



*UCD SCHOOL OF APPLIED SOCIAL SCIENCE*

*WORKING PAPER SERIES*

*2011*

**Small bang?**

**The impact of divorce legislation on marital breakdown in  
Ireland**

*Professor Tony Fahey*

**WP 21**

December 2011

**UNIVERSITY COLLEGE DUBLIN**

**BELFIELD DUBLIN 4**

**Small bang?**  
**The impact of divorce legislation**  
**on marital breakdown in Ireland**

Tony Fahey  
School of Applied Social Science  
University College Dublin  
Belfield  
Dublin 4  
Ireland.  
Email: [tony.fahey@ucd.ie](mailto:tony.fahey@ucd.ie)

5 December 2011

Word count: 6,962

**Small bang? The impact of divorce legislation  
on marital breakdown in Ireland**

*Abstract*

A substantial academic literature has grown up on whether liberalization of the law on divorce in western countries helped cause an increase in marital breakdown, with the weight of evidence now seeming to suggest that it did. The Irish case has been interpreted a typical, though delayed, example of this pattern: the introduction of divorce in Ireland in 1997 is represented as a late but abrupt liberalization which was followed by a surge in marital breakdown. This paper queries this interpretation on the grounds, first, that legal change wrought by the advent of divorce was modest, and second, that upward movement in marital breakdown rates was greater before divorce was introduced than afterwards and flattened out within about five years. It explains this limited impact as a matter of delayed timing: divorce became available when the de-institutionalisation of marriage and the rise of family instability associated with it were already far advanced and were beyond being strongly influenced by further change in the law.

## Introduction

A substantial international literature has grown up on the impact of divorce legislation on family behaviour, particularly in regard to marital breakdown. This literature has been prompted by the coincidence of two developments in western countries in the recent past. One was the widespread occurrence of ‘big bang’ moments of change in divorce law, mostly in the 1970s and 1980s, the effect of which was to make legal exit from marriage easier for couples (the ‘no fault revolution’ and the emergence of unilateral divorce are the two most commonly identified forms of such legal change – Allen and Gallagher 2007). The other was a sharp rise in divorce rates which occurred more or less at the same time. These developments prompted researchers to ask whether liberalization of divorce law helped cause the rise in divorce or was itself merely a consequence of wider forces that impelled both law and behaviour to move in the same direction.

The research which sought to answer this question for the most part consisted of comparative studies of multiple jurisdictions using econometric methods. A technical challenge researchers had to cope with was the possible endogeneity of change in divorce law, but the existence of numerous before-and-after instances of divorce liberalization has enabled this challenge to be dealt with (see esp. Wolfers 2006). Studies initially focused on comparisons of states within the United States, taking advantage of the different dates at which divorce was liberalised across states and the different trajectories of accompanying divorce rates. More recently, research has extended to comparisons of European states and has also included some single-country studies. Recent contributions to this literature include Friedberg 1998, Binner and Dnes 2001, Coelho and Garoupa 2006, Wolfers 2006, González and Viitanen 2009, Kneip and Bauer 2009; for a review, see Allen and Gallagher 2007. The

conclusions reached from this research were for long inconclusive. However, as data and analytical methods improved and more jurisdictions were included in comparative studies, a tentative consensus emerged that easier divorce law did tend to raise divorce rates, though some uncertainty remains as to whether this effect was permanent or temporary (see esp. Wolfers 2006, Kneip and Bauer 2009).

In this context, there is some value in conducting a case study of Ireland, a country that arrived late on the divorce scene (divorce was unavailable in Ireland until divorce legislation enacted in 1996 came into effect in February 1997). Scholars in this field usually interpret the advent of divorce in 1997 as Ireland's 'big bang' moment of change and have included Ireland in studies of the effects of divorce on that basis (González and Viitanen 2009, González and Ozcan 2010, Kneip and Bauer 2009). Indeed, some consider that Ireland's jump in 1997 from having not having divorce at all to having no fault divorce was especially dramatic and had a large impact on rates of marital breakdown, thus making it a particularly good case for studying the effects of sudden liberalization (Bargain et al. 2010).

This paper proposes an alternative interpretation which questions the fit of the Irish case with the standard liberalisation paradigm just outlined. It also briefly sketches a broader perspective on the institutional transformation of the family which provides a better basis for understanding the Irish experience and its location in international trends. A question arising from the paper is whether the misunderstanding of the Irish case which have led it to be routinely included in comparative studies may not occur in similar ways for other jurisdictions also and thus raise more general questions for research in this area, particularly in regard to measurement of trends in marital breakdown.

The alternative interpretation presented here has three strands. The first questions whether the divorce legislation introduced in 1997 really changed the law on exit from marriage all that much. It portrays the evolution of Irish law in this area as a gradual process that had been underway since the early 1960s and reached a certain end-point with the advent of divorce in 1997. Measures on child custody and access, maintenance of children and spouses and domestic violence regulated key aspects of *de facto* separation, mainly in the lower courts (the District Court), while more integrated treatment of legal separation was provided through the upper courts (the Circuit Court and High Court). By the end of the 1980s, these measures provided a comprehensive if ungainly legal regime for dealing with exit from marriage and also – quite importantly – brought non-marital couples and parent-child relationships within the ambit of family law (for an empirical description of this system in the pre-divorce era, see Fahey and Lyons 1995). When divorce arrived in 1997, its legal significance was modest: it did not seek to transform or replace existing legislation but merely to round it off by dealing with one outstanding issue – the right to remarry. For institutional reasons peculiar to Ireland (outlined below), this issue had been contentious and difficult to resolve but in practice, when finally dealt with, proved to be relevant only to a minority of separating couples. Thus, from a legal point of view, the advent of divorce can be characterised as a small bang rather than a big bang event. (This is not to deny its importance in other ways, since it signalled a marked decline in the Catholic influence on ‘moral politics’ in Ireland – Hug 1998, Burley and Regan 2002, Fahey 2011).

