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Book Reviews

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No-Fault Divorce deals primarily with the concept of fault or guilt in marriage as the basis for granting a divorce and the problems inherent in such an approach. This is the outgrowth of canon or ecclesiastical law, which rooted marriage in a sacrament by which the parties enter into an undissolvable agreement between themselves and the divinity. In discussion of no-fault divorce in most states, including Pennsylvania, the interrelationship between grounds and defenses must be considered. A party filing for divorce must have a ground, such as cruelty, adultery, indignities, etc., and must additionally be innocent of any wrongdoing. In the event the defending spouse also has a ground, or the petitioning spouse has provoked the charged wrong, condoned the spouse’s wrongdoing, or engaged in collusive activity, there could be no divorce as both parties would then be equally at fault. No-fault would eliminate the grounds as well as all defenses and, in theory, the marriage would be dissolved when it was simply no longer viable.

The theory of the no-fault ground would be to look not at guilt or wrongdoing, but to inquire only as to whether the marriage, as an emotional and social union, in reality continues to exist. The author points out numerous instances of hypocrisy, harsh court battles, vindictiveness and hostility created by the fault concept. The paradoxes of the law, improperly utilized to frustrate or facilitate divorce, have created great pressures for change even though, politically, change in this area is, at times, difficult to achieve.

The author discusses the various approaches to implementing no-fault divorce laws adopted by various states. California led the way in 1970 by abolishing “divorce” and replacing it with what is called “dissolution of marriage.”¹ All fault-related grounds were eliminated and a no-fault standard of irreconcilable differences which have caused an irremediable breakdown of the marriage was instituted.² By 1972 seven states had followed California’s lead in abol-

† Professor of Law, New England School of Law, Boston.
2. CAL. CIV. CODE § 4506 (West 1970). A second ground, incurable insanity, was included,
ishing fault-based grounds and replacing them with the marital-breakdown standard.\textsuperscript{3} Other states, while not eliminating fault, have added a ground similar to irretrievable breakdown.\textsuperscript{4}

Divorce reform in California, as in many states, started as an investigation of divorce and family problems in general, with a view toward resolving domestic problems and reducing the ever increasing divorce rate. In practice, the battle over "fault" has been eliminated and the act has been construed to practically permit divorce on demand by one of the parties. The consequence has been a 50% increase in divorces, fewer migratory divorces and, to some extent, "do-it-yourself" divorces. Affidavits without a court appearance became the practice in Contra Costa County, but the Supreme Court of California curtailed this practice by requiring that the courts retain some discretion in determining whether the breakdown did in fact occur.\textsuperscript{5}

Critics of no-fault claim the new laws should provide guidelines as to what constitutes a breakdown, while supporters believe that this would, in effect, re-introduce fault. To adequately determine whether these guidelines had been met would require an evaluation of the state of the marriage, an inquiry which proponents of no-fault very often do not wish courts to make at all. These proponents argue that while fault would be eliminated from the divorce proceeding, some lawyers might continue to use these hearings as opportunities to introduce evidence of marital wrongdoing aimed at influencing the judge's decision on such collateral issues as alimony, support, and custody.

\begin{quote}
but for practical purposes the irreconcilable differences ground is the true basis for dissolution of marriage.
\end{quote}

\textsuperscript{3} COLO. REV. STAT. ANN. § 46-1-6 (Supp. 1971); FLA. STAT. § 61.052 (1971); IOWA CODE § 598.17 (1971); KY. REV. STAT. ANN. § 403.110 (1972); Mich. STAT. ANN. § 25.86 (Cum. Supp. 1974); NEB. REV. STAT. § 42-347 (Supp. 1972); ORE. REV. STAT. § 107.025 (1971). In addition, the Commission on Uniform Laws formulated a no-fault divorce uniform law but was unable to obtain approval or adoption by the American Bar Association—the first uniform proposal rejected by the ABA in the 80 year history of the Commission.

