

# Why are Americans fighting over no-fault divorce? Maybe they can't agree what marriage is for

March 21 2024, by Marcia Zug

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"First comes love, then comes marriage"—so goes the classic children's rhyme. But not everyone agrees. Increasingly, the idea that love is the

most important reason to marry—or at least to stay married—is under attack. Republican pundits and lawmakers have been pushing back on the availability of no-fault divorce, challenging the idea that not being in love is a valid reason to end a marriage.

Speaking as a [professor of family law](#), I know such views aren't new. Zsa Zsa Gabor [once quipped](#), "Getting divorced just because you don't love a man is almost as silly as getting married just because you do." But while Gabor was probably joking, the Republican attack on [divorce](#) is serious.

## **A history of American divorce**

For most of U.S. history, getting a divorce was difficult. Many states [banned it entirely](#), while others permitted it only under limited circumstances—typically [cruelty, desertion or adultery](#). Unhappily married couples who couldn't prove such "faults" were effectively stuck.

Then, in 1969, California became the first state to [allow no-fault divorce](#)—meaning that a spouse could get a divorce simply by asking for it, without having to prove that their partner had done something wrong first.

After California enacted no-fault divorce, the rest of the states quickly followed. By 1977, 47 states permitted no-fault divorce, and by 1985, [all 50 states permitted some form of no-fault divorce](#).

But now, nearly 50 years later, no-fault divorce is under increasing attack.

The issue gained [renewed national attention](#) in 2023, when Steven Crowder, a conservative commentator who prides himself on his "provocative" views, expressed outrage and disbelief that his wife could divorce him without his consent.

Crowder isn't alone in such criticisms: Divorce has become a hot topic among many red-state Republican lawmakers. Most recently, in January 2024, Oklahoma lawmaker Dusty Deevers proposed a bill to [eliminate no-fault divorce](#) and suggested "[public shaming](#)" of spouses who commit marital fault and then divorce. Restricting no-fault divorce is also part of both the [Texas](#) and [Nebraska](#) Republican Party platforms, and was [recently debated](#) by Louisiana lawmakers.

The ability to divorce regardless of what the other party wants is the essence of no-fault divorce. I think it's alarming that it's under attack. Nevertheless, the idea that not being in love is a valid reason to divorce is an assumption that should be questioned. It's based on the idea that love is the purpose of [marriage](#), and that itself is debatable.

### **What's marriage for, anyway?**

Marriage is a [legal status](#) that confers important rights and benefits on the married, and these rights and benefits [have nothing to do with love](#). In fact, the purpose of these advantages is to give couples non-love reasons to marry. The idea is that the social benefits of marriage are so significant that incentivizing marriage, or even flat-out [paying people to marry](#), is justified.

For an example of this kind of cost-benefit analysis, consider the policy debate over whether children are better off being raised by two married parents. In her recent book "[The Two-Parent Privilege: How Americans Stopped Getting Married and started Falling Behind](#)," economics professor Melissa Kearney argues that this advantage is significant and wide-ranging. Not surprisingly, Kearney's work was [eagerly embraced by pro-marriage advocates](#) and has reinvigorated [long-standing discussions about how to further encourage marriage](#).

If children do better when raised by [married parents](#), it's understandable

that the government would enact laws and policies to promote marriage. It also explains why the government might seek to limit divorce. This is a purely instrumental view of marriage, and one that would have been [very familiar to 18th- and 19th-century Americans](#).

For most of U.S. history, marriage was unabashedly transactional. Laws [essentially guaranteed](#) that most men and women would wed; love had nothing to do with it.

## Striking a 'marital bargain'

Historians refer to marrying for legal and [economic benefits](#) as the "[marital bargain](#)." However, in the late 19th century, acceptance of the transactional nature of the marital bargain began to wane, and publicly, men and women began to declare that [love was the purpose of marriage](#). As historian Nancy Cott writes in her book "[Public Vows](#)," by the turn of the 20th century, American culture had "put love and money on opposite sides of the street."

My book, "[You'll Do: A History of Marrying for Reasons Other than Love](#)," also explores this history and shows how Americans went from encouraging the marital bargain to viewing it as harmful, both to couples and to the institution of marriage as a whole.

Despite the public view that love is the only reason to marry, the law takes a more practical approach, recognizing that love alone may not be enough to get couples to the altar. That's why it continues to encourage marriage for instrumental reasons, with [benefits ranging from tax breaks and immigration preferences to criminal law defenses](#).

When marriage was a clear bargain for exchange, the benefits of the union were obvious. Like the 19th-century marital advertisement "[Man with farm seeks woman with tractor](#)," each side knew exactly what they

were getting. Now, the purpose of marriage is less clear. I believe the move to eliminate no-fault divorce is simply the latest symptom of this confusion regarding the goals of marriage.

If marriage is about love, then a lack of love should be the quintessential reason to divorce. However, if marriage is a contract for benefits, then it isn't surprising that Crowder and other no-fault critics are outraged that it can be unilaterally broken. Although the push to eliminate no-fault divorce is presented as a fight over the purpose of divorce, it's really a fight over the meaning of marriage.

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Provided by The Conversation

Citation: Why are Americans fighting over no-fault divorce? Maybe they can't agree what marriage is for (2024, March 21) retrieved 28 April 2024 from <https://phys.org/news/2024-03-americans-fault-divorce-marriage.html>

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