A few years ago, Anne Lambert published a critical analysis of sociological research on divorce in *Population* (1-2009). In this article, Cécile BOURREAU-DUBOIS and Myriam DORIAT-DUBAN propose an economic approach to divorce. As divorce comes with a cost for couples, the authors consider it as both a private and social risk, one that may be covered in a number of ways by various social actors.

The journal’s editorial team called on divorce specialists from a range of disciplines to comment on this article. These seven accompanying commentaries are written by Bertrand Fragonard, Lucie Gonzalez and Céline Marc (Haut Conseil de la famille [High Family Council]), Céline Bessière and Sibylle Gollac (sociologists), Benoît Laplante (demographer), Bruno Jeandidier (economist), Anne-Marie Leroyer (legal specialist), Alain Trannoy (economist), and Claude Martin (sociologist). To conclude, the authors respond to these comments, some of them addressing issues in economic reasoning and others stressing the need to broaden perspectives to include other approaches, notably in terms of gender.
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Most OECD countries have observed an increase in divorce rates since the early 1970s. Between 1970 and the end of the 2000s, the total divorce rate rose from 1.0 to 1.9 per 1,000 in the European Union and from 0.8 to 2.0 per 1,000 in France.\(^1\) This evolution is linked to changes in social norms and conceptions of marriage (seen less as a religious commitment and more as a partnership), which tend to trivialize divorce. The demographic trend has been accompanied by changes in the law that make divorce easier, including when requested by only one of the spouses. In France, the Law of 11 July 1975 further facilitated access to divorce by authorizing it on grounds other than fault. More recently, the Law of 26 May 2004 set out four divorce procedures: divorce by mutual consent, “accepted divorce”, irretrievable marriage breakdown, and divorce on the grounds of fault. The main objective is to simplify divorce procedures and settle the financial arrangements more quickly. Globally speaking, couples marrying today are more likely to divorce than previous generations owing to greater social acceptance of divorce and simpler divorce procedures.

This shift has been the focus of extensive research in the social sciences. On the basis of the typology proposed by Lambert (2009) to classify sociological research on divorce, two types of research can be distinguished. The first concentrates on the causes of divorce, the second on the consequences for former spouses and their children. The same distinction applies in economics. In the economic analysis of law, a number of theoretical and empirical studies have sought to determine whether or not the introduction of no-fault divorce has led to an increase in the divorce rate. In parallel, in the field of the economics of social policies, considerable research has focused on the impact of separation on changes in the standard of living of former spouses and their children and, to a lesser extent, on the impact of separation on the labour market activity of


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the former spouses. This research shows that divorcing spouses generally see a drop in their standard of living due to a reduction in economies of scale. While the extent of this drop varies from one country to the next (Aasve et al., 2007; Andress et al., 2009), several facts can be established. In particular, the standard of living decreases more often for women than for men following a divorce (Bonnet et al., 2015), especially if the woman has custody of the children. In addition, the risk of poverty following a divorce is higher for women than for men (Ananat and Michaels, 2008). Furthermore, this same literature shows that public and private transfers between former spouses (child support or alimony) help to reduce the risk of poverty and to narrow the gender gap in living standards following a divorce (Bratberg and Tjotta, 2008; Poortman, 2000). In other words, divorce has an economic cost for the spouses. This cost is shared – though not always equally – between the former spouses, but also between the two spouses and public solidarity. The aim of our article is to examine these costs by considering divorce as a risk in the economic sense of the term, i.e. as the combination of a probability of occurrence and a level of loss. With divorce now socially accepted, the aim is not to identify ways of reducing the likelihood of divorce, for example by devising incentive mechanisms to prevent its occurrence or by reforming divorce law. The article focuses entirely on the coverage instruments available for protecting individuals against the financial losses arising from divorce.

The economic consequences of a separation are not specific to divorce alone; they concern all types of separations. But the extent of coverage instruments depends on the type of union (marriage, civil partnership, consensual union). Marriage is the form of union with the broadest range of coverage schemes, notably owing to the obligations between spouses created by marriage and the procedures for sharing the couple’s assets through the marital property regime. Consequently, by focusing analysis on the separation of married couples, the article covers the broadest possible range of instruments covering the risk of separation. That said, the analyses developed in this article remain relevant for all other types of union, providing that the coverage instrument is accessible.

This article makes a twofold contribution. First of all, it provides a complement to sociological studies of the aftermath of divorce. As stressed by Lambert (2009), sociological research on divorce, in France at least, tends to

(2) A broader analysis of divorce in terms of well-being would involve a consideration of how divorce can foster greater well-being for one of the spouses, by freeing them from conjugal conflicts for example (Martin, 2007), or by enabling them to recover their identity (de Singly, 2011).

(3) Non-divorce may also generate costs, for one of the spouses at least, as well as for the children (Martin, 2007), for example in the event of domestic violence or conflict. In these situations, while divorce may be preferable to continuing the union because it is less costly, the costs of divorce nevertheless remain, and may justify public coverage, which for the state entails paying social support to make the separation possible. Hence, the analyses developed in this article remain relevant for all other types of union, providing that the coverage instrument is accessible.

(4) For example, only people who have been married are legally entitled to alimony in most countries. However, support for single parenthood is provided regardless of the person’s conjugal status.
focus mainly on parenting issues. But we believe that post-divorce conjugal issues also deserve to be examined. Secondly, by defining divorce as an economic risk, the article provides justification, at least in part, for the roles that can be attributed respectively to the family, the state and the market in the coverage of divorce costs.

The article is in three parts. Section I presents an economic discussion of the nature of divorce risk, particularly in financial terms. The aim is to demonstrate that the economic costs of divorce are not of an exclusively private nature; they also have a social dimension in that the consequences of divorce are not borne solely by the ex-spouses. The answer to this question determines, from an economic standpoint, the different ways of covering divorce costs. In Sections II and III, the article addresses the principles and the various approaches applied for covering the economic costs of divorce.

I. Divorce as a risk with costly consequences at both private and collective levels

Divorce risk has a dual, private and public dimension. Divorce can be considered as a private risk in that it impacts the wealth of the ex-spouses. But it can also be seen as having a public dimension since its consequences affect society as a whole.

1. Divorce as a private risk

The realization of divorce risk generates two types of cost for the ex-spouses. First of all, divorce results in direct costs in the short term. In addition to the expenses linked to the procedure itself,\(^\text{(5)}\) these costs mainly correspond to the overall decrease in the ex-spouses’ standard of living due to a loss of economies of scale after separation. This decrease is not generally distributed evenly between the former spouses. The main cause for this imbalance lies in each individual’s own income. When one of the spouses accounts for the majority of the couple’s income, his or her standard of living increases substantially following the divorce while that of the other spouse decreases. The second cause of asymmetry is linked to the presence of children and the fact that their main residence is at the home of one of the former spouses. This imbalance, along with the overall decrease in standard of living, may also push one of the two parties into poverty.

\(^{\text{(5)}}\) Lawyers’ fees vary depending on the profile and location (Paris or province) of the law firm, the complexity of the case, and the contentiousness of the divorce. In France, according to the High Family Council (Haut Conseil de la Famille, 2014), the lowest fees are roughly €600 for the couple, rising to around €12,000 for contentious divorces. These costs may be reduced if the spouses receive legal aid. In addition to lawyers’ fees, the spouses have to pay notary fees if the couple’s property is divided between them.
Alongside these direct costs, divorce also generates indirect costs, resulting from decisions taken during the marriage, notably concerning marital investments. The costs in question stem, in part at least, from the fact that while relations within the couple were initially organized in a long-term perspective, the decision to divorce necessarily shortens the time horizon. The problem is posed in particular when one of the spouses has made specific long-term investments in the marriage and the divorce deprives him or her of the returns (Cohen, 1987). The economic literature provides concepts that are useful for analysing the nature of these investments and their consequences. For economists of the family, marriage is a long-term contractual relation governed by law (Cigno, 1991). Divorce marks the termination of this contract, amicable or otherwise. From this viewpoint, marriage is at the root of a major problem if one of the spouses (say, partner A) has made specific investments in the domestic sphere (by caring for and raising the children or managing the household, by financing the other spouse’s education or early working career). These investments bear fruit in the medium or long term. Partner A (most often the woman) profits from the marriage partly at the time he or she makes the investment but mostly once the investment is completed. In contrast, the other spouse (say, partner B) profits from the marriage immediately but pays the costs only in the long term, when partner A’s yield decreases sharply (the children have grown up, the career of partner B who has invested in the job market no longer depends on partner A’s investment, and so on) while B continues to pay for A’s upkeep. So for partner A, divorce deprives him or her of a return on investment, partner B having profited from partner A’s investment without paying the long-term cost. Furthermore, domestic investments are hard to transfer to other domains. The skills acquired by partner A who devoted part or all of his or her time to domestic life are of little value on the job market. As a result, divorce cancels out the value of the investment made during marriage.

The indirect costs related to specific investments can be assessed not only in the short term but also in the medium or long term. Where these investments have kept the spouse away from the job market, it is more difficult for them to return after a divorce owing to their low employability (initial career interrupted by periods of inactivity). The spouse’s employability level is further reduced if they are a lone parent, as they are less available for work owing to the presence of children. In addition, the consequences of the specific investments are also felt when a divorce occurs later in life. Irregular or less intensive presence on the job market (due to the presence of children) affects the replacement incomes received after retirement (Bonnet and Hourriez, 2012).

(6) The problem of employability is particularly acute for divorced female homemakers, whose skills are of little value on the job market (Parkman, 2001), as employers find it difficult to assess their human capital for tasks other than domestic ones (Bergmann, 1981).
2. Divorce as a risk of a social nature

Divorce also generates social externalities in that its impact extends beyond the spouses themselves, affecting any children they may have and, potentially, society. First of all, divorce may be a cause of lone parenthood, which is known to increase the risk of poverty for children. As demonstrated by Legendre (2003), the poverty risk for a child living with a lone parent is twice as high as that of a child living with two parents. And child poverty comes at a cost for the community. In the short term it increases social expenditure on means-tested family benefits (RSA welfare benefit, family allowances). Above all, in the medium term, child poverty compromises the human capital of future citizens. A number of studies, mainly British and American, have shown that poor children are more at risk than others of experiencing adverse outcomes over their lifetimes, such as poor performance in school (CERC, 2004), difficulties in entering the job market, poverty as adults (Rodgers, 1995), and low income or part-time working (Duncan et al., 2010).

Divorce also contributes to the development of gender-based economic inequalities. As demonstrated by extensive statistical research in the United States and Europe, women’s standard of living after a separation drops sharply on average, while separation has less of an impact on ex-husbands. Inequalities in post-divorce standards of living, resulting in part from the choices made before the divorce, reduce the woman’s ability to generate income. In the large majority of cases, it is the woman who adjusts her working career to take care of the couple’s children (Pailhé and Solaz, 2006). Also, in the event of extended career interruptions, women’s wages tend to be lower when they return to work, and remain so over the long term (Lequien, 2012). In other words, domestic specialization is painless for the wife during the marriage because resources are pooled, but becomes costly after a divorce, in both the short and long term. Further, domestic inequality often continues after the marriage, given that only a minority of divorced couples have alternate custody of their children and that the children’s main residence is most often at their mother’s home.\(^{(7)}\) Globally, then, lower income and a greater number of consumption units for the ex-wife than for the ex-husband add up to a more disadvantageous economic post-divorce situation for women than for men. This asymmetric financial impact may be lessened for women if they form a new couple. But the attractiveness of divorced men and women on the marriage market is not the same, with the former remarrying sooner and more frequently than the latter (Cassan et al., 2001).

