

The Evolution of the American Family: An Economic Interpretation¹

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Over recent decades, political, social, economic, and technological changes have impacted the shape of families, rendering the traditional nuclear family with a stay-at-home mom and a male breadwinner a minority. The widening scope of the configuration of families has brought new and, often challenging, legal issues, both for family law and beyond.

The approach of American adults to intimate relationships has been influenced by a broad range of forces. Trends in cohabitation and the marital life-cycle have affected the pool of marriageable singles across the age, race, gender, and education distributions which in turn shape one's desire to remain or become single. Technological changes impacting household appliances and market-based labor substitutes have simplified formerly time-consuming arenas of domestic work and reduced the value of specialist home-makers.

Changes in the legal environment have impacted family life directly through changes in family law and indirectly through legal changes that affect one's options outside of marriage. Legalization of birth control and abortion has changed the implications of pre- and post-marital sexual contact. Unilateral divorce laws have had a significant impact on the terms of the marital bargain. Finally, changes in employment law have brought more women into the labor market and increased the contact of men and women in the workplace. All of these changes affect the timing of marriage and children, behavior within marriage, and the consequences of divorce.

This article presents a summary of recent trends in family behavior along with an explanation of the economic approach to the family in a manner intended to aid a family law practi-

¹ I wish to thank Justin Wolfers for our ongoing collaboration on the family which has greatly informed this piece. This article was prepared with the excellent assistance of Matthew VanderZanden, J.D.

tioner attempting to gain a broader grasp of, and be prepared for, the types of legal problems and controversies brought about by shifts in the structure and function of the family. The economic approach to the family seeks to identify and explain family formation by assessing the incentives that individuals face as they make decisions about forming, investing in, and dissolving relationships. An awareness of the social and economic trends that influence the institutions of marriage and family will help a family practitioner to prepare for the new types of family law cases and controversies and thus better serve the client.

AN ECONOMIC MODEL OF THE FAMILY

The economic approach to the family seeks to reveal the forces that drive how and why families form through the use of economic theory verified by empirical research. This approach to the family involves considering the incentives that people face as they make decisions about forming or dissolving relationships. These incentives can be impacted by technology, the legal environment, and the behavior of others.

In the 1970s Gary Becker became the first economist to rigorously apply the insights of economics to develop a deeper understanding of how incentives shape peoples' family decisions. Economics focuses on how people make decisions to further their well-being, given the constraints that they face. Applying this idea of constrained maximization, Becker (1981) asked "why do families form?" The idea is not to eschew the importance of love, but to understand how other aspects of family life might shape peoples decisions. His work, for which he was awarded the Nobel Prize in 1992, focused on the shared goal of producing children and the efficiencies inherent in forming households. Becker emphasized that families are production units that produced both goods in the house (like clean laundry, well-cared for children) and in the marketplace. Just as Adam Smith observed that specialization by workers in the pin factory yielded workers more efficient production, so too families were organized so as to reap the benefits of specialization. By having one person specialize in domestic responsibilities (most often a wife as homemaker), while the other supported the spouse and children financially (typically a husband as breadwinner) couples were more efficient than singles and thus had an advantaged lifestyle.

This view of the family yields many empirical predictions, most of which were born out at the time. For example, women who were uninterested in, or not well-suited for, specializing in home production would find it less in their interest to marry since they would not be reaping the gains from the greater efficiency of specialized households. Indeed, college-educated women have historically been the least likely group of women to marry. In an era in which most marriages involved a stay-at-home wife, it is not surprising that women who had invested in market skills by obtaining a college-degree were about a third more likely to never marry.² In contrast, college educated men have always had higher rates of marriage than men with less education.

The Beckerian view of households also predicts that “opposites will attract”. In particular, someone with strong market skills is best suited to marry someone with strong homemaking skills. This pairing allows each person to get the maximum benefit of specializing in their area of expertise. Because the greatest gains in households come from each person specializing in an area where they are comparatively advantaged, there is less to gain if the two people marrying have similar skills. Again, the data showed in the 1970s that opposites did often attract and couples were less likely to be similar along a range of characteristics, such as education and income, compared with couples today (Lam, 1998).

Technological and Market Shifts

This view of the family as a source of production efficiencies has become less relevant over time. The twentieth century brought the development of technologies simplifying clothes washing and drying, pre-processed foods and dishwashers and businesses specializing in services such as dry-cleaning, landscaping and childcare. Such developments vastly simplified a homemaker’s duties. Moreover, with the time saved on each of these daily tasks a homemaker could pursue other activities, including education or employment. However, this shift towards technological and market substitutes for homemaking skills substantially reduced the value of such skills.