The second strand of our interpretation suggests that behavioural change accompanying this legal evolution was also gradual and was only moderately affected by the advent of divorce. Evidence on trends in marital breakdown shows that various

forms of *de facto* and legal separation had already been rising before divorce was introduced, that the overall rate of increase (combining *de facto* separation, legal separation and divorce) slowed down just as divorce became available, and that within five years it had plateaued out at a low level. There was no post-divorce ‘spike’ in marital breakdown rates which is usually said to have followed the easing of divorce law in other countries. Trends in the family law caseload appearing before the courts tell a similar story: judicial separations in the Circuit Court and the large volume of proceedings in the District Court connected to *de facto* separation continued as before and showed that these types of legal response to couple conflict were little affected by the advent of divorce. These patterns, then, suggest that the limited legal significance of divorce was paralleled by limited behavioural change on the part of couples in conflict.

The third strand of our interpretation sketches a perspective on the transformation of the family which, in broad outline at least, enables us to make better sense of the Irish case and locate it in international trends. This perspective focuses on the trend toward de-institutionalisation of marriage which was common to most western countries in the post-1960s era and was one component of what has sometimes been called the ‘second demographic transition’ (van de Kaa 1987, Lesthaeghe and Surkyn 2006).). On the legal front in Ireland, this trend was expressed in reforms which made the law more accommodating to marital disruption, non-marital unions and parenthood outside of marriage. Parallel developments in social policy also had the effect of weakening the status of marriage by providing both material support and normative validation to non-marital family forms. The behavioural parallel was a sharp rise in births outside marriage and in lone parenthood along with a slightly later rise in cohabitation (see below; also Lunn et al. 2009).

This perspective suggests that what was significant about the advent of divorce in 1997 in Ireland was its lateness – it came at a mature stage in this process of de-institutionalisation of marriage rather than early on as in most other countries, and in consequence was a finishing off rather than an initiating measure. In short, it mattered less when it arrived because by then marriage itself mattered less and the non-marital family mattered a great deal more. The levelling off (and possible decline) in marital break-up rates which seem to have occurred soon after divorce became available can be interpreted in the same light: it did not signify an improvement in family stability but rather a shift in the locus of family instability away from the marital towards the non-marital family, coupled with a shift in the concerns of family law and social policy in the same direction.

This paper deals in turn with each of the three issues just outlined – the ‘small bang’ versus ‘big bang’ interpretation of the legal import of divorce legislation in 1997, trends in marital breakdown and in family law caseload in the family courts, and the alternative de-institutionalisation perspective as a means to better understand the Irish experience and to link it with developments in western countries generally. A final section concludes the paper and offers some comments on the relevance of the Irish experience to international research on the impact of changes in family law on family behaviour.

### **Law on marital breakdown**

The historical barrier obstructing the advent of divorce in Ireland during the international wave of liberalisation of the 1970s and 1980s was a clause in the Irish constitution, which had been in place since 1937, prohibiting the introduction of



legislation to dissolve marriage. The obstructive character of this clause derived from another feature of the legal context, namely, the requirement for a majority vote in a national referendum to change the constitution. National referendums amounted to exercises in direct democracy which in the case of emotive issues like divorce had enormous mobilising potential and were subject to different influences than those affecting normal parliamentary politics. This potential was responded to by a range of activists in this period, especially by a number of small, highly motivated Catholic civil society groups who campaigned strongly against the introduction of divorce (for an overall account, see Hug 1999; also Burley and Regan 2002). They successfully evoked an electoral bias towards the status quo that tended to emerge when voters, faced with complex questions to which they had to provide a simple 'yes' or 'no' answer, decided to play safe and vote 'no'. This tendency was revealed in response to the first attempt by government to remove the ban on divorce, which occurred in 1986. The remarkable aspect of the referendum which was held to decide this issue was the sharp shift in public opinion which defenders of the status quo succeeded in bringing about in the lead-up to the vote. In advance of the campaign, opinion polls had indicated that a clear majority favoured change, but in the actual vote, voters chose emphatically to keep things as they were – the result was a two-to-one majority in favour of retaining the ban on divorce (Hug 1999: 46-7). Catholic anti-divorce activists had mounted a campaign highlighting risks to children and wives abandoned by errant husbands which was enough to sway a large number of waverers in the middle ground and bring them into the anti-divorce camp (one estimate had it that 25 per cent of voters had changed their minds in the three weeks prior to the vote – Hug 1999, p. 46; see also Dillon 1993).