\(^{(7)}\) According to a survey in 2012 by the French Ministry of Justice, in the event of divorce, residence at the mother’s home is pronounced in 69% of the decision made by the family affairs judge, alternate residence in 21% of cases, and residence at the father’s home in 6% of cases, with the remaining 3% of cases categorized as “other” (Carrasco and Dufour, 2015).
II. Private divorce risk coverage

From the standpoint of economic analysis, divorce risk should, at least in part, be covered privately. Given that divorce is a specific risk – its occurrence depending on the decision of at least one of the spouses – one may consider that the ex-spouses should be responsible for the consequences. Economic analysis can be used to explore the ways in which such private coverage could work.

1. The theoretical foundations of private divorce risk coverage

On the basis of the economic analysis of risk, two reasons may be put forward to justify the coverage of divorce risks by the individuals themselves, given the responsibility involved in deciding to make the risk occur, and the possibility of taking action to prevent it from occurring.

The realization of the risk results from the decision of at least one of the spouses to put an end to the union. Unlike other types of risk, divorce is a risk with an endogenous probability of occurring, as its realization always depends on the decision of at least one of the spouses rather than an agent external to the couple. This affirmation may be nuanced, in particular where the request for a divorce comes from just one of the spouses. For the person subjected to the decision of the other, divorce appears to be an entirely random event independent of their will. Even so, the likelihood of divorce is not necessarily exogenous since the decision to divorce by the other member of the couple may result from incautious behaviour on the part of the spouse not asking for a divorce. Consequently, the risk is realized either by the decision of one of the spouses (unilateral divorce), and in this case the non-deciding partner bears the brunt of the risk, or by a joint decision to put an end to the union (bilateral divorce). That being so, the partners may be held “responsible” identically for the occurrence of the risk, whether they make a joint decision to divorce or only one of them makes that decision.

Another justification for private divorce risk coverage could be that the spouses are in a position to prevent the risk from occurring. They can act upon the probability of divorce by being faithful and attentive to the other, for example, or by investing in the household (which, in the terms of Ehrlich and Becker (1972), is a form of self-protection). We may thus consider that if a divorce occurs it is because the spouses have not made sufficient effort to maintain their union and that this responsibility is shared, without necessarily being identical. Beyond the actual decision to divorce, the chosen legal procedure (divorce by mutual consent, on grounds of irretrievable marriage breakdown

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(8) For example, divorce is different from the risk of loss in a car accident. In this last case, even if the individual decides to take their car or not, the accident remains an event independent of their will. The probability of an accident is exogenous. (With a divorce, the event is uncertain so long as the spouses do not know if the other will ask for a divorce, but becomes certain once one of the parties decides to make it happen.)
or fault) could thus serve as a way of dividing responsibilities and, by so doing, of sharing the costs of divorce between the two ex-spouses.

2. Possible ways of handling divorce as a private risk

A number of instruments exist for covering divorce costs, but they are not without their limits.

The diversity of coverage instruments for private risk

The majority of industrialized countries have a legal form of risk coverage for divorce, known variously as alimony, maintenance or spousal support. Awarded to spouses whose standard of living has been compromised, alimony takes the shape of a private transfer from the wealthier to the less wealthy spouse. For the latter, it constitutes a form of ex post coverage (after the damage occurs) of divorce risk.

From the standpoint of economic analysis, such a transfer is justified by a criterion of effectiveness, as alimony encourages spouses to specialize in optimal sharing of tasks by ensuring that the spouse who invests in the family receives compensation for that investment in the event of a separation. In the founding model of the economic analysis of alimony, Landes (1978) shows that its role is to compensate the wife for the opportunity costs incurred when marrying (notably giving up on her own career), and that by doing so it enables the spouses to attain optimal output by encouraging each of them to specialize in the task in which they are the most productive. To justify alimony, Cohen (1987) insists on the specific – and thus hard to redeploy – nature of these domestic investments, which, in the event of divorce, cannot be recouped by the person who made them. The specific investments approach, inspired by the economic analysis of contracts, can be used to specify the nature of the loss to be offset. According to the typology proposed by Shavell (1980) to characterize the various types of loss resulting from breaches of contract, alimony may be considered, as did Bolin (1994), as a means to cover three types of loss. The first is the loss resulting from having furthered the career of one’s spouse without receiving any gains from that career owing to the separation. In this case, alimony ensures that in the event of separation, the wife is rewarded for her investment in her husband's professional advancement. To calculate the loss to be offset, we must consider the husband as if he had never been married and determine the value of the additional human capital obtained through the marriage. The second type of loss may correspond to one or other spouse giving up their professional career to make a greater investment in their family. To determine the value of the loss to be offset, the “wronged” spouse has to be considered in terms of the situation they would have been in had they not married, and the present value of the income shortfall from not having had a full-time and continuous professional career must be calculated. The third type of loss may include all the material and affective losses stemming from the divorce. Here, the value of the loss is
calculated in terms of the post-divorce decrease in well-being. Calculating the loss involves considering what the spouse’s situation would have been if he or she had remained married. It should be noted that, from an economic standpoint, nothing justifies treating the consequences of separation differently for different types of union. But in France, alimony exists under law for married couples only.

Alongside alimony, *ex ante* instruments (before the risk is realized) are, or may be, used by the partners to protect themselves against the economic costs of divorce.

A basic form of *ex ante* coverage consists in both spouses building up precautionary savings or limiting their specific investments in domestic life and having a professional activity throughout the marriage, the risk being, under the economic approach of alimony, that the couple’s output is not maximized.

The spouses may also seek to self-insure against divorce risk by signing a marriage contract that allows them to anticipate *ex ante* the economic consequences of a divorce. The marriage contract is analysed by economists in the same way as alimony. Based on contract economics and on a vision of marriage as enabling specific investments aimed at optimal domestic output, the contract is seen as a tool that also serves, by securing specific investments, to maximize marriage gains (Cigno, 1991). More specifically, by providing for marriage assets to be shared in a way that favours the partner who makes the specific investment, the contract creates “positive” incentives. The question here is to identify the optimal rule for sharing out the couple’s assets at the moment of the divorce, i.e. a distribution that will generate the best incentives for investing in the marriage and, by doing so, maximize the gains (Rainer, 2007). Economists stress the potential advantages of prenuptial contracts over alimony or the rules set out in statutory property regimes, insisting on the efficacy of giving contractual autonomy to the spouses (Smith, 2003).

A third form of the *ex ante* coverage of divorce risk could be envisaged in which the spouses transfer the coverage to a third party, providing that the conditions applicable to private insurance are fulfilled. Households could take out an insurance policy at the start of the marriage to guarantee compensation for the spouse most financially disadvantaged by the separation. The amount of the premium would be proportional to the value of the potential loss for the spouse in question and could be reassessed in line with the professional and family choices made by the household throughout the marriage. Each spouse could also take out an insurance policy in their own

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(9) For a discussion of the possibility of developing private insurance against divorce risk, see Bourreau-Dubois and Doriat-Duban (2015).

(10) While this type of insurance currently does not exist, it should be noted that the legal specialist Carbonnier mentions the possibility in his commentary on the law passed in France in 1975 on the creation of spousal alimony or “compensatory allowance”. Discussing the potential difficulties that payers of this alimony may have in honouring their payments, Carbonnier stresses that households could, in the future, count on insurance to “safeguard payment of allowances… Built around a life insurance policy in favour of the spouse, it can be seen as a marriage insurance policy serving multiple purposes” (Carbonnier, 2005 edition, pp. 1369-1370).
name to provide them with a certain replacement income in the event of divorce\(^{(11)}\) or, at the very least, coverage for some of the costs stemming from the separation (and notably the costs of proceedings).

**The limits of divorce risk coverage instruments**

The individual precautionary strategy is neither a universal nor certain coverage instrument. Precautionary savings are a form of coverage reserved for individuals able to put money aside, excluding those at the bottom of the earnings scale. Also, in the long term, nothing guarantees the value of the capital saved by individuals unless they diversify their savings sufficiently. Likewise, the quality of the coverage obtained by remaining in the job market depends on the individuals’ educational level and their employment situation. If a person is on low wages or if the unemployment rate is high, then coverage will be poor.

Concerning coverage under a collective system of risk mutualization based on a private insurance mechanism, the generosity of the scheme will depend on the amount of the premiums paid by the spouses during the marriage.

Alimony raises the question of its predictability, at least in cases of contested divorce.\(^{(12)}\) Because the law leaves room for interpretation in the granting and setting of the amount,\(^{(13)}\) alimony does not provide automatic coverage in the event of a divorce.\(^{(14)}\) According to the findings of Doriat-Duban and Bourreau-Dubois (2013), French judges set thresholds on eligibility for alimony (in terms of the degree of income disparity between the partners and the length of the marriage).\(^{(15)}\) In other words, as the activation of solidarity between ex-spouses is subject to the discretion of a judge, the party with the sharpest reduction in their standard of living is not certain to receive compensation, and if compensation is granted, the amount received may not be equal to the magnitude of the loss.\(^{(16)}\) Alimony, then, is a partial and non-systematic (and even random) coverage instrument.

\(^{(11)}\) To our knowledge, thus far only a single attempt has been made to create this type of insurance. The project, initiated in 2010 by a US firm but not implemented, consists in selling the insurance policies to cover a drop in the standard of living following a divorce. The coverage takes the form of a lump-sum payment if the risk is realized, the amount of which depends on the premiums paid (very high). There is a waiting period of four years before receipt of payment (http://www.safeguardguaranty.com/What_We_Do.html).

\(^{(12)}\) This question does not arise for mutual-consent divorces in which the parties agree both on the principle and consequences of the divorce. There is no unpredictability, therefore, the partners having negotiated the payment of alimony and its amount under the shadow of the law.

\(^{(13)}\) In France, the Code Civil provides for alimony to be paid where a divorce engenders substantial disparities in the living conditions of the ex-spouses (Article 270) and provides the judge with the criteria for determining whether such is the case and for setting the amount of alimony (Article 271). The judge does not have an official guideline for setting this amount.

\(^{(14)}\) In France, alimony is awarded in only one divorce in eight (Roumiguères, 2004).

\(^{(15)}\) Based on the analysis of several hundred decisions by a provincial French appeals court, Doriat-Duban and Bourreau-Dubois (2013) show that the eligibility thresholds are 11 years of marriage and a €900 difference in income between the ex-spouses.

\(^{(16)}\) The amount of alimony set by the judge takes account of the difference in income between the spouses as well as the resources of the spouse paying the alimony. If the payer’s resources are limited, the amount of alimony is revised downwards.
In contrast to alimony, marriage contracts provide the partners with predictability on how the costs of a divorce will be divided. But another question is raised, as it is not certain that the marriage contract protects the party for whom the divorce comes at the greater cost. As highlighted by Oosterbeek et al. (2003), this is because the specific domestic investments restrict the exit options of the specialized partner and thus limit his or her power of negotiation. It is for the same reason that Cigno (1991) and Smith (2003) recommend signing a marriage contract at the start of the marriage when the transaction costs related to negotiations are not yet too high. The uncertainties over the degree of protection provided by the marriage contract becomes manifest when the various matrimonial regimes are scrutinized. Not all contracts have the same effects in the event of a divorce. Community of property ensures an even division of the couple’s joint assets after marriage dissolution, while other regimes protect the wealthier spouse and may lead to increased divorce costs for the more vulnerable one (McLellan, 1996). This is the case under the separate property contracts, which protect the wealthier spouse by allowing them to keep all the assets acquired before and during the marriage and by limiting the sharing of assets to those under undivided ownership. Moreover, the current trend in the event of separation appears to be towards a reduction in solidarity between partners, as demonstrated in France by an increase in separate property contracts among married couples (Frémeaux and Leturcq, 2013).

