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**Policy for marriage theory:
the economic efficiency – and fairness - of prenuptial agreements**

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Abstract:

Prenuptial agreements or contracts (also known as prenups) are written contracts that enable affianced parties to organize their rights upon marrying, and eventually facilitate the procedure of divorce. They consist in a general agreement between partners about the custody of children, family's assets, and many more things related to the household. While in some countries, such as the United States, Belgium and the Netherlands, prenups are a well-known institution regularly adopted by couples, in other countries they have not attained legal status. This paper deals with prenups by adopting a history of economic thought perspective. Its aim is twofold: 1) to highlight the necessity to reform prenups, which should not merely be intended as a set of conditions in case of separation and divorce, but as agreements between spouses on how to properly handle the conditions within the new household, such as intra-house division of labor and child care; 2) to show that if prenuptial contracts include not only conditions in case of separation and divorce, but also agreement in sharing responsibilities between partners, prenups should be welcomed by both standard economics, based on efficiency as the ultimate benchmark, and by less standard economics, such as feminist economics, more oriented toward fairness and a possible resolution of the “double burden” of wage work and housework, which is usually on women, or on the weaker (in terms of economic clout) partner in case of same-sex couples.

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Keywords: Prenuptial agreements, marriage, divorce, contract theory

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Introduction

Prenuptial agreements are contracts between partners related to the household. They can be applied either as a form of regulation of sharing responsibilities and tasks within the household or to cope with the custody of children, family's assets, and many more things in case of divorce. Supporting or opposing prenuptial agreements, either as a substitute for divorce legislation or as a complement to divorce legislation, is a complex matter that involves legal rights, economic matters and moral factors. On one side, many policy makers who are in favor of prenups maintain that while divorce laws have undermined the institution of marriage, prenuptial contracts may be seen as an incentive to long-term commitment as it is required in marriage. On the other side, detractors of prenups usually claim that in a society where power bargain is asymmetrically in favor of one part (men), prenuptial agreements will reinforce that asymmetry.

In economic theory, family matters have been scrutinized by two different, and somehow opposite, research fields: the new home economics (NHE) founded by Gary Becker in the 1970s, and feminist economics developed between 1970s and 1990s as a reaction against NHE. While NHE is based on efficiency as the ultimate benchmark, and tends to justify the rationale behind the model husbands-breadwinners and wives-caregivers, feminist economics is based on fairness as its ultimate goal and is oriented toward a possible resolution of the “double burden” of wage work and housework, which is usually on women, or on the weaker (in terms of economic clout) partner in case of same-sex couples.

After offering a brief historical reconstruction of the theory of marriage and divorce within economics in both NHE and feminist economics, this paper presents a review of the more recent literature on prenuptial contracts, and suggests that if prenups are not merely intended as a set of conditions in case of separation and divorce, but as agreements between spouses on how to properly shares responsibilities between partners, such as intra-house division of labor and child care, they should be welcomed by both NHE and feminist economics.

Marriage and divorce are crucial issues in both NHE and feminist economics, while prenups have been rarely analyzed. Prenuptial agreements should not be confused with the dowry, a traditional institution intended as financial assets that a spouse will either offer to his/her partner (or his/her partner's family), or assume as a debt. Dowry has been historically embedded within any culture, including Western legislation, in order to define the legal binding of the parties involved in a marriage contract. More recently, dowry has dropped out of Western culture and, in some contexts, prenuptial contracts have been introduced and prenuptial contracting behavior has been analyzed in relation with transaction costs and property rights within families.

Meanwhile, during the last decades, marriage legislation in the Western countries has gradually reduced discrimination between spouses, namely discrimination against wives, by achieving a formal equality between them: forms of protection for the weaker partner, usually wives, had been introduced within marriage contracts by defining specific rules in case of death of one party, separation, and divorce. More recently, in some Western countries, same-sex marriage has been introduced as well as some specific legislation for domestic relationships, either for heterosexual couples or for same-sex couples. Nonetheless, many feminist scholars and activists, including economists, pointed out that the structures of marriage, even with increasing formal equality, continued to support the traditional gendered division of labor within the family.

