

For Worse  
***NOT For Better***



# FOR WORSE, NOT FOR BETTER

By

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**A Critical Reading of the Report**

***For Worse, For Better: Re-Marriage after Legal Separation***

issued by

The Today Public Policy Institute



## EXECUTIVE SUMMARY

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The introduction of divorce legislation in other countries has not solved any of the problems which it was expected to solve (like cohabitation, out of wedlock births and marriage breakdown). Our country does not need to try out solutions that have failed elsewhere. Learning from the hard experiences of others we need to embark on different proposals like:

- The setting up of an Inter-Ministerial Committee to plan and execute a holistic strategy in favour of marriage and family;
- Marriage and family courses included as part of the curriculum at every level of education;
- A strengthened National Family Commission to propose and monitor legislation, administrative decisions, curricula and media productions which promote the family based on marriage and
- Family-friendly housing policy especially for low-income couples wishing to get married.

The Today Public Policy Institute (TPPI) last May, 15 published a Report (For Worse, For Better) where it recommended that the government should introduce divorce legislation. It presents divorce as a solution to a number of social problems that are present in our society.

This critical reading of the Report presents a number of well-documented studies which proves either that reality is not as bad as presented by TPPI, or that divorce provides no solution at all; more so, in some cases, it only aggravated the situation.

1. The Report has a leading author and gives a list of the Board Members, however it fails to pronounce to what degree these members agree with the Report.
2. Readers are not provided with the relevant references that support its statements.
3. Mistakes result in quite a number of instances with regards to statistics: those who had their marriage declared null by the Ecclesiastical Tribunal (460 instead of 181); the number of separated couples between 2006 and 2008 (given as 3,500 when the stock position of separated persons is 13,354; couples are

identified as individuals; percentage rise in marriage breakdown is calculated without taking into consideration that the population and the number of married persons has increased over a period of ten years and it ignores the fact the most of those who have their marriage declared null are already included in the statistics under separation. It also confuses separation, declaration of nullity and divorce and obviously reaches the wrong conclusions. The author concludes that many who are separated, cohabit and have children when in actual fact the percentage is 18.7. Another grave mistake is that the Report states that children of a cohabiting couple “have no legitimacy”.

4. Although the author insists that he is impartial, the Report proves to be very one-sided. Out of the whole Report, 20 pages are in favour of divorce and two are positive about marriage. He refers to the relationships after marriage breakdown as happy when in actual fact, married couples are happier than cohabiting couples; and there is not a word about the happiness enjoyed in married life. Likewise, there is not a single allusion to the happiness or otherwise of the children of a cohabiting parent.
5. Another conclusion reached by the Report, which again, is not substantiated by any references, is that divorce legislation does not cause more marriage breakdown, in spite of the fact that this point is widely discussed in literature. A number of studies state otherwise and some even reach a conclusion that there is also a causal effect. A very recent study (referred to in the bibliography list of the Report) carried in 18 European countries concludes that the introduction of divorce legislation caused a 20 per cent increase in marriage breakdown.
6. The author refers to a common argument raised by those who are pro-divorce, namely that these people are in favour of marriage, so much so that they wish to get married. In itself this argument is contradictory. They are in favour of the marriage they wish to enter, while at the same time, they disregard their first marriage. Furthermore, second and third chances prove to be less stable than the first marriage.

7. Another argument cited by the pro divorce lobby is that as a result of divorce legislation, society will be more stabilized since cohabitation and out-of-wedlock births will be reduced. This sounds logical but it is not factual. Wherever divorce legislation was introduced, marriage rate decreased while cohabitation rate increased.
  
8. Besides their responsibility towards each other, parents should also shoulder their responsibility towards their offspring. The Report deals with the damage caused to children through the process of marital breakdown, but ignores altogether the negative effects which divorce and remarriage have on children. Regarding this argument, the author simply states that there are conflicting opinions. Studies show that children who experienced their parents' divorce were more likely to report problems in key areas of their lives, including psychosomatic disorders, difficulties with school work and low sense of self esteem.

It seems that the TPPI Report recommends that government should introduce divorce legislation because there are a number of negative social situations in our society. Research amply showed that none of these social ills may be healed, nor are their effects diminished, by divorce. So, if divorce legislation were to be introduced in Malta, would not the situation be worse, rather than better?

On the May 15, 2009, International Day of Families proclaimed by the United Nations General Assembly in 1993, The Today Public Policy Institute (TPPI) of Malta, published a report which “recommended that the government should introduce legislation permitting re-marriage after legal separation and the civil dissolution of marriage” (par. 102). All this beating around the bush is merely a camouflage for the simple word ‘divorce’. What a gift for this special day dedicated to the family!

ProgettImpenn is presenting to the general public, to the opinion formers and to the decision makers a critical reading of this Report. It is written by Fr Anton Gouder and includes valid contributions from Dr Rita Borg Xuereb and Ms Carmen Chetcuti (Diocesan Family Commission); Mr Alex Attard (Caritas Malta) as well as Ms Marthese Borg, Fr Paul Camilleri, Fr Dr Joseph Mizzi and Dr Anna Vella (Cana Movement). These contributors all agree with the contents of this document.

## 1. PATERNITY

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The leading author of this Report is Mr. Martin Scicluna. The first page contains a list of the Board Members of TPPI. All these are persons of very high calibre in their respective fields, as well as in the Maltese society. However, a very strange declaration follows: “... nor does it necessarily imply their endorsement of each of the conclusions and recommendations presented in such reports” (page 1). This could be an indication that these persons do not agree with this Report and its proposals to Government.

## 2. REFERENCES

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- 2.1 Not one statement or a single set of statistics which have been included in this Report, is backed by a reference to a particular study or research. This makes an analysis of the data mentioned next to impossible.
- 2.2 A bibliography is supplied at the end of the Report. Almost all books and/or articles which are included, lack proper referencing, for example, the place and date of publication. One cannot identify whether the title belongs to a book or an article. Needless to say, if it is an article, the name and reference of the journal is not given. The first names of some of the authors are not listed.