The second attempt at change occurred in 1995 and was more successful – but only just. Conscious that Irish voters were still concerned about what they saw as the social evils of ‘easy’ divorce, the government in advance of the referendum framed a divorce bill that was restrictive by international standards in that couples had to be separated for four years before they could apply for divorce. Again, opinion polls in advance of the referendum suggested that the tide of opinion was moving in favour of change but in repeat of the previous referendum, Catholic organisations mounted a strong campaign highlighting the negative consequences of divorce for children and women (Burley and Regan 2002: 217). In the event, the ‘yes’ side won but only by the narrowest of margins – the majority in favour of change was a bare 50.28 per cent. This paved the way for the bill which had been published before the campaign to be enacted in 1996 and come into effect in 1997 as the Family Law (Divorce) Act.

Although constitutional barriers to change slowed up the arrival of divorce in Ireland, they did not prevent the emergence of other legal remedies for marital breakdown. The most systematic of these related to judicial separation which, for couples who were ceasing to live together, provided a framework for dealing with spouse and child maintenance, division of property, succession rights, and access and custody of children. Judicial separation had long been available through the Circuit Court and High Court but until the late 1980s was so restrictive and cumbersome that it was little used (in 1982, for example, there were only five applications for judicial separation). Following defeat of the 1986 referendum on divorce, the government of the day overhauled the law on judicial separation through the Family Law Reform and Judicial Separation Act 1989. This, in effect, brought the ‘no fault’ revolution into Irish family law in that for the first time it allowed for legal separation on no fault

grounds – similar to provisions on no fault divorce elsewhere save that it did not permit re-marriage (Burley and Regan 2001: 205)..

However, by then a further layer of provisions had evolved which already dealt with most of the same issues on a piecemeal basis and which, importantly, could be accessed through the simpler and cheaper procedures of the District Court. A number of these also had the power to regulate non-marital unions and parent-child relationships, a feature that became increasingly important as time passed. Among the more important of these provisions were the Guardianship of Infants Act 1964, which dealt with custody and access for married and non-married parents and the parental rights of non-married fathers, the Maintenance of Children and Spouses Act, 1976, which governed maintenance claims between both married and non-married partners (though non-married partners could apply only for maintenance for children), and the Domestic Violence Act. The latter became the most widely used provision in Irish family law and for long seems to have functioned in effect as something akin to a poor woman's version of unilateral judicial separation (Fahey and Lyons 1995).

The upshot of these developments was that by the mid-1980s, while the District Court did not have the jurisdiction in regard to judicial separation or division of property, it could deal in an accessible and accommodating way with custody, access and maintenance in cases of *de facto* separation and could also institute *de facto* separation through the granting of barring orders under domestic violence legislation. It was on this basis that, as we shall see below, the District Court, in volume terms, became the dominant layer of the Irish family law system – a role that it retains to the present.

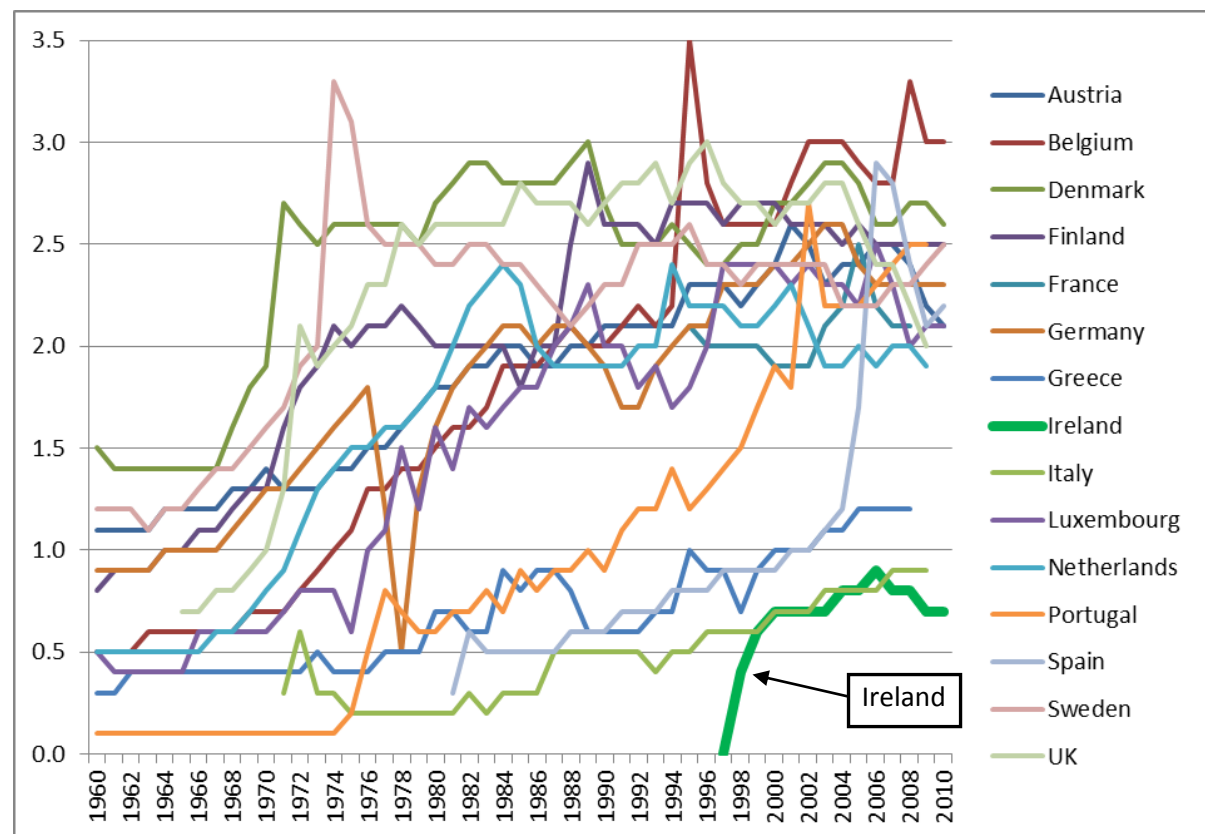
### **Marital breakdown: trends in behaviour**