1. Some historical framework about equal rights between spouses in the Western society

The argument concerning equal rights between spouses implies an analysis about the nature of marriage, divorce and gender division of labor within a household. While marriage and divorce are institutions which have been legally recognized, the gender division of labor between spouses is much more related to customs and rules.

Marriage is a very ancient institution which might be dated back before 2350 B.C. when the evidence of a marriage ceremony between a couple in Mesopotamia was recorded. Thereafter, it became a widespread institution that continues to evolve throughout time embraced by various cultures.

In ancient time, its primary purpose was to bind women to men. Men were often surrounded by concubines and polygamy was normally customary, because women were considered men's property regardless of their own status. Divorce and repudiation were commonly accepted especially in case of childless unions. Religion and love entered much later into the picture, roughly in the Middle Ages, when the power of the Church arose and forbade polygamy and divorce by setting up marriage as a sacrament upon which the Church was the sole institution able to rule it (Yalom 2001). Meanwhile, the concept of romantic love emerged especially in the literature, albeit the legal and practical subjection of women continued (Coontz 2006).

The legal doctrine known as 'coverture' – from the French for "covering" – persisted until early feminism emerged in the 19th century. According to this doctrine, married women gave up their maiden name in order to surrender their identity in favor of their husbands who became representatives of two people and, eventually, of their children by forming a family around a household that has been regarded as the fundamental unity of a society. If households flourish, societies follow along: households may flourish if, and only if, a strict division of labor between spouses is achieved: regardless of their natural inclination, men were breadwinners while women must take care of everything related to the sphere of domesticity, including child raising (Barclay et al 2020). This division of labor between spouses was grounded on what has been traditionally called the doctrine of the 'separate spheres': the private sphere is women's dominion, while the public sphere is men's dominion (Eibach and Lanzinger 2020).

The subjection of women guaranteed by the institution of marriage was questioned by a lengthy property law process aimed to recognize women's rights on land and income. This process started in the United States in the 19th century: the first American law that permitted a woman any control over land was issued in Connecticut in 1808. In 1848, the Married Women's Property Act was issued by New York State: it allowed women to own and control personal property as well as to dispose issues and profits, without making them subjected to the disposal of their husbands. Between the 1870s and 1880s, the Parliament of the United Kingdom passed the two Married Women's Property Acts, which allowed married women to be the legal owners of the money they earned and to inherit property (1870), and it recognized husbands and wives as two separate legal entities (1882).

These legal acts represented the very beginning of considering marriage as a contract between spouses rather than as a form of transmission of women from a paternal subjection to a marital one. Although the process in the West took many decades, legal recognition of women's property rights altered the relationship between spouses in terms of household decisions (Moehling and Thomasson 2020).

When legislation concerning the economic rights of married women started to pass, many middle-class women, who traditionally spent their life in the sphere of domesticity, joined the job market. This phenomenon rapidly became scrutinized by economists of the time: a large debate took place at the end of the 19th century about the economic consequences of married women who entered in the job market without having the necessity to do it, being their livelihood guaranteed by their husbands' income. It involved economists, such as Edgeworth¹, Jevons², and Marshall³, who reinforced the rationality behind the doctrine of the separate spheres. Of course, early feminist activists, and many women economists of the time, such as Perkins Gilman⁴ and Taylor Mill⁵, devoted their energy in endorsing women's choice to become financially

¹ Edgeworth (1922; 1923) seemed to promote an enlargement of the possibilities in the job market for women, but he questioned women's abilities and justified unequal wage.

² Jevons (1883) made a distinction between married women/mothers and other women as well as between women working in factories and as domestics. He claimed that workhours and workplaces should be differentiated according to class, race, and gender, recommending the complete exclusion of mothers from factories. In fact, married women/mothers' main duty was to take care of the family and only in severe circumstances to help their husband with an extra-mural job.