There are very vague references like “Editorials on Divorce during 2008 in The Times...”. Another example is the entry in the Bibliography: “World Health Organisation Survey: Health Behaviour of School Age Children’ (HBSC)” which does not even mention the year of the report, bearing in mind that Malta has participated in two of these reports.

### 3. MISTAKES AND COMPLICATIONS

- 3.1 Table 1<sup>1</sup> in paragraph 2 states that the total number of married couples in 1995 and 2005 were 181,875 and 195,523 respectively. This is incorrect. How can this be possible, when according to the same Census quoted by the author, the total population of the Maltese Islands stood at 378,132 and 404,962 in the respective years?<sup>2</sup> The figures mentioned by TPPI do not refer to couples but to individual persons.<sup>3</sup>
- 3.2 Paragraph 2 is formulated in a very complicated manner. It gives a collective percentage increase from 1995 to 2005 of those people who experienced marriage breakdown, that is, people who were legally separated, divorced and had their marriage declared null. This stands at 160 percent. Then it takes separately the figures of those who were legally separated, when these have already been included as part of the former data.

This exercise might have made more sense if the percentage was calculated after comparing the marriage breakdown with the total population and/or the married population of each particular year. This gives the following picture:

Year	Total Population (TP)	Married Population (MP)	Total Marriage Breakdown (TMB)	TMB % on TP	TMB % on MP
1995	378,132	181,875	5,098	1.35	2.80
2005	404,962	193,523	13,354	3.30	6.83

1 In actual fact this is the only table in the whole Report.

2 See *Census (2005)* Vol. 1, Table 1, p.3.

3 Ibid, Table 24, p. 116. The National Statistics Office (NSO) felt the need to make a public correction of what the Report states. See *THE MALTA INDEPENDENT* p. 7 (20 May, 2009).

- 3.3 Paragraph 3 of the Report comments on the number of declarations of nullity from the Ecclesiastical Tribunal, from the Civil Courts and also on the number of sworn separation applications. This gives a distorted picture of reality, since a number of cases are included under more than one heading. In most cases, those who apply for a declaration of nullity apply also for separation and in some cases those who apply for nullity declaration from the Ecclesiastical Tribunal, already have a civil declaration.
- 3.4 The Report says that for 2006-8, “there have been over 460 new ecclesiastical annulments” (par. 3). No reference is given to this data, although one of the bibliographical notes reads “Statistics for the Years 2006, 2007 and 2008 provided by the Ecclesiastical Tribunal.” However, it does not mention the kind of statistics it is referring to. One has to bear in mind that a marriage is declared null after there is a second positive sentence in conformity with the first (usually from the Second Instance of the Tribunal). When requested about this information, the Tribunal provided this data for the years 2006, 2007 and 2008, namely 39, 57 and 85 respectively. These bring a total of 181 and not of 460 declarations of nullity.
- 3.5 Again it says that “over the same period there have been about 3,500 sworn separation applications submitted”. This does not mean that during this three-year period, there were 7,000 new separated individuals. If one takes a look at other statistics that are available, one can easily conclude that this is not possible. The 2005 Census gives the stock number of separated, annulled and divorced persons as 13,354.<sup>4</sup> NSO’s Lifestyle Survey 2007 gives the relative number as 10,596.<sup>5</sup> How can one imagine that from this total, 7,000 separated during 2006-2008?

During a seminar organized by ProgettImpenn, on Friday 15, 2009, the Minister of Justice and Internal Affairs, also gave a very different set of information about the subject. Minister Carm Mifsud Bonnici produced a table<sup>6</sup> concerning the separation statistics in our Courts. Among other things it includes this information:

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4 Ibid, Table 24, p. 116.

5 Ibid, Table 4, p. 3.

6 Ibid, Table 1; see DEPARTMENT OF INFORMATION, *Press Release No. 847 (15 May 2009)* entitled: *Il-Futur: fil-Familja*.

	2006	2007	2008
Approved contracts drawn by notaries	330	336	307
Cases presented in court <sup>7</sup>	120	177	131
Cases decided	67	63	47

- 3.6 The Report estimates that by 2015, failed marriages will exceed 35,000 (par. 3). Since no reference is provided, the workings for this result will be greatly appreciated.
- 3.7 The author of this Report offers his reflection about the State of Marriage in Malta (pars 5-12). He states that “marriage breakdowns are now an ever-present reality and increasing steeply” (par. 8). Minister Mifsud Bonnici in the above-mentioned address gives facts, which contradict this opinion and states: “Facts and statistics that we have available show that applications for separation have remained static and consistent. In fact, from 2004 to 2008, the number of cases that have gone to the mediation stage has kept the same level without any significant increase”<sup>8</sup>.
- 3.8 Paragraphs 10 and 11 bring out a different type of confusion concerning the terms and factuality of separation, [declaration of] annulment and divorce. As a result of this confusion, the author considers it discriminatory that those who are separated are not allowed to remarry whereas the divorced and those who had a declaration of annulment are free to re-marry. Even the sub-title of the Report itself “Re-Marriage after Legal Separation” leads the author (unwillingly) to suggest bigamy, remarriage after legal separation.

<sup>7</sup> This figure might be inflated, as there exists the possibility that both the husband and the wife presented a case in Court concurrently.

<sup>8</sup> “Il-fatti, l-istatistika li għandna għad-disposizzjoni tagħna juru li t-talbiet sabiex jinbnew il-proċeduri ta’ separazzjoni baqgħu statiċi u konsistenti. Fil-fatt, mis-sena 2004 sas-sena 2008 jidher li l-ammont ta’ każijiet li marru sabiex jibnew il-proċedura ta’ medjazzjoni żammew l-istess livelli mingħajr ma kien hemm xi tkabbir qawwi”, See DEPARTMENT OF INFORMATION, *idem*.