\textsuperscript{4} IDAHO CODE § 32-603(8) (1973); N.H. REV. STAT. ANN. § 458:7-a (1973); N.D. CENT. CODE § 14-05-03(8) (1971); TEX. FAM. CODE § 3.01 (1971). Divorces are also available without determination of fault under state statutes permitting divorce based upon a legal separation. N.J. STAT. ANN. § 2A:34-2(d) (1973); N.Y. DOM. REL. LAW § 170(5) (McKinney 1974) (requires a signed separation agreement or a court decree establishing the fact of separation); VT. STAT. ANN. tit. 15, § 551 (1974) (provides the shortest separation period of any state statute upon which a divorce will be granted—six months). Other state statutes, while including the ground of incompatibility, have been interpreted so narrowly as to require evidence amounting to cruelty. ALASKA STAT. § 09.55.110(5) (1973); N.M. STAT. ANN. § 22-7-1.1 (1973); OKLA. STAT. ANN. tit. 12, § 1271 (1961).

One of the glaring weaknesses of divorce reform has been a failure to devise an adequate approach to alimony and support payments. These are areas where punishment and fault are important considerations. Because of the unequal economic status of the parties, a woman's lesser ability to support herself, and the belief that both parties create the wealth in a family, fault is a necessary legal concept. The husband rarely pays the full amount of the order and the wife rarely receives enough to survive. The hostility and resentment on both sides is enormous. Fault enters into consideration of the amount and whether or not an award is to be granted. Many states discriminate against men by denying them alimony payments. Ability to pay and "other circumstances" such as fault govern the amount. Eliminating the fault ground of divorce means more alimony cases are then tried in court rather than settled, resulting in the battleground being transferred.

California⁶ has attempted to eliminate this conflict by calling it spousal support and basing an award primarily on need, looking to duration of marriage and the ability of the supported spouse to engage in gainful employment. Community property laws assist in the division of marital property, and the elimination of fault further reduces the conflict. It is hard to eliminate fault in practice, however. The Uniform Act would eliminate fault and base disposition of property on need; thus, one spouse could receive more than 50%. Florida has eliminated fault, awarding alimony only on need, so that orders to women have been reduced to the extent necessary to encourage the wife to end her financial dependence on her estranged spouse. This concept has had a harsh result on women, often resulting in no support or alimony for many women, even when deserving. The Texas no-fault support and alimony provision has produced a new poverty class composed of middle-aged women. The author quotes authority which suggests that such policies externalize the cost of divorce by placing the burden on the taxpayer.

The problem of dealing with children of divorce has also been largely unresolved in divorce reform. The most sensible and important consideration is to provide counsel for the child. Too often an improper resolution of the child's status is worked out to its disadvantage by emotionally incompetent parents who see only their problem. Children can suffer from parents who should divorce but don't, and those who should not divorce but do. The problems of the

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child survive the divorce and in this sense the relationship is never terminated. When fitness of the parent is the test, each parent often tries to prove the other to be unfit. If "best interest" is the test, legal fitness of a parent would not necessarily be determinative of the child's best interest. Sometimes a parent legally unfit would be better while, in other instances, neither might be the best solution. Under present law it is difficult to determine if the child is really properly placed. Much of the difficulty in custody cases is inherent in the marital problem. Courts and law may mitigate, but cannot eradicate, the harm.

The uniform laws on divorce provide for the "best interest of the child" test. Some think that procedure rather than substantive law holds the key to improvement in custody proceedings. Appointing an attorney for the child is basic. The child's "rights" have to be considered even to the extent of denying a divorce if overly detrimental to the child. Another possibility is a family arbitrator or committee of persons the parties know personally. This concept has severe limitations since the great number of cases makes consistent, long range supervision impossible. The lack of authority of the court and requirement of consent of both parents, as well as the large number of people involved with the child, make acceptance of this approach unlikely. For the above reasons, the author suggests that court and state sponsored counseling should go where it can do the most good to those families with children.

There is also a need for greater use of behavioral science. Lawyers and judges must, however, become more knowledgeable in the area so that behavioral science concepts are given only the legal weight they deserve. While permanence of custody orders is necessary, there must be room for change. Meddling by hostile parents should not be permitted. Migratory custody actions somehow must be eliminated. A Uniform Child Custody Act is needed and, in effect, no-fault custody is desirable to the extent that the child is given the best treatment possible. Custody law changes must be effected at the time of change in divorce laws.