³ Marshall (1890) was hostile to the modern conception of women: he argued that women have different mental attitudes, which prevent them from theoretical works; thereafter, they cannot be valuable professionals. Furthermore, being the traditional family a crucial factor for social development, their role as wives/mothers was fundamentally much more important than their presence within labor-force.

⁴ In her *Women and Economics* (1898), Charlotte Perkins Gilman argued that women are subjugated in their role of wives and mothers and insisted on the necessity of female economic independence to the improvement of marriage and the family. Furthermore, she promoted an equal division of homework between men and women and self-determination of women in their professional activities.

⁵ Harriet Taylor Mill authored *The Enfranchisement of Women* (1851), demanding: "*partnership* in the labors and gains, risks and remunerations, of productive industry; and a *coequal share* in the formation and administration of laws--municipal, state, and national--through legislative assemblies, courts, and executive offices" (Taylor Mill [1851] 1994, 179), and claiming that social restrictions on women, segregated to motherhood, prevented them from maximizing their happiness.

independent: they fought against the idea that the traditional division of labor between men and women was more efficient for the society as a whole.

Even the debate on women's suffrage, which took place almost everywhere in the Western countries at the end of the 19th century, included many considerations about the status of married women. For instance, the American suffragist and historian George Elliott Howard (1914, 33) wrote: "educated women are declining to view matrimony as a profession, as their sole vocation, or to become merely child-bearing animals. They are declining longer to accept marriage as a sort of purchase contract in which the woman barter her sex-capital to the man in exchange for a life-support."

Talking about marriage legislation it is inevitable to consider the other side of the story: divorce. In 1857 in the United Kingdom divorce was finally allowed by the Matrimonial Causes Act. Although the Act did not treat women and men equally, being women forced to provide unquestionable proofs in order to file a divorce, the Act freed marriage from the millennial ecclesiastical power and made it secular (Kha 2021). Nonetheless, in many countries, divorce is influenced and regulated by religious authorities⁶. The situation in Islamic countries is well-known, albeit the case of Israel is emblematic too, and it creates a legal distance between Israeli citizens and Jews living outside Israel: while in Israel rabbinical courts are the sole institution able to provide a divorce accordingly to the Jewish law (Halakha) which gives to the husband the permission to refuse divorce (*get*); Jews outside of Israel are not subject to rabbinical courts and they follow the legislation of their country of residence.⁷

It is important to underline that until late 1960s, the condition of living an unhappy marriage was not an option to ask for a divorce. In fact, divorce laws required to prove faults in a spouse's behavior: faults might be adultery, abuse, sexual inability, and so forth. The first no-fault option for filing divorce was introduced in 1969 by the California's Family Law Act which led to a

⁶ The role of religion is still very important today even in secular societies: Smith (2003) explains that the religious behaviour of a given country influences divorce rates in Europe, along with the easing of divorce laws and the rising economic status of women.

⁷ Radzyner (2018) analyzes prenuptial agreements used to avoid *get* refusal, albeit not only divorce, but also prenups are treated differently in the diaspora and Israel: this makes things easier for Jews outside Israel, while it does not affect Israeli citizens.

dramatic increase in divorces in a period during which data revealed a consistent decrease in marriages.

In this historical framework pre-marriage agreements, not to be intended as prenups, have been constantly issued between families either to settle down the marriage contract or to face the consequence of divorce and, more frequently, the condition of becoming widowed. The most ancient forms of pre-marriage agreements were dowry and dower: the former was intended as a transfer of parental property or money from the bride's father to the groom while the latter is a payment by the groom to the bride which might be saved in case she should become widowed. The nature of both as well as their financial amount may vary widely. Neither dowry nor dower have been directly related to divorce; they were rather connected to the establishment of mutual rights and duties occurring between families involved in the engagement/marriage.