- 3.9 Another gratuitous conclusion reached by the author is that “many who are separated wish to remarry” (par. 12) and the reasons given are that “many form new, stable and happy relationships ... many cohabit and have children.” Again, without any statistical support, he states: “Today, large number of separated couples co-habit in what are essentially illicit pseudo- or quasi-marriages and have children” (par. 51). If one looks at national statistics, one might reach a different conclusion. Census 2005 states that 2538 declare their relation to a reference person as their unmarried partner.<sup>9</sup> Accordingly, those living in a stable unmarried relationship total 5076. This means that out of 13,354 persons who are separated / divorced/ annulled, the maximum number of persons who have formed a “new, stable... relationship” is 5076. This number ought to be less, because, no doubt, included in this number are those who in fact have never been married before<sup>10</sup>.
- 3.10 In an attempt to prove that divorce and remarriage are beneficial, as opposed to how awful cohabitation is, the Report states that the offspring of a cohabiting couple “in Malta, currently have no legitimacy” (par. 35). If the author meant that these children have none of the rights enjoyed by children born in wedlock, he is utterly incorrect. Basically the law has, since time immemorial, catered for the status of children born outside marriage. Whilst in olden times such children had very limited rights, as time went by, the legislator progressively granted more and more rights to such children and indeed there now exists a situation where such child can be legitimated or acknowledged and given extensive rights akin to those of children born in marriage<sup>11</sup>.

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9 See *Census (2005)* Vol. 1, Table 32 p. 152.

10 See *NSO Lifestyle Survey (2003)*, Table 2, p. 3 reports that 6,960 are divorced/annulled/separated. According to Table 4, p. 4, of these 1,300 (18.7%) are living with a partner while 4,340 singles are not living with a partner. Is it possible to have a calculated guess and say that 18.7 percent of the 5076 (that is 949) who declared “their relation to a reference person as their unmarried partner” are separated persons who are cohabiting? Unfortunately *NSO Lifestyle Survey (2007)* does not supply this detailed information and gives us only the number of divorced/annulled/separated as 10,596 and the total number of cohabiting persons as 6,073. When asked, NSO replied that it is not possible to have this information because the question was not put in the questionnaire.

11 See *Book First of the Civil Code*, Chapter 16, section 93, Subtitle III of Title II. This Chapter of the Civil Code is inserted in the Bibliography of the *Report*. Then, how come that its content was not reported correctly?

#### 4. ONE SIDED

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- 4.1 The author states that one of the parameters set to guide the outcome of this Report is that “it should be objective, balanced, impartial and free from prejudice” (par. 14). This would have been more than acceptable. Apart from the distorted facts and figures referred to above, everything demonstrates that these values were not adhered to and that the Report, from the onset is subjective, unbalanced, partial and prejudiced.
- 4.2 Although length is not the most important issue, it is difficult to imagine how a report, containing less than two pages out of twenty-two, which speak positively about marriage, can be referred to as “balanced”.
- 4.3 When commenting about marriage breakdown, the concluding sentence is quite cynical: “These marriages collapsed even though a divorce cannot be obtained in Malta” (par. 2). To an open minded reader, this scathing remark is meant to obviate for the argument, without entering into the discussion, whether the introduction of divorce would increase the incidence of marriage breakdown.<sup>12</sup>
- 4.4 Another bias in favour of divorce and against marriage emerges when the Report speaks of those who experienced marriage breakdown and are living in another relationship. It refers to these relationships as “new, stable and happy” (par. 12). How the author managed to qualify these relationships as “happy” is known only to him. So much so, that when one takes into account the findings of *Lifestyle 2007* published by NSO, it emerges that married couples enjoy a standard of living that is 16 per cent better than that of cohabiting persons,<sup>13</sup> and that married people are also more satisfied with their lives – to a degree of 12.5 per cent – than cohabiting people.<sup>14</sup>

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12 This argument is dealt with later in Section 5 *infra*.

13 Table 141 p.120. To be fair, one must add that NSO report, whenever referring to cohabiting persons makes a note that they are under-represented and therefore should be treated with caution. This is a technical remark, used in Statistics to demonstrate that from the sample stated a low number emerged of that particular category. However, the question arises: “Why did this category emerge as under-represented?” Is it because this category is not as large as the general public perceives?

14 Table 159, p. 129

- 4.5 The Report does not contain even a single word regarding the state of stability and happiness of married couples. This is more serious when one bears in mind that 62.7 per cent of the population is married and only 1.9 per cent is cohabiting.<sup>15</sup> Moreover, the NSO tells us that most persons in current relationships (and therefore by far the vast majority of them are married) enjoy a good level of satisfaction.<sup>16</sup>

	Number	Per Cent
Very Satisfied	139,171	44.6
Satisfied	80,605	25.8
Neither Satisfied nor Dissatisfied	19,994	6.4
Dissatisfied	4,667	1.5
Very Dissatisfied	3,337	1.1
Not in a Relationship	64,306	20.6
Total	312,079	100.0

The fact that the level of satisfaction in current relationships is very high emerges more clearly when one eliminates from this table (as should be done if one is comparing satisfaction in relationship) the 20.6 per cent of those who are not in a relationship:

	Number	Per Cent
Very Satisfied	139,171	56.2
Satisfied	80,605	32.5
Neither Satisfied nor Dissatisfied	19,994	8.1
Dissatisfied	4,667	1.9
Very Dissatisfied	3,337	1.3
Total	247,773	100.0

<sup>15</sup> See *NSO Lifestyle Survey (2007)* Table 4, p. 3.

