

**But...Who Mows the Lawn?: The Division of Labor In Same-Sex  
Households**

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## **I. Introduction**

Picture a white middle class Omaha neighborhood *circa* 1981: mother, father, two children, one dog. I grew up in that neighborhood, and when the house next door to my childhood home went up for sale, we assumed another nuclear family would move in, retaining the status quo. Instead, two women signed the mortgage. The neighbors immediately congregated on the sidewalk, speculating on the nature of their relationship: sisters, friends, ex-nuns, lesbians? My aging dad did not wonder about them for long. While unsuccessfully attempting to wake his Lawn-Boy from its winter hibernation, one of the “girls next door” came to his rescue. From then on, he affectionately distinguished them as “the outdoor one” and “the indoor one.” In Dad’s day, gender roles were immutable and it made sense to him to apply them to the couple next door. It was clear to him that one person should clean the house and take care of the kids while the other pay the bills and mow the lawn. Once he got passed the initial shock of having a lesbian couple next door, the roles applied just the same.

Households allocate two distinct categories of labor among their members: non-wage labor within the household and for-wage labor in the market. Until recently, the majority of households in the United States followed a strict division of labor in which women performed the domestic tasks within the household, while men worked for wages in the labor market. In determining the origins of this traditional pattern of labor allocation, economic theories assign causal roles to comparative advantages, bargaining power, institutional constraints, and gender roles. Comparative advantages are differences in preferences and skills that give an individual a relative advantage in a particular task. The argument maintains

that biological differences as well as social institutions and gender roles give women a comparative advantage in household labor. In contrast, bargaining power theorists contend that men tend to work in the private sector because they earn a higher income and effectively “bargain” out of performing household chores. Arguments that rely on institutional constraints and gender roles focus less on rational decisions made by household members and more on habits of behavior that lead to the traditional division of labor.

These economic theories have mainly been applied to the sexual division of labor within the context of heterosexual couples. If there are no biological differences that could contribute to the division, questions arise concerning the relative importance of these factors. Do lesbian and gay families exhibit different household divisions of labor than heterosexual families, and if so, then who mows the lawn? This chapter explores the division of labor in gay and lesbian households, that is, how gay and lesbian couples assign domestic tasks within the household, how they allocate their labor time between the paid market and the home, and possible explanations as to why they choose certain divisions of labor. The essay concludes by advocating for the passage of a federal employment nondiscrimination act, legal civil unions and other federally guaranteed rights in an effort to level the institutional playing field and expand the range of possibilities that same-sex couples face in terms of making choices regarding the division of labor.

Within the context of the economic theories of the household, both inherent and institutional differences suggest that gay and lesbian couples would

exhibit a different pattern of labor allocation than heterosexual couples. Lesbian and gay couples have no biological or genetic differentiation that would lead to comparative advantages in the household. Lesbian and gay families cannot bear their own biological children, leading neither partner to an automatic advantage in caring for the child. Same-sex couples are more likely than heterosexual couples to earn similar incomes<sup>1</sup> resulting in no bargaining advantage for either partner. Lastly, without differences in socialized gender roles, same-sex couples are unlikely to rely on such institutions to guide their decisions and are, therefore, less likely to develop a traditional division of labor in the household.

Additionally, lesbian and gay families are differently constrained than heterosexual households by many institutional factors, including laws banning gay marriage/civil unions, inheritance laws, adoption laws, tax benefits, domestic partner benefits, and hospital rights. Some informal institutions are beginning to be adopted by same-sex couples, such as legal agreements that substitute for marriage or domestic partnership benefits offered by companies. These *ad hoc* benefits, however, are associated with high transactions costs and, as such, have yet to be implemented in a widespread manner. Without readily available legal parameters, gay and lesbian couples may be less stable than their heterosexual counterparts, and a strict division of labor in which one partner works only within the household while the other earns a wage in the labor market may be considered too risky. Without a legal marriage contract, for example, one partner may not

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<sup>1</sup> Due to the existing wage gap between men and women (Blau and Kahn 1994), heterosexual couples are more likely than same-sex couples to have differences in their earnings. Thus, although members of same-sex couples may have differences in their income due, for example, to

have legal recourse if the partnership were to dissolve, and alimony and child support are not in the homosexual vernacular.<sup>2</sup> In this way, the institutional context may inhibit certain patterns of labor allocation within same-sex households.

