one of the partners traditionally has been a prerequisite to the dissolution of an unsuccessful union." [57] "The foundation of national morality must be laid in private families… How is it possible that children can have any just sense of the sacred obligations of morality or religion if, from their earliest infancy, they learn their mothers live in habitual infidelity to their fathers, and their fathers in as constant infidelity to their mothers?" [58]

IV) No-fault statutory challenges are Federally actionable

"[A] federal court may hear a case if the state court actions are merely 'administrative or ministerial.'" [59] Mr. Madison, along with the rest of the Congress during the Constitutional debates, explicitly granted jurisdiction to the Federal Courts over *"questions which involve the national peace and harmony."* [60] "[F]ederal courts may still hear an appeal based on the constitutionality of the rule on which the decision rests." [61] "A statute based upon a legislative declaration of facts is subject to constitutional attack on the grounds that the facts no longer exist; in ruling upon such a challenge a court must, of course, be free to re-examine the factual declaration." [62] "The courts are not bound by mere forms, nor… to be misled by mere pretences. They… are under a solemn duty - to look at the substance of things, whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority. If… a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution." [63] When "harm to the physical or mental health of the child or to the public safety, peace, order, or welfare has been demonstrated..." [64] there is a recognized legal and judicial obligation for prevention. This would certainly encompass today's social ills caused by No-fault divorce, [65] divorce related fatherlessness, and the attendant crime and societal disorder. [66] In legal actions with children, the power of the state to act as *parens patriae* is for "preserving and promoting the welfare of the child..." [67] Since it is a fact, beyond dispute that divorce and fatherlessness are destructive to children, how can the courts exercise jurisdiction under *parens patriae* and continue to promote this destruction? It was well said by Justice Chase;

> *I cannot subscribe to the omnipotence of a State Legislature… The people of the United States erected their Constitutions, or forms of government, to establish justice, to promote the general welfare, to secure the blessings of liberty; and to protect their persons and property from violence... There are acts which the Federal, or State, Legislature cannot do, without exceeding their authority. There are certain vital principles in our free Republican governments, which will determine and over-rule an apparent and flagrant abuse of legislative power; as to authorize manifest injustice by positive law; or to take away*

> *that security for personal liberty, or private property, for the protection whereof of the government was established. An ACT of the Legislature (for I cannot call it a law) contrary to the great first principles of the social compact, cannot be considered a rightful exercise of legislative authority. The obligation of a law in governments established on express compact, and on republican principles, must be determined by the nature of the power, on which it is founded.* [68]

"Seldom in U.S. history have laws been enacted with higher hopes and poorer results than the no-fault divorce statutes." [69] "The divorce revolution… has failed. It has created terrible hardships for children, incurred unsupportable social costs, and failed to deliver on its promise of greater adult happiness." [70] "There are... some indications that no-fault divorce litigation is becoming more acrimonious, with the litigative fire transferred from conflicts over divorce grounds to those over children and property issues." [71] No-fault has been equated with child abuse and the destruction of children? [72] "Divorce often causes a bitter dispute between the parents, even worse than before the divorce was decided upon. Two-thirds of angry divorces remain that way after 5 years of being separated, and one-quarter to one-third of those divorces that were initially in good spirits had degenerated to open conflicts." [73]

V) No-fault is a "ministerial act" and strips a judge of immunity

"Acts of a ministerial nature are those where [there is] little decision making power during the course of performance and the conduct is delineated." [74] "[D]iscretionary or quasi-judicial acts involve the exercise of reasoned judgment which could typically produce different acceptable results whereas a ministerial act envisions direct adherence to a governing rule or standard with a compulsory result." [75] "The first requirement of official immunity is that the officer must be performing a discretionary function. Discretionary (or quasi-judicial) functions require deliberation and judgment." [76] "Such acts are different from ministerial functions, which only require obedience to orders." [77] "This distinction is important in that performance of discretionary acts may provide immunity while execution of ministerial functions offers no protection from liability." [78] "A ministerial act is commonly one that is simple, absolute, and definite, arising under conditions admitted or proved to exist, and requiring merely the execution of a specific duty. A discretionary act, however, calls for the exercise of personal deliberation and judgment, which in turn entails examining the facts, reaching reasoned conclusions, and acting on them in a way not specifically directed." [79]

The formal entry of Judgment is a Ministerial Act. [80] "A judge is liable for injury caused by a ministerial act..." [81] "In *Ex parte Virginia*, 100 U.S. 339, the Court held that a judge … could be held liable under the… Civil Rights Acts. The Court assumed that the judge was merely performing a ministerial function. But it went on to state that the judge would be liable under the statute even if his actions were judicial." [82] If a judge cannot deny divorces, or order reconciliation, preservation, or even mandate marriage counseling, but must comply with the termination of a marriage as a "predetermined outcome" then this is clearly a ministerial act.