Because marital breakdown in Ireland occurs in a variety of forms – *de facto* separation, legal separation and divorce – the measurement of trends in marital breakdown is not straightforward. The indicator most commonly used for this purpose in international data is the crude divorce rate (divorces per 1000 population, measured by means of annual divorce registration data). From a sociological point of view, however, the significant transition in marital breakdown occurs when spouses cease to live together and thenceforth constitute two separate households. Family law in many countries reflects a similar view in treating the separation of households as evidence of the ‘irretrievable breakdown of marriage’ (Antokolskaia 2006). Divorce data in Ireland fail to capture the occurrence of this transition in all its forms because they do not encompass *de facto* and legal separation in addition to divorce itself (we will return briefly below to the question whether similar incomplete coverage of marital breakdown can be found in divorce data in other countries). Furthermore, divorces granted in a particular year relate to marriage breakdowns that occurred at least four years previously (the minimum period of separation required to obtain a divorce) and perhaps much longer ago. Divorce data in Ireland are thus a lagged measure of marital breakdown but because the extent of lag varies in an unknown way, they are a poor indicator of the *timing* of trends in marital breakdown.

Despite these data problems, it helps to take a first step towards situating Irish patterns in international context by looking at comparative data on trends in crude divorce rates (see Figure 1). The data for Ireland in this graph highlight both the late arrival of divorce and, once the initial take-up period had passed, the low and almost flat trend in divorce rates which ensued. By 2010, following a slight hump in the

period 2006-08, the crude divorce rate in Ireland was more-or-less the same as it had been in 2000, three years after divorce had first become available, and at that was the lowest among EU-15 countries. For the time being at least, there is thus little sign of the sustained upward movement in divorce rates which followed the liberalisation of divorce in most European countries in earlier decades.

Figure 1. Crude divorce rates in EU-15 countries, 1960-2010



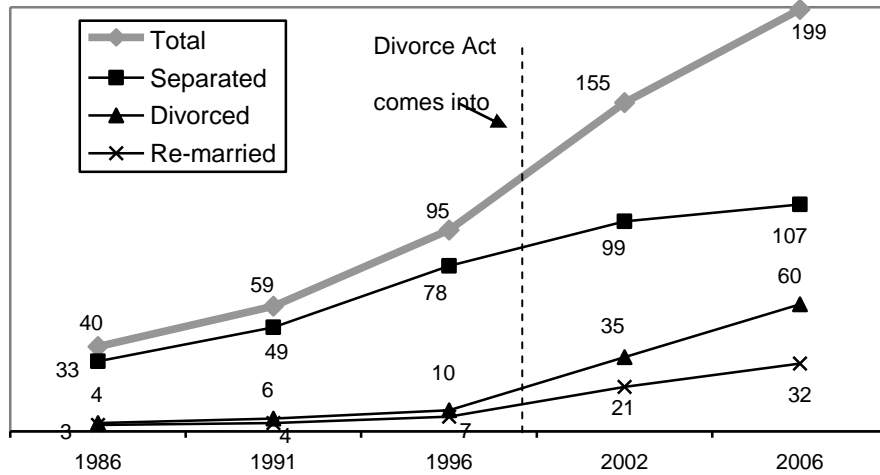
Source: Eurostat database

A more complete measure of marital breakdown in Ireland needs to take account of separation as well as divorce. Such a measure can be estimated in an indirect way on the basis of data from the quinquennial census of population which provide counts of the numbers of people who have experienced a marriage breakdown. Indeed, the changing census categories used to record marital status are themselves an indication

of the growing significance of marital breakdown in Irish society in the 1980s and 1990s. Up to and including the 1981 census, a simple four-fold categorisation was used in the census to record marital status: single, married, widowed and other. In 1986, however, the number of categories grew to nine: in addition to single, married, widowed, householders were offered six categories of disrupted or re-constituted coupledness under which they could record themselves: deserted, legally separated, other separated, marriage annulled, divorced in another country, remarried following the dissolution of a previous marriage, and remarried following widowhood. (In the census counts of 1986, the 'deserted' were the most numerous within these categories – Fahey and Lyons 1995: 100.) In 1996, the separation/divorce options were reduced to three: separated, divorced, and remarried following a previous dissolution of marriage, while a category of 'living together as married' was added in recognition of the growing significance of cohabitation.