Such differences have political ramifications. Family policies are theoretically designed to enhance efficiency in reaching social goals. If lesbian and gay families are qualitatively different than heterosexual families and face different constraints that affect their allocation of labor within the household, then policies must be designed that account for such differences. Recent attempts to equalize the institutional context faced by lesbian and gay families include the introduction of the Employment Non Discrimination Act (HR2355 and S1276), employment protection at the state and firm level, and attempts by several states to pass legal civil unions for homosexual couples (of which only Vermont has seen success).<sup>3</sup> Additionally, the passage of domestic partnership benefits in some states and within some corporations has also served to limit constraints felt by lesbian and gay families. These changes may increase the range of options available to same-sex couples in terms of their labor allocation choices.

This paper begins by introducing the economic theories of the household and how they have treated lesbian and gay couples. This section is followed by empirical findings on the division of labor in lesbian and gay households. The

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human capital discrepancies, they will not *necessarily* have differences in their incomes on average.

<sup>2</sup> The term “galimony,” however, is. Galimony is a descriptive term for what is owed to the “divorced” partner of a rich/famous lesbian, coined after Marilyn Barnett sued Billy Jean King upon the dissolution of their relationship. Martina Navratilova was also sued by her former partner, Judi Nelson upon their breakup.

fourth section of the paper presents political implications including a description of recent developments in employment discrimination acts, domestic partnership benefits, and civil unions for gay and lesbian couples. The paper concludes with a summary and suggestions for further research.

## **II. Theoretical Treatment of Households in Economics**

Gary Becker (1981) uses the notion of comparative advantage to explain the sexual division of labor between men and women. The theory assumes that because women biologically bear children, that they will choose to specialize in household labor while men, with greater earning power, will specialize in the paid labor market. Specialization leads to the development of comparative advantages with women producing goods and services in the private sphere (home) and men in the public sphere (market). Thus, preferences and comparative advantages (based on both biological differences and socialized gender roles) lead to a sexual division of labor between the men and women.

When attempting to explain the division of labor in lesbian and gay households, Becker points to both the inherent biological differences between heterosexual and homosexual couples and some of the institutional constraints faced by gay and lesbian couples. Becker (1981) concludes that the model of comparative advantage is inapplicable because gay and lesbian couples have similar abilities and thus, cannot exploit the “inherently” balanced comparative advantages existing between men and women. He assumes that because gay and lesbian couples cannot bear children, that they will invest less (emotion, effort,

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<sup>3</sup> ENDA was reintroduced into both the Senate and the House during the summer of 2001. This and other relevant policies will be discussed in greater detail in the section on policy implications.

and money) in marriage-specific capital. As a result, the partners in “homosexual unions” will be less stable (Becker 1981: 330).

In terms of institutional constraints, Becker points to both the lack of a legal marriage contract and discrimination faced by lesbian and gay couples as further evidence that they would have a less extensive division of labor than heterosexual couples. He questions the sustainability of gay and lesbian relationships because there is no legal contract involved. “[H]omosexual unions, like trial marriages, can dissolve without legal adversary proceedings, alimony, or child support payments” (Becker 1981: 330). Additionally, “the opprobrium attached to homosexuality has raised the cost of search to homosexuals and thereby has reduced the information available to them” (Becker 1981: 330). These factors lead him to conclude that lesbian and gay couples exhibit a less extensive division of labor than heterosexual marriages.

Critiques of Becker’s theory emphasize the role of culturally constructed norms and social institutions that shape the behaviors and activities of economic agents. Institutions structure long-term relationships in a manner that minimizes the transaction costs associated with the relationship (Pollack 1985). The institution of marriage, for example, is a type of map consisting of informal gender roles and traditions, as well as formal social and legal agreements, that spell out the rules of the ongoing relationship and the rights of each member, should the relationship dissolve (Blau, Ferber and Winkler 1998). As such, institutions can serve as stabilizing devices. Heterosexual couples, for example,

may unconsciously adopt a traditional division of labor rather than making a decision based on preferences or abilities.

Bargaining models of the household in which families negotiate with each other in order to reach an agreement were developed as a critique of Becker's neoclassical model (Manser and Brown 1980; England and Farkas 1986; England and Kilbourne 1990). Returns from the marriage contract are commensurate with each member's "bargaining power" or negotiating strength. Historically, men have had more education, experience and higher incomes, which led to greater bargaining power in the home and an unequal division of labor with women performing the majority of housework. Within same-sex couples, however, large differences in income are less likely than among heterosexual couples. It stands to reason that neither partner would garner any bargaining power leading to a more egalitarian division of labor.<sup>4</sup>

Nancy Folbre's (1994) "structures of constraint" tie together several aspects of these economic models of the household in order to broaden our understanding of the sexual division of labor. She defines structures of constraint as "sets of asset distributions, rules, norms, and preferences that empower a given social group" (Folbre 1994: 51). The fact that women, worldwide, perform the majority of the domestic responsibilities in families may be due to some combination of these constraints. Traditions and implicit social roles may affect women's preferences and their choices about education and career—ultimately shaping their opportunities. Furthermore, access to fewer assets, and explicit legal

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<sup>4</sup> Of course, large differences in income between same-sex partners are possible and may lead to one member gaining bargaining power over the other.

institutions may limit women's choices outside of marriage. As was the case with the biological argument, a lack of gender differentiation within same-sex couples would lead to less of a difference between the partner's gender socialization, preferences, and ultimately the legal institutions each partner faces. Again, this would lead to a more egalitarian division of labor in gay and lesbian households as opposed to the strict public/private pattern exhibited within heterosexual households.