Beyond the type of contract chosen, it may become impossible to negotiate a marriage contract for various reasons. First, the parties may be affected by optimism bias (Smith, 2003), particularly in first marriages. For example, an American study (Baker and Emery, 1993) based on a survey of future newlyweds, shows that they have a fairly accurate estimation of the overall risk of divorce but strongly underestimate their own risk of divorcing. The authors ascribe this optimism to a representativeness bias (Kahneman and Tversky, 1982), with the interviewees considering themselves as not representative of the population as a whole. Even in the absence of such bias, other sources of excess optimism also exist, as highlighted by Smith (2003). For example, the parties may also underestimate the risk of divorce. Consistent with the work of Kahneman and Tversky (1979), individuals tend to underestimate the high probabilities of negative outcomes, and this reduces their incentive to protect against divorce risk. Second, the idea of negotiating a marriage contract may be perceived as a negative message as to the solidity of the marriage, thus making such a negotiation rather unlikely. These same limits may be at the root of under-insurance against divorce risk.

Their differences aside, the marriage contract and alimony both share the same limits in terms of divorce risk coverage for the party the most penalized by the marriage breakdown. First, the two systems reduce the costs of divorce only if there is an income to be redistributed or wealth to be shared. In other words, this type of coverage does not work systematically. Second, both alimony
and the marriage contract may place upward pressure on divorce costs but without necessarily being able to cover them. By guaranteeing compensation in the event of separation, these systems encourage specific investments (Bianchi et al., 2014). If the specialization is strong, for the spouse who specializes in the domestic sphere it may entail a substantial reduction in earning power over the short and long term, which automatically increases the extent of his or her losses in the event of separation. Yet alimony and marriage contracts are designed to help people cope with the short-term costs of a divorce rather than compensate for the longer-term losses resulting from separation. The fact that the very existence of compensation is liable to increase the magnitude of loss is a well-known mechanism in the economics of insurance, one referred to as a problem of moral hazard.

In the light of this overview, three main coverage approaches may be distinguished. The first is based on inter-individual solidarity between spouses (alimony and marriage contract), the second on the pooling of risks (private insurance) and the third on individual coverage (remaining in employment, precautionary savings). The first corresponds to the systems enshrined in law. Having existed for a long time in most countries, these systems apply to married couples only. The second, based on market instruments, appears to be emerging in some countries to specifically cover certain types of costs stemming from a divorce (mainly the costs of proceedings, and more rarely the payment of child support). The third approach is also based on a market logic, that of the job market and the financial markets. According to results obtained from US data, some of these different forms of coverage can be partly substituted one for the other. For example, it appears that in a context of no-fault divorce, women living in US states where the law provides for equal sharing of the couple’s assets tend to work less than women living in states where the law is less favourable to women who divorce (Chiappori et al., 2002; Voena, 2012).

III. The role of the state in divorce risk management

From the standpoint of economic analysis, public intervention in the management of divorce risk, in both its social and private dimensions, may be justified. This intervention may be direct or indirect.

1. The theoretical foundations of public intervention

Divorce risk is not considered as a social risk in that the material consequences of divorce do not give rise to coverage by a social protection

(17) For example, compensation in the form of a life annuity has practically disappeared in France, to the benefit of an endowment in the form of capital or a temporary annuity.

(18) In this regard, a private insurance policy against divorce risk could limit the extent of the problem by including a clause in the policy limiting domestic specialization.
system, notably a public one. However, viewing divorce risk as a kind of social risk could be justified under Pollak’s interpretation of the question (2011). For Pollak, a risk may justify collective coverage if it meets four criteria: it has material consequences, it is probabilizable, there is adverse selection and there is no legal fault. The first criterion is respected where the divorce affects the economic situation of the ex-spouses, notably through an exceptional increase in their expenditure. The second criterion relative to the probabilizable nature of the risk is also fulfilled in that it is easy to calculate the probability of a divorce based on the frequency of divorces observed in the population (and notably according to the length of the marriage). In addition, individuals are not equal in the face of divorce risk, even if they are all likely to be exposed to divorce once married, so a risk of adverse selection exists. Lastly, divorce is now largely dissociated from any reference to a fault or responsibility, except in the case of at-fault divorce. But divorce risk is not considered as necessarily deserving of public coverage, as society does not support recognition of collective responsibility in this case. The main reason is undoubtedly the fact that, basically, society considers that the individuals concerned are responsible for divorce risk (Pollak, 2011) and that divorce is not a general dynamic of instability in the family structure to which individuals are subjected, and against which they are powerless. In other words, social protection should not be required to compensate for an increase in expenditure subsequent to the choice of a more expensive lifestyle. It may be considered that the costs borne subsequent to a divorce are offset by the greater well-being resulting from separation, for one of the ex-spouses at least (De Singly, 2011). Moreover, as social inequalities in divorce risk do not give rise to clearly anti-redistributive mechanisms, there is not necessarily a call for society to reduce them. In other words, while there is indeed a risk of adverse selection, it is not clear that it works to the detriment of the most disadvantaged categories. For all these reasons, there is no basis for designating divorce as a fifth risk, as was envisaged for old-age dependency, for example.

While divorce risk may not call for direct coverage by the public authorities, two reasons can be identified that may justify public intervention in the management of divorce risk.

(19) According to Dupeyroux (1998), “under the economic approach, too, the idea of social risk is not objectivized on the basis of risk characteristics, as no risk is social in itself (...), social risks are by their nature economic risks (as they have economic consequences on the income and expenditure of the agents) and are ‘social’ only in that a collective guarantee is established”.

(20) In insurance, adverse selection refers to the fact that it is individuals with high risk levels who take out policies, thereby penalizing the insurer.

(21) Divorce probabilities can be calculated by length of the marriage. In France, the probability of divorce is greatest at around five years of marriage (2.9% in 2010), after which it gradually decreases (under 5 per thousand beyond 34 years of marriage) (Mazuy et al., 2011).

(22) The presence of children, the age at marriage and the employment status of the spouse may have a positive effect on the occurrence of divorce risk (Kalmijn and Poortman, 2006).

(23) Divorce risk is not necessarily higher among the less advantaged social categories. For example, women with higher-level or intermediate occupations have a higher risk of separating than female clerical and sales workers. In contrast, men with higher-level or intermediate occupations have a lower risk of separating than male clerical and sales workers (Vanderschelden, 2006).
The first is based on the negative social externalities generated by divorce, to the detriment of children and of women. Child poverty should be addressed by the public authorities for reasons of fairness and effectiveness alike. First of all, as stated by the French Council for Employment, Income and Social Cohesion (CERC, 2004), “in the matter of social justice, it is the duty of society to redress the inequalities suffered by people who are not responsible for the situation in which they find themselves. This applies to children more than to any other person”. Secondly, as stressed earlier, child poverty erodes the value of the human capital of a part of the population. So it is in the interest of the public authorities to protect the interests of children living in lone-parent families when these are synonymous with poverty. Regarding women, and as pointed out above, divorce tends to have more adverse financial consequences than it does for men. Here again, one may consider that, in the name of a criterion of social justice relative to gender equality, it is the state’s role to intervene in order to limit such inequality following a divorce.

The second reason for public intervention may lie in the desire to regulate the private management of the financial consequences of divorce wherever they lead to unfair situations for one of the parties or to situations of inefficiency, where the individuals concerned are not covered for a risk that could be insured against. From a purely couple-centric viewpoint, the spouses are not always mindful of the risk. As long as the marriage “works”, divorce is a random event for both spouses who know neither if nor when they will separate. They may suffer from a certain short-sightedness or even a cognitive bias (see above for optimism bias) that causes them to minimize the actual risk of divorce. They may also imprecisely assess the financial and human consequences, as the extent of the losses also depends on the occupational choices of both partners and their ability to “bounce back”, including on the marriage market. In other words, the parties are not fully qualified to evaluate the costs of divorce and plan for such an eventuality, or to prepare for the related social costs. Moreover, power relations during a divorce may be unequal, leading to an unfair division of assets between the partners. Consequently, there are grounds for considering the regulation of divorce risk at a more collective level.

2. Public systems for managing divorce risk

The state can implement social and tax policies and wield its legislative power, both to limit the social costs of divorce and to improve private management.

Systems for limiting the social costs of divorce

While the community is not disposed to providing social insurance against divorce risk (see above), it does consider as a new social risk one of the consequences of separation, namely situations of lone parenting (Eydoux and Letablier, 2009; Pollak, 2011). Lone parents are covered by parenting support
policies, either in the shape of targeted services (increased RSA welfare benefit) or socio-fiscal transfers aimed at financially supporting households (lone-parent or not) with children. The introduction of guidelines setting the amount of child support for the children of separated parents may also be considered as another way for the legislator to directly regulate the economic consequences of divorce, with a view to limiting its negative impacts on children. This is notably the case when, as in the United States, the judges tasked with resolving differences between the parents are obliged (barring exceptional waivers) to award the amount set by the guideline. In other countries, including France, guidelines can be used, at the very least, to guide the judges’ decisions. The introduction of a rule for calculating the amount of child support subsequent to a divorce provides the state with a way of ensuring the material well-being of children with divorced parents by specifying the parents’ support obligations. Because the calculation rule is based on objective estimates of child costs, it guarantees an adequate standard of living for the child, i.e. consistent with the parents’ abilities to contribute (Bourreau-Dubois and Jeandidier, 2013), and favours better future compliance with judicial decisions.

The gender inequalities that emerge at the time of divorce are also not considered to constitute a social risk. But these inequalities are taken into consideration, at varying extents, by social protection law. In some countries, “pension splitting” applies in the event of divorce. The principle consists in grouping the pension entitlements acquired by the man and the woman during their union and then splitting them evenly between the two at the moment of the divorce. This rule applies in Germany, Switzerland and Canada. In the UK, pension entitlements are included in the overall assets of the household, which are then shared between the two ex-spouses. This system makes up for the low individual entitlements of women who reduced their working activity during the marriage to make specific investments in domestic life. France has for many years operated a system of family-related pension entitlements designed, notably, to offset the impact of career interruptions on the pension levels of mothers (Bonnet and Hourriez, 2012). Last, gender inequalities subsequent to divorce are, as a last resort, covered by social welfare systems. In France, RSA welfare benefit and the minimum pension form an ultimate safety net for single women in situations of poverty.

Alongside these systems providing ex post compensation for the gender inequalities resulting from divorce, the state may also use tools aimed at limiting the occurrence of gender inequalities during the marriage which, through a knock-on effect, helps to reduce the risk of poverty post-divorce. The objective here is not for the state to remedy difficult situations or redress gender inequalities but to change the behaviour of individuals. As seen earlier, specific

(24) For example: family benefits, family support allowance (ASF), back-to-school allowance (ARS), lower taxation for lone parents.
(25) In some of these countries, such as Canada, this rule also applies to couples who were not married.
Investments in the domestic sphere are very costly for women if they separate. These investments reduce their earned income and, if they have custody of the children, put them at a high risk of poverty. Generally speaking, then, the idea is to encourage mothers to remain in employment after the birth of their children. The trend today is towards greater intervention in this respect on the part of public authorities, as demonstrated by the recent reform of parental leave in France, voted as part of the law on gender equality that, by encouraging fathers to take parental leave, aims to limit gender inequalities associated with divorce. Further upstream in the cycle, the state may also seek to improve the educational levels of women (Guvenen and Rendall, 2013). Lastly, it may use tax incentives, by reducing taxation of dual-earner households, for example, through individualization of income tax (Esping-Andersen, 2008; Landais et al., 2011). Overall, the public interventions that can be rolled out to regulate divorce risk belong both to the traditional conception of social policy (the fight against poverty of lone-parent families) and the modern conception of social policy (aimed at fostering women’s employment) defended by Esping-Andersen (2008), for whom the welfare state should be an investor rather than a nursemaid.