In the last decades, especially in the United States, prenuptial agreements have been introduced as a form of bilateral contract between the two spouses⁸. Prenups are intended as a full and complete disclosure of the value of all the real and personal property and other assets belonging to each partner who intend to remain them separate propriety. The main function of prenups is to fix conditions in case of divorce. i.e. division of property acquired during marriage, eventual alimony, protection of children from prior marriage, and so forth.

Unlike other economic literature on prenups, this paper is not aimed at investigating their effect on divorce rates (Allen and Gallagher 2007), rather it is aimed at suggesting that, if intended not simply as a list of conditions in case of divorce, but also as a tool to coordinate the division of labor within households among partners, prenuptial agreements may combine efficiency and fairness by overcoming the (supposed) trade-off between efficiency and fairness as depicted in the competition between NHE and feminist economics.

⁸ In 1983 the National Conference of Commissioners on Uniform State Laws [As you have discussed several countries, best to specify that this is in the United States, if indeed it is] introduced the Uniform Premarital Agreement Act (UPAA) in order to make prenups reliably enforceable in their courts.

2. The economics of marriage and divorce in standard economics and feminist economics

Standard economics embedded marriage and divorce within the contract theory based on the process of maximization of households' utility function (Becker 1981) or on the risk-preferences framework (Posner 1992, 2007).

Gary Becker applied rational choice theory to any aspect of human behavior. His interpretation of marriage, the origin of the division of roles within a couple, and divorce were not an exception. Along with Jacob Mincer, Becker founded a new research field, the new home economics (NHE), entirely devoted to the application of neoclassical economics to gender issues with a specific view of household production and the economics of the family (Grossbard 2015; Becchio 2020). As he wrote: "the rational choice interpretation of family behavior has much to offer not only to economists, but also to researchers in the many other disciplines" (Becker 1991, 19). Accordingly, Becker considered the rationale of marriage as follows: "persons marry when the utility expected from marriage exceeds the utility expected from remaining single" while divorce occurs "when the utility expected from remaining married falls below the utility expected from divorcing and possibly remarrying" (Becker et al. 1977, 1142).

Becker introduced his economics of marriage in two articles published in 1973 and 1974. He specified that marriage theory must be grounded on two initial assumptions: a person gets married in order to maximize his or her well-being, which is measured by the consumption of commodities produced by the household; the marriage market reaches a Pareto-optimum condition, which means that nobody can change mates and become better off without worsening someone else's condition. Besides these assumptions, Becker specified that his model of marriage implies that men and women usually acquire different human capital due to their physical and biological differences. As in any other market which tends to equilibrium, the following conditions are satisfied: the division of roles in the marriage market is determined by marginal productivity; preferences are revealed; and mates compete given their budget constraints. Once a marriage has occurred, household production begins: Becker described the economics of the household by assuming that all the commodities produced in the household may be combined into a single aggregate utility function. Finally, he explained mating by defining marriage as a two-person firm with an entrepreneur member who hires (i.e., marries) the

other adult member: the optimal sorting maximizes the entrepreneur's profit, especially by considering the increasing return in mating with someone with similar preferences (Becker 1973).

In his following paper (Becker 1974), he included more nonmarketable elements related to marriage within the household, such as love and caring, as well as problematic issues that lead to divorce and remarriage. Becker et al. (1977) specified that divorce occurs when the combined utility of partners once dissolved exceeds their combined utility while married. Possible causes of divorce are a larger than expected deviation between actual and expected earnings in marriage; discrepancies between partners regarding intelligence, social background, religion or race, which were underestimated at a first stage; and marriage at a young age.