### **III. Empirical Findings In Lesbian and Gay Households**

It is possible that the division of labor in lesbian and gay households tends to be egalitarian, but the determinants of this division are more complicated than Becker theorized and require further explanation. Several empirical studies have shown that lesbian couples in particular tend to distribute their household labor more equally than their heterosexual counterparts (Bell and Weinberg 1978; Clunis and Green 1988; Peplau and Cochran 1990; Desaulniers 1991; Peace 1993; Patterson 1998; Dunne 1998a, 1998b). The factors influencing this result vary from Becker's comparative advantage thesis. Egalitarian norms, a lack of gender differentiation, and social and legal institutions may encourage lesbian and gay households to adopt a more equal division of labor.

Several studies indicate that both lesbians and gay men reject the notion of gender differentiation. Philip Blumstein and Pepper Schwartz (1983) and Lawrence Kurdek (1993, 1995) argue that lesbian couples actively defy existing gender roles and are careful to divide tasks equally. They speculate that lesbian couples avoid task specialization because of the low status traditionally associated

with women who perform housework. Further, lesbians refuse to take on the “provider role” as women do not expect to support their partner financially (Blumstein and Schwartz 1983: 130). H. F. Peace (1993: 30) finds that lesbian couples do not specialize in tasks along any stereotypically gendered lines such as outdoor versus indoor tasks. Kath Weston (1991) found that even in cases where gender differences existed, such as within couples who exhibited “butch/fem” identities, it was seldom the case that one partner would work outside of the house while the other performed only domestic labor.

With regard to gay men, Blumstein and Schwartz (1983) find that work was an integral part of their self-esteem. Furthermore, unlike heterosexual men, gay men did not feel an obligation to provide financially for their partner (Blumstein and Schwartz 1983: 129). Gay men preferred that their partner work rather than for either partner to assume the role of full time homemaker. “Otherwise, one partner may feel he is relinquishing some of his maleness, and that is not an appealing prospect for most gay men” (129).

M.V. Lee Badgett (1995a, 2001) questions Becker’s failure to separate out the effects of comparative advantage and the effects of institutions on the division of labor in the household. She claims that “gendered patterns of specialization would be much rarer among lesbian and gay households” because homosexual couples do not have access to the legal and social institutions supporting heterosexual couples and enforcing gender norms (Badgett 1995a: 131), rather than due to comparative advantages. For example, institutions that keep same-sex partners from adopting may discourage lesbian couples from having children.

Same-sex couples might perceive investment in marital capital and specialization to be too large a risk without the legal frameworks defining the beginning and ending of relationships.

Although the division of labor within lesbian and gay couples tends to be equal relative to heterosexual couples, not all lesbian or gay couples divide household labor equally, and it is not entirely clear that conditions for specialization do not exist for some same-sex couples. Partners may exhibit different preferences for household tasks. It is reasonable to assume that heterosexual and homosexual couples alike would develop relative advantages for domestic tasks within the house based on preferences and abilities. Household tasks are many and varied—cleaning, cooking, shopping, child-care, finances, repairs, etc. Differences in preferences for performing the tasks could lead to differences in ability, and ultimately a division of labor within the household that may or may not be equal. Several studies have shown that lesbian couples do, in fact, use preferences and comparative advantages to guide their division of labor (Desaulniers 1991; Peace 1993). Weston (1991) found that both individuals in lesbian couples generally worked in the labor market for money and individuals either rotated household tasks, or performed those that they did best or enjoyed most.

The presence of children within the same-sex household may alter the division of labor and encourage specialization in different activities. Many authors have noted a recent increase in childbearing among lesbians<sup>5</sup> (Mitchell 1996; Patterson 1992, 1994, 1995; Patterson, Hurt, and Mason in press; Polikoff

1990; Riley 1988; Tasker and Golombok 1991; Weston 1991). Raymond W. Chan, Risa C. Brooks, Barbara Raboy, and Charlotte J. Patterson (1998) find that although lesbian couples with children maintain a fairly equal division of labor, the non-biological mother tends to work more hours in the labor force and perform less child-care than the biological mother.