Tools for improving the private management of divorce

The state may also improve the private management of the consequences of divorce by harnessing its power to state the law. If one of the spouses makes specific investments in domestic activity, this leads to problems of efficiency and fairness, as the divorce cancels out the value of the specific investment for the person who made it, and these investments lead to a drop in the standard of living that is not shared equally by the two ex-spouses. And yet it is not unreasonable to think that in a situation of unilateral divorce, the spouse who did not make the specific investment is unlikely to compensate their ex-partner without any prompting. By entrusting judges with the task of deciding on alimony, the state exerts control over the result of the negotiations between spouses in terms of divorce cost sharing. The objective is for the judge to ensure that the interests of both parties are respected and that the divorce does not generate an uneven distribution of divorce costs. The state may, as is the case in France, leave it to the discretion of its agent – the judge – to choose the social justice criterion to be applied. In this case, it is up to the judge to decide on the threshold beyond which the inequality becomes unfair. The level of that threshold depends on the judge’s conception of solidarity between former spouses.

(26) The joint taxation system for couples reinforces occupational inequalities between men and women. When the couple is on an equal standing, i.e. earning the same income, the joint taxation regime is no more advantageous than an individualized one. However, the greater the inequality between the partners, the greater the tax advantage. Consequently, today’s joint taxation regime does not encourage the partners to equalize their incomes.

(27) In some countries, such as Canada, the state guides the choice of the judge by drawing up guidelines with criteria that must be respected when calculating the amount of alimony.
The choice of statutory matrimonial regime is also an indirect way for the state to play a role in private divorce regulation. By designating community of property as the default legal regime, as is the case in France and Luxembourg, the law helps to protect the weaker partner by ensuring that they obtain half of the assets acquired during the marriage. In contrast, countries such as Austria and the United Kingdom, having opted for a separate property default regime (Granet and Dandoy, 2016), are, in principle, less protective of the spouse who made a specific investment and, by doing so, acquired fewer assets. Naturally, the spouses can sign a marriage contract different to the default regime, enabling them to protect the weaker party by planning for the fair distribution of property in the event of a separation. But owing to status quo bias, the choice of regime is not a neutral one. Because it is reasonable to assume that the spouses opt most often for the default regime and remain under that regime until a potential divorce, it would be in the state’s interest to choose the community regime as the default regime so as to protect the weaker partner in divorce.

Finally, and again with regard to its legal power, one could imagine a system in which the state requires households to take out insurance policies to resolve a market failing that stems from a phenomenon of under-insurance. Given the existence of optimism bias or a preference for the present, the risk of under-insurance exists, with newlyweds potentially liable to underestimate their divorce risk. The mandatory nature of the insurance policy could be justified for other reasons, too, such as ensuring the solvency of the payer in the event of income loss due to an unexpected life event. 

**Conclusion**

Initiated by at least one of the spouses, divorce is a risk (in the economic sense of the term) of a private nature, as it affects the wealth of the ex-spouses. One could thus argue that it is their duty to bear the associated costs. They have a number of coverage instruments at their disposal. Conventional instruments are based on private solidarity between the two ex-spouses or on an individual precautionary strategy consisting in not leaving the job market and in building up savings for a possible future divorce. Other coverage instruments, used much less often, are based on mutualized coverage via private insurance. But for reasons of efficiency and, above all, fairness, it is economically justified for the state to intervene in the private regulation of divorce risk. The law helps to ensure that divorce costs are shared in a relatively efficient and equitable manner by ruling on the payment of alimony or by establishing a default regime of community of property. And while divorce

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(28) In the USA, some insurance companies propose policies that guarantee continuity of payment of child support or alimony in the event of death or disability of the payer.
may be a private risk, it is also the cause of externalities that come at a social cost, including the heightened risk of poverty, stemming in particular from lone parenthood, and gender inequalities. It is the role of the welfare state to manage these two types of externality through direct public intervention in the form of policies to prevent lone-parent families falling into poverty, solidarity mechanisms in the pension system, and policies aimed at boosting women's employment rate. In all, three actors contribute to the coverage of divorce risk: the family, the state and the market. Their intervention takes different forms and their respective roles in divorce risk coverage vary according to the financial situation of the ex-spouses and their ability to bounce back after a separation.

This analysis could be extended by studying the degree of coverage of former partners by type of union, as some coverage instruments are not available to unmarried couples (including marriage contracts and alimony). It would also be interesting to analyse the way in which the respective interventions of the family, the state and the market are organized in different countries. For example, in Italy, family solidarity is a key form of support in the event of divorce, while in the United Kingdom, divorce risk management appears to be handled at a more individual level, through an increase in women’s employment rate, in an environment where the default matrimonial regime is that of the separation of property. For purposes of international comparison, a typology of the various forms of divorce risk coverage would be needed in order to compare cross-country differences in the economic consequences of separation.

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(29) Bianchi et al. (2014) show that in the event of a divorce in Italy, the parent with custody of the children (i.e. the mother in most cases) has the right to remain in the family home, even if the other parent continues to pay the mortgage on that home.

(30) According to Jenkins (2008), the narrowing of the gender gap in post-divorce standard of living observed in the UK in the early 2000s was caused in part by an increase in women’s employment rate.
References


The aim of this article is to identify all the costs of divorce and to review the various coverage instruments – private and social – used to cover those costs. In terms of economic analysis, divorce can be considered as a risk since it is possible to establish a probability of occurrence and the amount of the costs involved. Divorce risk is private in that it affects the wealth of the former spouses. The private costs it engenders may be covered by a range of instruments, some based on private solidarity, organized ex post (alimony) or ex ante (community of property marriage contracts), and others on individual precautionary strategies (remaining on the job market, savings, insurance, separate property marriage contracts). Divorce is also a social risk, in that it generates socially costly externalities (lone parenting, poverty, gender inequalities), whose scale may be reduced by implementing appropriate social and tax policies.

Cécile Bourreau-Dubois et Myriam Doriat-Duban • LA COUVERTURE DES COÛTS DU DIVORCE: LE RÔLE DE LA FAMILLE, DE L’ÉTAT ET DU MARCHÉ

L’objectif de cet article consiste, d’une part, à identifier l’ensemble des coûts du divorce et, d’autre part, à présenter les différents instruments de couverture, privés et sociaux, qui sont mobilisés pour assurer la prise en charge de ces coûts. L’analyse économique permet de considérer le divorce comme un risque puisqu’il est possible de lui associer une probabilité d’occurrence et un montant de coûts. Il est de nature privée en ce sens qu’il affecte la richesse des anciens conjoints. Les coûts privés qu’il engendre peuvent être couverts par différents instruments dont certains relèvent de la solidarité privée organisée ex post (prestation compensatoire) ou ex ante (contrats de mariage permettant la communauté de biens), ou d’une stratégie individuelle de précaution (maintien sur le marché du travail, épargne, assurance, contrats de mariage permettant la séparation de biens). Le divorce est aussi un risque de nature sociale au sens où il est à l’origine d’externalités socialement coûteuses (monoparentalité, pauvreté, inégalités de genre) dont l’amplitude peut être atténuée par l’activation de politiques sociales et fiscales.

Cécile Bourreau-Dubois et Myriam Doriat-Duban • LA COBERTURA DE LOS COSTOS DEL DIVORCIO. EL PAPEL DE LA FAMILIA, DEL ESTADO Y DEL MERCADO

El objetivo de este artículo es identificar el conjunto de los costes del divorcio y presentar los diferentes instrumentos de cobertura, privados y colectivos, que son movilizados para tomar a cargo dichos costos. El análisis económico permite considerar el divorcio como un riesgo ya que es posible asociarle una probabilidad de ocurrencia y un costo. Es de naturaleza privada en el sentido de que afecta a la riqueza de los ex-conyuges. Los gastos privados del divorcio pueden ser cubiertos por diferentes instrumentos algunos de los cuales corresponden a la solidaridad privada organizada ex-post (prestación compensatoria) o ex-ante (contratos de matrimonio con comunidad de bienes), o a una estrategia individual de precaución (mantenimiento en el mercado de trabajo, seguros, contrato de matrimonio con separación de bienes). El divorcio es también un riesgo de carácter social en el sentido de que produce efectos socialmente costosos (familias mono-parentales, pobreza, desigualdades de género) y cuya amplitud puede ser atenuada por políticas sociales y fiscales.

Keywords: Divorce, risk, private costs, social costs, family, state.
When a couple separates, the impact on the expenditure and income of the individuals involved is considerable. How should the risk of that separation be covered? This stimulating way of seeing things reflects a change in mentalities concerning separations. Divorce and other forms of separation have become commonplace, and this trend has been accompanied by major changes in civil law, with the divorce reforms of 1975 and 2004 and the acts of 1970, 1993 and 2002 on parental authority. The object of the decisions handed down by family judges has thus shifted from the search for the cause of and “responsibility” (“fault”) for the separation to the question of how to sort out the consequences and organize the lives of individuals – parents and children – in the aftermath. This change in viewpoint is also to be found in sociological and economic research (Bonnet et al., 2015; Lambert, 2009).

Two ways of protecting against the negative financial consequences of separation can be envisaged: either leaving households to handle the separation as they see fit, or promoting public intervention.

*Separation of unmarried parents is now more common than divorce*

The article mainly examines divorce, for which the range of legal provisions is most extensive, and makes numerous references to alimony or “compensatory allowance” (*prestation compensatoire*). Yet separations of unmarried parents are now more frequent than divorces of parents with children (High Family Council, 2014), the context of the former being much less “protected” than that of the latter. In particular, fewer formal guidelines exist for transfers between couples in a consensual union or civil partnership than for those between divorcing spouses.

When couples are formed (or at any other moment in their existence), the rules on the management of the partners’ assets and their division in the event
of a separation can be organized under a marriage or civil partnership contract. The rules can provide for the specific protection of one of the partners (as with the “regime dotal” system of dowry management still common in some countries). In several countries, the share of “specific” marriage contracts is increasing at the expense of the default community of property regime – of somewhat unsophisticated design – covering the assets acquired during the marriage (Frémeaux and Leturcq, 2013). A recorded or certified agreement between partners is also possible, though much less widespread.

After a separation, “compensatory allowance” exists for married couples only. Where children are involved, court hearings to set child support payments are mandatory for divorcing spouses only. This raises the question of the creation of “parenting compensatory allowance”, which would be open to unmarried parents (Boisson and Wisnia-Weill, 2012) and have a narrower scope than “compensatory allowance”, whose level is determined using a wide range of criteria, each one constituting a reason or justification. “Parenting compensatory allowance” would be designed to offset losses in income following separation and attenuate differences in the parents’ situations resulting from the asymmetric investment in parenting, notably by recognizing each partner’s parenting time, which is often invisible. It could be awarded to unmarried couples with long-term unions and shared children. It could be seen as temporary assistance for returning to work if the financial consequences of the separation are considered reversible for the parent having consented to the greater parenting investment, or take a more consequential form for losses seen as lasting.