<sup>16</sup> *Ibid*, Table 154, p. 127

- 4.6 The Report falls short to comment whether the sons and daughters of these parents who entered into “a new, stable and happy relationship” are also emotionally stable and happy or whether they encounter any difficulty in their lives.<sup>17</sup>
- 4.7 Paragraph 5 gives a good comment on the sufferings of all those involved in marriage breakdown and ends with the clause “... an enlightened government can no longer ignore.” What is this Report suggesting to Government to do? Government is already taking care of these individuals through social services, social housing and other measures. Definitely further measures need to be undertaken.
- 4.8 Paragraph 6 mentions a number of reasons for marriage breakdown in Malta. There is no research to support what it says. The final remark is again worth reflecting upon: “Like it or not, Malta has become a more secular society.” So, what is this conclusion suggesting? Once marriage breakdown is causing so much suffering, should one just look on and feel helpless? Should we just go with the flow of this trend even though we acknowledge the negative consequences? We do not behave in this way in other spheres of life like smoking, drugs, environment, obesity and others. In most of these spheres the Church, Government and various NGOs turned proactive and embarked upon awareness, educational and therapeutic programmes.
- 4.9 Paragraph 9 refers to those who “pretend there is no problem” as being “hypocritical”. May be they are not hypocritical, but are misled because they listen to a lot of perceptions and generalizations and little to real facts and research. The Report itself provides none to help them be better informed. If these “pretend there is no problem” because they have some vested interest or in order to cheat the general public, then they are not only “hypocritical” but also immoral. The same can be said of those who propose as positive solutions, measures that they know have not solved the real problems in other countries over a period of years.
- 4.10 The Report, in the same paragraph calls upon “a civilized society” to deal with the consequences of broken marriages ... by providing the legal remedies for a well ordered process for marriages which have clearly failed.” Again what

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17 This argument is dealt with in Section 8 *infra*.

is the Report saying in concrete terms? In actual fact the Maltese society has these legal remedies for a well ordered process for failed marriages. May be they are not enough or may be they need to be upgraded. Is this what the Report is suggesting? The running feeling is that the “legal remedies” referred to, are the legislation for the introduction of divorce. Otherwise, according to the Report, the Maltese society fails the test of being “a civilized society”. In fact, that is what the Report says in its next paragraph: that what is missing is “the right to re-marry”. This is the “objective, balanced, impartial, and free from prejudice” solution and also qualified as “a more humane and compassionate way for society to deal with the situation” (par. 12). Readers and more seriously, legislators are simply asked to take the author’s word for it.

- 4.11 Part One of the Report is called *In Praise of Marriage*. For fairness sake, one has to admit that some statements are positive. Others are inaccurate<sup>18</sup> and still others carry a certain innuendo within them. For example, “the commitments of marriage... for life” is qualified to be possible “in an ideal world” (par 17).<sup>19</sup> The implication is that this does not conform to reality. The negative consequence to this, even from the educational point of view, is that one might be complacent about doing the utmost to achieve it, because it is only a distant ideal. However, even the studies quoted above, show that this is a real fact to most married couples.

## 5. DOES DIVORCE CAUSE MORE MARRIAGE BREAKDOWNS?

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- 5.1 Professor Lynn D. Wardle, way back in 1991, published a review of studies regarding whether divorce legislation affects the increase of marriage breakdown.<sup>20</sup> He refers to a review of ten studies carried by Professor Thomas B. Marvell and that most (not all) of them conclude that there is no “causal correlation”. However, he continues to point out that these studies were “faulted for flaws in data used, research design, over-simplicity and other technical problems” (page 117). Wardle reports that “Professor Marvell’s rigorous and

18 When defining marriage (par. 17), with reference to the couple itself, the definition stops short by stating “for the purpose of living together”. This is true, but it is more appropriate to state that this community of life is meant to be for their mutual love and support.

19 The same concept is repeated at some more length in par. 23.

20 See LYNN D. WARDLE, *No Fault Divorce and the Divorce Conundrum*, in *Brigham Young University Law Review* (1991/1) p. 79-142.

comprehensive statistical research now has demonstrated a significant causal relationship between adoption of no fault divorce in individual states [of America] and the increase of divorce rates in most states” (page 117).

Professor Wardle gives tables that show that before no-fault divorce reforms were accepted, “the divorce rates had been slowly rising for a long time; during the years the legislatures in the American states were adopting no-fault divorce laws, the divorce rates rose abruptly and significantly; and since the no-fault divorce reform movement peaked ..., the divorce rates appear to have stabilized again, at a significantly higher rate of divorce that has ever been recorded...” (page 118).

- 5.2 In 1994, Ruth Deech published her experience when at the age of 26, she was posted with the Law Commission formulating the Divorce Reform Act, 1969.<sup>21</sup> A brief quotation from the Introduction to this study puts very clearly what was expected from the reform and what was the result of the reform: “The changes are based on the recommendations of the Law Commission, as reshaped by the Lord Chancellor to promote family values and save legal costs... Today’s reformers use many of the same terms and arguments as their predecessors in the 1950s and 1960s. But easier divorce has failed to realise the aims of its original proponents and, in many ways, has gone against them... The message of the reforms is that marriage should be regarded as a short-term commitment – and this perception of the law will increase still further the rate of marriage breakdown... They will save neither money nor marriages, and please no one outside the narrow legal establishment which instigated them.”<sup>22</sup>
- 5.3 In 2002, Professor Giulio Fella and his companions published a study which concluded that “the causal relation between marriage laws and marital separation is far from clear, and the empirical evidence is not conclusive”.<sup>23</sup>

<sup>21</sup> See RUTH DEECH, *Divorce Dissent – Dangers in Divorce Reform*, CENTRE FOR POLICY STUDIES, Policy Study No 136 (January 1994).

<sup>22</sup> *Ibid.*, p. 5

<sup>23</sup> GIULIO FELLA - PAOLA MANZINI - MARCO MARIOTTI, *Does Divorce Law Matter?* in IZA Discussion Paper No. 439 (February 2002) p.1. In footnote 1, these scholars report a number of studies that arrive at different conclusions.

- 5.4 Professor Douglas W. Allen and Maggie Gallagher, in 2007 published the result of their research on this issue. They examined twenty four empirical studies about the impact of no-fault divorce laws on divorce rates both in the United States and in other countries.<sup>24</sup> Seventeen of the twenty four studies conclude that the introduction of no fault divorce increased the divorce rate. The range of increase varied from ten to eighty eight per cent. As expected, they also concluded that divorce legislation is not the only (and not even the major) cause of increase in divorce rate. Their conclusions also state that in certain situations this increase is permanent, whereas in other situations the increased rate fades with time.
- 5.5 Despite the fact that there is a healthy discussion among researchers about this topic and that they arrive at different conclusions, the Report answers this question without any hesitation: “It is not the availability of annulment, divorce or legal separation processes that cause marriages to break down” (par. 18). The author also has the boldness to suggest that divorce remedies marriage break-down (par. 74). A bit later, he labels as “disingenuous and null” (par. 75) the argument that “introducing divorce laws creates a divorce mentality”.