VI) No-fault is a legislative function requiring processing by the legislature

"That when the Constitution was ordained divorce was a matter of the deepest public concern, rather than deemed a personal dispute between private parties, is shown by the fact that it could be secured almost exclusively only by special enactments of the several legislatures and not through litigation in court." [83] "[T]he legislative assemblies of the colonies… treated the subject [of granting a divorce] as one within their province… [L]egislative divorces [had] been granted, with few exceptions, in all the States… [A]t the time of the settlement of this country legislative divorces were common, competent, and valid in England, whence our jurisprudence was derived, [making] them conclusively so here, except where an invalidity is… created by a written constitution binding the legislative power… During the period of our colonial government, for more than one hundred years preceding the Revolution, no divorce took place in the colony of New York, and for many years after New York became an independent state there was not any lawful mode of dissolving a marriage in the lifetime of the parties but by a special act of the legislature." [84] The same fact is stated in numerous decisions of the highest courts of the States. [T]he Supreme Court of Pennsylvania said: "Special divorce laws are

legislative acts. This power has been exercised from the earliest period the legislature of the province, and by that of the State, under the constitutions of 1776 and 1790… The continued exercise of the power, after the adoption of the constitution of 1790, cannot be accounted for except on the ground that all men, learned and unlearned, believed it to be a legitimate exercise of the legislative power. This belief is further strengthened by the fact that no judicial decision has been made against it. *Communis error facit jus* would be sufficient to support it, but it stands upon the higher ground of contemporaneous and continued construction of the people of their own instrument." [85] [T]he Supreme Court of Maryland said: "Divorces in this State from the earliest times have emanated from the General Assembly, and can now be viewed in no other light than as regular exertions of the legislative power." [86]

[T]he question arose before the Supreme Court of Connecticut as to the validity of a legislative divorce under the constitution of 1818, which provided for an entire separation of the legislative and judicial departments. The court, after stating that there had been a law in force in that State on the subject of divorces… said… "The law has remained in substance the same as it was when enacted in 1667. During all this period the legislature has interfered like the Parliament of Great Britain, and passed special acts of divorce *a vinculo matrimonio;* and at almost every session since the Constitution of the United States went into operation, now forty-two years, and for thirteen years of the existence of the constitution of Connecticut, such acts have been, in multiplied cases, passed and sanctioned by the constituted authorities of our State. We are not at liberty to inquire into… this subject; nor into… interference by the legislature. We can only inquire into the constitutionality of the act under consideration. The power is not prohibited either by the Constitution of the United States or by that of the State." [87] [T]he Supreme Court of the State did not regard the divorce as beyond the competency of the legislature… **[W]e are compelled to hold, that the granting of divorces was a rightful subject of legislation…**" [88]

VI) A) No-fault's questionable constitutionality should be moved to the legislature for processing

"The fact that no particular provision of the Constitution explicitly forbids the State from disrupting the traditional relation of the family - a relation as old and as fundamental as our entire civilization - surely does not show that the Government was meant to have the power to do so. Rather, as the Ninth Amendment expressly recognizes, there are fundamental personal rights such as this one, which are protected from abridgment by the Government though not specifically mentioned in the Constitution." [89] "No legislative act contrary to the Constitution can be valid… The Constitution is, in fact, and must be regarded by judges as a fundamental law." [90]

Early Supreme Court Justices Story and Marshall have not been silent on the matter of marriage, or amazingly, the subject of "no-fault" in divorce. In a US Supreme Court case cited over 2,000 times, [91] it has been affirmed that removing fault-based grounds from divorce proceedings would invite a constitutional challenge of such legislation.