In divorce reform, conciliation is one of the centers of controversy. Many lawyers oppose it; the Catholic Church insists on it; the American Bar Association demands it; and legislatures accept it in theory only. It is generally non-compulsory, under-financed and

7. Uniform Marriage and Divorce Act § 402.
doomed to failure. If society is committed to preserving the family, the court should be involved in counseling and, by so doing, the court should show that there is a larger social interest in saving marriages. Delays of conciliation procedure can benefit the parties, but if nothing is done in the interim, it could also do harm. The strongest argument against counseling is that it invades privacy.

The effect of the difference of varying state commitments to the program can be illustrated. New York’s program, with eight counselors for the entire state, was doomed to failure and has achieved only 5% success in conciliation. Wisconsin and California, on the other hand, are very successful as a result of adequate staffing and funding. Even if reconciliation is not accomplished, counseling can smooth the divorce and assist in resolving economic and custody matters. Every state studying divorce reform has concluded that conciliation is necessary to offset easing of divorce laws; yet, virtually none of the recommendations regarding counseling have been fully implemented.

The author also reviews the effect of divorce on legal practice. Divorce is a hard, emotional, and difficult proceeding for both clients and lawyers. Whatever lawyers do to further reform is considered by many to be self-serving. Many lawyers see reform as a threat to their livelihood and consider no-fault to be no-lawyer divorce. However, wherever no-fault has been introduced it has benefited lawyers. While more divorces (uncomplicated ones) are do-it-yourself, the resulting increase in divorce more than compensates. Judges are reluctant to advise litigants or guide them through the procedure. Lawyers are needed in custody, support, and property matters. Because there are more divorces, there are more collateral problems and more business for lawyers.

The author points out that the politics of reform are complex. Those who desire reform seek different and contradictory changes. The fragmentation makes for ineffective political action. Reform takes on the color and culture of the state in which it is implemented.

The author alleges that migratory divorce is lessened by no-fault as the need to travel is eliminated. Nevada divorces dropped 15% after no-fault was introduced in California. Divorce-mill states lose their appeal since the legal complexities of migratory divorce can be enormous.

Migratory divorce law has existed for one century, and until there is a uniform law equally liberal in all places, it will continue. There
will always be one or two states which won't go along. Tightening up on marriage laws is also needed—easy marriage makes for more frequent divorce. While Nevada's divorce business has been depressed, its marriage-mill business booms.

The author has made a thorough review of the complexities of divorce and the no-fault divorce movement in this country. He has reviewed most points of view and has considered the pros and cons of each. Despite the author's best efforts at supporting a no-fault approach, it is unlikely that this book will convince proponents of one view to adopt the other. The effects of marital breakdown are becoming increasingly evident in terms of social and economic costs which may not be tolerable in the long run. The movement for children's rights is on a collision course with that of divorce-on-demand. The feminist movement, too, is not faring well in this regard. It would be well for the reader to be aware that absolute freedom in any social undertaking can result in license and anarchy, instead of liberty.

In conclusion, the author asserts that laws regulating social relations such as marriage and divorce are less effective than those relating to business and commerce. If the laws don't reflect social practice and values, people will work out their own relationships.

To serve families, we must start much earlier than the time divorce is sought. Sometimes in divorce actions the battle is more important than the separation or the loot. Fault fosters the battle. No-fault tends to reduce it. However, even in successful marriages there is a time when most couples believe it can't work. A quick divorce would destroy these.

The reviewer believes a sensible national policy on the family, which would include education, family centers, and affirmative efforts to strengthen the family, is needed. Rampant divorce is a symptom of a fragmented society. Divorce should be reasonably available, but it should not penalize the weak or pander to the morally and emotionally crippled. The concern for children can no longer be entirely subsidiary to the desires of the parents. No-fault divorce can only be justifiable as long as economic justice to both parties is preserved and reasonable measures are incorporated to protect children and preserve viable marriages. Any other approach, which in effect converts the proceeding to divorce-on-demand, is as hypocritical as the evil the reform seeks to remedy.

*Patrick R. Tamilya*

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The scarcity of helpful literature on the techniques of legal draftsmanship, particularly as to statutory materials, is surprising. Only recently have the law schools, forsaking somewhat their stance against trade-school subjects, begun to include draftsmanship courses in their curricula. That step, however, does little to help practitioners and law-trained legislators now in the field.