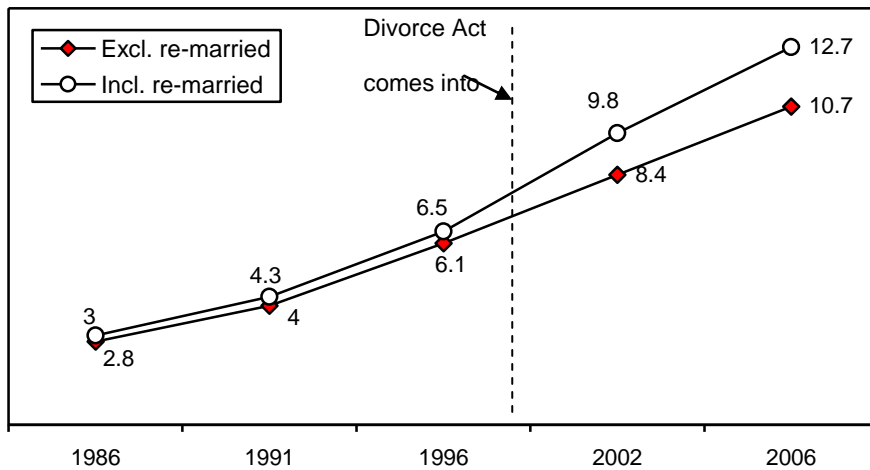
In addition to their role as signs of the times, these categories are of value as data sources that enable us to track changes in the numbers who had experienced marital breakdown since 1986. Inclusion of the category 're-married following a previous dissolution of marriage' means that the data measure not just the numbers of who are currently separated or divorced but also those who were ever previously in that situation and subsequently exited through re-marriage. Having summed the various forms of separation into a single category, Figure 2 shows the trend in the stock of people who had experienced any of these circumstances in each census year from 1986 to 2006. Figure 3 expresses the same numbers as percentages of the ever-married population.

Figure 2. Numbers of persons who are divorced, separated and re-married following dissolution of marriage, 1986-2006



Source: Census of Population

Figure 3. Separated/divorced as % of the ever-married population\*



\* excluding widowed

Source: Census of Population

Some understatement of marital breakdown could occur in these data arising from emigration or death among those whose marriages broke up over this period and are

therefore not included in census counts.<sup>1</sup> Given the upsurge in immigration since the mid-1990s, a more serious distortion is likely to arise from the inflow of already divorced non-nationals. In 2006, non-Irish nationals accounted for 10 per cent of the total population and 11 per cent of the married population, but they accounted for 27 per cent of the divorced population and 39 per cent of those who were remarried following divorce (own calculations from Table 40, Census 2006, Vol 4 – CSO 2007). Thus, in drawing on stock data from the census to assess trends in marital breakdown, it would appear that the ‘import’ of marital breakdown through the immigration of divorced non-Irish nationals has an exaggerating effect on the upward movement in the numbers. Because similar breakdowns on marital status by nationality are not available for the 1990s, it is not possible to be precise about how large that effect is. (Counts in the pre-divorce era indicate the presence of small numbers of divorced persons – 10,000 in 1996, for example. These would have consisted of a mix of immigrant non-nationals and of Irish nationals who had obtained a divorce abroad.)

Between 1986 and 2006, the stock of people in Ireland in these categories together increased five-fold in absolute terms and four-fold as a proportion of the ever-married population (if non-nationals are excluded in 2006, these increases reduce to four-fold and just over three-fold respectively). The upward slope of the trend appears slightly steeper in the period 1996-2002, that is, after divorce was introduced, but this is an

---

<sup>1</sup> Such understatement is likely to be small. The relative novelty of marital breakdown in Ireland means that few older people are counted among the divorced or separated and thus the stock is not yet liable to substantial annual reduction through mortality (in 2006, only 6.7 per cent of the divorced or separated female population was aged 65+). This was also a period of exceptionally limited emigration from Ireland, so that the effect of emigration on the stock of separated or divorced persons is also likely to be small.



artefact created by a wider interval between the Censuses of those years.<sup>2</sup> In any event, the data suggest that the trend was steadily upward in this period but that the advent of divorce did not cause an immediate change in the trend-line. In addition, it is notable that by 2006, almost ten years after divorce had become available, the numbers who were either divorced or remarried following divorce (92,000) was still substantially less than the numbers who were separated (107,000).

These data are only partially informative since they relate to stocks of those who had experienced marital breakdown and thus do not directly measure what is usually of main interest in this field, namely, the annual marital breakdown rate. We can derive a rough estimate of such a rate from the stock data because the latter are affected only to a small degree by outflow (see footnote 1 above). Therefore any inflow is more-or-less wholly captured in an increase in the stock. Thus the annual rate of increase in the stock of divorced and separated persons provides a proxy measure of the annual rate of marital breakdown.

Such a proxy measure is presented in Table 1 based on the average annual inter-censal increase in the numbers of women who had experienced a marital breakdown for four inter-censal periods (1986-91, 1991-96, 1996-2002 and 2002-06). This measure relies on data for women since women are more likely to provide an accurate report of their marital status than men (Lunn et al. 2009: 46-7). The data show that the rate of increase rose from 2,330 per year in the period 1986-91 to 5,531 per year by 2002-2006, a two-and-a-half fold jump. Measured as a rate per 1000 population, the

---

<sup>2</sup> The 2001 census was postponed until 2002 on account of an outbreak of foot-and-mouth disease in Ireland, thus creating a six-year interval between the 1996 and 2002 censuses and a four-year interval to the 2006 census.

jump was about double – from 0.66 per 1000 in 1986-91 to 1.35 per 1000 in 2002-06. (Note that the rate for 2002-06 is more than half a high again as the divorce rate for Ireland for the same years shown in Figure 1 above. This gap reflects the inclusion of various kinds of separation in the measure in Table 1, though it is also boosted to some degree by the migration effect referred to earlier.)