> *[Marshall] "That even marriage is a contract, and its obligations are affected by the laws respecting divorces… When any state legislature shall pass an act annulling all marriage contracts, or allowing either party to annul it, without the consent of the other**,** it will be time enough to inquire, whether such an act be constitutional… [Legislative acts regarding divorce] enable some tribunals, not to impair a marriage contract, but to liberate one of the parties, because it has been broken by the other."* [92]

> *[Story] "But if the argument means to assert, that the legislative power to dissolve such a contract, without such a breach on either side, against the wishes of the parties, and without any judicial inquiry to ascertain a breach, I certainly am not prepared to admit such a power, or that its exercise would not entrench upon the prohibition of the constitution."* [93]

Mr. Justice Story later elaborated on the concept of marriage, and of "No-fault" indicating this scheme we call "No-fault" is constitutionality forbidden:

> *Marriage, though it be a civil institution, is understood to constitute a solemn, obligatory contract between the parties. And it has been, arguendo, denied, that a state legislature constitutionally possesses authority to dissolve that contract against the will, and without the default of either party.* [94]

"Even if one thought [the no-fault] view of… marriage was socially desirable, it could scarcely be held that such a personal view was incorporated into the Constitution or into the law for the enforcement of the Full Faith and Credit Clause enacted by the First Congress." [95] "[M]arriage… as a civil relation, possesses elements of [a] contract… But… marriage, even considering it as… a civil contract, is so interwoven with the very fabric of society that it… *may not… be dissolved by the mere consent of the parties*. It would be superfluous to cite the many authorities establishing these truisms… Marriage, as creating the most important relation in life, [has] more to do with the morals and civilization of the people than any other institution… Other contracts may be modified, restricted, or enlarged, or entirely released upon the consent of the parties. Not so with marriage… [T]he law steps in and *holds the parties to various obligations and liabilities*."[96] Divorce is "conceived as a remedy for the innocent against the guilty." [97] Not allowing marital wrongs is one of the most solid, foundational, and bedrock principles in existence at the time of the formation of our Constitution. [98]

Another important case noted Justice Story "had treated marriage as a contract in the common sense of the word" but he adds "it appears to me to be something more than a mere contract. It is… an institution of society founded upon consent and contract of the parties, and in this view it has some peculiarities in its nature, character, operation, *and extent of **obligation** different from… ordinary contracts*.' " [99] With marriage as "more than a mere contract" [100] --, eliminating or impairing any of the contractual elements makes it less than a contract.

Perjury anyone??

It was NOT the American public that decided it was time for no-fault, *"the no-fault divorce statute was promoted by women's groups, lawyers, judges, academics and family practice professionals*…" [101] It was promoted by judges and lawyers because of the common practice of presenting false (perjured) testimony for "fault" grounds. The courts and legal system began to come into disrepute as a result of the routine practice of perjury. [102] In Texas, as was common with other states, there was NO ATTEMPT to stop the perjury, deception, and manipulation of the courts, instead, the process was changed to allow for previously forbidden practices of leading questions on facts and legal matters (often with perjured testimony) which had been the judge's responsibility. [103] The legal system wanted to make divorce as easy as possible and ensure that once the divorce application was filed, there was NO legal mechanism to prevent it.

The perjury committed is greater than ever before. Step into any family court in the country and witness perjury in property distribution, child custody, and domestic violence claims. Commit a little perjury, and if the opposing side tells the truth, it's an all out slaughter of the honest individual.

Isn't it past time for judges to deny a few divorces, order marriage and reconciliation counseling, and throw off this tyranny that has been established in the current "Family" law system?

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[1] Maxims in law are somewhat like axioms in geometry. 1 Bl. Com. 68. They are principles and authorities, and part of the general customs or common law of the land; and are of the same strength as acts of [the Legislature] when the judges have determined what is a maxim; which belongs to the judges and not the jury. Terms do Ley; Doct. & Stud. Dial. 1, c. 8. Maxims of the law are holden for law, and all other cases that may be applied to them shall be taken for granted. 1 Inst. 11. 67; 4 Rep. See 1 Com. c. 68; Plowd. 27, b.

[2] *Maxime, ita dicta quia maxima est ejus dignitas et certissima authoritas, atque quod maxime omnibus probetur*. Co. Lit. 11.

[3] Hearing on HR. 1488. US House Testimony ser. no. 106-107, pg. 101 see also ppg. 101-103. March 16, 2000.