In his *Treatise on the Family*, Becker ([1981] 1991) proceeded to define marriage as a long-term commitment to assure that women are not abandoned and to protect them from life's troubles. The sexual division of labor is a consequence of women's "heavy biological commitment" to the production, feeding, and caring of children (Becker 1991, 38), which leads to the conclusion that the time of men and women are not perfect substitutes, but complementary: "households with only men or only women are less efficient because they are unable to profit from the sexual difference in comparative advantage" (Becker 1991, 39). Specialized investments in comparative advantages reinforce the division of labor between men in the market and women in the household sector. Becker posited a benevolent head of the family (the husband/father) by assuming that he fairly considers the preferences of all household members, and that he is able to adjust allocations in response to family members' behavior. If a family member (a "rotten kid") tries to raise his own consumption by lowering the consumption of others, the head of the household may reduce transfers to him ("no dinner for you tonight!") in order to induce him to behave properly. In the same book, Becker described divorce by incorporating uncertainty about the outcomes of marital decisions in the marriage market, and he defined it as a "special case of the Coase theorem (1960) and as a natural extension of the argument that persons marry each other if, and only if, they both expect to be better off compared to their best alternatives" (Becker 1991, 331). By following Becker, Evelyn Lehrer (2003) analyzed the factors which influence divorce, such as the quality of the match, mainly based on the personality and the behaviors of spouses, and the role of information missed before the marriage occurs. Her conclusion is that divorce is mainly driven by mistakes during the process of finding a marriage partner.

Posner's law and economics approach (1992) applied to family issues such as marriage and divorce is mainly based on new home economics, by showing that a coherent and unifying framework with which to approach legal problems exists beyond the apparent fragmentation of legal rules. Hence, Posner overcomes the traditional boundary between the family and the market described as a conceptual separation between status and contract. His work on the economics of private law can be viewed as an application of his well-known efficiency hypothesis of the common law that is best explained as the courts' attempt to promote economic efficiency. According to Posner, sexual orientations have a strong biological origin that rationally drive sexual behavior through an implicit calculation of the perceived costs and benefits of specific actions which include marriage and divorce.

Posner considers marriage as a central institution based on contract law which essentially regulates "the major 'commodity' that marriage produces: children": raising children in fact requires time which is often on mothers who "trade(s) their work in the home for the husbands' work in the market" (Posner 1992a, 140). Based on the economics' notion of marriage market as a metaphor for mate-searching aimed to form productive households, the traditional marriage law differs from contract law for three aspects: the end of the contract cannot be fixed in advance (as neither death nor divorces are planned); the sanction for breaking the contract is usually more severe than in a regular contract; normal disputes within marriages are not regulated by the courts unless they are leading to divorces. He clearly considered the issue of divorce by distinguishing between consensual and non-consensual divorces. Though Posner pointed out that in a society which men dominate women, wives are more easily coerced to agree to a divorce (Posner 1992b).

Summing up, both Becker and Posner considered the rationale behind marriage and divorces by applying respectively the economic behavioral model and contract law. They did not specifically regard the role of prenups in their theoretical scheme, albeit we might consider an introduction of prenups justified from a rational point of view if and only if it decreases costs, either in terms of individual disutility (a reduction of stress in case of divorcing) or in legal terms (a reduction of disputes at court). The peculiarity of this approach is represented by the nature of the prenup to be intended exclusively as a potential efficient tool for reducing costs in case of separation/divorce, not as a possible fairer tool for organizing the division of labor between spouses during their partnership.

Feminist economics combines economic theory and a feminist stance by criticizing the standard approach to gender issues *à la* Becker and *à la* Posner, and especially their interpretation of marriage and divorce. Feminist economics considers marriage as a social institution whose complex dynamics have been too often rooted in gender inequality which persists in the intra-house dynamics of caring as well as in the dynamics of divorce and break-ups. Furthermore, gender inequality has paid constant attention to the distribution of resources, including material provisions, leisure time, and investments in education in favor of boys and men, in contrast to NHE, which assumes all these factors as *ceteris paribus* conditions.