The key issue for our purposes is the *timing* of this rise, as shown in the final column in Table 1. The biggest increase, at 67 per cent, was between the periods 1986-91 and 1991-96, that is, before divorce was introduced. The increase in the period 1996-2002 was much smaller, at 24 per cent, and by 2002-06, it had fallen to zero. Thus the arrival of divorce in 1997 was accompanied by a slowing in the growth of marital breakdown compared to the immediate pre-divorce years and was soon followed by a leveling off. Here, then, we have an indication that the surge in marital breakdown which followed divorce liberalization in other countries in the 1970s and 1980s did not emerge after divorce was introduced in Ireland.

*Table 1: Marital breakdown estimates for inter-Census intervals, 1986-2006*

Inter-Census interval	Average annual increase in no. of women separated, divorced or remarried following divorce	Average annual rate of increase per 1,000 persons	
		Rate	Change in rate since previous period
1986-1991	2330	0.66	
1991-1996	3927	1.10	+67%
1996-2002	5055	1.35	+23%
2002-2006	5531	1.35	0

*Source: Census 1986 - 2006*

### **The family law caseload**

A further perspective on the impact of divorce legislation can be obtained by looking at data on family law cases appearing in the courts and what that tells us about the take-up of the divorce option after it became available in 1997. A useful indicator in this regard is the distribution of the total family law caseload between the District Court and Circuit Court, since that reflects the relative salience of the two broadly differing means of coping with the legal consequences of marital breakdown which had developed in Ireland – the piecemeal remedies associated with *de facto* separation in the District Court versus the more comprehensive settlements associated with legal separation and (after 1997) divorce in the Circuit Court. (The role of High Court in marital breakdown cases is numerically small – it accounted for only 0.6 per cent of total family law applications in 2006 – Fahey and Field 2008: 25).

Table 2 presents data on how this distribution compares for 1994 and 2006 (two years before and ten years after divorce became available). The data show that the volume of family law applications doubled over this period, but also that the increase occurred equally in the District Court and Circuit Court (for more detailed analysis of these data, see Fahey and Field 2008, pp. 23-8). In the Circuit Court, applications for judicial separation (which had made up almost all of family law business in the Circuit Court prior to 1996) declined in number and were overtaken by divorce applications, which by 2006 accounted for 70 per cent of family law business in the Circuit Court. But there was no shift of applications from the District Court to the Circuit Court, even though the District Court continued to lack jurisdiction in regard to judicial separation and divorce. In both 1994 and 2006, District Court applications outnumbered those in the Circuit Court by five to one. This ratio overstates the

relative weight of the District Court in the overall caseload in that the data for the District Court are liable to multiple counting of *cases*: each case could often give rise to two, three or even more applications and there was no method of registering unique cases. Such multiple counting was less likely to arise in the Circuit Court in the pre-divorce era (Fahey and Lyons 1995), though many divorce cases arising in the Circuit Court from 1997 onwards were likely to represent double counts of cases that had already appeared before the Circuit or District Court in earlier years.

*Table 2. Numbers of family law applications in District Court and Circuit Court in Ireland, 1994 and 2006*

	1994	2006
District Court	14,274	29,172
Circuit Court	2,806	5,775
<i>Judicial separation</i>	2,806	1,789
<i>Divorce</i>	n.a.	3,986
Total	17,080	34,947

Sources: Statistical Abstract 1995, Courts Service *Annual Report 2006*.

Nevertheless, despite these imperfections in the data, the clear indication from Table 2 is that the advent of divorce in 1997 had some impact on the pattern of cases appearing before the family courts but that impact was far from transformational and again indicates the limited nature of the change brought about by the legalisation of divorce. Explanations for the limited nature of this impact have not yet been fully explored. However, the reasons are likely to echo those pointed to by Fahey and

Lyons (1995) in accounting for the heavy use of District Court remedies in the pre-divorce era. Those remedies were quick, simple, cheap and could easily be accessed without legal representation, where Circuit Court proceedings were slow, cumbersome and costly and required the use of adversarial legal representation. While some streamlining and speeding up of family proceedings at Circuit Court level were achieved through administrative reforms introduced under the Courts Services Act 1998, the cost of proceedings still had a deterrent effect on accessing the family courts at that level (Coulter 2009, Burley and Regan 2002).

### **Interpreting the Irish case**

The advent of divorce and the rising instability of marriage which accompanied it in western countries from the 1960s onwards is usually interpreted as a central thread of the 'second demographic transition', that process of institutional and behavioural loosening of family life that followed hard on the heels of the first demographic transition, the fall in mortality and fertility of the preceding half century (van de Kaa 1987, Lestaeghe and Surkyn 2006). The delay in the legalisation of divorce in Ireland until the mid-1990s could be read as an indication that Ireland was late in joining the second demographic transition, and that even then, the low rate of divorce which has ensued up to the present would indicate that its participation was only partial. Ireland might be interpreted instead as having persisted with echoes of traditional stability in marriage and in this respect at least to represent a case of 'stalled modernisation' of family life along the lines sometimes suggested was a feature of southern European countries (see, e.g. de Rose et al. 2008 on the case of Italy). An obvious factor that might be pointed to in explanation would be the strong history of Catholic influence and

the conservative family values that could be found until even recently in Ireland (see, e.g. Fahey, Hayes and Sinnott 2006).