[4] New Jersey Law Journal, 140 N.J.L.J. 281, Vol. CXL, No. 4, Monday, April 24, 1995, pg. 1 (281), "N.J. Judges Told To Ignore Rights In Abuse TROs". A followup rebuke to this "standard practice" in family law can be found here;
New Jersey Law Journal, 140 N.J.L.J. 473, Vol. CXL, No. 6, Monday, May 8, 1995, pg. 1 (473), "Judge Rebuked By AOC on TRO Training".

[5] Zablocki v. Redhail, 434 U.S. 374, 398 (1978) citing from Skinner *v.* Oklahoma, 316 U.S. 535, 541 (1942).

[6] Co. Lit. 9 b.

[7] Griswold v. Connecticut, 381 U.S. 479, 486 (1965)

[8] Maynard v. Hill, 125 U.S. 190, 211, 212 (1888)

[9] Andrews v. Andrews, 188 U.S. 14, 27 (1903) citing from Maguire v. Maguire, 7 Dana, 181, 183

[10] Zablocki v. Redhail, 434 U.S. 374, 399 (1978) citing Maynard v. Hill, 125 U.S. 190, 209 (1888)

[11] Baker's Ex'rs v. Kilgore, 145 U.S. 487 at 491 (1891) citing from Bishop on Marriage, Divorce and Separation, § 5

[12] Baker's at 491

[13] Willoughby, Westel Woodbury. Rights and Duties of American Citizenship. Chapter 1, Introduction to Political Science, ppg 14-16. American Book Company -- New York, Cincinnati, and Chicago (1898).

[14] *Lex semper dabit remedium.* 3 Bouv. Inst. n. 2411 -- The law always gives a remedy.

[15] *Jus ex injuria non oritur.* 4 Bin 639 -- A right cannot arise from a wrong.

[16] *Lex nemini operatur iniquum; nemini facit injuriam*. Jenk. Cent. 22.—The law works injustice to no one; does injury to no one.

[17] *Lex deficere non potest in justitia exhibenda.* Co. Lit. 197.—The law cannot be defective in dispensing justice; *Lex non deficit in justitia exhibenda.* Jenk. Cent. 31.— The law is not defective in justice.

[18] *Commodum ex injurie sue non habere debet.* Jenk. Cent. 161. -- No man ought to derive any benefit of his own wrong.

[19] *Lex non favet delicatorum votis*. 9 Co. 58.—The law favours not the vows of the squeamish.

[20] *Nemo punitur sine injuria, facto, seu defalto*. 2 Inst. 287.—No one is to be punished unless for some injury, deed, or default; *Legis constructio non facit injuriam.* Co. Lit. 183.—The construction of law does no injury.

[21] *Nemo punitur sine injuria facto, seu defalto.* 2 Co. Inst. 287. -- No one is punished unless for some wrong act or default.