Practitioner Crawford has entered the draftsmanship gap with a useful and unpretentious little book which can be very helpful but must be used with some important cautions. It deals with zoning ordinances, the most complex products of local governing bodies, with the sole exception of comprehensive building codes. In contrast to excellent, available national model building codes, there are no national model zoning ordinances, nor are there likely to be any.

In the past, lawyer draftsmen have been so chary of zoning ordinances, or have botched zoning-code writing so badly, that professional city planners have taken over that area of draftsmanship, though not without some ill-conceived resistance from the organized bar.²

The Crawford handbook, based on the author’s experience as a land-use control lawyer, city councilman and zoning board of appeals member, is a pragmatic tool indeed. He starts with the fundamentals of organizing a zoning ordinance and numbering its sections,³ displaying the reality of his experience by avoiding any suggestion for the lettered subsections and sub-subsections which

† Member of the Michigan Bar; Chairman, American Bar Association Committee on Planning and Zoning in the Section of Local Government Law.

are so unutterably difficult to cite orally. The handbook does not merely give some principles on writing the formal definitions which are important in zoning codes; after very brief introductory remarks, it sets forth a model set of definitions.  

The solutions recommended for the classic zoning classification problems are refreshingly confident and concise, if not a bit glib. Questions dealing with mobile homes and mobile home parks, with which many suburbs are now wrestling mightily, are met in a couple of pages, with the suggestion that a special district for individually-sited mobile homes and a special district for mobile home parks both be created.

A chapter is devoted to the site plan approval device and process. Mr. Crawford displays his capacity for forthright criticism by pointing out that the site plan device has been used by some municipal officials to extort concessions from developers. He joins in condemning that abuse, but does not do any better than anybody else in suggesting explicit standards by which well-intended officials could implement equitable approaches.

The handbook expends only three short pages on draftsmanship suggestions for the wide field of legal nonconforming uses, which is just not enough to list the problems, much less to suggest vehicles to deal with them. Not much more space is spent on the more esoteric areas of air rights, greenbelts, and aesthetics. In fact, only 117 of the 207 pages constitute the text of the handbook. The remaining pages are the forms. I have to note that the author has candidly labeled the forms as "representative" and does not claim that they are models at all.

The forms are copies of all or part of three zoning ordinances. One of them is the zoning ordinance of Lenox, Massachusetts, which is interesting because it must be the shortest zoning ordinance in the world, occupying only six printed pages. A few more pages are devoted to the greenbelt provisions used by Grayling Township, Michigan, for the protection of the AuSable River. Because the AuSable is Michigan's best known trout stream and a delightful watercourse for canoeing, Mr. Crawford leaves unbroken the Michigander policy of never writing a book without bringing fishing into it.

4. Id. at 23-27.
5. Id. at 39-41.
6. Id. at 66-70.
7. Id. at 76-78.
The big representative form is an extensive reprint of the Zoning Ordinance of the City of Troy, Michigan. Because Troy's ordinance is definitely not a model to be followed closely, the reader could obtain a similar result by simply borrowing a half-decent zoning ordinance from a neighboring community before he sets out to do some drafting. However, that approach would not provide the benefit of the critical footnotes which the author has appended to the Troy zoning ordinance. His comments are pithy and unsparing: he describes one provision as leaving "much to be desired";\(^8\) certain controls as "ineffective";\(^9\) another section as "rather vague to say the least";\(^10\) and yet another provision as "of questionable validity."\(^11\) He characterizes one portion as seeming to be "inconsistent."\(^12\) Another footnote refers to a particular aspect of the ordinance as constituting something like a floating zone which is, he says, "a no-no in many states."\(^13\) Thus, instead of a model, we get a critique, and the usefulness of the critique cannot be denied.

The major caution to observe with respect to this zoning ordinance handbook arises from the pervasive assumption that the attorney or legislator is also the planner as to the substance of ordinance content. Despite a slight bow to the need for "the professional skills" of city planners in the introduction,\(^14\) Mr. Crawford plunges into a discussion of the determination of zoning district boundaries without a single mention of the importance of a thorough planning analysis preceding the decisions on district configuration.