The argument presented here suggests that such an interpretation would be misleading. It contends that Ireland's appearance of having deviated from the de-institutionalisation of marriage through its resistance to divorce was superficial. In narrow legal terms, the late arrival of divorce served merely to limit people's right to re-marry. It did not inhibit other reforms in family law which created an accommodating and accessible legal regulation of breakdown of first marriages and a more supportive treatment of non-marital families. The simple and flexible regulation of *de facto* separation and non-marital family relations provided through the District Court were instances of such reforms which facilitated the de-institutionalisation of marriage long before divorce became available in the 1990s.

A series of innovations in social policy moved in the same direction, perhaps with greater impact on family behaviour. In 1970, the first social welfare assistance payment for separated mothers was introduced in the form of Deserted Wives Allowance and that was extended to become an insurable benefit in 1972. In ideological terms, as Kennedy (2001, p. 219) has said, the introduction of Unmarried Mother's Allowance in 1973 was 'like stepping onto a new planet' and henceforth made the unmarried mother a 'visible recognised member of Irish society'. In 1987, the Status of Children Act prohibited discrimination against children born outside marriage, thereby undermining what historically had been one of the primary legal functions of marriage. In 1990 and again in 1996, reforms of welfare supports for lone parents amalgamated payments for different categories of lone parents (the widowed, the unmarried, deserted and prisoners' wives, the separated and divorced) into a single scheme (Kennedy 2001, p 218).

These developments were accompanied by a transformation of family behaviour. The most striking change was a rapid growth in non-marital child-bearing, which rose from around five per cent of births in the early 1980s to 30 per cent in the late 1990s (Fahey and Field 2008). Lone parent families with children also rose rapidly, though full measurement of this trend was long impeded by incomplete counting of lone parents who lived in larger family units. Despite Ireland's low rate of marital breakdown, recent estimates suggest that its level of lone parenthood is well up the European league table. Iacovu and Skew (2011) suggest that in 2008 Ireland had, after Latvia, the second highest rate of lone parenthood in the European Union, though other estimates place it somewhat lower down in the middle of the European range (Lunn et al. 2009). In trying to account for Ireland's high showing on lone parenthood despite its relative stability in marriage, Lunn and Fahey (2011) suggest that cohabiting unions and non-marital child-bearing have served to select less stable relationships out of marriage and concentrate union instability into these non-marital family situations. Irish *marriages* are thus by today's standards relatively stable but a broader picture of Irish couple relationships suggest that levels of instability in Irish families as a whole are much closer to a European mean.

## **Conclusions**

This paper has suggested that the delay in legalising divorce in Ireland until the 1990s did not prevent a rise in family instability of the kind commonly associated with the second demographic transition in other countries and came too late to contribute substantially to that trend. It did, however, have the effect of making family change less visible to researchers: the absence of divorce led to an absence of divorce *data*

which in turn could be misread as indicating an absence of marital breakdown. A focus on the emergence of divorce legislation also distracts from earlier changes in the law which facilitated exit from marriage and were widely used by couples in conflict before divorce arrived. In addition, a focus on marriage as the sole arena where instability is relevant distracts attention from the growth of non-marital family forms and their significance as sites of unstable family relations. A comprehensive view of all kinds of relationship instability, including separation and divorce plus non-marital child-bearing and lone parenthood, indicates that Ireland had already moved far along the path of family instability before divorce was introduced and indeed was tending towards a plateau in that trend just as divorce arrived. It thus stands as a case where liberalisation of divorce had little impact because it came too late to play a significant role in the transformation of family life along lines broadly similar to what had happened in other western countries.

Despite the broadly standard pattern of family change in Ireland, it might nevertheless be said that unique features of the Irish experience limit its relevance to other countries. Here, however, we would suggest one lesson which can be learned from the Irish case. This is the need for close analysis of what actually happened in order to establish an accurate picture: details matter and can point in quite different directions from what first impressions suggest. That lesson could well apply in other countries also, at least as far as developments over the long term are concerned. The difficulties in tracing trends in marital breakdown over time in Ireland are a case in point: the effect of the absence of divorce (and thus of divorce data) on *measurement* of marital breakdown was undoubtedly large even though its real effect on actual rates of marital breakdown may have been modest. Similar patterns are evident in Italy, the other European country which requires a lengthy period of separation (three years in



the Italian case) as a prelude to divorce: here too, data from the courts suggest that there are 80-90 per cent more legal separations than divorces per year, while it is likely that there is an additional number who separate informally under Italy's consensual separation rules (ISTAT 2007). As in Ireland, therefore, the low divorce rate recorded for Italy in Figure 1 above is likely to understate the real incidence of marital breakdown by a considerable margin and make it difficult to track the real trend in marital breakdown rates over time.

No international data are available to indicate how common this pattern of understatement is. More to the point, there are no data to indicate whether relatively low divorce rates found in many countries prior to the wave of liberalisation in divorce law were similarly misleading. There was much bending of the law to accommodate people's desire for divorce in the days before 'easy' divorce became available (Antokolskaia 2006), but, as in Ireland up to the present, there may also have been many who coped with marital breakdown simply by ignoring the law, or (as in Ireland) by approaching it for remedies which do not appear in the registration data on marital breakdown. Until the extent of such practices are fully explored, some doubt must exist about the reliability of data on long-term trends in marital breakdown, particularly in countries where divorce was difficult and other forms of exit from marriage may have evolved. As a result, a question hangs over the empirical bases for research on the impact of changes in divorce law on trends in marital disruption.