[22] Opinion of Justice Chase in Calder *v*. Bull, 3 Dallas 386, 388-389 (1798).
[23] Harvey L. Golden & J. Michael Taylor, Fault Enforces Accountability, 10 Fam. Advoc. 11 at 12 (1987)
[24] Henry Campbell Black, American Constitutional Law §70 (4th ed., West Pub. 1927).
[25] Chief Justice Marshall in Marbury v. Madison, 5 U.S. 137, 163 (1803)
[26] *Ubi jus, ibi remedium*. Where there is a right, there is a remedy. 1 T. R. 512; Co. Litt. 197, b; 3 Bouv. Inst. n. 2411; 4 Bouv. Inst. n. 3726.; See also Justice Joseph Story, Commentaries on the Constitution, 1 §§ 482 (1833)
[27] *Malum quo communius eo pejus*.—The more common an evil is, the worse.
[28] *Politiæ legibus non leges politiis adaptandæ*. Hob. 154.—Politics are to be adapted to the laws, not the laws to politics.
[29] Lenin merely repeated what Socrates had said and what Friedrich Engels and Karl Marx put into words. Lenin set out to do just that, hoping that a new society -- with the State as the ultimate father -- could be constructed. With the collapse of the Soviet Union, we have seen the consequences of the experiment.
[30] G. K. Chersterson. On Family Life and Other Fairy Tales. World Magazine, May 20, 2000. From his book "Heresies." (1905); See also *Qui molitur insidias in patriam, id facit quod insanus nauta perforans navem in qua vehitur.* 3 Inst. 36. -- He who betrays his country, is like the insane sailor, who bores a hole in the ship which carries him.
[31] The Atlantic Monthly; July 1926; The Russian Effort to Abolish Marriage; Volume 138, No. 1; page 108-114.
[32] The common law maxim "the child of parents divorced, is to be brought up by the innocent party, at the expense of the guilty party." Ridley's View, part 1, ch. 3, sect. 9, cites 8th Collation. Vide, generally, 1 Bl. Com. 440, 441 3 Bl. Com. 94; 4 Vin. Ab. 205; 1 Bro. Civ. Law, 86; Ayl. Parerg. 225; Com. Dig. Baron and Feme, C;- Coop. Justin. 434, et seq.; 6 Toullier, No. 294, pa. 308; 4 Yeates' Rep. 249; 5 Serg. & R. 375; 9 S. & R. 191, 3; Gospel of Luke, eh, xvi. v. 18; of Mark, ch. x. vs. 11, 12; of Matthew, ch. v. v. 32, ch. xix. v. 9; 1 Corinth. ch. vii. v. 15; Poynt. on Marr. and Divorce, Index, h. t.; Merl. Rep. h. t.; Clef des Lois Rom. h. t.
[33] United States v. Raddatz, 447 U.S. 667, 683 (1980) citing St. Joseph Stock Yards Co. v. United States, 298 U.S. 38, 53 (1936)
[34] Carnegie Steel Co. v. Cambria Iron Co., 185 U.S. 403, 435 (1902) "No-fault" removes all law and facts and there is no judicial consideration, only a "rubber stamp" of the termination of a marriage.
[35] Yakus v. United States, 321 U.S. 414, 461 (1944) (Rutledge, dissenting on other grounds).
[36] Federal Election Com. v. Massachusetts Citizens for Life, Inc., 479 U.S. 238, 263 (1986)
[37] ICC v. Brimson, 155 U.S. 3, 9 (1894)
[38] Thomas v. Arn, 474 U.S. 140, 152 (note 12) (1985)
[39] Muskrat v. United States, 219 U.S. 346, 361 (1911).
[40] General Investment Co. v. New York Central R. Co., 271 U.S. 228, 230 (1926); Gaines v. Relf, 53 U.S. 472, 539 (1851) "The harshness of judicial duty requires that we should deal with witnesses and evidences..."
[41] St. Joseph Stock Yards Co. v. United States, 298 U.S. 38, 52, 53 (1936)
[42] Ex parte United States, 242 U.S. 27, 38 (1916)
[43] Armstrong v. Manzo, 380 U.S. 545, 552 (1965) citing Grannis v. Ordean, 234 U.S. 385, 394
[44] In re Slaughter-House cases, 83 U.S. 36, 125-27 (1872); Walker v. Sauvinet, 92 U.S. 90, 93 (1875); Twining v. State of New Jersey, 211 U.S. 78, 102 (1908); 18 Fed. 385, 429
[45] Gumbel v. Pitkin, 124 U.S. 131, 143 (1888)
[46] Excerpt from 41 Tenn. L. Rev. 463 (1974) notes footnote 62 here "That the state has an interest in preserving marriage has been recognized so far as to categorize the state as a party to the divorce proceeding. See Hartigan v. Hartigan, 272 Ala. 67, 128 So. 2d 726 (1961); Crook v. Crook, 19 Ariz. 448, 170 P. 280 (1918)."
[47] Alice O'Leary Ralls, The King County Family Court, Wash. L. Rev. 22, 23, and 26
[48] Linda J. Waite and Maggie Gallagher, 2000. The Case for Marriage: Why Married People Are Happier, Healthier and Better-Off Financially (New York: Doubleday, 2000).
[49] Maggie Gallagher. *The Abolition of Marriage: How We Destroy Lasting Love.* Regnery Publishing (Washington, D.C.). page103
[50] James Wilson, Lectures on the Law. November 25, 1791.
[51] Andrews v. Andrews, 188 U.S. 14, 27 (1903) citing from Bishop, Marriage and Divorce, 6th ed. secs. 229b, 230.
[52] Maynard v. Hill, 125 U.S. 190, 211 (1888).
[53] Sherrer v. Sherrer, 334 U.S. 343, 360 (1948)
[54] 3 Bishop on Marriage and Divorce, § 480. Bishop has been frequently quoted throughout the entire history of American Jurisprudence. From the US Supreme Court on down.
[55] Griswold v. Connecticut, 381 U.S. 479, 498 (1965)
[56] Griswold at 499
[57] Zablocki v. Redhail, 434 U.S. 374 at 399 (1978) (Powell, concurring opinion)
[58] John Adams Diary. June 2, 1778.
[59] 17 J. NAALJ 333, 337 (1997) Possible Application of The Rooker-Feldman Doctrine to State Agency Decisions: The Seventh Circuit's Opinion in Van Harken V. City of Chicago citing District of Columbia Court of

