

# *Good Incentives Lead to Good Marriages*

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## INTRODUCTION

Many people are finding it difficult to achieve happiness through marriage and a family. This is not always a regrettable situation as we have moved from an environment in which marriage was attractive to essentially all adults to one in which sometimes that is not the case. Still, marriage is the preferred arrangement for most adults and to the extent that they are less successful in finding happiness there, that is a social tragedy. Frequently, this lack of marital success is attributed to recent changes in values associated with a shift from fulfillment within a family to an emphasis on narrowly defined personal goals. Although some may feel comfortable with this explanation, it begs the question of why values changed. If we recognize that the individual's most fundamental values are based on self-interest, which is resistant to change, then a more satisfactory explanation for these changes in behavior is that people are responding to a change in the incentives that they face. In this chapter, I will address the importance of incentives in a successful marriage, the ability of no-fault divorce to frustrate these incentives, and a reform program to improve the incentives for adults to make decisions that increase the likelihood of a successful marriage.

## THE IMPORTANCE OF INCENTIVES

Incentives are central to the rational choice framework, which is commonly used in economics and frequently in other social sciences such as sociology and political science. This model assumes that people make

decisions based on their attempt to increase their welfare subject to the constraints they face. People are viewed as rational not because their decisions are brilliant, but because their actions are purposeful. In the process of increasing their welfare, people weigh the costs and benefits of alternatives, choosing the ones that they anticipate will provide them with the largest net benefits. As the costs and benefits of activities change, the incentives facing people change. This framework has been shown to explain and predict a broad range of human activities.<sup>1</sup> Based on this perspective, people marry when they expect the benefits of a marriage to a particular person to exceed the costs—remaining single and searching for a better spouse. Alternatively, they divorce when they conclude that the costs of this marriage exceed the benefits associated with some other living arrangement.

Incentives have had an important role in the trends we have observed among American families. Some fundamental changes in society have reduced the incentives for people to marry and, among those who marry, these incentives have resulted in less durable marriages. In addition to love and physical attraction, people traditionally married because they expected to be better off psychologically as well as having access to more goods and services. The psychological benefits came from a stable relationship, while the additional goods and services followed from the spouses assuming more specialized roles. A strong incentive for this specialization was based on their desire for children. A convergence in the opportunities available to men and women accompanied by a decrease in the desirability of children has reduced the incentives for men and women to specialize during marriage, thereby reducing the gains from marriage. The impacts of these changes need to be recognized, because they cannot be reversed. For people who do not want children and see few gains from increased specialization during a relationship or perceive few psychological gains from a stable relationship, marriage has become less attractive.

Still, most people see substantial gains to be obtained from marriage, especially if they want children and a long-term commitment to their spouse. For them, legal changes have reduced the incentives for people to focus on the best interests of their families, lessening the likelihood that their marriages will be a success. The primary legal change has been the change in the grounds for divorce from essentially mutual consent—fault divorce—to permitting either spouse to dissolve a marriage unilaterally—no-fault divorce.<sup>2</sup> The fault grounds were normally adultery, desertion, or cruelty, while the no-fault grounds are usually irretrievable breakdown or incompatibility. Divorces granted on the fault grounds were usually based on mutual consent, so that the crucial negotiations between the spouses tended to confront the spouse wanting the divorce with the costs of divorce, especially to the other spouse and to their children. These costs were financial as well as psychological. Without a compensation package to cover those costs, the divorced spouse would be expected to be reluctant to participate

in the divorce. Unilateral, no-fault divorce often permits the divorcing spouse to ignore some of the costs of divorce at the expense of the divorced spouse and their children.

Consequently, the grounds for divorce had important effects on the incentives influencing the decisions that people made in an attempt to have a successful marriage. If someone expected to be able to control when and if their marriage dissolved—as they tended to do with mutual consent divorce—their self-interest suggested that a long-term commitment to their marriage was appropriate, and personal sacrifices—such as limiting a career—that benefited others within the family were likely to result in reciprocal actions by the spouse and children then or later. As marriage has become a less stable institution—due in part to unilateral, no-fault divorce—the incentives for people to make these commitments and sacrifices have been reduced. People have responded by focusing more on their own self-interest and less on the best interest of their families.

This shift in behavior has erroneously been attributed to a change in values. In contrast to the irreversible social changes already noted, these legal changes can be reversed. A combination of no-fault, fault, and mutual consent grounds for divorce will increase the incentives for people to make decisions that increase their welfare and the welfare of their families.