**Has separation become an “insurable risk”?**

Recourse to private insurance is also possible, either as a supplement or an alternative. But designing an insurance policy poses formidable problems. First of all, who signs the policy? The couple or a member of the couple seeking to protect themselves against the risks involved in a conflictual or penalizing separation? Secondly, which risks are insurable? It is technically possible to include coverage of the costs of separation proceedings in a legal protection policy. Covering the costs of the proceedings involved in recovering unpaid child support is more complex, as the risk extends over several years and is difficult to foresee. Coverage for unpaid child support itself is an even more difficult matter, the amounts involved being potentially substantial and the risk once again extending over a long period. Paradoxically, guarding against the risk of falling into poverty after a separation is perhaps easier to envisage. The insurance policy could be aligned with the criteria used in France for setting “compensatory allowance” and take the form of a lump-sum payment or an annuity.

The third delicate point is the level of the premiums determined by the insurer. The high frequency of separation will lead to high premiums, and it is hardly feasible to mutualize risks among households. Fourth, defining rules
that take account of moral hazard and adverse selection\(^{(1)}\) is difficult because this is a human issue and separations and their consequences are considered in part to be attributable to behaviour (and not an exogenous inevitability, despite their statistical regularity). What kind of autonomy should be left to insurers in determining premiums based on the policyholders’ risk profile? Recent developments in suicide insurance have raised similar questions and shown how difficult it can be to assemble an insurance policy. Yet suicide is a risk with a much lower rate of occurrence and for which forward planning makes little sense. In the end, the principle of coverage has been accepted, with a waiting period (generally one year) and capping mechanisms, and with a principle of preference for guarantees on home mortgages\(^{(2)}\) (Courtieu, 2002; Kullmann, 2002).

The last problem concerns the situation of uninsured households. We can leave them to the hazards of life post-separation or help to insure those who, given their income, are unlikely to obtain insurance.

Methods of “protecting” against the negative consequences of divorce based on transfers between former spouses are available only to couples with substantial wealth or income or if the husband (in general, the wife more rarely) is solvent at the time of the divorce. These coverage methods are uncertain and rather inequitable, as is the use of voluntary insurance. State intervention to support the standard of living of families after separation is thus indispensable.

*The state plays a multiple role in supporting divorcing or separating parents*

While the choices of parents should be respected, the state intervenes in at least three respects, ensuring its tutelary and judicial functions as well as its function of financial and social protection.

The state plays a tutelary role by determining the principles to be respected by the parties and the procedures for their implementation. This applies to decisions on child support and “compensatory allowance” payments, with the state ensuring that the child’s interests are respected and that none of the parties are disadvantaged. To help judges in their work and foster agreement between parents, it distributes decision-making tools such as (guideline) scales, developed by the ministry of justice, for setting the amount of child support.\(^{(3)}\) It also provides the receiving parent with the relevant tools for recovering unpaid amounts of child support. It could define public policy rules for separation insurance policies, as it did for “responsible contracts” in supplemental health insurance.

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\(^{(1)}\) In insurance theory, moral hazard is the risk linked to the fact that a policyholder may behave with less caution. Adverse selection is the concept whereby high-risk individuals take out more insurance policies than other people, leading to an unfavourable “selection” for the insurer.

\(^{(2)}\) Article L. 132-7 of the French Insurance Code.

\(^{(3)}\) The High Family Council report suggests ways of improving these guidelines and the development of similar guidelines for “compensatory allowance”.
The state also plays a judicial function, with 250,000 civil proceedings, whether for initial decisions or revisions, and 5,000 criminal proceedings, in all likelihood the most painful.

Lastly, the state has a function of financial and social protection. As parents become poorer after a separation, the state is required to introduce benefits that partly offset that impoverishment, for those with the most modest incomes at least. This is the case in France. Lone parents have been able to qualify for benefits since the creation of the lone-parent benefit (Allocation de parent isolé) in 1976, as lone parenting is considered to generate particular difficulties. The main welfare schemes are “family support allowance” (Allocation de soutien familial, subsidiary to a maintenance obligation, however), lower taxation for lone parents (approved in all cases) and increased RSA (Revenu de solidarité active) welfare benefit. Lone-parent families also have higher ceilings for some benefits, and the income of the ex-spouse is “neutralized” when calculating the income basis on which the right to benefits is reviewed. However, our system takes poor account of the parents who do not have primary custody of the child (with the exception of the possibility of sharing child support in cases of alternate residence and the guidelines for setting child support payments where the type of “right of visit and accommodation” is taken into account). To favour co-parenting and bonding between the child and the parent without primary custody, the High Family Council has also proposed that custody of the child be taken into account when calculating the housing benefit of the parent exercising his or her “right of visit and accommodation”.

There are also “general” family allowances, to which lone parents, often on low incomes, are generally entitled (even including means-tested allowances). Likewise, lone-parent households, more affected by poverty, are often recipients of minimum welfare payments, such as the RSA, the last safety net of our welfare protection system. The “guarantee against unpaid child support” (Garantie des impayés de pension alimentaire), generalized on 1 April 2016, can also be seen as a guarantee of income – corresponding to the amount of “family support allowance (ASF, roughly €100 per month per child) – for lone parents receiving a low level of child support.

The public authorities also support families by providing them with services, often at below-cost prices. These include child-care places for young children, which can contribute both to the ex ante coverage of divorce risk, by improving the work-life balance, and ex post support when lone-parent families take priority in the allocation of places.

The differential impact of separation on women and men

The loss of economies of scale following separation is not reducible. It is the counterpart of the economies of scale made possible by forming (or reforming) a couple. However, action can be taken on asymmetries in different areas (occupational and domestic: the asymmetry of income, employability,
child care, etc.) that (understandably) appear to be the main factor behind the high costs following separation or divorce and the fact that women generally find themselves in more difficult situations than men. Some of the measures to guard against financial losses following divorce or separation – such as remaining in the job market and dividing parenting tasks more equally – can be taken ahead of the separation, while still living as a couple.

The coverage of divorce risk (through “compensatory allowance” or another means) poses a dilemma concerning the potentially perverse effect of *ex post* protection against the risk of income loss relating to specialization in the couple: might the existence of such protection actually serve to maintain such a situation? This seems highly unlikely in the case of “compensatory allowance”, which does not appear to play a major role in the organizational choices of couples, but the question might arise with a better known and more predictable insurance system.

In the article, the way in which specialization within the couple should be viewed remains ambiguous. Is specialization “optimal” or rather a major source of difficulties after separation? The scope and time frame associated with each of these cases are probably different, casting doubt upon the supposed “rationality” of the choices made by the partners in a couple.

The article mainly deals with the financial consequences of divorce or separation, principally for mothers. The negative impact for fathers lies elsewhere, in the risk of losing contact with the children (Régnier-Loilier, 2013).

The impact of separation on men and women – who are affected differently – is an important question. But it is also useful to examine the situation of children. Apart from the economic impact on children, there are few studies based on French data that analyse the effects of parental separation from the child’s viewpoint.
References


The Fig Leaf of Economic Theory

For those interested in the mechanisms of conjugal separation, the article by Cécile Bourreau-Dubois and Myriam Doriat-Duban, based on purely theoretical concepts of orthodox economics, may appear somewhat disconnected from reality. The authors ask, for example, whether divorce is an exogenous risk – a random event independent of the will of the partners – or endogenous – tied to the partners’ decisions, including their potentially “incautious” behaviour: “They can act upon the probability of divorce, for example by being faithful and attentive to the other or investing in the household” (p. 462). As sociologists working on the legal aspects of conjugal separations (Collectif Onze, 2013), we believe that it is essential to lay down the abundantly documented socioeconomic facts that the article helps to mask.

The article is based on a temporal division between “before” and “after” the divorce. This division seems logical, but it creates blind spots. “Before” refers only to conjugal life; the partners’ situation at the time they split up is regarded as the result of decisions they took about “optimal” specialization during their conjugal life; no mention is made of prior factors that might determine those choices. Typically, they do not ask why it is usually women who are most productive in domestic labour and why it is “optimal” for men rather than women to invest in their professional careers. And yet there is no lack of answers to that question. Gender studies show that as children, girls and boys are unequally familiarized with domestic work, through the games they are invited to play and because they do not identify in the same way with the women they mostly see doing this kind of work – mothers, childminders, daycare and nursery school staff, domestic helpers etc. Although the egalitarian ideal is increasingly shared by couples, it is women’s greater familiarity with the gestures that weighs more heavily in the balance (Kaufmann, 2011). At school, girls are pushed towards tracks that are less valued on the job market, even though their academic results are better (Baudelot and Establet, 2006). Later, they face discrimination in employment throughout their working lives (Maruani, 2011), notably in terms of wages (Silvera, 2014).
From the existing literature it is clear that the terminology of choice is not adequate where women’s work is concerned. Take the example of part-time workers, 78% of whom are women. It has been amply demonstrated that the distinction between “involuntary” and “voluntary” does not reflect the reality of the female labour market and women’s internalization of their family constraints (Angeloff, 2000). Their specialization in domestic labour is not a matter of choice but a product of social history. Yet the authors describe it as the result of decisions negotiated between two individuals, referred to in neutral terms as “partners”, “spouses” and “parties”. Cécile Bourreau-Dubois and Myriam Driot-Duban describe the impact of this specialization on women's economic situation after separation as “private risk”. They then try to distinguish these “private costs” from the “negative social externalities” of break-up (a reduction in the children’s human capital as they grow up in impoverished lone-parent families, increased gender inequality in a society that has social justice as a stated objective) – as if it were by chance that these private conjugal arrangements lead to a society-wide situation of gender inequality and poverty for the children, most of whom live (again as if by chance) with the mother. By making the contrast between private and social costs, the authors mask what feminist studies have long since established: that the private and domestic are social and political issues (Fraisse, 2001). In so doing the authors help, in their own way, to conceal men’s exploitation of women in the home and the world of work (Delphy, 2015).

Given the persistent inequalities in the job market and the inertia of differentiated male and female socialization, the authors’ hypothesis that the legal marriage regime and alimony are disincentives for women to invest in a professional career seems somewhat absurd (on that basis, why should these arrangements not equally well constitute an incentive for men to foster their wives’ careers?). The authors’ reasoning relies on the idea that the spouses have perfect knowledge of these legal provisions when they form their couple, and that they exercise their contractual freedom. The authors say nothing about the reasons why some couples marry and have the benefit of these provisions and others do not. They say nothing about the rather particular profiles of couples who do sign notarized marriage contracts, yet we know that these are the wealthiest couples, and (if the contract is for “separate property”) the most unequal (which seems to show that contractual “freedom” is exercised for the benefit of the stronger), and come from families where such practices are common (Frémeaux and Leturcq, 2013; Gollac, 2011). Both early studies (Carbonnier, 1964), and recent ones (Belleau, 2011), show that most people do not know the legal consequences of their marital situation in the event of separation, and also that knowledge of the law and of legal procedures, and their proximity to lawyers available to provide help, are very unequally spread across social classes and genders.
By contrasting “before” and “after” divorce, Cécile Bourreau-Dubois and Myriam Dorian-Duban are simply ignoring the moment of the divorce itself. They leave aside the way things work in practice: how those involved in a conjugal separation process (ex-partners, judges, the family benefits authority, tax authorities, lawyers, notaries and lawmakers) assess the costs of divorce and actually organize their coverage. Here, economic theory reasons without reference to reality, institutions or the prevailing unequal social conditions, and invents divorce insurance contracts (even imagining a clause “limiting domestic specialization”), though it is hard to imagine who might actually subscribe to one.