Blumstein and Schwartz (1983) argue that the division of labor in gay and lesbian households is the result of an absence of traditional gender relations. They claim that within a same-sex partnership,

[t]here is no assumption about the primacy of one partner's career, and if a conflict arises, it is negotiated between them. Neither job is automatically considered of secondary or of auxiliary importance. Fights may flare up over career issues, but rarely over who should work... The same-sex couples profit in this instance by being guided by neither institution nor gender (Blumstein and Schwartz 1983: 153).

In contrast, preliminary empirical and theoretical work suggests that gender roles may still play a role. Sarah Oerton (1998) asserts that though gender differences in lesbian households may be less obvious, the absence of a heterosexual man in a household does not “erase all the processes and practices associated with gendering” (Oerton 1998: 76). Lisa Giddings (1998) argues that lesbian couples may either purposefully or subconsciously emulate the traditional roles and traditions found in heterosexual marriages in their allocation of domestic tasks within the household. Were we to understand gender as a category that is not fixed, we may find more subtle examples of gendered patterns of behavior. For example, in their study of lesbians in the 1940's and 50's, Elizabeth Lapovsky Kennedy and Madeline D. Davis (1993), find that partners become more or less

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<sup>5</sup> This has been coined the “lesbian baby boom.”

masculine in a given context and relative to a particular partner, performing the household tasks associated with that role.

Bargaining models may also be applied to explain divisions of labor in lesbian and gay households. Differences in the standard determinants of threat points such as education, experience, wealth, income, or the probability of finding another partner, may exist within the lesbian or gay household. The belief within same-sex couples that both partners should work in the market can change if they have incomes large enough to make two wage earners unnecessary (Blumstein and Schwartz 1983: 130). These differences could lead to power asymmetries and, ultimately, an unequal division of labor. It is also conceivable that increased risks associated with the lack of formal legal contracts in lesbian and gay relationships could exaggerate power differences in times of crisis.

With regard to institutional constraints faced by same-sex couples, official contracts and legal agreements may proxy some of the rights homosexual couples cannot access. Gay and lesbian couples are increasingly turning to wills, power-of-attorney agreements, health-care proxies and contracts to protect their relationships (James and Murphy 1988: 108; Curry and Clifford 1992). As gay and lesbian couples substitute formal and informal agreements for legal ones, they may be more willing to specialize and create divisions of labor within the household.

#### **IV. Political Implications**

Gay and lesbian families are different than heterosexual families in that they face greater biological and institutional structures that constrain their ability

to make choices about their allocation of labor within the household. Recent policies have been proposed in an attempt to limit the constraints faced by lesbian and gay families in the United States and around the world. The policies address discrimination of sexual minorities in employment, housing, access to services, and other areas of public life. In addition to discrimination of various sorts, policies also appeal to registered partnerships, marriage or civil unions at both the federal and state levels. With access to civil rights that are analogous to heterosexual couples, gay and lesbian partners can enjoy a greater array of choices with regard to their division of labor within and outside of the household.

Critics of the traditional division of labor between men and women argue that immense risks exist for the individual specializing at home. Barbara Bergmann (1981) identifies several economic risks associated with being a “housewife”.<sup>6</sup> The most obvious economic risk is that working in the private sector for one’s family is not compensated with a wage or salary<sup>7</sup> and, as such, receives no current or future benefits (health and dental care, paid leave or retirement to name a few). A “housewife” has little job mobility within the same “occupation” and if the job ends (either at her own or at her husband’s discretion) the human capital generated from performing housework leads only to other low-pay, low-status jobs. Furthermore, without wages or a salary, housewives may be unable to generate savings that could be relied upon during a job search or were he/she to exit the relationship. Lastly, the occupation of housewife is unique in

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<sup>6</sup> I will follow Bergmann here in using the term “housewife” to refer to either women or men who work at home without wages.

<sup>7</sup> Rolande Cuvillier (1979) points out that housewives do, in fact, receive a return on their work in non-cash benefits including room, board, clothing allowances, etc. She characterizes the

that precisely as his/her partner's value in the private sector is increasing, the value of a "housewife's" labor devalues over time as children grow up and move out of the household (Ferber and Birnbaum 1977).

In this light, one may wonder why it would be good for gay and lesbian couples to move toward the more traditional division of labor. I am arguing here that it is important for gay and lesbian partners to have the *choice*, and that in order to enable this choice, greater protections for the home-specializing partner (in either heterosexual or homosexual relationships) is necessary. It is conceivable that the availability of such a choice—while not for an entire lifetime—would be beneficial to couples at various life stages, such as after childbirth or adoption. Because institutional constraints appear to be a motivating factor in determining the allocation of labor, their expansion (or removal) would afford gay and lesbian couples the range of choices available to heterosexual couples.