As customary, the author does not feel the need to support with any research his position about such a fundamental aspect to the issue under scrutiny. What is very dubious is that in his bibliography, there is a reference to a study that concludes exactly the opposite.<sup>25</sup> Fairness suggests that this research should at least be granted a brief mention in that paragraph.

- 5.6 Professors Libertad Gonzalez and Tarja K. Vittanen, studied divorce legislations and their effects in 18 European countries, and presented a 30-page paper. They concluded that “the introduction of no-fault divorce accounted for about 20 per cent of the increase of divorce” (page 21). They referred to their results as “our most conservative estimates” (ibid) and asserted that “the combined effect of all the legal reforms that took place in Europe between 1960 and 2002 amount to about 20 per cent of the increase in divorce rates in Europe during

24 DOUGLAS W. ALLEN and MAGGIE GALLAGHER, *Does Divorce Law Affect the Divorce Rate? A Review of Empirical Research, 1995-2006*, INSTITUTE FOR MARRIAGE AND PUBLIC POLICY, iMAPP Research Brief (July 2007) 1/1.

25 The correct reference to this study is LIBERTAD GONZALES and TRJA K. VITTANEN: *The Effect of Divorce Laws on Divorce Rates in Europe*, in *IZA Discussion Paper 2023* (March 2006).

that period” (ibid). Another important outcome from this study is that “The effect of the move towards ‘no-fault’ divorce laws seemed permanent (allowing for the time scale of the panel) with strong, significant long-term effects” (page 3). These researchers set out specifically to study the relation between change in legislation and increase in rate of divorce. Their results clearly established that 20 per cent of the rise in divorce rates has a single identifiable source, namely, divorce legislation.

- 5.7 This study also states that “the introduction of unilateral divorce on the other hand, had no long-term effect” (page 17). The researchers explained that “under unilateral divorce, the break-up will take place unless the spouse who wishes to stay compensates the one who wishes to leave” (page 2). This is an awkward situation, and because it is awkward, it is not embraced by a great number. As a result, it is much more difficult for this type of legislation to make a conspicuous difference in the divorce rate.
- 5.8 However, in no way does this imply that unilateral divorce does not have its negative effects in various directions. A very interesting study about this topic is made by Justin Wolfers, Associate Professor of Business and Public Policy at the University of Pennsylvania.<sup>26</sup> Professor Wolfers states: “I find that the divorce rate rose sharply following the adoption of unilateral divorce laws, but that this rise was reversed within about a decade. There is no evidence that this rise in divorce is persistent. Indeed, some of my results suggest—somewhat puzzlingly—that 15 years after reform the divorce rate is lower as a result of the adoption of unilateral divorce, although it is hard to draw any strong conclusions about long-run effects” (page 1802).

When interpreting his results, Wolfers concludes that “the shift to unilateral divorce had important, albeit relatively small, effects on the divorce rate over the decade following its adoption ... and in some cases negative [four] long-run effects of these laws” (page 1814).

The first of these effects is a shift towards earlier divorce rather than more divorce. This explains the increase in divorce following the reform and the decrease after a decade because unilateral divorce led to an earlier dissolution

<sup>26</sup> JUSTIN WOLFERS, *Did Unilateral Divorce Laws Raise Divorce Rates? A Reconciliation and New Results*, in *The American Economic Review*, 95/5 (Dec 2006) p. 1802-1820.

of bad matches. Secondly, it is estimated that following unilateral divorce, the marriage rate declined by three to four per cent. As a consequence one needs to acknowledge the fact that the lower rate of divorce is also a result of lower number of marriages. Therefore a more accurate level of divorce rate would be to measure divorce per 1000 marriages and not per 1000 persons. The third long term negative effect mentioned by Wolfers is that unilateral divorce reduces the stigma associated with divorce, with obvious consequences, and this is extended also to other states (or countries) that have not yet introduced such legislation. The fourth and last reflection was that states with historically higher rates of divorce were more likely to reform their laws. This might explain why divorce rates rose faster in controlled states.

Whichever answer one gives to the question of whether divorce legislation, causes more marriage breakdown, one thing is certain: it cannot be just one sentence without any qualifications whatsoever. Moreover, it is important to take into account another important aspect, namely, whether there any research that proves that divorce legislation decreases marriage breakdown.

## 6. THE WISH TO REMARRY

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- 6.1 The Report speaks of the State's direct and ultimate responsibility "for ensuring that the family is protected [and supported] even when marriages fail" (par. 19). This is done "through policies and structures". This is positive, and one must agree. The Report also makes some positive suggestions in this regard (par. 21).
- 6.2 Then the Report moves on to speak of what is considered by the author as "the State's objective here, recognizing none-the-less that those whose marriages have broken down, and who in due course wish to re-marry, do so because they wish to return to the marriage fold ..." (par. 20). Again, this is another prolonged way of saying divorce. In paragraph 39 he refers to the introduction of divorce legislation as a "moral imperative".
- 6.3 The first consideration that needs to be done is whether this second proposal contradicts or at least weakens the first proposal. In crude terms, is one really and truly protecting and supporting the family based on marriage when one

says, “You can walk out of your marriage”? The research studies quoted in Section 5 and *infra*, give rise to serious doubts. If in reality divorce increases the rate of marriage breakdown, both for a decade or for good, divorce can never go hand in hand with measures to protect and support the family.