## References:

- Allen, D.W. and M. Gallagher (2007) Does Divorce Law Affect the Divorce Rate? A review of empirical research, 1995-2006. *iMAPP Research Brief* 1, 1, July 2007. Available at: [www.marriedebate.com/pdf/imapp.nofault.divrate.pdf](http://www.marriedebate.com/pdf/imapp.nofault.divrate.pdf) (accessed September 2011)
- Amato, P.R. (2010) Research on divorce: Continuing trends and new developments. *Journal of Marriage and the Family* 72: 650-666.
- Antokolskaia, M. (2006) *Harmonisation of Family Law in Europe. An Historical Perspective*. Antwerp: Intersentia
- Bargain, O., L. González, C. Keane and B. Özcan (2010) 'Female Labour Supply and Divorce. New Evidence from Ireland' IZA Discussion Paper No. 4959
- Binner, J. M. and A. W. Dnes (2001). Marriage, Divorce, and Legal Change: New Evidence from England and Wales. *Economic Inquiry*, 39, 2: 298-306
- Burley, J. and F. Regan (2002) 'Divorce in Ireland: the fear, the floodgates and the reality' *International Journal of Law, Policy and the Family* 16, 2: 202-22.
- CSO (1995) *Statistical Abstract of Ireland, 1995*. Cork: Central Statistics Office.
- CSO (2007) *Census 2006, Vol 4: Usual Residence, Migration, Birthplaces and Nationalities*, Cork: Central Statistics Office. Available at [www.cso.ie](http://www.cso.ie)
- Coelho, C. and N. Garoupa (2006). Do Divorce Law Reforms Matter for Divorce Rates? Evidence from Portugal. *Journal of Empirical Legal Studies* 3, 3: 25-542
- Coulter, C. (2009) *Family Law in Practice: A Study of Cases in the Circuit Court*. Dublin: Clarus Press.

- De Rose, A, F. Racioppi and A. L. Zanatta (2008) 'Italy: Delayed adaptation of social institutions to changes in family behaviour' *Demographic Research* 19, 19: 665-704. DOI: 10.4054/DemRes.2008.19.19
- Dillon, M. (1993) *Debating Divorce. Moral Conflict in Ireland*. University of Kentucky Press
- Fahey, T. (2011) 'Ireland', in Q. Skinner (ed.) *The State and the Family in Western Europe*. Cambridge University Press
- Fahey, T., B. Hayes and R. Sinnott (2006) *Conflict and Consensus. A study of values and attitudes in the Republic of Ireland and Northern Ireland*. Dordrecht: Brill Academic Publishers
- Fahey, T. and M. Lyons, (1995). *Marital Breakdown and Family Law in Ireland. A sociological study*. Dublin: Oak Tree Press
- Fahey, T. and C-A. Field (2008) *Families in Ireland. An Analysis of Patterns and Trends*. Dublin:
- Friedberg, L. (1998). Did unilateral divorce raise divorce rates? Evidence from panel data. *American Economic Review*, 88, 608 – 627
- Iacovu, M and A. Skew (2011) Population and Social Conditions. *Statistics in Focus* 52/2011. Luxembourg: Eurostat.
- Kennedy, F. (2001) *Cottage to Crèche. Family Change in Ireland*. Dublin: Institute of Public Administration.
- Kneip, T. and G. Bauer (2009). Did unilateral divorce laws raise divorce rates in Western Europe? *Journal of Marriage and the Family* 71: 592-607.
- Glenn, N. D. (1999). Further discussion on the effects of no-fault divorce on divorce rates. *Journal of Marriage and the Family*, 61, 800 – 803.

- González, L., & T.K. Viitanen (2009). The effect of divorce laws on divorce rates in Europe. *European Economic Review* 53: 122-38.
- Hug, Chrystel (1999) *The Politics of Sexual Morality in Ireland*. London: Macmillan
- Lesthaeghe, R. and J. Surkyn. 2006. 'When history moves on: Foundations and diffusion of a second demographic transition,' in R. Jayakody, A. Thornton, and W. Axinn (eds.), *International Family Change: Ideational Perspectives*. Mahwah, NJ: Lawrence Erlbaum and Associates.
- Lunn, P., T. Fahey and C. Hannan (2009) *Family Figures. Family Dynamics and Family Types in Ireland, 1986-2006*. Dublin: Economic and Social Research Institute. Available at [www.esri.ie](http://www.esri.ie)
- Lunn, P and T. Fahey (2011) *Households and Family Structures in Ireland: a detailed analysis of Census 2006*. Dublin: Economic and Social Research Institute. Available at [www.esri.ie](http://www.esri.ie)
- ISTAT (2007) 'Separazioni e divorzi in Italia'. *Statistiche in Breve*, 26 Giugno 2007. Rome: Istituto nazionale di statistica.
- Stevenson, B., & Wolfers, J. (2006). Bargaining in the shadow of the law: Divorce laws and family distress. *Quarterly Journal of Economics*, 121, 267 – 288.
- van de Kaa, D. J. (1987) 'Europe's second demographic transition,' *Population Bulletin* 42, 1.
- Wolfers, J. (2006). Did unilateral divorce laws raise divorce rates? A reconciliation and new results. *American Economic Review*, 96, 1802 – 1820.