Appeals v. Feldman, 460 U.S. 462, 467-77 (1983) (citing Prentis v. Atlantic Coast Line Co., 211 U.S. 210, 224 (1908)).
[60] This resolution was first proposed by Mr. Randolph during the Convention on May 29, 1787; then during the Debates in the Federal Convention on June 13, 1787 Mr. Randolph moved for adoption, Mr. Madison seconded, and general agreement was granted. -- The Debates in the Federal Convention on June 13, 1787 by James Madison.
[61] District of Columbia Court of Appeals v. Feldman, 460 U.S. 483 (1983)
[62] Block v. Hirsch, 256 U.S. 135, 154-155 (1921); Communist Party v. SACB, 367 U.S. 1, 110-114 (1961). Leary v. United States, 395 U.S. 6, 32-37 (1969) (see footnote 68)
[63] Mugler *v*. Kansas, 123 U.S. 623, 661 (1887)
[64] Wisconsin v. Yoder, 406 U.S. 205, 230 (1972) with noted references Cf. e. g., Jacobson v. Massachusetts, 197 U.S. 11 (1905); Wright v. DeWitt School District, 238 Ark. 906, 385 S. W. 2d 644 (1965); Application of President and Directors of Georgetown College, Inc., 118 U. S. App. D. C. 80, 87-90, 331 F.2d 1000, 1007-1010 (in-chambers opinion), cert. denied, 377 U.S. 978 (1964).
[65] US House Testimony for H.R. 4090. Bill Wood - Individual Statement, Welfare Reform Reauthorization Proposals. April 11, 2002. Human Resources Subcommittee of the House Ways and Means Committee. Pre-publication reference version can be seen at http://bellsouthpwp.net/w/o/woodb02/marriage%20and%20divorce.htm
[66] *Ibid.* "Father absence, a byproduct of divorce, illegitimacy, and the erosion of the traditional family, is responsible for; filling our prisons, causing psychological problems, suicide, psychosis, gang activity, rape, physical and sexual child abuse, violence against women, general violence, alcohol and drug abuse, poverty, lower academic achievement, school drop-outs, relationship instability, gender identity confusion, runaways, homelessness, cigarette smoking, and any number of corrosive social disorders." Referencing US House Testimony 107-38, June 28, 2001. Pg. 94-104. 83 noted references. Online version is at http://waysandmeans.house.gov/humres/107cong/6-28-01/record/chillegalfound.htm.
[67] Santosky v. Kramer, 455 U.S. 745, 766 (1982)
[68] Calder v. Bull, 3 U.S. 386, 388 (1798)
[69] Allen M. Parkman, No-Fault Divorce: What Went Wrong?, (Boulder, CO: Westview Press, 1992), p. 53.
[70] Council on Families in America, Marriage in America, A Report to the Nation, 1995.
[71] James Herbie DiFonzo, Customized Marriage, 75 Ind. L.J. 875, 880 (2000)
[72] David R. Francis, "Is Making Divorce Easier Bad for Children?" NBER Digest, February 2001; based on Jonathan Gruber, "Is Making Divorce Easier Bad for Children? The Long Run Implications of Unilateral Divorce," NBER Working Paper No. 7968, October 2000, National Bureau of Economic Research.
[73] Maggie Gallagher. The Abolition of Marriage: How We Destroy Lasting Love. Regnery Pub. (Wash, D.C.). p. 103
[74] Wilson v. Beebe, 743 F.2d 342, 345 (1984) 6th Circuit citing Cook v. Bennett, 94 Mich. App. at 100, 288 N.W.2d at 612 (1979).
[75] 62 Alb. L. Rev. 293, 304 (1998) Should New York Reinstate Sovereign Immunity for the Year 2000 Computer Glitch?
[76] 47 Baylor L. Rev. 551, 553 (1995) citing City of Lancaster, 885 S.W.2d at 654 (quoting Raines v. Simpson, 50 Tex. 495, 501 (1878)).
[77] *Id.*
[78] 47 Baylor L. Rev. 551, 553 (1995) noting one should see, e.g., Baker, 621 S.W.2d at 645.
[79] 47 Baylor L. Rev. 551, 553 (1995) citing Kelly, 471 S.E.2d at 585-86 (citing Gilbert v. Richardson, 452 S.E.2d 476,481 (Ga. 1994). quoting Joyce v. Van Arsdale, 395 S.E.2d 275, 276 (Ga. Ct. App. 1990).
[80] 31 Ariz. St. L.J. 95, 103 (1999) "[T]he Ministerial Act of 'Formal Entry of Judgment.'"
[81] Pierson v. Ray, 386 U.S. 547, 566-567 (1967) Dissent of Mr. Justice Douglas from note 6, citing Ex parte Virginia, 100 U.S. 339; 2 Harper & James, The Law of Torts 1642-1643 (1956).
[82] Pierson v. Ray, 386 U.S. 547, 563-564 (1967)
[83] Sherrer v. Sherrer , 334 U.S. 343, 360 (1948) dissent of Justices Frankfurter and Murphy citing Ireland and Galindez, Divorce in the Americas (1947) p. 1
[84] Maynard v. Hill, 125 U.S. 190, 206-208 (1888) quoting from 2 Kent Com. 97
[85] Maynard at 207 quoting from Cronise v. Cronise, 54 Penn. St. 255, 261
[86] Maynard at 207 quoting from In Crane v. Meginnis, 1 G. and J. 463, 474
[87] Maynard at 207 and 208 quoting from In Stone v. Pease, 8 Conn. 541 (1831)
[88] Maynard at 209
[89] Griswold v. Connecticut, 381 U.S. 479, 495-496 (1965)
[90] Federalist Papers #48 – Alexander Hamilton
[91] A Shepard's search reveals 2,224 references as of April 21, 2002. With a 2000 US Supreme Ct reference, and a 2001 State Appeals Ct reference.
[92] Trustees of Dartmouth College v. Woodward, 17 U.S. 518, Wheat at 627, 629 (1819)