When we look at divorce courts in France, we find that the cost of separations, especially the cost of child rearing, is considerably underestimated, and that it is generally the mother who pays. In one-third of cases, the divorce judge imposes no child maintenance, considering the parent without custody (very often the father) to be “impecunious”, which opens the way for the family benefits authority to pay the mother a lone-parent allowance (€100 per month per child). In the other cases, child maintenance is set at a low level, with a mean value of €140 per month per child (Belmokhtar, 2014). Spousal alimony is increasingly rare (20% of divorces) and the amounts awarded decreased in the 2000s (Roumiguères, 2004). This is because magistrates, whether male or female, assume that childcare is always the woman's natural responsibility, but that she must take charge of her own finances. It is also a result of the conditions in which the judges make their decisions: 800 cases per year each, with few investigatory powers. In those conditions, the judicial system favours agreements negotiated between the parties, which the judges have only to ratify (Théry, 1993). But such agreements are the result of an imbalance of power between the ex-partners and of unequal access to professionals who can help them defend their rights (Collectif Onze, 2013). This judicial reality is not reflected in the principles of law described by the article's authors; and it is related in complex ways to the work of the family benefits authority, the tax authorities and the notaries – institutions with which men and women of different social classes have very different relationships.

Far from enabling the state to “ensure the material well-being of children with divorced parents” (p. 470), the guidelines for child maintenance rates recently established in France help to legitimate a limited conception of the cost of raising a child. These guidelines are intended to follow jurisprudence while drawing on the definition of the cost of a child established by public statistics producers from family budget surveys (Sayn et al, 2012; Hourriez et al, 1997). They therefore ignore the non-monetized value of the domestic labour supplied by the custodial parent and the opportunity cost to that parent, usually the mother, of raising the children. The maintenance amount is mainly based on the income of the non-custodial parent; it takes no account of the economic situation of the parent the child is living with, although that is what ultimately
determines the child’s living standard. These guidelines, which one of the article’s authors helped to draw up, thus result in poorer fathers paying less child maintenance, although they are also the fathers whose children are living with the poorest mothers.

So the paper by Cécile Bourreau-Dubois and Myriam Dorian-Duban should not be read as an exotic theoretical analysis of the costs of divorce, somewhat disconnected from reality. Above all, it helps to mask the fact that the largely underestimated costs of conjugal separation are almost entirely borne by women (Bonnet et al, 2015). The political applications of their analysis, such as the guidelines for child maintenance rates (and soon for alimony payments), exacerbate this state of affairs. Our work as sociologists is not only to show, as is suggested by their references to the sociological work of François de Singly and Claude Martin, that despite this reality, women also gain something from separation in terms of identity building or an escape from violence. Our work as sociologists, like that of historians, demographers, anthropologists, political scientists and empirical economists, is to understand the socioeconomic and historical mechanisms by which women end up paying the price for their hard-won right to freely unite with a partner and freely separate from him.
Références

The Diversity of Legal Systems in Europe: There is No “Average” Law

The article is interesting in that it looks at the coverage of divorce costs from the standpoint of economic analysis of law, acknowledging from the outset that ideas about marriage have changed in recent decades, at least in the West, and considering the three institutions that can insure social risks – the state, the family and the market, as highlighted by Esping-Andersen. However, it does not seem to have achieved its goal. The authors write in terms of a kind of “average” legal framework combining elements borrowed at different moments from France, England and unidentified American states, mainly gleaned from economics articles published by authors from the countries in question at different times. Moreover, they only partly consider the question they raise in terms of the potential contributions of state, family and market, without gauging the full extent of the transformation of marriage, whose reality they nonetheless acknowledge.

Trying to argue in terms of a general body of divorce law embodied in combinations of functional equivalents leads the authors into error and confusion. Scottish private law is not the same as English private law; one cannot speak of the private law of the United Kingdom. There is no separate property system in the common law marital regimes of England or Germany. To the extent that one can talk about a marital property regime under English law, the existing system makes complete community of property mandatory, does not recognize separate property and allows community of property to be limited only under certain conditions, which are left to the discretion of the divorce judge. In Germany as in France, the legal system limits common property to assets acquired in common by the spouses (Zugewinngemeinschaft in German, acquêts in French). “Maintenance” (alimony), which is still at the heart of divorce law in countries that have inherited the English legal tradition, is not the functional equivalent of the prestation compensatoire (“compensatory allowance”) of French law, especially since the 2004 reform. A prenuptial agreement in those countries is not functionally equivalent to a French “marriage contract”. Divorce judges in the English law tradition can and sometimes do

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reject the prenuptial agreement if they think that upholding it would not enable the less well-off partner to maintain the standard of living they are entitled to, and especially if it might lead them into poverty. By contrast, only in exceptional circumstances can a French judge overturn a marriage contract; it is a rare and radical step. Thus a prenuptial agreement by no means provides the same certainty as a marriage contract.

How have the transformation of marriage over the past 50 years and factors that depend on the state, the family and the market come together in different countries?

The question of divorce costs arises because divorce has become common, and divorce is now common because the second half of the twentieth century saw a deep transformation in the moral and doctrinal foundations of the conjugal relationship. In a short space of time, people in the West have abandoned the concept, inherited from Catholicism, of the marriage bond as an indissoluble tie in which the exchange of vows at the moment of the celebration commits a person for life. In its place they have adopted a neo-Roman concept in which the conjugal relationship (marriage, consensual union or civil partnership) is based on affectio maritalis, i.e. continued mutual consent. We have shifted from the lifelong conjugal relationship to one that occupies one period in the life of each partner. At the same time, we have seen profound changes in relations between the sexes, in law and in daily life. Family law, and not only marital law, has been trying for half a century to adapt to the new ideas about the couple and relations between men and women, but, apart from the Scandinavian countries where the problem was tackled early on, we are still groping in the dark.

The promised economic analysis might have been instructive if it had really taken this change as its starting point. Instead, the article discusses the economic model of marriage as a system for maximizing domestic output by means of specialization, as if marriage could still be represented in this way when it is no longer based on the foundations that prevailed at the time the model was put forward. It is no longer realistic to think of the couple as a functional unit. The contemporary couple is destined to split up – partners enjoy their happiness while it lasts – and divorce is not an unpredictable catastrophe. A researcher who discusses the contemporary couple without starting from this principle is as unwise as lovers who delude themselves about the risks inherent in their relationship. The contemporary couple is a temporary association and it is more instructive to study it by modelling the relationship that binds the two protagonists than by talking about their specialization within a unit.

The article does enumerate preventive measures that each partner may take: personal savings, divorce insurance, remaining in paid work. But, surprisingly, it presents them without emphasizing the continuity solution. If
the couple is viewed in this light, it is seen as an association of two units with a tension between them, not as a production unit in which the two partners’ interests merge. Moving from one conception of the couple to the other is a conceptual break, and it is this break that has created the object the authors are studying. It is hard to see how one can fail to focus on the difference.

That said, a critical examination of the model is called for. Individual savings will not help to cover the costs of divorce for the saver if, under the country’s legal system, they are included in the common property to be divided on divorce. And not all community property systems are equivalent. If such savings are not part of the assets to be shared out, they can be criticized because they reduce the amount to be shared and so widen the wealth gap between the spouses. Divorce insurance is presented as a realistic measure, but the article the authors cite on the subject concludes that it can never play a major part, the most obvious reason being, of course, the magnitude of the moral hazard. Being able to count on a pay-out from a divorce insurance policy when the law allows one spouse to apply for a divorce without citing a cause, is like a fire insurance policy that pays out if you set fire to your house. Continued employment by both partners for the duration of their union seems to be the only effective private measure, despite the practical difficulties (cost of childcare services, work-life balance), which vary from country to country.

The way the authors use the word “private” leads to some confusion. Provisions governing matrimonial regimes, the sharing of assets on divorce, alimony and child maintenance, and the degree to which the law recognizes agreements between the spouses, are all part of what is called private law, but it is still law: it is not the private individuals who decide but the legislator and the judge, two of the state’s three powers. As long as the legislators do not require couples in consensual unions to abide by the rules that govern marriage, de facto partners make their own decisions, for better or for worse, but spouses do not. The public policy provisions of private law are not private decisions. The distinction may pass unnoticed in a country where private law authorizes and respects marital property contracts, but in a country where, in practice, private law makes no provision for agreements between spouses, the distinction is crucial.

The roles of state, family and market under different legal systems

The state-family-market triad that Esping-Andersen has drawn attention to is used not so much to classify insurance instruments as to analyse how the elements specific to each of these institutions combine to form a welfare system in each country. It is particularly important to see these combinations clearly when considering the law. The three elements in Esping-Andersen’s original classification correspond to three traditions in private law in Europe. One is family-focused civil law, which has adopted from late Roman law the maintenance obligation between ascendants and descendants; one is English law, which is
“liberal” in that it does everything possible to ensure that individuals do not become a burden on the community; and the third is Scandinavian law, which developed without undue influence from either Roman or canon law and which, between the marriage reform of the 1920s and the reform of welfare and family law in the 1970s, has done away with most maintenance obligations between related persons.

Examining coverage of divorce costs from the standpoint of these combinations might be a long process, but we can glimpse its usefulness by looking at two radically different European cases. In England, women are considered to be still disadvantaged in the world of work and in the division of tasks in the home, and efforts are made to remedy the consequences of this inequality while avoiding all forms of social redistribution. The redistribution is strictly between the divorcing spouses; all the couple's assets are divided equally and alimony is paid to the less well-off party, until death if necessary. In Sweden, right from the 1930s, 40 years before J. Caldwell's work, it was recognized that industrialization and urbanization created conditions that reduced fertility, and that the only way for couples to have the children they wanted was to reduce the direct and indirect costs by partly transferring them to the community. The Swedish welfare system was born of this economic analysis of fertility. Marital law had been reformed between 1920 and 1925 with a recognition that the law should not force unwilling couples to continue living together. From the 1950s, public services were developed to offer women stable, well-paid jobs that the private sector was not supplying in sufficient number: social policy fostered women's economic independence. Parental leave is now designed to encourage fathers as much as mothers to stay at home with their new child, so reducing the time when the mother is not in paid work, and splitting between the two parents the impact of parental leave on careers and pensions. Social redistribution cuts divorce costs and reduces the inequality that may ensue: it is prevention rather than compensation.
Should There be a System of Alimony for Unmarried Couples who Separate?

The article “Covering the Costs of Divorce: The Role of the Family, the State and the Market” analyses the economic risk associated with divorce, and public and private coverage of this risk. The authors mention, furtively but at least three times, that the risk they are discussing applies to unmarried as much as to married couples. And indeed, the various divorce-related costs evoked by the authors also exist for unmarried couples who separate (though the amounts involved may be different). Living standards drop because economies of scale are smaller after separation; human capital is lost because of specialization in domestic labour prior to the break-up (leading to reduced employability and a smaller pension for one of the partners); there are collective costs in terms of child poverty owing to reduced living standards (with a long-term impact in terms of aggregate human capital); there are also costs linked to gender inequality, and procedural expenses. So if the risks are of a similar nature, one would expect the state to offer the same instruments for covering them, regardless of marital status. And in fact it does so in several respects. For example, welfare benefits for lone parents and people on low incomes, back-to-work incentives, child support guidelines, family provisions in pension entitlements and some family-based tax benefits do not depend on marital status. So why, then, is alimony reserved for married couples only?

To address this question, we use the same economic reasoning as the article. If we consider that alimony is intended to cover basic needs, in that the separation penalizes one of the former partners in economic terms, even to the point where he or she (and the child or children) risks falling into poverty, then nothing justifies reserving alimony for married couples alone. We can draw a parallel here with child support, which applies to both unmarried and married parents, since the couple’s break-up in no way affects the parents’ responsibility for their children’s maintenance and education.

(1) Even though there is no divorce procedure, there may be legal expenses involved in soliciting a judge and a lawyer to set the child support amount, or notary’s fees for settling property issues, etc.
(2) We do not approach the issue from a legal perspective, since this is not the authors’ angle of attack.