² This difference refers to women attending college in the late 1960s and early 1970s. Marriage rates were even lower for women attending college earlier in the century. Around 30 percent of women attending college in the 1920s never married—a rate that is about three times that of women in their cohort without a college degree.

With homemaking skills thus subcontracted to machines and the market, the production efficiencies realized by families has been eroded. Additionally, the costs of having such a specialist have also risen. Women's increased control over fertility (allowing them to better time and plan pregnancies), their improved access to education, and a decline in labor market discrimination have all led to higher potential wages for women (Blau and Kahn, 2000). These higher potential wages represent a greater opportunity cost for a couple contemplating a stay-at-home spouse.

Moreover, increases in life expectancy mean that the average women will now spend less than a quarter of her adult life with young children in the household. By increasing the number of potential years in the labor force, the opportunity cost of women staying out of the labor market to be home with children is higher. Rising life expectancy also reduces the centrality of children to married life, as couples now expect to live together for decades after children have left the nest. Other marriages are occurring when women are in the post-fertility part of their lives.

This decline in the productive benefits of families may partially explain some of the decline in marriages and the shift toward shorter duration cohabiting relationships that we have witnessed in the United States and, to a much larger extent, in Europe. Moreover, specialization requires a long-term commitment. A woman who specializes in household production is left in a financial lurch upon the end of a marriage and a man who has specialized in the market may be left unable to take care of his domestic needs. Thus, such marriages have more to gain from strong contracts that enforce the marital bonds.

Modern Factors Driving Family Formation

To understand both the challenges that families face and the future of family behavior it is useful to consider what the modern factors driving family formation are. The answer lies in a shift from the family as a forum for shared production, to one of shared consumption and leisure. Most things in life are simply better shared with another person: this ranges from the simple pleasures such as enjoying a movie or a hobby together, to shared social ties such as attending the same church, and finally, to the joint project of bringing up children. What is dif-

ferent about this form of marriage is that it requires shared interests as well as the time and money necessary to pursue these interests.

As with the specialization model of marriage, this view of marriage has specific empirical predictions that are currently born out in the data. To enjoy the benefits of shared consumption a person with similar interests is most appealing. Indeed, there has been a steady shift away from “opposites attracting” toward increasing similarity in the backgrounds of those marrying. Most notably, those who marry are now more likely to have similar education and employment backgrounds than at any other time in the past. Moreover, marriages based on shared consumption may be more fragile than those based on the old model of specialization because they involve less investment specific to that relationship and are easily abandoned if the shared interests dissipate.

TRENDS IN FAMILY LIFE

The previous section provides a background to the economic approach to assessing trends in family life and understanding how they may evolve in the future. We now turn to examining the basic trends in marriage and divorce and cohabitation³

Marriage and divorce

The last century has seen gradual and more rapid shifts in the rates of marriage and divorce in the US. The timing of those fluctuations suggests that social and economic factors play a significant role in the decision to marry or divorce. For example, marriage rates rose sharply during and immediately following each of the two World Wars and dropped during the Great Depression. Divorce rates also shifted during and in the wake of such extreme shocks, falling during the Depression and spiking following World War II.

The longer run trends indicate a fall in marriage rates and a rise in divorce rates over the past century, but these trends differ in important ways. There was little evidence of long-run changes in marriage rates prior to the 1970s. The large spike in marriage rates following World War II combined with an anomalously young age of first marriage in the 1950s led to a an un-

³ The analysis comes from data from Jacobson (1959), the 2002 National Survey of Family Growth, Cartel et al. (2006), the U.S. Census Bureau (2007), and Stevenson and Wolfers (2007).

usually high percent of the population who were married in 1960. The percent of the population marrying in any given year was, however, largely stable for the 100 years prior to 1970. In 1973, however, the rate at which people married began to steadily decline and marriage rates are now at the lowest point in history. Some of this decline represents a permanent eschewing of marriage, while some it reflects the increasing age at first marriage. As people delay marriage, current marriage rates drop.

Divorce, in contrast, steadily increased prior to World War II. Indeed, the divorce rate today is what would be projected by simply examining the trend in divorce rates from 1860 to 1940. However, divorce rates rose sharply in the 1940s, fell through the 1950s, and sharply increased between 1960 and 1980. In this latter period, divorce rates more than doubled. However, after reaching a peak in 1981, the divorce rate has been falling steadily and the divorce rate is currently at its lowest level since the late 1960s.