Throughout the handbook, quantitative measures are offered, sometimes with a caution that they should not be adopted directly—as in the case of the particular measures in density controls—but in other instances, without any such qualifications. The suggested off-street parking standards are not limited to being purely illustrative. With respect to sales establishments, there is at least one error or misprint which could cause trouble for the scrivener who might adopt it unquestioningly. The off-street parking standard for enumerated types of retail stores is one parking space per 800 square feet of store area while, on the same page, another standard for

\(^{8}\) Id. at 127 n.12.
\(^{9}\) Id. at 129 n.16.
\(^{10}\) Id. at 147 n.35.
\(^{11}\) Id. at 149 n.38.
\(^{12}\) Id. at 151 n.40.
\(^{13}\) Id. at 167 n.55.
\(^{14}\) Id. at 8.
retail stores is one parking space per 150 square feet of floor space. The 800 square foot figure seems to be in error because national planning standards currently recommend a ratio of one parking space to about 180 square feet of internal floor area.

The problem is not with a particular error but with the failure of the handbook to point out that professional standards are available to the draftsman from many sources outside of the handbook itself. The author’s caution on not adopting his density standards should desirably be extended to all of the planning content which is presented.

Nevertheless, Mr. Crawford’s handbook is a useful, and often delightful, tool. Upon reading it, there is a feeling of having met Mr. Crawford at some law conference and having gleaned a great many useful pointers from his wide experience. His own personality comes through; in fact, the personal thrust is enhanced by the fact that the book carries a photograph of the author himself on an inside page, not just on a dust jacket blurb.

Mr. Crawford says that he is “not ready to give up on zoning.” Well, we are not ready to give up on Mr. Crawford. He has written a book worth many times its price in providing solid advice and friendly company for the attorney engaged in the lonely business of writing land-use control regulations from scratch.

David W. Craig


Because I have always been an admirer of William O. Douglas, it

15. Id. at 64.

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did not seem patently necessary to bolster my predilections by reading his life story, *Go East, Young Man*. However, since it was a gift and for want of better things to keep myself occupied on a commuter bus, I began flipping pages—the first fifteen or so contain only pictures—with half-hearted enthusiasm. This cursory glancing soon turned to deliberate perusal as it became readily evident that there was much more to be learned about the author than what could be gleaned from legal opinions or news articles.

Actually this autobiography, over a decade in preparation and writing, is the first of a two-volume work that will span the life of the longest tenured Supreme Court Justice. Chronologically, this installment essentially traces the author's life from an impoverished childhood to his appointment to the Supreme Court in 1939. I say essentially because, for purposes of cohesion, he often refers to later years. In recapturing those "early years," as he calls them, Justice Douglas relates countless experiences to the reader through effortlessly simplistic prose. The book does provide enjoyable reading for many reasons, far too many to be adequately dealt with in a brief book review. Suffice it to say even his harshest detractors would be hard put to conclude that this work offers "no redeeming social importance." Seriously though, this work is educational in that it touches upon the disciplines of economics, history, sociology, business, politics, ecology, literature, government, psychology, law (of course), and a myriad of other topics that easily provide something of interest for everyone. And for those who would eschew the truly erudite features of this book, there are other palatable tidbits of information worthy of attention: the author's being mistaken for Spencer Tracy and Casey Stengel; Learned Hand's penchant for off-color stories; that the sweetest of wildlife meats is the chicken hawk; FDR's love of poker; and more.

In conjunction with his underlying narrative, Justice Douglas has compiled a potpourri of short stories which he has somehow interwoven into twenty-six diverse chapters, each populated with periodic cross-referencing for sustained continuity. Apart from being meticulously researched and documented, the book is well written, elegantly concise in form, and seemingly exhaustive in content. The longest chapter (The Securities and Exchange Commission) details