Feminist economics analyzes marriage by explicitly including social pressures as well as tacit and explicit rules and traditions related to age, class, race, religion, sexual orientation, and gender identity. Moreover, feminist economics points out the relevant role of the legal framework which enormously affects the dynamics of marriage and divorce as well as the role of other formal legal partnerships. Finally, feminist economics promotes economic policies that aim to improve the condition of women, especially considering that the marriage rate has been dropping over the last three decades.

3. Prenups models and literature

In the jurisprudence prenups belong to nuptial agreements made by couples before marriage (pre-marital agreements), when parties usually have an unrealistic view of their marriage, mainly based on their romantic vision of living together, and do not know how circumstances will change, given that human rationality is bounded, information is always incomplete, and knowledge imperfect. Much academic discussion of premarital agreements did not succeed in considering the real-world context around prenups, or has considered only one aspect of the larger context, e.g., gender inequality, while ignoring others. Economic theory might help in understanding pro and contra prenuptial agreements (Thompson 2018).

Evidence suggests that prenuptial agreements are used primarily by wealthy spouses who try to protect their own interests in the event of divorce, or to guard the inheritance interests of their children from previous relationships. Pollack (2018) found three different arguments for the low

rate of prenups. Few couples make prenuptial agreements. The empirical argument shows that in first marriages only 5 percent of couples make prenuptial agreements, while in second and higher order marriages the rate rises to about 20 percent. The theoretical argument is based on the fact that each spouse has multiple objectives that change and it is hard to set up a prenup which might still be valid after many years in case of divorce. Finally, the legal argument is linked to the complex and complicated way to enforce provisions of prenups that specify allocation within marriage: in fact, courts cannot supervise ongoing marriages.

Several studies have shown that prenups have significant effects on individuals' behavior, such as the division of labor in the household seems to be more balanced between partners who usually tend to choose joint ownership of property (Douglas 1992; Hamilton 1999). Some empirical investigations revealed that prenuptial agreements lead to a substantial decline in the divorce rate especially because they tend to be designed to protect economically well-off spouses' financial interests in the event of divorce (Leeson and Pearson 2016)⁹. Other empirical works present spouses' perceptions of the fairness of the division of labor in marriage as fundamental element for a healthy household (Brinig and Nock 1999). In fact, in the last fifty years, women have massively entered the labor market, while men's labor force participation rates have not changed much. Though, this situation did not equalize the housework done by men and women though: women simply end up working 'two shifts' (market and household labor) by carrying on a 'double burden'. A recent paper on Italian data shows the inverse relation between female labor participation and gender wage gap and this situation increases gains from separate property which may easily be determined by prenups. Given the low cost of prenuptial contracts, prenups are not only efficient in case of divorce, but they might lead greater rates of female labor participation.

While divorce is regulated by specific laws and the condition of divorcees are usually set up during the divorce process, the allocation of household labor has never been regulated by jurisprudence. By suggesting that the division of household labor between spouses might be an element of prenups does not mean that a specific legislation must be introduced, rather than a

⁹ The authors examined more than 2,000 American premarital agreements between 1985 and 2013.

possibility to include them along with the traditionally conditions that are embedded in prenuptial agreements.

Rainar (2004) proposed the ‘incomplete contracting’ approach, aimed to guarantee the two partners’ agreement in equilibrium to write a prenuptial contract with the optimal asset division rule. In his model a married (or cohabiting) couple makes three decisions: the terms of divorce; a relationship-specific investment in the marriage for each partner; a bargain over the partition of the marital surplus generated from their investments before divorcing. Divorce is ruled out by equilibrium, and it has not only distributive consequences ex post but can also have efficiency consequences in intact households, by influencing spousal incentives to make investments in relationship-specific assets. The optimal strategy for prenups is to equalize the parties’ economic positions after divorce because they prevent parties behaving opportunistically ex post, thereby promoting efficient investment ex ante.