### ***Discrimination in the labor market***

Being gay, the last time I thought about it, seemed to have nothing to do with the ability to read a balance book, fix a broken bone or change a spark plug (President William Jefferson Clinton 1997).

Workers that identify as being gay or lesbian combat issues in the workplace that are not related to the productivity of their time or labor. Prejudice against gays and lesbians manifests itself in the workplace through discrimination in both hiring and firing, harassment, promotion, and compensation, as well as in more subtle ways. "These forces present significant challenges for employees deciding whether to reveal their sexual orientation and for managers trying to

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housewife as an "unjustified financial burden on the community" because he/she receives non-

create a climate that promotes understanding and productivity” (Human Rights Campaign 2000).

Fears of discrimination on behalf of gay, lesbian, bisexual and transgendered (GLBT) individuals are not unfounded. A 1992 survey found that between 16 and 44 percent of GLBT people reported incidences of anti-gay discrimination in the workplace (Badgett, Donnelly and Kibbe 1992). Between a fourth and two-thirds of lesbian, gay, and bisexual people report having lost a job or a promotion as a result of their sexual orientation (Badgett 1997a: 1).<sup>8</sup> Evidence of similar cases of discrimination exists even in “tolerant” professions such as law, medicine and academia. Heterosexual witnesses corroborate this evidence. The results from two surveys targeting heterosexual employees found that between 15 and 25 percent had witnessed anti-gay discrimination (Badgett 1997a: 2). Furthermore, contrary to popular myth, gays and lesbians do not earn more than heterosexuals. In fact, one study suggests that similarly qualified gay workers may earn less than their heterosexual counterparts (Badgett 1995b; Badgett 1997b, Klawitter and Flatt 1997).

Actual or perceived employment discrimination against gay and lesbian workers serves to constrain individual behavior. Discrimination in the workplace can create salary inequities, impede promotions, and accentuate job loss. Within a heightened climate of discrimination, gay and lesbian couples may be less

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cash benefits that go untaxed.

<sup>8</sup> Please see the following Human Rights Campaign report for a detailed description of more than 130 cases of discrimination among gay and lesbian workers in the United States: *Documenting Discrimination* at <http://www.hrc.org> published 2001.

inclined to adopt traditional divisions of labor due to the uncertainties surrounding potential losses associated with discrimination in the workplace.

This environment of workplace uncertainty has been removed for certain Americans with the passage of three federal laws. Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of race, color, religion, sex or national origin. The Age Discrimination in Employment Act of 1967 prohibits employment discrimination on the basis of age and the Americans with Disabilities Act of 1990 prohibits employment discrimination on the basis of disability. At this time, however, no federal law protects lesbian, gay, bisexual or transgendered individuals from discrimination in the workplace on the basis of their sexual orientation.

A series of state and local laws do protect LGBT individuals to some extent. Currently, 11 states, 116 cities and counties, and the District of Columbia have laws protecting gay men and lesbians against discrimination in the private sector. The states include: California, Connecticut, Hawaii, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, Rhode Island, Vermont and Wisconsin.<sup>9</sup> As of February 2001, 257 Fortune 500 companies, 931 private sector employers, 319 colleges and universities, 235 state and local governments, and 37 federal government department agencies include sexual orientation in their non-discrimination policies (Human Rights Campaign 2001).<sup>10</sup>

The closer a company is to the top of the Fortune 500 list, the more likely it is to include sexual orientation in its non-discrimination

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<sup>9</sup> In 1982 Wisconsin became the first state to enact anti-gay employment discrimination. Minneapolis became the first municipality to do the same in 1974.

<sup>10</sup> In 1975, AT&T was the first employer to add sexual orientation to its non-discrimination policy. See [www.hrc.org/worknet](http://www.hrc.org/worknet) for a complete list of employers.

policy, suggesting that the most successful companies in America are those that embrace diversity and work toward providing an inclusive work environment for lesbian and gay employees (Human Rights Campaign 2000: 8).

If passed, the Employment Non Discrimination Act (ENDA) (HR2355 and S1276) would prohibit discrimination in the workplace on the basis of sexual orientation at the federal level. First introduced in Congress on June 23, 1994, the federal bill bars employers from basing hiring, firing, promotion or compensation decisions on an individual's sexual orientation. The bill would apply to businesses with more than 15 employees and would not require any affirmative action, quotas, or preferential treatment on behalf of employers. Contrary to popular myth, the bill does not create "special rights" for gay and lesbian people in the workplace. It simply ensures equal protection under the law. The bill came within one vote of passing the Senate on September 10<sup>th</sup> 1996 and was reintroduced in the summer of 2001 co-sponsored by Senators Edward M. Kennedy, Arlen Specter, Joseph Lieberman, and James Jeffords, and by House Representatives Christopher Shays, Mark Foley, Barney Frank, and Ellen Tauscher.

