

## Reconsidering Work and Family with “the Marriage Equation”

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Deborah A. Widiss, [Changing the Marriage Equation](#), 89 Wash. U. L. Rev. 721 (2012).

Every day, married couples make decisions about how to allocate work within their relationships. Some couples specialize, with one person performing a breadwinning role and the other doing the lion's share of caregiving tasks. Others divide breadwinning and caregiving tasks fairly evenly, and still others perform the breadwinning role together while outsourcing caregiving to housekeepers, gardeners, and nannies. When spouses make a decision about how to allocate work, the decision often feels like a private choice. Feminist scholars have long argued that, to the contrary, choices regarding breadwinning and caregiving are largely shaped, or even coerced, by law.

Deborah Widiss's article *Changing the Marriage Equation* provides a new way of analyzing the complicated interaction of law, social norms, and individual choice that leads to gendered roles in marriage. Widiss argues that choices regarding the allocation of paid and care work are profoundly shaped by three factors, which together make up what she calls the “the marriage equation.” Two of the factors of the marriage equation are legal—sex-based classifications within marriage law, and the substantive law of marriage. The third is social—the gender norms of marriage. The article argues that all three factors affect couples' decisions about the allocation of labor. Widiss also argues that the first factor, sex-based classifications within marriage law, was largely dismantled during the equal protection revolution of the 1970s, but that the other two factors continue to work together to produce gendered outcomes in the allocation of work within marriages. She then suggests that same-sex marriage can provide a natural experiment for assessing the relative strength of substantive marriage law and gender roles within the marriage equation.

Widiss's marriage equation concept is a useful analytical tool for understanding what many have referred to as a stalled feminist revolution. Feminists hoped that dismantling the first piece of the marriage equation, sex-based classifications, would lead to a more equitable distribution of breadwinning and caregiving work. But despite the formal sex equality now required by the Supreme Court, the persistence of substantive marriage law and cultural gender norms have meant that formal equality has only a limited influence on individual couples' choices. Widiss's article gives many examples of the ways in which substantive marriage law still encourages specialization, even without mandating sex-based roles within marriage. For example, two couples that make identical combined salaries but have allocated paid and care work differently will experience a large disparity in Social Security benefits earned over a lifetime. The couple with one breadwinner will earn much more in Social Security benefits—perhaps tens of thousands of dollars more—than the couple with two.

Standing alone, these types of legal incentives to specialize would not necessarily have a gendered effect on personal choices regarding breadwinning or caregiving. We would expect breadwinners and caretakers to be randomly distributed across husbands and wives. But if we add the third piece of Widiss's marriage equation, societal gender norms, legal incentives to specialize matter. When law encourages one spouse to specialize in breadwinning and the other in caretaking, the vast majority of different-sex spouses opt for breadwinning by the man and caretaking by the woman. Widiss uses social scientific studies to show that couples make this choice even where pure economic theory would suggest they might do otherwise; women who earn substantially more than their husbands, for example, actually do *more* caregiving work than those who earn the same as their husbands, perhaps because they are trying to correct for their “gender deviance” in out-earning their husbands.

In the final part of Widiss's article she considers how same-sex marriage might affect the marriage equation. She reviews research showing that same-sex couples tend to be more egalitarian about both breadwinning and caretaking

functions within their relationships. But she then expresses a cautionary note. All of these studies were done using data that predated legal marriage for same-sex couples. All they show is that, absent the legal incentives provided by marriage, same-sex couples tend to allocate work differently. But what will happen now that many same-sex couples can marry? Marriage equality, Widiss argues, will provide a unique natural experiment that will demonstrate the effect of substantive marriage law on the one hand and gender norms on the other. This experiment will be especially effective if, as she notes, the Defense of Marriage Act is struck down, since DOMA prohibits validly-married same-sex couples from access many of the federal benefits that encourage specialization within marriage. If same-sex couples who marry turn out to specialize to the same extent that different-sex couples do, then we might conclude that it is the legal incentives provided by marriage that are correlated with specialization, rather than gender difference. If not—if, say, gay male couples tend to both be breadwinners and outsource caregiving more than straight couples or lesbian couples—then we might think that the substantive law of marriage makes little difference, and what matters instead is the each spouse's performance of a particular gender norm.

When discussing work and family issues, my students often express the view that law can't do anything about them because gender norms are so entrenched. Widiss gives us a new way of thinking about the role of law. Legal *equality*, standing alone, may not be able to do much about gender inequality in the home. But reform of laws that appear to be sex-neutral, such as substantive marriage law, actually might result in real change. It will be fascinating to see what the "natural experiment" provided by same-sex marriage yields. We may discover that the substantive law of marriage has been doing more to sustain traditional gender roles than we ever imagined. Or, we may discover that gender norms have a power all their own, regardless of whether they are supported by law.

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