Broadly speaking, economics models of prenups imply the notion of equilibrium in market marriage to be reached when the joint welfare of the spouses is maximized, such as in the model proposed by Nicolò and Tedeschi (2004). However, reality constantly shows that women usually are at a financial disadvantage to their male counterparts. This lack of realism is precisely what feminist economics criticizes in the standard economics marriage models. Nonetheless, in feminist economics there are no specific studies on prenups, as they are seen as a traditional tool embedded within that standard model. Feminist economics often criticizes the fact that extra-economic issues, which are fundamental in order to understand human behavior – including the decision to get married/divorced – are not taken into any account by NHE economics: not only do prenups reduce the romance around marriage, but they strengthen market dynamics into an intimate relationship by putting too much emphasis on an individual’s utility and by ignoring the couple’s utility. Becker’s identification of the benevolent husband’s utility function as perfectly representative of the household’s utility function is a perfect example of this situation.

Like many feminist scholars, who often point out procedural unfairness in prenuptial agreements, feminist economists likely consider prenups as a sexist way of reinforcing financial protection of men, and they think that premarital agreements generally disadvantage women by sharpening gender inequality (Brod 1994). Nevertheless, some faults emerge in this feminist image of prenups. First and foremost, marriage is not only a romantic relationship: it has economic

consequences, likewise divorce and albeit nobody can buy love, to live in the real world means also to try to arrange things in a way that might reduce disadvantages not only in case of break-ups, but also in order to avoid break-ups. Second, by putting much emphasis on individuals rather than on the couple might be a way to strengthen the well-being of the couple, unless we all agree that there is an inverse relation between ‘the couple’ and the two individuals who form it. In this case, the decision to getting married would be not only totally inefficient, but also unfair. Furthermore, prenups can be useful for a greater commitment between partners, and they might be a good incentive for altruistic behavior.

While many prenuptial agreements detail the division of property or other assets upon death or divorce, they may also include provisions regulating the ongoing marriage. If the view on prenups shifts from a contract to regulate financial asset in case of divorce to an agreement on how to properly handle with partnership during marriage, they would allow couples to take advantage of their freedom as individuals and to build up their own version of the marriage contract. This autonomy of the couple might become a powerful tool to overcome the traditional family, the old-style division of roles between spouses, in order to construct a more egalitarian relationship between partners (Marston 1997).

Conclusions

With the introduction of Gary Becker’s economics of the family, marriage has been scrutinized by considering the division of labor between spouses, which implies men as breadwinner and women as care giver, as natural and efficient. Later on, feminist economics refused [do you mean “refuted?” Because usually one school of thought does not “refuse” another. Another possibility is “rejected.”] NHE economics as a form of reinforcement of the traditional gender stereotypes based on the male breadwinner and the female housewife, a very unfair vision of marriage which leads to a very unfair society.

Many legal instruments might be introduced in order to make marriage an equal institution. Among them prenuptial agreements are a good tool to improve the condition of both partners, and to increase gender equality in the society as a whole. While standard economists – either NHE or law

and economics scholars - seriously took prenups into account by considering them as a tool to reducing costs in case of divorce, feminist economists seem to have ignored the potential effect of prenups on marriages by taking for granted that they are another instrument aimed to preserve men's privileges.

In this paper I have presented prenuptial contracts not only as a tool for regulating financial assets in case of divorce, but also as an instrument to coordinate individual behavior in dealing with family issues that includes a responsible sharing of responsibilities between spouses. If we stop thinking about marriage either as an exclusive romantic union of two people, or as the private bargaining of two rational agents, and we think about it as a form of protection for families and their property, prenups might be regarded as a way to increase the equality between partners in marriages, domestic relationships, and divorces. They can be tailored to any particular couple and, albeit they are not a magical instrument to avoid any possible legal dispute, they might be useful and fair. Prenups can promote efficiency and fairness in marriage and divorce. Henceforth they should be considered not only by today's followers and developers of NHE economics, but also by feminist economists.

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