Is Marriage a Proxy for Wealth?

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Erez Aloni, *The Marital Wealth Gap*, 93 **Wash. L. Rev.** 1 (2018).

Discussions about wealth accumulation and economic equality invariably lead to discussions about income and wealth inequalities. Professor Erez Aloni's article, *The Marital Wealth Gap,* takes the discourse to a new level by adding the connection between marriage and wealth inequality. Specifically, Professor Aloni indicates how the family structure impacts wealth by comparing the accumulation of wealth among married households in the top ten percent to all households in the bottom ninety percent. He coins this differential "the marital wealth gap." Further, the article exposes various policies that reinforce wealth inequalities that serve as the foundation for the marital wealth gap. Finally he discusses the cause and harms caused by the gap and possible solutions for narrowing the gap.

In his analysis, Professor Aloni explores whether the success of married couples is the cause of the wealth advantage and he analyzes the various legal mechanisms that reinforce the wealth privilege that married households enjoy. In other words, he posits that law and policy facilitate measures to maximize wealth holdings for married households. Professor Aloni proposes the state should decouple wealth benefits from marriage by dismantling the architecture that supports preferences based on marriage.

Wealth accumulation and preservation is an important indicator of economic health because wealth includes assets, in addition to income, and is transferable. Income is not as good an indicator because tax rates have the power to manipulate economic resources. For instance, capital gains income is not taxable until there is a realization event and because of preferential rates, this property is taxed at a lower rate than wages. Professor Aloni points out that the intersection of wealth and family law also impacts the gender wealth gap because divorce negatively impacts women who tend to be the primary caretakers in the marital household. Overall, he argues marital status and family structure are highly correlated to wealth ownership.

In this article, Professor Aloni shows how data support his theory that married families own the most wealth and that married individuals never own the least. Interestingly, he also provides data indicating that married couples own significantly more wealth than their cohabiting counterparts. Further, the research shows the top ten percent of the wealthiest households are married in greater proportions than any other group and they are most likely to be homeowners.

In focusing on causes of the marital wealth gap, Professor Aloni explores different possibilities. For example, married couples typically practice labor specialization and cut expenditures, therefore the marital framework tends to encourage fiscally responsible behavior. Further, married families tend to get support from extended family while divorce divides the economic structure whereby the same resources used for one household are divided between two households. Still, he concedes that marriage may be only one factor rather than the single cause of the wealth gap.

Next, Professor Aloni discusses how law and policy impact and contribute to the wealth gap through tax preferences and incentives. The tax code provides specific benefits to married couples, unavailable to other couples, as long as they are married and file a joint income tax return. For example, the capital gains tax exclusion for sale of a principal residence permits a married couple to exclude up to $500,000 as long as one of them has ownership and they both occupy the home for the requisite time period. A cohabiting couple does not enjoy this preferential treatment. Similarly, unemployed spouses may contribute to an Individual Retirement Account even though they have no earned income. Again, cohabitants do not qualify for this benefit.

Other tax benefits available to married couples, through the transfer tax system, are the unlimited marital deduction, double exclusion amounts, and portability provisions. Working in concert, these laws allow an unlimited amount of wealth to be transferred to a spouse, a double exclusion by using the surviving spouse's exclusion amount, or portability of any remaining exclusion from the decedent spouse. Either way, marital status provides a path to estate and gift tax double exclusion amounts and transfers of enormous amounts of wealth.

Finally, Professor Aloni discusses the fact that wealthy individuals tend to congregate and socialize with potential mates from similar educational and socioeconomic backgrounds. He refers to this arrangement as positive assortative mating based on parental wealth. One of the most interesting aspects of this article is the connection demonstrated between cultural policies and societal norms that affect meeting pools and impact mate selection. For instance, he argues that factors such as school segregation, exclusionary neighborhoods, and the rising cost of higher education restrict access to physical spaces making it difficult for people from different socioeconomic backgrounds to meet. As a result, wealthy families consolidate wealth by marriage and further contribute to wealth concentration through intergenerational transfers thereby exacerbating wealth inequality.

In order to effect structural change, Professor Aloni explores options such as limiting income and transfer tax preferences and exclusions to married couples who are economically interdependent, or eliminating the marital deduction and switching to an individual-based tax system. For example, he suggests, couples with prenuptial agreements should be restricted from income splitting. Additionally, unmarried couples who are economically interdependent should have the benefit of portability and estate tax exclusions. Furthermore, elimination of the marital deduction and switching to an individual-based filing system would treat all relationships equally.

Overall, Professor Aloni argues for marriage neutrality, that marital status should not be the determining factor in receiving tax and wealth-based preferences. This approach advances a recognition of transformative family definitions and promotes nontraditional marriage by not favoring marital status in laws and policies. This is an interesting article based in intersections between estates, trusts, tax, and family law. I particularly like the correlation between marital status and the contribution to wealth inequality as well as the analysis of the wealth concentration via marriage of two socioeconomically privileged families. I recommend this article to all scholars and professors who teach tax policy and social justice-based courses.

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