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The question is more complex if we see alimony as compensation, and the union as a contract. When the union is formed, or when the partners make decisions later on, they establish a long-term contract under which the partner who, in the early part of their life together, specializes in domestic production (mainly child-rearing) and so invests less in the labour force, will profit from their investment later in life by benefiting from the other partner’s employment income (current or future). In the event of a break-up, the partner who has invested in domestic labour should be indemnified because the union has not lasted long enough for him or her to reap the fruits of their investment.\(^{(3)}\) Can this reasoning be applied regardless of marital status?

**Is specialization (and its consequences) specific to married couples?**

From a theoretical standpoint, the answer is certainly “No”. The theory of specialization in the model of family economics devised by Gary Becker makes no hypothesis about marital status. From an empirical and descriptive standpoint, some studies show that such specialization exists in unmarried couples, though to a lesser extent than in married couples (Baxter, 2004; Craig and Mullan, 2010; South and Spitze, 1994). From an empirical and analytical standpoint, however, we know of no studies that have analysed the impact of conjugal status (married versus unmarried) on the human capital (wage rate) of individuals living in couples.

Instead, the literature studies the effect of being married or unmarried in comparison to being single. The most recent literature on this subject shows that there is a (slight) marriage premium for men and an even slighter (or non-existent) premium for men in unmarried couples (Barg and Beblo, 2009; Cohen, 2002; Datta Gupta and Smith, 2002; Datta Gupta et al., 2007; Dougherty, 2006; Killewald and Gough, 2013; Mamum, 2012; Pollmann-Schult, 2011; Taylor and Bardasi, 2008).\(^{(4)}\) A small marriage premium has also been observed for childless women, but no statistically significant effect of being in a couple for mothers (Datta Gupta and Smith, 2002; Dougherty, 2006; Killewald and Gough, 2013). By contrast, the literature quite clearly agrees that motherhood carries a penalty (for an overview, see Jeandidier and Lim, 2015). We can draw two conclusions from these studies. Marital status does not seem to be a strong determinant of specialization or of the consequences of specialization; but whichever the type of union, if there are children, the consequences of motherhood are undeniable. So from this point of view, where the couple has children it does not make sense to restrict alimony to married couples alone. This is precisely the recent conclusion of Canada’s consultative committee on family law (2015), a committee

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\(^{(3)}\) As the authors explain, this compensation mechanism also constitutes an ex ante incentive to stay together, or to make career choices according to the likely level of compensation.

\(^{(4)}\) The difference in the premium for men in marriages and for those in non-marital unions could be interpreted as a consequence of lesser specialization in unmarried couples, but it should be stressed that, to our knowledge, no study has explicitly tested the statistical significance of this difference.
of legal experts who argue in favour of a parental compensatory allowance independent of marital status.\(^{(5)}\)

**Does the nature of the contract differ by marital status?**

From the standpoint of law, legal experts would say that marriage being an institution,\(^{(6)}\) it provides sufficient grounds for treating the two kinds of couples differently. From the economic standpoint, the question is less clear-cut. It seems to us that whatever the marital status, there is an implicit, unwritten contract; the partners trust each other and legal marriage changes nothing. The career choices the couple make, with the promises that go with them, are not explicitly a part of the marriage institution. But it could be objected that alimony is an aspect of the marriage institution, that the implicit contract takes it into account, and therefore that, all other things being equal, the implicit contract is not the same for married and unmarried couples. This seems to be the hypothesis developed in Landes' theoretical model (1978): in marriage, the spouses adjust their career choices according to the payoff they expect from alimony in the event of a break-up (and hence for an unmarried couple the payoff is certain to be nil). However, the pertinence of this argument is doubtful, at least in the case of France: do couples really make their career and fertility decisions in full knowledge of articles 270 and 271 of the Civil Code? Who can reasonably estimate the amount of alimony far ahead of time, when there are no official guidelines, and when judges and lawyers themselves admit to being ill-equipped to set the appropriate rates? Clearly, it is fair to doubt the effectiveness of alimony as an *ex ante* incentive. We can therefore consider that the implicit contract is of the same kind whatever the marital status.

We thus find few arguments in favour of maintaining this unequal treatment between married and unmarried couples. Regardless of marital status, one of the partners, usually the woman, is making an investment when they stop paid work to look after the children\(^{(7)}\) – despite the current (slow) behavioural trend towards less specialization of labour between partners. Alimony should be extended to unmarried couples so as to acknowledge that investment. This would also give added strength to the policy of gender equality.

\(^{(5)}\) This would be in addition to child support, which follows a different logic: child support divides the current and future costs of the children between the parents, whereas alimony compensates one of the partners for the investment they have made in the children’s past education.

\(^{(6)}\) From the legal point of view, marriage is not a contract but an institution, because the parties cannot change the rules of marriage, which apply to everyone in the same way.

\(^{(7)}\) We suggest limiting alimony exclusively to parents because (a) the career choices deserving of compensation are mainly connected with motherhood, and (b) parenthood confirms implicitly— in a certain manner, although this is debatable and needs to be examined further – the veracity of the union (while the cohabitation certificate and civil union do so explicitly).
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Reducing Gender Asymmetries Due to Divorce

A jurist cannot but welcome an economic analysis of divorce that seeks to assess the scale of the “risk” resulting from separation and to determine how that risk can best be covered. The law has set up numerous provisions to more or less directly compensate for the economic consequences of divorce, including alimony, arrangements for setting and enforcing child support payments, equal division of property under a community property regime, parenting support tools and welfare provisions for lone-parent families and various back-to-work incentives for the spouse who has stopped work to raise one or more children.

While the study presented here reviews and comments on the effectiveness of these various measures, it will mainly be noted for highlighting the persistent gender asymmetry associated with separation, to the detriment of women, notably because they invest more in domestic work and childcare during the marriage and because after the divorce, in most cases, the children live with their mother.

This asymmetry extends well beyond the question of divorce, though it is particularly visible when divorce occurs. A more general question is how to restore gender equality at a time when women still perform most of the domestic and parenting tasks.

French law has tended to opt for a system of redistributive justice designed to compensate for the economic inequalities created by a gendered division of labour in the family. It is this redistributive justice that underlies the French community property regime, under which both partners’ earnings, wages and goods bought during the marriage go into a common pot. The same ideology explains why one factor taken into account when setting the alimony rate is the impact of the career choices made by a spouse during the marriage, or the choices made to favour the other spouse’s career to the detriment of their own (Article 271 of the French civil law code). We can be glad that there are measures to compensate for the inequalities resulting from women’s investment in family life. But that said, the ambivalence of these measures is widely highlighted. They may seem to favour women by giving them a degree of financial independence that enables them to divorce and, at the same time, to penalize

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women because, being merely compensatory, they perpetuate or mask women’s over-investment in the family compared to men (Pichard, 2014; Revillard, 2011). However, this kind of criticism necessarily leads to a dead end because taking domestic labour and childcare into account is a factor both for equity and for maintaining inequalities. This is a result of the purely compensatory principle adopted to cover the economic risks of divorce.

If redistributive reasoning leads to such a dead end, we need to look for other solutions. In this connection it would be interesting to use the work of the American philosopher Nancy Fraser who assesses the effectiveness of policies for achieving equality. The authors compare the efficacy of various public policies designed to foster equality. One such policy uses compensatory measures to eliminate the cost of the difference between men and women. The aim is to place a value upon the caregiver’s work by equitably rewarding their investment in the family. The limitation of this policy is that it provides no way of obliging men and women to share tasks equally. A genuinely egalitarian policy would give an incentive to share childcare equally. So as well as compensatory measures, we should give men incentives to take an equal share in domestic and parental work. “The key to achieving gender equity in a post-industrial welfare state, then, is to make women’s current life patterns the norm for everyone.” (Fraser, 2012, p. 186). This would involve a set of measures to change conceptions of men’s and women’s roles both at work and in the family. Examples might be parental leave and benefits paid equally to both parents on condition that they both spend the same amount of time with the children.

So there is a different way of thinking about the cost of divorce, wherein the existing system of resource redistribution, whether private or public, is seen to be largely inadequate because it maintains the principle of inequality by merely compensating for its effects.

Genuinely reducing the economic risk of a divorce depends on reducing the economic divide between men and women in the worlds of work and the family. If the two partners have equal economic independence through their work, and both are equally involved in family life, the economic risk of divorce will obviously be smaller. Working towards this is an urgent priority.

**References**


Alain Trannoy*

The Key Issue in Divorce: Children

Joseph Stiglitz often jokes that the “most important decision in life is choosing the right parents”. So is the “choice” of being born in a household of divorcing parents really a poor one? This aspect, relatively unexplored in the article, calls for additional developments, after indicating, in agreement with the authors, that it is largely the parents’ responsibility if they choose a partner with whom they are unable to live in harmony.

Divorce can be interpreted schematically as an incompatibility in the mating procedure that, in western societies,\(^{(1)}\) is left entirely to individuals and no longer concerns the family, as was the case in traditional societies. This incompatibility may arise because couples adapt poorly to unforeseen events (such as upward or downward career mobility of one of the partners) or cannot cope with the difficulties involved in cohabitation. But the authors do not address the fact that although divorce results from decisions taken by individuals, a certain amount of social determinism may be at play. The decision to divorce may be influenced by one’s own parents’ divorce, or there may be an intergenerational correlation between unfavourable characteristics from the original environment and the probability of a divorce in the population of descendants.

For example, do children of divorcees divorce more than the others? Can union instability or mismatches be transmitted from one generation to the next? If such is the case – and this point is not examined in the article – we believe that the reasoning of John Roemer (1998) applies (see also Roemer and Trannoy, 2015). Roemer distinguishes between “circumstances”, including the factors of influence imposed on the individual such as social environment and the hazards of life, and “effort”, a general term designating factors for which the individual can be held responsible. A systematic difference in choice on average is a circumstance, a characteristic independent of individuals. As with any circumstance, it should be addressed by a compensation policy on the part of the public authorities to re-establish equal opportunity. What form could

\(^{(1)}\) This is in no way a value judgment regarding the merits of the mating procedure in western societies with respect to that of traditional societies.

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that policy take? Habitual thinking would advocate monetary redistribution, while a vision informed by equal opportunity would prefer a preventive policy over a curative policy, at least where an ex ante approach is preferred over an ex post approach. Vouchers could be provided to partly cover the cost of consulting relationship counsellors, psychologists or psychiatrists, even though relationship counsellors can already be consulted free of charge at family planning clinics. In the absence of children, alimony between former spouses belongs to the private domain. In theory, a Coasian analysis (Coase, 1960) can be applied to the negotiation of alimony between the two former spouses, whereby the individual instigating the separation should compensate the other individual unless, by common agreement, the two individuals wish to recover their freedom and consider alimony in the light of the specific investments made in the couple. The author makes an accurate analysis of the imbalance between the two sexes. In most cases, men have invested more in the job market, the returns of which are, in theory, independent of marital status, even if a number of studies highlight a marriage-related “wage bonus” that may result from a selection effect or a greater investment. Women, particularly those who stopped work to take care of children, have generally invested more in domestic activities, the yields of which are specific to the marriage. The analysis could be extended to pension schemes. With funded pension schemes, the capital accumulated by the two partners could be divided in two, as could the wealth acquired during marital life. Under a points-based pay-as-you-go pension scheme, like that in Sweden, the total points accumulated by the partners could also be divided between them. The pay-as-you-go scheme in France is not unified and pensioners cannot claim their entitlement until they actually retire, so it is unfortunately not amenable to this sharing solution. The pay-as-you-go pension scheme can also be a source of inequality at the moment of separation if it encourages individuals to save too little for their old age. In such cases, the wealth accumulated prior to separation and which can potentially be shared will be lower than that accrued in a funded pension scheme. But in the case of France, this argument needs to be qualified since the savings rate of the population as a whole was still around 14.5% in 2015 according to INSEE, above the level observed in many other countries.