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the inner workings of the SEC, on which he served (later as Chairman) for five years. Students or practitioners of high finance should find it pleasurable and informative. While there are some chapters (Columbia and Yale Faculties, Small-Town Teaching) that are intolerably boring, the major portion of the book renders a fascinating account of the sometimes stormy but always enduring life of this civil libertarian. The earlier chapters are especially gripping, for they portray the author as an often naive lad and one who, despite his innate righteousness, was every bit as much a kid as you and I—maybe even more so. These segments also lend credence to his natural intelligence, for they vividly describe his recognition of social sickness at a very tender age (the depraved struggle of bootleggers, prostitutes, hobos, and others deemed societal outcasts by a puritan ethic fostered his “resentment against hypocrites in church clothes who raise their denunciations against the petty criminals, while their own sins mount high”); his disdain for Christmas because so few described its true meaning; his witness to unjust treatment of Indians, Orientals, Blacks and other minorities. Being fatherless at age six, he matured rapidly, and his self-exposure to life’s realities forged early the liberal philosophies that would later designate him chief spokesman of environmental conservationists, political prisoners, the underprivileged, and the oppressed. Yes, these chapters on growing up very adroitly convey to the reader why Justice Douglas is considered the axiomatic “flaming liberal” by his many critics. Stand advised, however, that these youthful recollections are not all shrouded with pathos. He was not yet adolescent when he formed a lasting appreciation and love for the wilderness through backpacking. Mountain streams, wooded valleys, the Cascades, and other gifts of nature were his playground near home in Yakima, Washington.

In subsequent chapters one sees how formal education and hard work earned Justice Douglas expertise in fields of bankruptcy and securities. Coupling this with varied professional encounters, he

3. Our backyard neighbor on Sixth Avenue was a man whom we disliked. He was small and wiry, and thoroughly obnoxious. We spent hours each Halloween in wait for him to leave his home and enter his outhouse. Once we heard the latch click, we would give one big heave and push it over with the door down, leaving him two possible exits.


4. Id. at 62.
candidly explains why he came to mistrust the corporate establishment.

Always a controversial figure, he makes sporadic reference to the public outcries precipitated by such acts as his visiting Soviet Russia in the fifties and staying execution in the Rosenberg case. Of course, he was a "New Dealer," and for some that was enough to associate him with anti-Americanism. Shrugging off all criticism with an air of indifference, his retort is simple: "Anyone in public life who deals with controversial issues makes enemies, and an enemy is eager to cut one down for any reason, great or small."

Probably the most noteworthy feature this work offers is the characterization of his innumerable friends and acquaintances from well-known to unknown. In fact, one chapter is devoted to nothing else. The more interesting passages pertain to those people who most influenced his life in both direction and purpose; another chapter, describing his special fondness for Louis Brandeis and Hugo Black, is by far the most captivating. Ranking a close second is the product of his jocular tendencies. Justice Douglas has spiced his writing throughout with amusing quips and humorous anecdotes; one which he derived from Hugo Black (an adept storyteller) I felt to be particularly noteworthy.

It seems that a sharecropper was charged with the crime of stealing the mule of the landlord. The latter was rich and domineering, without many friends among the common people. The evidence against the defendant was overwhelming, so much so that he did not take the stand. The judge charged the jury, laying down the law meticulously. In five minutes the jury returned.

"Have you reached a verdict, Mr. Foreman?" asked the judge.

"We have, your Honor."

"Then hand it to the clerk."

The clerk put on his glasses, took the paper, unfolded it, cleared his throat, and said, "We the jury find the defendant not guilty, provided that he returns the mule."

The judge brought his gavel down sharply, saying, "There is no such verdict in the law. The defendant is either guilty or not guilty." After giving the charge all over again the judge told the

6. EAST, supra note 3, at 467.
jury to retire and come back with a lawful verdict.

The jury returned in five minutes and the judge asked the foreman, "Have you reached a verdict?"

"We have, Your Honor."

"Then hand it to the clerk."

The clerk put on his glasses, unfolded the paper, cleared his throat, and read: "We the jury find the defendant not guilty. He can keep the mule."

Not having read any of the author's former works, it is difficult for me to gauge his talent as an accomplished writer. As I stated earlier, he tells his story well and—as any autobiographer should—with highly personal revelations. No doubt the best way to capsulize all the foregoing verbiage is for me to say—read this book and you will find out why he is, to those who know him, just Bill Douglas.

Jon J. Vichich*

7. Id. at 451.


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