The divorce rate is falling both as a percent of the overall population and as a percent of married couples. Moreover, examining individual marriages we see that divorce has become less likely. Couples marrying in the 1980s, 1990s, and 2000s, have been more likely to survive to a given anniversary than has the cohort that married before them (Stevenson and Wolfers, 2008). Indeed, among female college-graduates, those marrying in the 1990s were more likely to survive to their 10th wedding anniversary than were those marrying in the 1960s (Isen and Stevenson, 2008).

Why this sharp turnaround in divorce? Many couples who married in the 1960s and 1970s likely expected their lives to be best served by each pursuing the separate rolls of homemaker and earner, yet the dramatic social, technological, and legal changes that occurred in the 1970s meant that for many couples this model of marriage no longer suited their ideals. Women unexpectedly found themselves more interested, available, and able to enter the labor market. Both men and women likely found that the benefits of having a wife who specialized in home production did not lead to the large expected efficiency gains. Unfortunately, many marriages based on specialization were simply ill-suited for marriage based on shared interests. As couples have become more acclimated to a new model of marriage—one that often involves

both spouses working—couples have matched differently (with people becoming more likely to marry people who have similar skills and interests) and divorce rates have fallen.

While marriage rates have fallen overall, the greater pool of people available at older ages—because of divorce, increased life expectancy, postponing marriage—have all led to a surge in marriage among the elderly. Adults 65 and older are more likely to be married now than in any time in the past century. This pattern is due in part to greater life expectancy for both men and women but is due also to an increasingly populous remarriage market that has emerged in recent decades. These factors combine to change the age profile of marriage and have further implications. For example, the proportion of married people living in a household with their own children has fallen steadily from 75 percent in 1880 to only 41 percent in 2005, indicating that the role of fertility and child rearing in married life has declined. This also means that fewer divorces today involve children—since 1968 the average number of children involved in each divorce has fallen.

As previously mentioned, one explanation for the fall in the marriage rate has been the steady increase in the median age of first marriage for both men and women. Moreover, the gap in the ages between married couples has narrowed over time. In 2006, the median age of marriage for men and women was 27.5 and 25.9 respectively. These numbers mask large differences by education with most college-graduates marrying at age 30 or later, while high school graduates tend to marry in their early 20s. Among women, college graduates are now about as likely as those without a college-degree to marry (Isen and Stevenson, 2008) closing the long-standing gap in which college-educated women were less likely to marry. However, the greater age of marriage among college-educated women leads them to be less likely to be married in their 20s. The difference in age of first marriage also leads to an age difference in age of first divorce. Because young women with less education have entered marriage at a younger age they are more likely to experience a divorce at a younger age. Furthermore, this difference leads college-educated women to be more likely to be married in their 30s.

Cohabitation

Recent decades have witnessed the emergence of cohabitation as an important family institution having real economic and legal consequences, such as determination of the default property allocation, tax treatment of the couple, and eligibility for social programs and employment-related family benefit programs. Most American couples still treat premarital cohabitation as a transitional stage, potentially leading to marriage. For some, however, the choice to cohabit may instead reflect a lower value of the institutional structure of marriage.

Though data on cohabitation over time is limited, available data suggests that cohabitation levels were low prior to 1970 and have since grown at a roughly constant rate to around five percent of adults. A majority of couples who cohabit either marry or end their relationship within a few years. And while most cohabitations do not end in marriage, most marriages are preceded now by co-habitation. A period of cohabitation preceded 59 percent of first marriages and 75 percent of remarriages occurring in the early 2000s.

Meanwhile, a little over one-fifth of couples cohabiting in 2002 had been doing so for five years or more, indicating that some couples are treating cohabitation as a more permanent alternative to marriage. Factors which may be driving couples towards long-term cohabitation, some of which are discussed in more detail below, include: (1) decreasing value of specialized homemakers; (2) an increasing number of dual-career couples who face high marginal tax rates on secondary income, i.e., the “marriage penalty”; (3) the increased value of women’s investment in labor force experience prior to marrying or having children; (4) the increased availability of individualized contracts which have reduced the role of family law as the default legal institution for allocating property when a relationship ends and (5) co-habitation faces diminished social stigma.

