

Recently, William Galston, a professor at the University of Maryland School of Public Affairs, has proposed revising American divorce laws in a way designed to reduce the rate of divorce in families with dependent children. Under current law, either spouse in a marriage, with or without dependent children, may file for divorce without the consent of the other spouse, and is entitled to obtain it without having to allege specific grounds involving fault on the part of the other spouse, such as adultery, physical abuse, mental cruelty, and so forth. Galston's proposal would create a "two tiered" system. For couples without dependent children the law would remain exactly as it is. For couples with dependent children, however, the proposal would eliminate "no fault" divorce in cases where only one spouse wants to end a marriage. In such cases the spouse wishing to end the marriage would have to allege fault on the part of the other spouse before a court. The only alternative, under the proposal, would be a five year waiting period. In support of this proposal, Galston cites statistics indicating that children of parents who divorce experience an average immediate decline of 30 % in their standard of living, and almost half of the children of divorced parents have not seen their father in the previous twelve months.

Should the State of Illinois adopt Galston's proposal? If so why? If not, why not?

MODERATOR'S ANSWER : It would be unjustifiable for Illinois to adopt Galston's proposal because there are strong reasons to believe it could result in more unhappiness than results under the current rules of divorce law. Granted, children of divorced parents often undergo a severe decline in their standard of living. The appropriate response, however, is to devise effective means to enforce child support agreements, rather than to compel a spouse to remain in a marriage, even when doing so makes him or her so unhappy that he or she wants a divorce. As for the psychological well being of the children, it is a matter of speculation whether this concern is better served by compelling a continuation of a marriage that makes one or both spouses unhappy, or by allowing those spouses to separate. Views about a matter of speculation should not receive greater weight in decisions about the rules of divorce law than matters of virtual certainty, such as the unhappiness that results when a spouse who wants to end a marriage cannot do so.

Case from the February 3, 1996 Intercollegiate Ethics Bowl. Copyright Robert Ladenson, Center for the Study of Ethics at the Illinois Institute of Technology, 1996.