While parents are responsible for divorce, children are its passive victims. For the latter it is clearly a circumstance, at least if being a child of divorced parents confers a disadvantage in education and, as a consequence, in the job market, as well as in social and private relations. The classic conflict between the principle of natural reward and the principle of compensation applies with particular force here. Under the principle of natural compensation, whereby people should not be compensated for factors for which they can be held responsible, parents must accept the consequences of their decision to divorce. As children are linked to their parents, at least until their majority, no compensation for the disadvantage is awarded. But if priority is given to the principle of compensation, then public policy must introduce provisions
enabling the children of divorced people to overcome their disadvantage. Social policy in France largely favours the principle of natural reward. This is clearly illustrated in a comparison of the income tax rules applying to divorced people and those applying to widows and widowers who still have dependent children. Divorced people enjoy no specific tax breaks and have the right to the same tax reductions as all lone parents with dependent children (the family with one dependent child is counted as 1.5 “parts” in the “quotient familial” system). However, widows and widowers still raising children are taxed in the same way as married couples or civil partners with dependent children, i.e. the family with one dependent child is counted as 2.5 parts (tax advantage capped at €4,672 in 2014). This differentiated treatment is interesting in that, even if Marc Fleurbaey and François Maniquet (2012) consider that one of the principles can take priority over the other, philosophers and economists working on the concept of equal opportunities tend to give priority to the principle of compensation. Let us imagine that we follow this route. The key question, then, is to ascertain whether children could potentially be targeted rather than parents. No thought is given to this matter in social policy. The only tool available in the fiscal and social arsenal for indirectly targeting divorced parents is the tax reduction for lone parents (widowed or divorced). The reduction applies to people living alone and having raised alone, for at least five years, a child who is no longer dependent. Before 2014, the five-year threshold was not required to qualify for this provision, which reduced income tax payments within a limit capped at €897 (in 2014) – a rather modest reduction. The grounds for this provision are far from clear from the perspective of equal opportunities. Parents benefit from it even though they are responsible for the divorce, which in theory runs counter to the principle of reward; and it can help the children indirectly only, especially since the children have already been raised. A recommendation directly concurring with the principle of compensation would be to help children by targeting the goods that concern them, through a policy of vouchers, mainly for the comfort and quality of housing, private lessons, and holidays. This policy will be criticized as paternalistic, and it undoubtedly is, since it involves helping children without overly helping parents. The version of this policy for children who have entered adulthood, mentioned at the beginning of this commentary, would constitute the second part of a policy designed to offer the children of divorced people greater chances of success in their adult lives.
REFERENCES


Under What Conditions can Divorce be Considered as a Risk?

As with many life events, divorce is a subject for discussion and debate involving a broad range of disciplines in the humanities and social sciences. Economics is not generally at the forefront of these disciplines; it is lawyers and psychologists who are first in line to accompany conjugal trajectories. Demographers are also widely called upon to examine changes and variations in the phenomenon, providing the necessary basis for formulating possible interpretations of the reasons for these changes, which occur in time, space and, naturally, the social space. Sociologists and economists are part of this second circle of experts interested in the causes and, above all, the consequences of divorce.

The article by Cécile Bourreau-Dubois and Myriam Doriat-Duban is unquestionably a useful contribution in this respect. It provides a basis for an actuarial analysis aimed at judging the nature of this “risk” and envisaging the grounds and methods for covering it. The article proposes a model that could probably be converted into a formula at some later stage.

Considering divorce as a “risk” is not new. For our part, we have proposed the notion of “solitude risk” (Martin, 1993). Depending on the angle chosen, divorce can be seen as a risk in the insurable sense of the term, as is the case here, or in the sense of a threat. The latter raises the question of the social construction approach to risks, including controversies about the meaning to be attributed to covariations, or disagreements over the attendant independent and dependent variables.

One of the most significant examples of this battle concerns the effects of divorce on children. A considerable share of the scientific literature in the social sciences, particularly in the United States, has focused on this question. However, an attentive review leads to the identification not just of major disagreements on the idea that divorce is an event whose effects work mechanically to the detriment of children’s well-being, but also of disagreements over the systems used to test such a causality. For example, many authors have

* CNRS, (CRAPE-Arènes, UMR 6051).
questioned approaches that tended to merely compare (even by matching them) children raised and socialized in households of married couples with children whose parents have divorced. The independent variable, likely to be severely neglected, concerns conflict. Without going further into this example, we can clearly understand the nature of the discussion and the importance of diversifying the situations and cases to be compared, such as those of children socialized in couples who have remained married despite permanent and violent conflict. Consequently, we have proposed the idea of assessing the “risks of non-divorce” for children in situations of conflict (Martin, 2007).

In short, while the economic dimensions of divorce can potentially be informed in terms of its direct and indirect costs, it is more difficult to address the medium- and long-term consequences or the effects on children. The risk, when keeping to an “all other things being equal” standpoint, as is the case with part of the North American literature, is to generalize the “depreciation of the human capital of future citizens” caused by divorce to a large population of individuals, children, teenagers and young adults, who may nonetheless be capable of converting the ordeal of divorce into a strength for their future existence and human capital. The question to be asked, then, is how thinking of the kind proposed here could integrate in its bundle of variables this phenomenon of resilience or of conversion of the ordeal into an alternative strategy to avoid the silent mechanics of what are considered as normal or successful trajectories, at a given time and a given level in the social space. Another example illustrates the complexity of the variables in question: the fact that young people having experienced their parents’ process of divorce and lived with their mother as a lone parent leave education earlier on average than those socialized in a stable couple is often seen as a possible sign of “academic failure” or as a penalty linked to divorce. But that would be to neglect the fact that this effect may also correspond to a strategy, desire or need: that of becoming independent at a younger age and entering the job market sooner, even if this means shortening an educational trajectory that in other circumstances could have been longer.

A number of other points could be discussed here, including the way the authors consider divorce as a particular risk because it results from the choice of at least one of the protagonists. Viewing divorce in terms of choice is once again highly questionable, and it naturally echoes the idea that divorce is caused in many cases by a lack of investment, effort and cooperation on the part of the protagonists. People often say that divorce numbers have increased because adults “throw in the towel” at the first sign of a problem. From that perspective, we could even ask ourselves whether we need to think about socially protecting individuals from these consequences, other than asking them to take out an insurance policy, as they would for driving a car. Thinking in terms of choices here is tantamount to considering as negligible all the factors that contribute to divorce, far beyond the question of choice. These
include the links (co-occurrences) between unemployment and divorce, between loss of social status and divorce, or between everyday living conditions, the gender division of roles or achieving a balance between family life, working life and divorce.

In other words, while it is very useful, and even necessary, to discuss the conditions in which divorce could be considered as a social risk, it is clear that we still have a long way to go if we are to avoid creating measures that are incapable of compensating for the inequalities generated by these ordinary accidents of contemporary life trajectories. Among the points to be pursued in this discussion, let us conclude by mentioning the indicators of well-being (or ill-being), which, looking beyond purely economic issues, could be taken into account in the design of measures to accompany divorce.

REFERENCES

Divorce is a key research topic in demography and a subject explored widely by other disciplines in the human and social sciences, including economics. This last discipline addresses divorce from various angles: family economics, as in the work of Becker (1981), the economics of law (Farmer and Tiefenthaler, 2001; Hiller and Recoules, 2013) and the economics of social policies (Aasve et al., 2007; Ananat and Michaels, 2008). The originality of our approach in the article “Covering the Costs of Divorce: the Role of the Family, the State and the Market” lies in its exploration of divorce from the standpoint of the economics of risk, showing that divorce can be considered as an economic risk defined by a probability of occurrence and a level of loss, which can give rise to different forms of coverage. Our approach can be criticized. Nevertheless, it has the merit of providing keys for articulating scattered discussions on divorce on the basis of concepts derived from economic analysis. This approach also nurtures debate in other disciplines in the humanities and social sciences, as highlighted by the contributions to this issue.

As pointed out in the introduction, divorce has a material effect on all members of the household concerned, women in particular. On the basis of these stylized facts, well documented in the literature, the article starts by identifying in a general manner, with no gender bias, the different types of costs resulting from a separation. We explore the various financial consequences of separations according to the specialization choices made during the union, underlining the gender-based nature of those choices. Our analysis also makes a distinction between costs of a purely private nature and social costs.

In economics, identifying a risk calls for subsequent exploration of the methods of covering and preventing that risk. Applying this approach to divorce enables us to determine the consequences of separation, as well as the possible reasons for those consequences (notably specialization), and to review all the existing coverage instruments (more numerous for divorced couples than for couples having lived in consensual unions) and potential coverage instruments.

From reading the contributions, it appears that our article opens up the way to more specific thinking on some of the instruments for covering the
economic risks of divorce, on ways of preventing these risks, and on the
distinction we make between the private and social costs of divorce.

For example, Jeandidier’s commentary focuses on alimony, raising questions
about the economic grounds for restricting alimony – in France at least – to
married couples only. He shows that the economic analysis is unequivocal:
there is no reason for limiting alimony to married couples once it has been
demonstrated that marriage and consensual unions have the same effects on
the employment trajectories of the partner specializing in domestic tasks.

Another way of limiting the financial consequences of divorce (and, more
broadly, of separations) consists in preparing for them *ex ante* rather than
covering them *ex post*. A possible solution is to take out an insurance policy
before the risk occurs, as mentioned by Fragonard, Gonzalez and Marc. But
this remains largely exploratory, as we have already demonstrated (Bourreau-
Dubois and Doriat-Duban, 2015). One way of preventing the risk, in the realm
of public policy, is to promote gender equality in couples by introducing
mechanisms that limit or discourage specialization during the union. Explored
in the article, this point is taken up by Leroyer, who calls for the development
of measures to encourage men to make an equal contribution to domestic and
parenting tasks, and, in a more polemical and partisan manner, by Bessière
and Gollac, who write that the gender-based specialization of tasks during the
union is rooted in earlier life, notably during childhood socialization. Beyond
the examination of the various coverage and prevention instruments, our
analysis could be extended, as suggested by Laplante and as we state in our
conclusion, by an international comparison to identify, in different countries,
the respective roles of the actors potentially involved in divorce risk coverage.

Lastly, our article underlines the social dimension of divorce costs, notably
through the consequences of separation on children. Debate may thus shift
towards the question of compensating individuals who have no control over
the events affecting them, as suggested by Trannoy. The loss in well-being
suffered by the children of separated parents could be covered through a
principle of compensation, with coverage provided by the community (in
opposition to the principle of responsibility, which would exclude parents from
the social coverage of divorce costs). Martin, for his part, stresses the importance
of pulling away from an overly pessimistic vision of the consequences of divorce
for children (though without neglecting it) by pointing out that divorce may
also generate positive effects. These effects are outside the scope of our analysis
but they also deserve to be explored.

The article “Covering the Costs of Divorce: the Role of the Family, the State
and the Market” fulfils a double purpose. It proposes an original approach to
divorce, seen as an economic risk that can be addressed by both prevention
and coverage instruments. It also serves to stimulate supplementary or critical
analysis from economists and from other disciplines in the humanities and
social sciences. The diverse range of discussions on divorce and on the ways
of addressing divorce in a constantly changing society confirms the interest of a research field which remains largely to be explored.

**ADDITIONAL REFERENCES**