### **Why Do People Marry?**

The importance of incentives in a successful marriage becomes more apparent if we recognize that there is more to that success than just love and physical attraction. Additional benefits follow from opportunities within a relationship for economies of scale, specialization, and insurance. Traditionally, the decision for a couple to live together was synonymous with the decision to get married. That is no longer the case. Before the broad availability of contraceptives, it was uncommon for couples to live together without being married because regular sexual relations usually resulted in parenthood. Social mores tended to require marriage as a prerequisite for regular sexual relations because the children were potential burdens on society if the parents did not marry. Society responded by placing a significant social stigma on premarital sex. With effective contraceptives, living together does not have to lead to children and, therefore, cohabitation has often been separated from the decision to get married.

#### *Incentives to Live Together*

Therefore, a first step toward marriage is the recognition that a couple is better off living together than living on their own. Living together provides opportunities for economies of scale, specialization, and insurance.

Households provide opportunities for economies of scale that are not available to someone living alone. The size of a comfortable house does not

normally increase as much as the increase in the number of occupants; thus the cost per occupant falls as the number of occupants increases up to some point. In addition, some commodities consumed in a household are public goods, which are special cases of commodities with economies of scale: A public good can be consumed by additional people at little or no additional cost; further, people cannot easily be excluded from the enjoyment of the commodity. A private good, by way of contrast, is costly to provide to additional people and people can be excluded from enjoying it. A television set can be a public good; an apple exemplifies a private good. Most households can reduce the number of public goods relative to the number that they would have if the members were living on their own.

Economists have also recognized that there are gains from specialization when people live together.<sup>3</sup> Specialization increases the welfare of individuals by expanding their access to goods and services as they become more efficient in their production. When people cook more frequently, they become better cooks. The activities in which people specialize tend to be based on comparative advantage, which exists when two people have levels of productivity that vary among activities. A stronger person might focus on activities such as shoveling snow, for example, while his or her partner might accept responsibility for paying bills due to a bad back or a greater talent for financial management.

The last reason that people benefit from living together is insurance. People generally do not like uncertainty, so they frequently buy insurance because they prefer certainty—a fire insurance premium—to uncertainty—having a house that has been destroyed by a fire. Economists call this characteristic of human behavior “risk aversion,” concluding that increased certainty can contribute to people’s welfare. Because insurance cannot be purchased to cover all uncertain future events, people frequently have to make other arrangements to avoid uncertainty. People may prefer a current known situation to an uncertain future.

#### *Incentives to Marry*

Although we have identified numerous reasons why adults benefit from living together, we have not established a clear reason—other than one based on romance—that would explain why they marry. Some of the benefits from living together are enhanced by a more formal, long-term arrangement that traditionally has been provided by marriage. Marriage is especially important if a couple wants children, but it can be a response to other, often psychological, inducements. Still, most adults want children and children present substantial opportunities for a couple to enhance their welfare through economies of scale and specialization. In addition, marriage can be viewed as providing more substantial insurance than that available to couples who are living together.

There are economies of scale in parenting because children are a public good: they can be enjoyed by both parents at no more cost than if only one parent is present and, if the relationship continues, it is difficult to exclude a parent from that enjoyment. A more formal arrangement such as marriage increases the likelihood that the parents will continue to live together, thereby being able to take advantage of these important economies of scale.

The specialization that results from parenthood can have longer-lasting effects than those commonly associated with people living together. Increased specialization within a relationship can impose long-term costs on a party. A couple can often avoid this type of specialization until they have children. They can maintain their careers while dividing the responsibilities within their household. Children change this situation by increasing the pressure for a couple to specialize within their relationship. The arrival of children usually results in one parent increasing the emphasis that he or she places on household activities. The parents may be tempted to share the responsibility for childrearing. However, on closer inspection most conclude that it is less costly to the couple for just one parent to alter his or her employment than for both to alter their employment. Higher-paying jobs often require unexpected overtime and travel. If both parents reject that type of employment, they may be worse off than if only one parent—usually the one with the higher income-earning potential—makes that choice and the other, if he or she is employed, accepts employment that accommodates child care or devotes full time to household and children.

Although this specialization is usually in the best interest of the parents and their children while a relationship lasts, it can be revealed as costly if the relationship ends. Skills developed in one household may have little value in another relationship and even less value in the marketplace, leaving a spouse who has emphasized domestic work vulnerable at divorce. Although this can be a problem in a marriage of short duration, it is particularly a concern in longer marriages. If spouses specialize in earning income, that skill will be intact if the relationship ends. Those persons would lose their share of the household commodities provided by their spouse, but those commodities may have decreased in value after any children have grown up and left the home. During the relationship, the spouses who worked in the home may have developed skills to produce household commodities that do not have substantial value outside their relationship. Their income-earning capacity has deteriorated because of their working primarily at home. Traditionally, spouses were reluctant to make the sacrifices associated with specializing in domestic activities during marriage unless they had the expectation of a long-term relationship; marriage was associated with that expectation.