THE DRIVING FORCES OF FAMILY CHANGE

We now assess the specific developments which seem to have played important roles in driving these changes in family structure. There have been significant shocks to the system of laws by which state governments regulate families, including the rise of federal privacy and civil rights law and legislative changes to family law, such as the broad introduction of unilateral di-

orce laws. Technology has inserted itself into the structure of the family, both through its encroachment on homemaking skills, as described above, but also through the introduction and legalization of simple and safe forms of birth control.

Changes in the Legal Structure of the Family

The vast majority of states have held that marriage is a legal status based upon a contract between three parties, each spouse and the state. State governments are thus responsible for determining the public policies that in turn dictate not only who is to be granted a marriage, a divorce, or parental rights, but also what duties, rights and obligations attach to such a grant. State law also provides a set of default property rights in case of separation or death, and a definition of the family for the purposes of taxation and government programs.

A state's right to regulate families is subject to U.S. Constitutional constraints, and the 1960s ushered in a wave of large-scale deregulation of the family. *Loving v. Virginia*, 388 U.S. 1 (1967) eliminated anti-miscegenation laws and set precedence by stating in the decision that marriage was "one of the 'basic civil rights of man'." Supreme Court rulings in *Levy v. Louisiana*, 391 U.S. 68 (1968), and *Gomez v. Perez*, 409 U.S. 535, (1973), also changed the nature of family relationships by eliminating many of the legal distinctions stemming from the marital status of a child's parents.

During this period, states also began to reduce their role in divorce proceedings. In the 1950s, most states required evidence of marital fault before allowing a marriage to be dissolved. Beginning in the late 1960s, many states introduced "irreconcilable differences" as grounds for divorce, effectively ushering in a period of unilateral divorce—divorce upon the request of either spouse, regardless of the wishes of his or her partner. In addition to the passage of unilateral divorce laws during this period, many states removed fault as a consideration in property division, and some states changed laws governing property division subsequent to divorce. Currently, all but a few states have some form of unilateral divorce and two-thirds allow unrestricted unilateral divorce.

Empirical evidence has found that unilateral divorce laws had little, if any, significant impact on divorce rates (Wolfers 2006). However, unilateral divorce laws provide a new tool in intrahousehold bargaining as observed in the following two examples. First, female suicide and

domestic violence rates fell in states that adopted unilateral divorce laws, indicating that such laws have shifted at least some of the bargaining power to women (Stevenson and Wolfers 2006).

Second, empirical research indicates that unilateral divorce laws influence certain types of intertemporal contracting within households (Stevenson 2007). Because either partner may end a marriage, spouses appear less likely to pursue investments whose value depends on the relationship continuing, such as children, specialization in homemaking skills, and the financial support of a spouse's education.

Technology

Birth control. In the early 70s, Supreme Court jurisprudence combined with technology to increase control over fertility. Most well known is *Roe v. Wade*, 410 U.S. 113, which in 1973 acknowledged women's right to abortion. But the year before, and of perhaps even greater significance to the marriage market, the Supreme Court overturned laws prohibiting sale of oral contraceptives to unmarried women in *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

The resulting control over fertility reduced the costs associated with delaying marriage. Birth control also led to a greater accumulation of human capital by women due to a decrease in pregnancy-related interruptions in their education or labor market plans, which in turn allowed for longer and more informative courtships, thereby reducing uncertainty about compatibility and the probability of a bad match. Empirical evidence has shown that women who delay their first birth earn significantly higher wages (Miller 2008). A year of delay in motherhood leads to a three percent increase in women's wage-rate. The effect is even larger for highly educated women.

Household efficiency technologies. As noted above, twentieth century technology such as electricity, plumbing and household appliances vastly improved the efficiency of housework. As a result homemakers could spend less time at home and more time specializing in the market. Those who specialized in the market could similarly avail themselves of household technology thus driving down the value of specialized homemaking skills. With the opportunity cost

of remaining single for both men and women and the role of production complementarities as a driver of marriage thus reduced, the decision to marry was delayed and was instead driven by factor such as consumption complementarities and risk pooling or insurance.

Internet. The Internet and internet dating sites offer increased opportunities for men and women to meet an expanded potential set of partners. Mainstream dating websites allow for narrowly tailored searches, reversing the usual courtship pattern of first assessing attraction, then suitability of a potential mate.