Patchworks of social policies protect GLBT individuals against discrimination inconsistently around the world. While the Universal Declaration of Human Rights (UDHR) 1948, does not explicitly address sexual orientation, a 1994 case decided by the United Nations Human Rights Committee, *Nicholas Toonen v. Australia*, held that the term "sex" found in the list of protected categories in the International Covenant on Civil and Political Rights (analogous to Article 2 of the UDHR) should be understood to include "sexual orientation." As of April 1999, 21 countries had enacted some kind of anti-discrimination act

protecting LGBT people from discrimination in work, education, the provision of goods, services and facilities, and accommodations. The countries include:

Australia, (Anti-Discrimination Act of 1991; various state acts), Canada (Canadian Charter of Rights and Freedoms Section 15(1), 1982; Human Rights Act, 1996), Columbia, Costa Rica (Law No. 7771, Art. 48), Denmark (Penal Code, 1987; Act 459, 1996), Ecuador (Constitution, Article 23, 1998), Fiji (Constitution, Section 38(2) of the Bill of Rights, 1998), Finland (Constitution, Section 5, 1998; Penal Code, Section 9, 1995), France (penal Code, 1985 and Code of Labor, 1986, 1990), Iceland (Penal Code, 1996), Ireland (Prohibition of Incitement to Hatred Act, 1989; The Unfair Dismissals Act, 1993; The Health Insurance Act, 1994), Israel (Equal Opportunities in Employment Act, 1992), Luxembourg (Penal Code, Art. 454-457, 1997), The Netherlands (Constitution, Article 1 DC, 1983; Penal Code, 1992; The General Equal Treatment Act, 1994), New Zealand (Human Rights Act, section 21, 1993), Norway (Penal Code, Paragraph 135a, 1981; Work Environment Law, 1998), Slovenia (Penal Code, Article 141, 1996; Law About Work Relations, Article 6, 1998), South Africa (Constitution, 1996), Spain (Penal Code, 1995), Sweden (Penal Code, 1987), United States (Equal Employment Opportunity in the Federal Government, 1998).<sup>11</sup>

### ***Domestic Partnership Benefits***

Employers offer fringe benefits to their employees as a way to both compensate their workers, attain a competitive advantage, and to attract (and

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<sup>11</sup> See the International Gay and Lesbian Human Rights Commission at <http://www.iglhrc.org> for updates on antidiscrimination legislation around the world.

retain) highly skilled workers. These benefits include medical and dental insurance, disability and life insurance, pensions benefits, family and bereavement leave, tuition assistance, relocation and travel expenses, and profit sharing. These benefits have historically been offered to employees' spouses and legal dependents; however, extending them to domestic partners of unmarried employees (including gay and lesbian employees) is only a recent trend.

In 1982, the Village Voice became the first employer to offer domestic partner benefits to its gay and lesbian employees (Human Rights Campaign 2000). "By 1990, there were fewer than two dozen U.S. employers that offered 'spousal equivalent' benefits to their gay employees' partners" (Human Rights Campaign 2000).<sup>12</sup> At that time no Fortune 500 Company offered domestic partner benefits. By 2000, 20 percent of Fortune 500 companies did so (Badgett 2000:1). According to the Human Rights Campaign, there are currently 3,647 employers that offer domestic partner health benefits, 116 fortune 500 companies, 602 other private companies, non-profits or unions, 129 colleges and universities, and 98 state and local governments (Human Rights Campaign 2000).<sup>13</sup> Additionally, three cities including San Francisco, Los Angeles and Seattle have established "equal benefits ordinances" which require companies with whom they do business to provide domestic partner benefits (Human Rights Campaign 2000:

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<sup>12</sup> In 1992, Lotus Development Corporation became the first publicly traded company to offer such benefits. See [www.hrc.org/worknet](http://www.hrc.org/worknet) for a complete list of employers offering at least full medical coverage to domestic partners.

<sup>13</sup> The Human Rights Campaign tracks employers with domestic partner benefits through surveys, partnerships with other organizations, news articles and through other informal methods.

19).<sup>14</sup> Furthermore, six states (California, Connecticut, New York, Oregon, Vermont, and Washington) cover the partners of their employees.

