

(Un)Equal protection: Why gender equality depends on discrimination ^[1]

Author: Cunningham-Parmeter, Keith

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AVAILABILITY

Abstract & full report ^[2]

The case for paying dads to spend more time with their kids ^[3]

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Abstract

Most accounts of the Supreme Court's equal protection jurisprudence describe the Court's firm opposition to sex discrimination. But while the Court famously invalidated several sex-based laws at the end of the twentieth century, it also issued many other, less-celebrated decisions that sanctioned sex-specific classifications in some circumstances. Examining these long-ignored cases that approved of sex discrimination, this Article explains how the Court's rulings in this area have often rejected the principle of formal equality in favor of broader anti-subordination concerns. Outlining a new model of equal protection that authorizes certain forms of sex discrimination, (Un)Equal Protection advocates for one particular discriminatory policy that could dramatically promote gender equality in the decades to come. Fatherhood bonuses - laws that give families additional parental leave when fathers stay at home with their newborns - have the potential to drastically reorder gendered divisions of labor and expand women's workplace opportunities. Countries that have experimented with fatherhood bonuses have seen women with children spend more time in paid work, advance in their careers, and earn higher wages. Applying these international models to the American context, this Article explains why fatherhood bonuses would fit comfortably within our constitutional framework, which authorizes discriminatory policies when such policies support women's public participation. (Un)Equal Protection concludes by proposing a model for fatherhood bonuses in the United States that would encourage more men to perform care work, thereby advancing the goal of gender equality for both sexes.

Region: United States ^[4]

Tags: gender ^[5]

work/life balance ^[6]

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