This technology's potential to change matching is greatest for those who face a limited demographic of compatible partners. Data from Forrester Research reveals that those who perceive themselves as facing difficulty meeting potential mates are more likely to use online personals: blacks and Asians more than three times more likely than whites, those with physical disability more than twice as likely as those without, gays more than four times as likely as straights. There may also be changes in marital stability, as one-third of those currently using online personals are currently married.

The Internet and internet dating websites may yet revolutionize marriage markets, but it is too early to assess the effects on marriage and divorce of (1) the potentially improved quality of matching due to improved search functions and (2) the tremendous amount of searching being done online by those who are already married.

Changes in the workplace

Women's ever increasing presence in the workplace has the potential to effect the institution of the family in at least two specific ways. First, the increased focus of women on market specialization has created a more sexually integrated workplace. Similar to the potential impact of the internet on the marriage market, increased sexual integration of the workplace creates more opportunities for men and women, single or already married, to meet a potential mate.

Second, there has been a decline in the gender wage gap separating similarly employed and qualified men and women. This decline stems from

1. a decline in explicitly sexist personnel policies, which in turn, reflects stronger antidiscrimination laws;

2. an increase in labor market experience among women;
3. declining occupational segregation of men and women; and
4. de-unionization.

Beyond eliminating inferiority of earnings potential as a motivation for women to marry, the move towards equality of men's and women's wages may have other, more subtle effects. For example, the historical propensity of women to marry younger may be explained in part by the reduced value of a homemaker's specialized skills outside of marriage. But now, with women investing more in market skills, the ages of men and women at first marriage and first childbirth are drawing closer.

THE RISE OF CONTRACT LAW

Neither the new family law questions, nor the variety of non-traditional families out of which those questions arise, are the exception any longer. Much as the old specialization model of the family has become less relevant to modern marriage, traditional family law was not developed around the issues that arise out of modern trends in the family. Among the important consequences of this ever-shrinking role and diminished rigor of government regulation of the family is an increase in the number of partners who seek out the protection of a private contract regime.

For decades traditional antenuptial agreements were routinely invalidated because such agreements were thought to encourage divorce and therefore found to be against public policy. In past decades, however, most states have recognized the validity of antenuptial agreements through statute or case law provided there was a full disclosure of assets by each party and the terms of the agreement are found by the court to be fair. While "pre-nuptial" agreements are still rare—Marston (1997) estimated that five percent of couples enter antenuptial agreements—the demand for "pre-nups" is likely to continue its growth in response to trends in the marriage market. For example, these trends—including the increase in later first marriage, a vigorous remarriage market, and greater parity in partner market-based skills and

intra-relationship bargaining—have led to unions involving spouses who want to protect their financial assets or children from a previous relationship.

Even less pervasive are postnuptial agreements—contracts signed after a couple has married and govern the division of assets upon divorce. These agreements began to gain popularity in the late 90s with a newly minted crop of internet millionaires aiming to protect their wealth. The trend continued through the early part of this decade and is especially popular amongst hedge funds and other high-value equity partnerships whose members want to be protected against the possibility of a partner losing an ownership interest in a divorce. But in recognition of the potential for coercion in the signing of a “postnup,” states have imposed strict requirements on the agreements and may order hearings to determine if even the most straight-forward agreements were signed under duress.

The demand for private regulation of the family is also likely to grow as the number of families who fall altogether outside the current formal regulatory structure of marriage also grows. Partners who have eschewed marriage in favor of permanent cohabitation, including same-sex partners, will still experience disputes upon any termination of their relationship, but such non-traditional families won’t have the benefit of default marital property division rules. As these family forms shed their social stigma and gain in popularity, the demand for contracts to offer the structure not provided by state law will swell. And the termination of unmarried families for whom no private contract exists will present a family lawyer with the opportunity to fashion creative solutions through analogy to separation agreements, mediation or equitable remedies.

CONCLUSION

The last few decades have seen enormous changes in family forms. The institution of the family has been influenced by an array of socio-economic, regulatory, and even technological forces. Families involving same-sex marriage, divorce, remarriage, and planned childbirth or semi-permanent cohabitation in the absence of marriage have gained social acceptability if not legal rights.

Additionally, the institutions of marriage and family have by no means come to rest. The debate among policymakers and the public continues over the effect of divorce on children, whether unilateral divorce or abortion laws need to be revised or overturned, and whether long-term cohabitants or same-sex partners have a right to employment or death benefits. As these debates become disputes and find their way to the legal system, the family lawyer can play a vital role in shaping the future of the family.

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