- 6.4 There is also the psychological aspect. How can educators (including the State) in a convincing way help and support couples, both before and after their marriage, and simultaneously, provide a way out if something goes wrong? And this something needs be a serious reason, since the Report is proposing to Government to introduce no-fault divorce (par. 93). Can one imagine, an educator instructing his or her audience to live free from drugs, while at the same moment telling them, that if they cannot manage, drugs are freely available from point X? What sort of education is this? How effective can this be? Is it acceptable to have such an approach in matters of substance abuse, environment, obesity and other issues? Then why is the Report proposing it with regards to family and marriage, “the bed-rock of society” (par. 16)?
- 6.5 The Report tries to justify this proposal by saying that the people who walk out of their marriage and wish to re-marry “wish to return to the marriage fold and to participate once more in consolidating the stability of their new family in a new and legal marital relationship” (par. 20). One needs to make a sturdy effort to accept this. Is marriage simply a matter of wishing? Can one just wish to walk out of one and enter another? In such cases, can one say that one is in favour of marriage, or more precisely, that one wants to make use of marriage as a legal structure for one’s whims? One needs to ask, what about the stability of the first and original life commitment? What about the first and original marital relationship? Has this any value in the life equation? One also needs to keep in mind the responsibilities towards the children.<sup>27</sup>
- 6.6 An obvious question arises: And if the stability of the new family and new legal marital relationship prove again not to be so stable and the person involved, again wishes to return out of this “marriage fold”, what will the position be? After all, these “second chances” prove to be less stable than the first marriages.

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<sup>27</sup> In the 27 EU countries, between 1996 and 2006, there were over 10.1 million marital breakdowns that affected over 15 million children; see INSTITUTE FOR FAMILY POLICIES, *Report on the Evolution of the Family in Europe* (2008) part 3.

- 6.7 Examples from different countries can prove this. The Centres for Disease Control and Prevention (USA) published information gathered in 1995 about women who remarried. It specifies that after ten years of remarriage, 47 per cent of remarriages of women under age 25 years, have dissolved, when compared with 34 percent of remarriages to women at least age 25 years at remarriage.<sup>28</sup>

In England and Wales, in 2007, 20 per cent of the males and 20 per cent of the females who were granted divorce were already divorced at least once before.<sup>29</sup>

According to Jennifer Baker the divorce rate in America is 50 per cent of first marriages, 67 per cent of second and 74 per cent of third marriages.<sup>30</sup> In Canada, the situation is worse: 50, 72 and 85 per cent respectively.<sup>31</sup>

What the Report calls “second chance” often proves to be much weaker with regards to the stability of the marriage fold which it strives to present.

## 7. DIVORCE LEGISLATION IN ORDER TO REDUCE COHABITATION RATE

- 7.1 One of the common arguments for the divorce lobby is that by the introduction of divorce legislation, society will be more stabilized since cohabitation and out-of-wedlock births will be reduced, since those who are divorced can remarry. The Report does not fail to follow this line of thought: “Re-marriage after legal separation would provide greater stability in our society by minimizing the damage from earlier failure and avoiding the adverse social consequences from any subsequent relationships that may be formed” (par. 23). What sounds logical does not prove to be factual. Wherever divorce legislation was introduced, marriage rate went down (when it is expected to increase because there is the possibility of second and further marriages), while cohabitation

28 See MATTHEW D. BRAMLETT - WILLIAM D. MOSHER, *First Marriage Dissolution, Divorce, and Remarriage: United States*, in *Advance Data*, No 323 (31 May 2006) p.11.

29 See OFFICE OF NATIONAL STATISTICS, Table 2: *Divorces: Previous Marital Status*, in *Annual* (2007) (online) <http://www.statistics.gov.uk/statbase/Product.asp?vlnk=14124>

30 See FOREST INSTITUTE OF PROFESSIONAL PSYCHOLOGY, Springfield/Missouri (online): <http://www.divorcerate.org/>

31 For the divorce rate in Canada, see <http://www.divorcerate.org/divorce-rates-in-canada.html>

and out of wedlock births went up (when it is expected to decrease because there is the possibility of getting married).

- 7.2 Ruth Weston (Psychologist and Principal Research Fellow) and Lixia Qu studied the trends in partnership formation in Australia and based their analysis on the 2006 Census of Population and Housing.<sup>32</sup> Their findings show that cohabitation rates increased across all age groups. In 1996, nearly 58 per cent of the partnered men and 46 per cent of the partnered women aged 20–24 years were cohabiting rather than married, whereas in 2006 cohabitation applied to 75 per cent of the partnered men and 65 per cent of the partnered women in their early twenties.<sup>33</sup> In the general population the increase is mapped as follows: 6 per cent in 1986; 8 per cent in 1991; 10 per cent in 1996; 12 per cent in 2001 and 15 per cent in 2006.<sup>34</sup> And this has resulted, notwithstanding that Australia has had the system of no-fault divorce since the Family Law Act of 1975.
- 7.3 Susan Linacre, Acting Australian Statistician, started her analysis<sup>35</sup> by quoting R. Parker: “Decreases in marriage rates and increases in divorce rates over the past twenty years have resulted in changing family structures within Australia. Increases in the proportions of babies being born outside registered marriages and increases in cohabitation provide evidence that registered marriage as the traditional social institution for family formation is declining”. Marriages declined from 7.2 to 5.4 every 1000 persons from 1986 to 2005, while divorce rate remained practically the same, 2.5 for every 1000 persons in 1986 and 2.6 in 2005.
- 7.4 In Ireland, according to the 2006 Census, in spite of having introduced divorce legislation in 1997, there are more than 210,000 cohabiting couples, which signifies a 56 per cent increase in the past four years.<sup>36</sup>

32 See RUTH WESTON – LIXIA QU, *An Update on Partnership Formation Trends: What does the 2006 Census Suggest?* in AUSTRALIAN INSTITUTE OF FAMILY STUDIES, *Family Relationship Quarterly* 6, p. 16-19.

33 Ibid. p. 17

34 Ibid.

35 SUSAN LINACRE, *Lifetime Marriage and Divorce Trends*, AUSTRALIAN BUREAU OF STATISTICS, *Australian Social Trends* (2007) p.1.

36 See IONA INSTITUTE, *Domestic Partnerships – A Response to Recent Proposals on Civil Unions*, Dublin 2007, p. 16. However, the report also makes a remark about this point, namely that a high percentage of non-nationals living in Ireland do cohabit.