Employers can benefit from offering domestic partnership benefits to gay and lesbian couples. During periods of low unemployment, for example, benefits can provide firms with a competitive advantage in recruitment and retention. By creating a social safety net for employees and their dependents, domestic partnership benefits can also improve employee productivity. Lastly, offering benefits signals that the firm values diversity in the workplace.

As with nondiscrimination acts, domestic partnership benefits can also expand the range of choices available to gay and lesbian couples with regard to their allocation of labor. Without access to insurance and health care, for example, it could be impossible for one partner to stay at home and focus on domestic labor. This is particularly pertinent for lesbian and gay couples with children. The decision concerning who will bear a child, for example, may be predicated on who has access to the most comprehensive benefits to protect the child, rather than on other factors such as health of the mother or even preference.

### ***Gay Marriage/Civil Unions***

The rights associated with marriage convey economic, social, and civil benefits that vary widely across countries and cultures. The rights provided by marriage may include the right to joint custody of children to adoption, inheritance, spousal immigration rights (and extending one's citizenship to one's

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<sup>14</sup> As a result of the San Francisco Equal Benefits Ordinance 2,707 employers have instituted domestic partner benefits. More information about the specific requirements of the ordinance can be obtained from the San Francisco Human Rights Commission at

spouse and children), rights to power of attorney, property, the execution of living wills, medical decision-making power, and insurance and pension benefits. These benefits are limited to heterosexual couples only by political decision, not by logic or efficiency reasons. M. V. Lee Badgett and Josh Goldfoot (1996) argue that marriage provides a sort of social safety net creating “property, spousal inheritance, and social security survivor benefit rights in the event of divorce or death, all of which enhance the economic security of the family” (Badgett and Goldfoot 1996: 2). If extended to gay and lesbian couples, such benefits would provide security to those partnerships as well.

Although gay and lesbian couples cannot currently marry through the same institutions and mechanisms as heterosexual couples anywhere in the world, four forms of “gay marriage” have been legislated throughout the world in an attempt to equalize the institutional setting for gays and lesbians. These forms of marriage include “Civil Unions” in Vermont, “Reciprocal Beneficiaries” in Hawaii, “Registered Partnerships” in Denmark, Greenland, Iceland, Norway, and Sweden, and “Statutory Cohabitation Contracts” in Belgium.

A law establishing the institution of civil unions for gay and lesbian couples went into effect on July 1, 2000 in the state of Vermont. The first of its kind, this law gives gay and lesbian couples all of the rights and privileges afforded to married couples. Under the law, gay and lesbian couples are eligible to receive spousal benefits afforded to married couples by their employers. It also requires insurance carriers to cover gay and lesbian couples in civil unions.

According to the Human Rights Campaign (2000) two states (Hawaii and California) and 53 cities and counties have established domestic partnership registries in the United States. While not equivalent to marriage, these laws give gay and lesbian couples certain rights and benefits including hospital and jail visitation rights. They do not, however, require employers to provide domestic partnership benefits.

Several states have recently introduced civil union bills. California Assembly Bill No. 1338 would allow gay and lesbian couples to obtain a civil union license and assume the same rights and obligations provided by marriage. The Connecticut House Bill No. 6032 would provide legal recognition to same-sex couples. The Maine Domestic Partnership Bill (Maine House Legislative Document No. 1703) requires insurers and HMOs to offer domestic partnership coverage to people living together including both heterosexual and gay/lesbian couples. The state is also considering two domestic partnership bills that would exclude same-sex couples from such coverage. Additionally, legislatures in Rhode Island, Hawaii and Washington have held hearings on proposals modeled after Vermont's law.

Thirty-six states have passed laws that prohibit the recognition of civil unions or marriages between same-sex couples. President Clinton signed the Defense of Marriage Act (DOMA) on September 21<sup>st</sup> 1996, allowing a state to choose to not recognize same-sex marriages performed in another state. The Act further seeks to create a legal definition of marriage as a "union between a man

and a woman.” DOMA was introduced by Reps. Bob Barr and Steve Largent, and passed the House of Representatives by a vote of 342 to 67 on July 12, 1996.

The United States lags behind other countries in accepting some variation of same-sex unions, such as domestic partner registries and gay marriages, particularly Northern European countries.<sup>15</sup> Denmark enacted a same-sex partnership registry that took effect on October 1, 1989, making it the first country in the world to grant gay and lesbian couples the civil benefits accorded to heterosexual couples. With the exception of the recognition of weddings performed in churches, access to adoption, and the use of national socialized medicine for artificial insemination, the law is equivalent to marriage under Danish law. Greenland, a dependency of Denmark, adopted the law in 1994. Norway passed a law mirroring Denmark’s partnership law in 1993, and Sweden followed suit by legally recognizing same-sex couples in 1995.