Another anticipated benefit from marriage as a long-term relationship is insurance against the uncertain future. While marriage can provide

insurance against the potential costs of parenthood previously noted, it can also be important for couples without children. Seldom does a relationship permit both parties to pursue the careers that they would have pursued without the relationship. Frequently, promotions require a relocation that requires other parties to make a sacrifice either in career or lifestyle. Alternatively, as the incomes of the parties increase, they may decide that they want a more leisurely lifestyle. Just as with parenting responsibilities, it may not make sense for both parties to adjust their careers. Marriage can provide some insurance for a person who limits a career. Last, there are important psychological benefits from predictability with marriage, providing insurance that encourages a commitment by both parties.

In summary, economists note that marriage is not the only choice for adults. Because of economies of scale, specialization, and insurance, people gain from living together but not necessarily marrying. A more formal, long-term arrangement such as marriage has usually been associated with children who magnify the gains from economies of scale and specialization. Insurance also provides an incentive for people to marry.

#### THE DECLINE IN THE ATTRACTION OF MARRIAGE

The gains from marriage are not static. Fundamental changes have occurred in essentially all industrial nations that have reduced the gains from marriage. Most obvious has been a reduction in the gains from specialization. The increase in women's wages and opportunities reduced their dependence on men for income and the expansion in the availability of laborsaving devices in the home reduced men's dependence on women for domestic services. Particularly important in the decline in the gains from marriage has been a reduction in the desirability of children. The benefits of parenthood have declined for some adults, as children are no longer a major source of domestic labor or retirement income. Meanwhile, the costs of children have risen. The primary factor has been the increase in the earnings available to women outside the home. Either some income has to be sacrificed so that a parent can remain at home or arrangements have to be made for child-care services. Higher incomes also provide adults with options such as travel that often are restricted by children. With the lower benefits and higher costs of children, it is no surprise that people are electing to have fewer children and, increasingly, some couples are deciding not to have children. Without children, couples lose gains from economies of scale and specialization; they are more limited and so is the attraction of marriage.

As marriage became less attractive, some people initiated legal changes that have had an independent effect that has reduced the gains from marriage. Because of the reduction in the gains from marriage, the likelihood increased that at least one spouse would ultimately conclude that he or she

would be better off if the marriage was dissolved. In the process of dissolving their marriages, many people concluded that there were obvious problems with the existing fault grounds for divorce because they were perceived to be hypocritical, restrictive, and unfair. A movement developed to make it easier for spouses to divorce, with all the states either replacing the fault grounds with no-fault grounds or adding no-fault grounds to the existing fault grounds between 1969 and 1985.

The problem with no-fault divorce is that its repercussions are subtle. It is subtle because the primary reaction has been a reduction in the commitment by adults to their families. But there may be a way to enhance commitment.

### **A Program to Improve Incentives**

A combination of divorce grounds based on no-fault during the initial phase of marriage, mutual consent for established marriages, and fault grounds for abusive marriages will provide a major improvement in the incentives that face adults who want to marry.<sup>4</sup> States have traditionally been reluctant to become involved in the normal interactions during marriage and that position is supported here. Still, the state's role in protecting children is obvious, so it is appropriate for states to have statutes that establish rules for protecting children during and after a marriage. It is important to recognize that the conditions that accompany the dissolution of marriage have far greater effects on the quality of the marriage than has been commonly accepted, as they strongly influence the commitment that spouses make to marriage.

#### *Mutual Consent Divorce*

Under this proposal, mutual consent would be the primary ground for divorce. An established marriage should only be dissolved if both spouses agree that it is a failure. Knowing that the ground for divorce for established marriages is mutual consent would encourage spouses to make sacrifices that benefit their marriage. Meanwhile, not all established marriages are successful and if a couple is questioning the durability of their marriage, mutual consent would increase the incentives for them to recognize and place a value on the collective benefits and costs of marriage and, potentially, divorce. Under mutual consent divorce, a party who does not want a divorce would have an incentive to require compensation for its costs as a basis for agreeing to the divorce.

One of the attractive aspects of mutual consent divorce is the increased likelihood that both parents will address the costs incurred by their children due to a divorce. These costs go far beyond just maintenance, which is covered by child support. If the divorcing spouses are forced to recognize the full costs of their divorce, some parents might be able to make their

marriage work and thereby provide benefits to their children.<sup>5</sup> The parents who expect custody of the children after a divorce are most likely to recognize the costs that the children will incur.