- 7.5 In Britain the 2002 General Household Survey<sup>37</sup> gives the same picture, that is, divorce legislation has not diminished cohabitation, but on the contrary, it increased. These are the facts, with regards to women aged 18 to 49:

Women	1979	2002
Married	74%	49%
Single	18%	38%
Non-married and cohabiting	11%	29%
Divorced and cohabiting	20%	35%

- 7.6 There is another piece of interesting information with regards to the United Kingdom. If one looks at this aspect from a different angle, namely “What type of family were dependent children living in 2004?”<sup>38</sup> it results that 66 per cent lived with a married couple while 11 per cent lived with cohabiting couples.

## 8. EFFECTS OF DIVORCE ON CHILDREN

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- 8.1 The Report dedicates one short paragraph (five lines) on this topic, notwithstanding the fact that it clearly states that “it is crucial that the interests of the children of any marriage must be secured before and after divorce proceedings” (par. 76). The only information (or lack of it) that the Report provides about this “crucial” aspect is that “there are conflicting opinions” about it. As if there is any argument in which there are no conflicting opinions!
- 8.2 Later on, the author opts to focus on the damage caused to children by the process of marital breakdown (paragraphs 80-82). This is another example of partial presentation found in the Report. No one denies that the process of marriage breakdown is harmful to children. But one cannot ignore the fact that divorce and remarriage also have negative effects on children. Here, again, the Report gives us no reference or studies about these conflicting opinions, which could assist the reader and the legislator to make up one’s mind or at least form an opinion.

37 See online at <http://www.statistics.gov.uk/CCI/nugget.asp?ID=824&Pos=3&ColRank=2&Rank=224>

38 UK NATIONAL STATISTICS (online): <http://www.statistics.gov.uk/CCI/nugget.asp?ID=1163> [June 15, 2009]

- 8.3 In spite of the fact that the author acknowledges this particular topic to be crucial and in spite of the fact that he admits that there are conflicting opinions about it, he moves on and ignores it completely and proposes the introduction of no-fault divorce legislation. The least one can do is to weigh the pros and cons and only afterwards arrive at a decision suggested by the law of probability or lesser evil.
- 8.4 At this point too, the Report makes another instance of ethical incorrectness. In the bibliography, there is reference to a study that delves deeply into the subject.<sup>39</sup> Fairness suggests that this research should at least be mentioned briefly in this paragraph.
- 8.5 This study was conducted on behalf of The Department of Child Health, Postgraduate Medical School of the University of Exeter. In this study 152 children and their parents were interviewed. The children were from two different age groups, 9-10 and 13-14. Half of them lived with both biological parents in “intact” families and half lived in families that had been reordered by parental separation or divorce. For the latter group, separation or divorce had occurred five years before the interview for 34 children (45%), between four and five years for 32 (42%) and less than four years for 10 children (13%)<sup>40</sup>. As expected, those living in “intact” families came from three categories:<sup>41</sup>
- happy and no rows,
  - rows or unhappy and
  - unhappy and rows.

The conclusions of this study speak for themselves: “Although *most* children do not exhibit acute difficulties beyond the initial stage of family breakdown, *a significant minority* of children encounter long term problems. Compared with their counterparts in intact families, children who had experienced their parents’ divorce were more likely to report problems in key areas of their lives, including psychosomatic disorders, difficulties with school work and low sense of self-esteem... Parental conflict and financial difficulties are clearly important features of family reorganization that are associated with adverse outcomes for

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39 MONICA COCKETT – JOHN TRIPP, *The Exeter Family Study – Family Breakdown and its Impact on Children*, published by the University of Exeter, Exeter 1996.

40 Ibid, p. 6.

41 Ibid, p. 8

children. However, in this study it appeared that a more important adverse factor was the loss of a parent and the consequences, which included the risk that history would repeat itself with the breakdown of subsequent parental relationships”.<sup>42</sup>

- 8.6 In the same short paragraph (73), the Report presents the position of those who “claim that children are better off with parents who have re-married after legal separation than constant marital conflict and discord in a failed marriage.” For unknown reasons, the author fails to read what this same Exeter Family Study concludes on this topic: “... It was possible to compare the effects of family disruption on children in re-ordered families with those [situations] of conflict and/or violence on children living in intact families. From the multivariate analysis carried out, it appeared that the most significant factor of those examined was the re-ordering of the family ... rather than the presence of serious conflict or violence [in intact families] that was most closely associated with children’s poorer outcomes as measured”<sup>43</sup>.

## 9. CONCLUSION

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- 9.1 The Report deals (in its own way) at length with the role of the Church in relation to marriage (Part II). The author finds comfort in a letter written by His Grace Monsignor Paul Cremona, O.P., Archbishop of Malta,<sup>44</sup> where he stated that the Church would not seek to interfere, as opposed to participate in the process (par. 25). The Report, however, feels free to interfere with the legislators and admonishes them that they “cannot properly represent the heterogeneous society that Malta has become while being religiously sectarian” (par. 28). In another section (Part IV), he puts the question “Should a particular religious view on marriage prevail?” He also reports a distorted statement, namely “that divorce undermines the Catholic view of marriage” (par. 66).
- 9.2 Since the correct position is that divorce undermines the family and marriage and not the Catholic view of them, the valid teachings of the Catholic Church on family and marriage are not being discussed in this critical reading of the

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42 Ibid, p. 59-60.

43 page 55.