[93] Trustees of Dartmouth College v. Woodward, 17 U.S. 518, Wheat at 695-697 (1819)
[94] Story, Joseph, LL. D., Commentaries on the Constitution of the United States. Volume 3 § 1391. Published in Boston: Hilliard, Gray and Co. Cambridge: Brown, Shattuck, and Co. (1833)
[95] Sherrer v. Sherrer , 334 U.S. 343, 360 (1948) dissent of Justices Frankfurter and Murphy referencing 1 Stat. 122, 28 U.S.C. 687, 28 U.S.C.A. 687.
[96] Andrews v. Andrews, 188 U.S. 14, 30-31 also citing from Maynard v. Hill, (1888) 125 U.S. 190, 205, 210
[97] Brown v. Brown, 198 Tenn. 600, 613, 281 S.W.2d 492, 498 (1955).
[98] From Bouvier's Law Dictionary, 1856. By the marriage, the husband assumes the duty of paying her debts, contracted previous to the coverture, and of supporting her during its existence; and he cannot, therefore, be fraudulently deprived, by the intended wife, of those rights which enable him to perform the duties which attach to him. 2 Cha. R. 42; Newl. Contr. 424; 1 Vern. 408; 2 Vern. 17; 2 P. Wms. 357, 674; 2 Bro. C. C. 345; 1 Ves. jr. 22; 2 Cox, R. 28; 2 Beav. 528; 2 Ch. R. 81; White's. L. C. in Eq. *277; 1 Hill, Ch. R. 1, 4; 13 Maine, R. 124; 1 McMull. Eq. R. 237 3 Iredell's Eq. R. 487; 4 Wash. C. C. R. 224.
[99] Maynard v. Hill 125 U.S. 190, 213-214 (1888)
[100] Maynard v. Hill, 125 U.S. at 210
[101] Janet P. Simmons. Silicone Valley / San Jose Business Journal. September 6, 1996. No-fault divorce faulty indeed, as many women and children can attest.
[102] See Comment, "The End of Innocence: Elimination of Fault in California Divorce Law," 17 *UCLA L. Rev.* 1306, 1312 (1970)
[103] McKnight, *Texas Family Code and Commentary*, 5 Tex. Tech L. Rev. 267, 320 (1974) *quoting from*, official draftsman's commentary of the 1969 revisions of the Texas Family Code