Introduction

Lloyd R. Cohen and Joshua D. Wright

It all began with Gary Becker. The story – perhaps apocryphal – involves the young Becker giving a workshop on his original work on the economics of discrimination to a learned audience, at least half of whom initially thought the subject matter of the paper was monopolistic price discrimination. Even now, those not learned in the economic arts believe that economics is either solely or essentially concerned with commercial relations. And, so it was, originally. Understanding the economic world in that narrow sense of the term seemed an ambitious and difficult enough task. Then, in the second half of the 20th century, economists began to turn their attention and apply their minimalist but sturdy tools to other human activities: marriage, child-bearing, crime, religion, social groups, etc.

How are we to appreciate the nature of this revolution? And, what are we to make of its causes and prospects? The fundamental driving force behind this imperial expansion of economics into these social relations arises from a transformation of our understanding of the discipline. We once understood it to concern a subject matter: exchanges (principally commercial) between individuals across markets. But we now understand it as a discipline in which we use the assumptions and tools of understanding those exchanges to analyze a wider world of human interaction.

The most interesting part is that the very great power of economics in its core commercial inquiries came from its spare minimalist assumptions: maximizing behavior, market equilibrium, and stable preferences. These assumptions seemed barely sufficient when applied to commercial activities. How could they yield anything of value when pared down still more and applied to less easily cabined human interactions?

Well, the answer is rather straightforward. At its core economics assumes that people act purposively and have contending desires and finite resources. The demand curves for their various wants slope downward with respect to whatever currency pays for them. The trick is to acquire a solid feel for the character and weight of those desires, as well as insight into the various currencies that must purchase them. As Gary Becker has explained:

[What most distinguishes economics as a discipline from other disciplines in the social sciences is not its subject matter but its approach. Indeed, many kinds of behavior fall within the subject matter of several disciplines: for example, fertility behavior is considered part of sociology, anthropology, economics, history, and perhaps even politics. I contend that the economic approach is uniquely powerful because it can integrate a wide range of human behavior.]

The Research Handbook on the Economics of Family Law consists of a series of original essays by distinguished scholars in either economics, law or both. The chapters represent

---

a congeries of approaches to the field. Most, though not all, contain extensive surveys of
the literature with respect to the particular question they address. Some employ empirical
economics, others are more narrowly legal. They have in common one thing: each scholar
employs a core economic tool or insight to shed light on some aspect of family law and
social institutions broadly understood.

Joseph Price asks “Is It Just About Love? Factors that Influence Marriage”. Price actu-
ally asks two distinct, and important, questions. The easier one is: what legal, economic,
and demographic factors influence the demand for marriage? Price provides a summary
of a broad swath of empirical literature demonstrating that indeed all of the usual sus-
pects affect the rate of marriage in the predicted direction. The more difficult question is:
what is the effect of marriage on life outcomes? The difficulty here is in accounting for
powerful selection effects, knowing that people who marry (and their children) generally
do better in life than people who do not. That is, are we merely observing people with
the “unobserved” characteristics which are correlated with marriage and lead to success
in life?

Amy Wax examines “Diverging Family Structure and ‘Rational’ Behavior: The Decline
in Marriage as A Disorder of Choice”. There has been a heterogeneous revolution in pat-
terns of reproduction and mating in the United States over the last fifty years. While the
general trend has been toward less marriage, more divorce, and more extra-marital births,
the variation across educational and ethnic groups has been dramatic. Well-educated
whites still generally marry, stay married, and bear children only during marriage; on the
other hand, poorly educated blacks do the opposite. Wax examines the various theories
and evidence that attempt to explain the broad societal trend and the variations among
groups. Finding the various theories not fully consistent with the evidence, she posits a
supplementary theory based on “global” versus “local” decision making. This distinction
corresponds roughly to what economists think of as varying discount rates.

Reporting the best available answers to those questions is the central task of Robert
Lerman’s “Economic Perspectives on Marriage: Causes, Consequences, and Public
Policy”. Lerman restates the results of the many studies showing a decline in the rate of
marriage, a greater likelihood of financially successful men to marry, and a greater likeli-
hood of women who remain single to do better. But the meat of this chapter is a report on
the various papers that try to untangle the cause and effect of marriage and success in life.
The upshot is that there is a growing body of evidence that marriage does indeed improve
the life prospects of the couple in a variety of dimensions, including, but not limited to,
the financial dimension. More significantly, the evidence seems strong that the progeny of
these couplings do much better in life if they are the product of a stable marriage.