44 MaltaToday on Sunday, June 1, 2008.

Report. Even though, the Archbishop Paul Cremona in the above mentioned letter quotes Benedict XVI as saying: “[The Church’s social doctrine is meant] to help purify reason and to contribute, here and now, to the acknowledgement of what is just.”<sup>45</sup> However, a reference to the Catholic *Magna Carta* on Family and Marriage by Pope John Paul II, *Familiaris Consortio* (1981), is only fair and just: “The Church values sociological and statistical research when it proves helpful in understanding the historical context in which pastoral action has to be developed and when it leads to a better understanding of the truth”.<sup>46</sup>

- 9.3 The author of the Report refers to “a disinterested lay observer of the Maltese scene” (par. 6). The contrary is badly needed: namely, a good number of interested lay doers and not just observers, to work for healthy families, based on indissoluble marriages. Politicians in other countries are acknowledging this need and are proposing concrete actions in favour of healthy families.<sup>47</sup> Another recent very enlightening document on the topic is the one published by the Commission of the Bishops’ Conference of the European Community in October, 2007.<sup>48</sup> It is not a document about the Catholic view of marriage and family, but the Bishops try to read the signs of the time and put forward their suggestions in order to “ask for and promote a debate on what the EU institutions can do within their existing competences and through existing EU policies to help couples across Europe in their efforts to create, firstly, a loving and stable relationship, and then to become good parents.”<sup>49</sup>

In the local scene, prior to the 2008 General Elections, on January 6, 2008, ProgettImpenn, has presented to the Political Parties a memorandum with nine concrete proposals to strengthen marriage and family.<sup>50</sup>

45 POPE BENEDICT XVI, *Deus Caritas Est* (25 December, 2005), par. 28.

46 Par. 5.

47 For example, see *Breakthrough Britain – Ending the Costs of Social Breakdown*, an 861 pages document by the Social Justice Policy Group of the British Conservative Party chaired by Rt Hon Iain Duncan Smith MP. The first Volume (116 pages) is dedicated to Family Breakdown.

48 COMMISSION OF THE BISHOPS’ CONFERENCE OF THE EUROPEAN COMMUNITY, *Proposal for a Strategy of the European Union for the Support of Couples and Marriage*, Brussels (October 2007).

49 *Ibid*, *Introduction*, p. 2.

50 See “Ittra lis-Segretarji tal-Partiti Politici”, FAMILJAKANA No. 523 (March 2008) p. 18-21; an English Translation is produced in Appendix 1, *infra*

9.4 A close look at the situation in other countries shows that divorce legislation (whether no-fault or any other form) did not solve their problems connected with family, marriage, cohabitation, out of wedlock births and marriage breakdown. Learning from the various experiences of these countries, it would be unwise for Maltese society to embark on proposals that have failed miserably elsewhere. Other avenues need to be explored. These are only some examples:

- The setting up of an Inter-Ministerial Committee to plan and execute a holistic strategy in favour of marriage and family;
- Marriage and family courses included as part of the curriculum in every level of education;
- A strengthened National Family Commission to propose and monitor legislation, administrative decisions, curricula and media productions which promote the family based on marriage
- Family-friendly housing policy especially for low-income couples wishing to get married.

Who is not part of the solution for healthy families and marriage, is part of the problem.

## APPENDIX 1

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### HEALTHY MARRIAGE: MEMORANDUM BY PROGETTIMPENN TO POLITICAL PARTIES

January 6, 2008

Research has shown that healthy marriage is one of the key values embraced by the people of Malta and Gozo. Due to this, and possibly because they themselves also set great store by the values inherent in healthy marriage, Maltese political parties claim to give priority to the family. From many studies undertaken in several other countries, it emerges that marriage works to the advantage of the lives of men, women, children and society in general. The same studies show that marriage breakdown, as well as alternative forms of relationships, have many negative and long-term effects, which are of an emotional, psychological, social and economic nature.

In this respect, may we propose that a promise be made to the Maltese electorate, that the family will be given priority in the Electoral Programme. By the word 'family' we understand the total self-giving of one man and one woman, bound by their mutual consent to remain together until death, to love and nurture one another, as well as to bear and raise children.

We believe that this is a priority which should be laid down in concrete terms in every legislative and administrative act, as well as in the field of education, social policy (particularly in social housing), finance and the media. This would serve to foster a mentality in favour of strong families and healthy marriages.

We wish to make it clear that we firmly believe that persons who are living in alternative forms of relationships, that is outside marriage, or those whose marriages have failed, should receive every form of assistance and protection, in line with their fundamental rights as human persons. However those who are not married, should not be given exactly the same form of assistance as those who are married. While acknowledging the existence of such relationships, the State cannot treat all forms of social relationships in the same manner.

In this light, we wish to put forward some suggestions to all the Political parties who are contesting the forthcoming elections. We believe that should they be included as part of the Electoral Programme, they would serve as a means to pass on an influential message to our society.

1. The setting up of an Inter-Ministerial Committee to plan and execute a holistic strategy in favour of marriage and the family. It is necessary that the family is recognized as emanating from an indissoluble bond of marriage, between one man and one woman, as a partnership of life and love and for the purpose of bearing and raising children. In order that a serious endeavour may be made in favour of the family, it is first required that one common model is established. Following that, the State should provide assistance to persons who are living out painful situations resulting from failed marriages, decisions to co-habit, and most especially single mothers, among others.
2. This form of stable marriage must be promoted and must not be discriminated against in any way.
3. The National Commission for the Family should be strengthened by additional financial and human resources in order that it may be in a better position to propose and monitor legislation, administrative and financial decisions, educational curricula and media programmes, which promote the family; it should also commission research studies, as well as establish contacts both locally and internationally, which would assist the Commission in the fulfillment of its responsibilities.
4. Marriage preparation courses are to be compulsory also for those persons who enter a civil marriage, as well as those who marry persons from a different cultural background.
5. Other courses focusing upon important aspects of marriage and conjugal life should be organised for married couples, similar to the parental skills courses.
6. Every level of education (primary, secondary, tertiary) should include as part of its curriculum, a course on marriage and family studies, covering also parent-child relationships.
7. A concerted effort should be made in order to introduce and strengthen family-friendly measures both at State and private-industry level. Recognition and, where possible, financial compensation should be offered to the parent who opts to remain at home to raise the children.

8. Support (including financial) should be offered to NGOs who promote and work in favour of the family built on marriage (preparation, formation and therapy).
9. The State should recognise, as well as offer financial and other means of support, to those couples who bear children; this in the light of the drastic reduction in the number of births, as experienced in recent years.



**PROĠETT IMPENN**  
B'Riżq Żwieg B'Sahhtu