Another attraction of mutual consent divorce is the incentives it creates for couples to consider the rules that are appropriate for their marriage. If people who were considering marriage knew that mutual consent was the primary ground for dissolving an established marriage, that knowledge might increase the incentive for them to negotiate premarital agreements. With mutual consent divorce, the dissolution of marriage would be based on the parties' criteria rather than those of the state. Any agreement by the spouses should nevertheless be subject to regulations that attempt to protect the interests of any children.

Mutual consent is not a perfect solution. It can result in the continuation of a marriage if one party wants to ignore the costs imposed on the parties by the marriage. This can occur when a spouse is opposed to a divorce under any circumstances. However, people can be surprisingly rational even when dealing with emotional issues such as marriage and divorce. In most divorces, at least one spouse initially wanted the marriage to continue, but when the collective benefits of divorce exceed the costs, social welfare is increased by a divorce. Under those circumstances, the parties have incentives to construct an agreement that leaves them both better off. The large number of divorces based on mutual consent under the fault grounds illustrates the willingness of spouses to negotiate even under trying conditions.

#### *No-fault Divorce*

No-fault divorce is still attractive during the early period of a marriage. Mutual consent divorce gives substantial power to spouses who do not want a divorce. To limit abuse of this power, it would appear to be prudent to permit no-fault divorce when the potential costs of divorce are likely to be low, as they tend to be early in a marriage and when there are no children. Early in marriage, a couple is still involved in an evaluation process. During this period of evaluation, no-fault divorce should continue to be the grounds for divorce, giving the parties incentives to investigate their commitment to their relationship.

Eventually, at least one spouse may make sacrifices based on a long-term commitment to the marriage and then the grounds for divorce should shift to mutual consent. These sacrifices will usually occur because a spouse is limiting a career or the couple is having a child. Recognizing that the grounds for divorce are going to change under certain circumstances—a relocation, a child, or potentially a specified time period—will force a couple to reevaluate their commitment to each other. If they are uncomfortable with the restrictions that will accompany mutual consent divorce, they can mutually agree to maintain no-fault grounds for divorce.

### *Fault Divorce*

Fault divorce can also still have a role in dissolving marriages. Mutual consent can create problems when someone is “driven out” of a marriage rather than wanting out. Being driven out of a marriage raises concerns similar to those addressed with the fault divorce statutes. Under fault divorce, the “guilty” spouse did something that gave the “innocent” spouse a right to dissolve the marriage. Fault divorce is still appropriate when there is clear evidence of fault such as abuse of a spouse or any children.

In summary, mutual consent as the ground for the dissolution of most marriages is not a perfect solution to problems facing the family, but it is superior to the alternatives, especially no-fault divorce for all marriages. Most important, it creates incentives for spouses to make decisions based on the best interests of the family rather than taking a narrow focus on themselves. No-fault divorce early in marriages provides spouses with an incentive to evaluate their commitment to each other at a fairly low cost. The potential for a fault divorce creates incentives for spouses to avoid socially unacceptable behavior.

### CONCLUSION

Because of the convergence in the opportunities available to men and women, the gains from marriage have been reduced for some adults. Still, many adults want to be parents and a long-term commitment to a marriage is important in increasing their welfare and the welfare of their children. The commonly available no-fault grounds for divorce produce perverse incentives encouraging adults to focus more closely on their own self-interest and less on the interests of their family. Their incentives would be improved if the normal ground for divorce were mutual consent.

### NOTES

1. Victor R. Fuchs, *How We Live: An Economic Perspective on Americans from Birth to Death* (Cambridge: Harvard University Press, 1983).

2. For a discussion of the evolution and effects of no-fault divorce, see Allen M. Parkman, *Good Intentions Gone Awry: No-Fault Divorce and the American Family* (Lanham, MD: Rowman & Littlefield, 2000).

3. The standard economic discussion of the gains from specialization within a relationship, assumed to be marriage, is contained in Gary S. Becker, *A Treatise on the Family*, enl. ed. (Cambridge: Harvard University Press, 1991), 30–53.

4. For a more detailed discussion of the reform package discussed here, see Allen M. Parkman, “Reforming Divorce Reform,” *Santa Clara Law Review* (forthcoming).

5. Under no-fault divorce, many divorces occur when there has only been a minor discord between the spouses. See Paul R. Amato and Alan Booth, *A Generation at Risk* (Cambridge: Harvard University Press, 1997), 220.