Betsey Stevenson and Justin Wolfers also seek to give us some insight into “Trends
in Marital Stability”. Theirs is a methodological contribution that offers a lesson in the
hazards of relying on published data. It reminds us of the wise words of Sir Josiah Stamp:

The Governments are very keen on amassing statistics – they collect them, add them, raise them
to the nth power, take the cube root and prepare wonderful diagrams. But what we must never
forget is that every one of those figures comes in the first instance from the chowly dar (village
watchman), who just puts down what he damn pleases.2

2 Sir Josiah Stamp, Some Economic Factors in Modern Life 258–9 (1929).
Stevenson and Wolfers argue that the recently reported uptick in the frequency of divorce is nothing more than an error in data recording and reporting. And a critical error at that. The authors demonstrate that, after proper adjustment, the data reveal the steady decline in divorce after the 1970s has continued apace.

Michael Hanlon seeks to explain “The State’s Choice of Divorce Law”. Hanlon’s study is both theoretical and empirical. He hypothesizes that the net value of becoming and remaining married is a function of the male-to-female sex ratio. He posits that the greater the competition among men for women either inside or outside of marriage, the lower the net gains to both sexes from marriage. Hence, he predicts, divorce laws will be more liberal. That is, the vows of marriage will less likely be protected by contract-like remedies. While we believe the hypothesis is plausible, it is certainly less than obviously correct. The empirical results of a logistic regression seeking to measure the relationship between the liberality of the various states’ divorce laws and the male-to-female ratio are rather impressive. Hanlon finds a statistically significant relationship in the direction he predicts. We leave it to the reader to puzzle over this novel theory and its apparent empirical support.

A personal favorite in this collection is provided by Antony Dnes. His “Partnering and Incentive Structures” is a short theoretical restatement and extension of the metaphor of contract as the lens through which we can examine the nature of marriage. Under this view, opportunistic behavior is encouraged by the modern failure to treat marriage as a serious and vital contract and to exact damages from the breaching party. Dnes argues that addressing divorce settlement and judgment should normatively start with something like expectation damages. He believes that such a regime would reduce opportunistic behavior (particularly by husbands) in terminating marriages.

Douglas Allen considers a form of “reverse opportunism.” In “The Anatomy of Canada’s Child Support Guidelines: The Effects, Details, and History of a Feminist Family Policy”, Allen argues that Canada’s child support laws, which adopt the “Wisconsin” model, are too generous to the custodial parent (overwhelmingly the mother). This generosity encourages the mother to initiate divorce proceedings. Allen believes that the trauma children suffer due to the increase in dissolved marriages is greater than whatever financial advantage the laws provide following the divorce.

Tiffany Green and Katherine Dickinson bring the economic lens to bear on “The Economics of Infant Feeding”. They restate the ample epidemiological evidence on the health benefits to children of extended breastfeeding. They also survey a plethora of empirical evidence showing that in developed countries better educated, wealthier mothers tend to breastfeed more, while in underdeveloped countries the relationship is reversed. Green and Dickinson’s economic perspective emphasizes the costs – in the broadest sense of the term – of the alternative feeding choices for infants and the effect of public policy on breastfeeding behavior.

Jonathan Klick and Thomas Stratmann provide the reader with a peek into the art of econometric analysis as applied to law and sexual relations. In “Abortion Access and Risky Sex” they review several empirical papers they have written on the question of whether the demand for risky sex displays the traditional characteristic of all conventional demand curves. That is, does it slope downward and to the right? They view the greater availability of safe abortion as a decline in the price of risky sex, and they attempt to measure the corresponding increase in the quantity of risky sex. The reader is briefly
Research handbook on the economics of family law

introduced to: instrumental variables, fixed effects, difference-in-difference techniques, and various other econometric methods. We will not keep the reader in suspense: lo and behold, the demand curve for risky sex does indeed slope downward.

Scott Cunningham and Todd Kendall’s “Prostitution, Technology, and the Law: New Data and Directions” explores the effect of modern communications technology on the “oldest profession.” Internet availability has revolutionized the prostitution industry. It provides enormous advantages to both providers and consumers in terms of safety, ease of advertising, and maintenance of discretion and privacy. Cunningham and Kendall direct researchers to developing databases for further analysis of this evolving industry.

One interesting medical and legal change in the last half-century is “early legal access” to reliable contraception. In “A Survey of the Literature on Early Legal Access to the Birth Control Pill and its Influence on Young Women’s Fertility, Education, Career and Labor Supply”, Melanie Guldi reviews a great body of empirical literature regarding differing adoption dates of more liberal laws by various states. The studies exploit variation between states’ adoption of these laws, as well as the timing of adoption, to generate inferences about the effects of lowering the cost of sex to young women.

Happy reading.