In 1995, the Constitutional Court in Hungary ruled that common law marriages can be applied to same-sex couples. The court said that a law limiting common-law marriages to “those formed between adult men and women” was unconstitutional. This ruling provides same-sex couples the same basic civil benefits as an unmarried heterosexual couple (same as marriage except adoption of children).

The Netherlands’ Second Chamber of parliament approved a same-sex partnership law with benefits mirroring the Danish model in 1996. By January 1, 1998, gay and lesbian Dutch couples had access to all of the benefits except

adoption. In 2001 the country passed a new law giving gay couples equal rights with other married couples under civil law. Under the new law, same-sex couples are able to apply for court approval to adopt children after living together for three years, and the law eliminates legal ambiguities on inheritance, pension rights, taxes and divorce.

In 1996, Iceland approved a same-sex domestic partnership law. In Canada same-sex partnerships must be given the same legal benefits given to heterosexual couples who can legally be married. Finland legalized homosexual “unions” giving gay and lesbian couples many of the same rights and responsibilities as married couples, but not the same status. Same-sex couples are also not allowed to adopt children.

Germany passed a same-sex partnership law in the summer of 2001 giving couples access to inheritance and health insurance rights. The law does not give gay partnerships the same tax privileges as heterosexual marriages. In France registered partnerships are available, including tax benefits, public insurance and pension benefits, inheritance and lease protections. Additionally, property acquired together is considered to be jointly owned and partners can demand concurrent vacation schedules. Within Italy, Pisa and Florence allow same-sex couples to register as domestic partners, and within Great Britain, London established the London Partnerships Register for unmarried couples in 2001. The Spanish parliament passed a domestic partnership law in 1997 that was similar to

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<sup>15</sup> For an interesting discussion on the history of lesbian and gay marriages see “Lesbian and Gay Marriage through History and Culture” by Paul Halsall, <http://www.bway.net/~halsall/lgbh/lgbh-marriage.html>.

the Danish model. In addition to existing laws, many of these countries have signed treaties that recognize each other's registered partnership laws.

Many other countries are considering legislation that would offer some nation-wide protection including Australia, Luxembourg, Portugal, the Czech Republic, Slovenia, and Switzerland. Furthermore, Israel has not yet legalized gay partnerships, however legal decisions appear to be leaning toward such a law including decisions concerning the inheritance rights of the surviving gay partner to the late partner's pension. South Africa, while not yet providing legal same-sex marriage rights, contains language in its new constitution that bans discrimination on sexual orientation. The Belgium parliament is debating a bill that would legalize gay and lesbian marriages, granting same-sex couples nearly the same legal status as heterosexual couples. Same-sex couples would not be allowed to adopt children. It is expected that the bill will become law in early 2002.

As was the case with employment non-discrimination and domestic partnership benefits, the implementation of "gay marriages" or civil unions extends the social safety net to gay and lesbian couples and establishes a greater level of institutional support for these families. The more extensive civil union legislation requires employers to extend domestic partnership benefits, which, as we have seen, can extend the range of choices available to gay and lesbian couples in terms of their allocation of labor. Civil unions do more than simply create and extend available benefits. They also provide gay and lesbian couples with a legal contract that binds couples together and provides a mechanism for resolution were the partnership to dissolve. With a contract, the couple may be

more willing to take risks in terms of their labor allocation and adopt a more traditional division.

## **V. Conclusions**

Same-sex households tend to allocate their labor in a manner that is more egalitarian than their heterosexual counterparts. In other words, it is much more rare for gay and lesbian couples to exhibit a pattern in which one household member performs for-wage labor in the market, while the other performs non-wage labor in the home. Economists have theorized that this is due to the fact that same-sex couples do not develop comparative advantages based on biological differences, or differences in social norms that lead heterosexual couples to adopt the traditional division of labor. Same-sex couples, for example, are less likely to bear their own children, and are thus, unlikely to support the mother at home caring for her child.

Empirical evidence suggests that while it may be true that same-sex couples do exhibit more egalitarian divisions, that this may be the result not of comparative advantage issues but of institutional constraints. Without access to employment protection, domestic partnership benefits, or legal marriage, same-sex couples might find the risks associated with a traditional division of labor too great. In response, proxy contracts and legal benefits are increasingly being adopted to ensure legal protection for their families. The current changes in the institutional environment faced by gay and lesbian couples (including the increase in employer provision of domestic partnership benefits, civil unions and domestic partner registries) could decrease these constraints. Future research is necessary

to examine the long-term effects of informal contracts as well as the changing institutional environment, and their effects on the division of labor in same-sex households.

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