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FROM STATUS TO CONTRACT: THE BIOPOLITICS OF MODERN MARRIAGE AND THE LIMITS OF STATE INTERVENTION IN THE REPUBLIC OF SERBIA**

Abstract

The adoption of Family Law in Serbia in 2005 marks a fundamental change in how the state governs domestic life. By introducing the marriage contract, the state embraced neoliberal individualism, transferring regulatory power to private actors while maintaining institutional oversight through notary procedures. This movement functions as a biopolitical mechanism that integrates market logic into the private sphere, eroding the collective protective mechanisms characteristic of the socialist era. Despite the formal emphasis on freedom of contract, structural barriers continue to undermine equality between spouses. Moving beyond the myth of absolute autonomy, this study identifies a persistent “dilemma of choice” shaped by ideological illusions and gender-sensitive power imbalances. Through critical discourse analysis, the

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paper demonstrates how the neoliberal framework rebrands systemic economic risks as individual responsibilities, leaving the socio-economically weaker spouse vulnerable. The Serbian family thus remains at a critical crossroads, caught between persistent patriarchal frameworks and the atomizing pressures of globalized neoliberalism.

Keywords: marriage contract, Henry Maine, biopolitics, neoliberalism, individual autonomy

INTRODUCTION

The relationship between the state and the family is one of the most important issues of political power and social order. In the past, the law recognized the family as the fundamental unit of society, treating this collective bond rather than the isolated individual as the core of the community. As Maine (1897, 126) observes, this focus allowed the state to manage domestic life as a way of maintaining social stability. Within traditional legal systems, marriage functioned as a “status” where the state acted as the ultimate guardian of the family unit (Stanimirović 2006).

The modern era has moved away from a rigid model of status toward contractualism. The Republic of Serbia formally recognized this transformation with the Family Law from 2005, which introduced the marriage contract. The introduction of the marriage contract into the Serbian legal framework is not a simple technical update, but a reflection of a profound transformation of the country’s political and social structure. This reform marks the moment when the state let market logic and private autonomy enter the traditionally protected domain of the family. Such a change served as a strategic response to the economic and political realities of a society in transition (Stjepanović 2021, 8).

The significance of this evolution lies in the break with the socialist legacy of collective solidarity. This transition from state-guaranteed security to individual responsibility reflects broader

post-transitional processes where old models of protection recede before new market demands. The rise of contractual freedom creates what scholarship identifies as the “dilemma of choice”. This dilemma highlights the conflict between honoring a person’s freedom of contract and protecting them from the harmful consequences of power imbalances within an “unequal field” (Hadfield 1995, 337).

In this paper, we explore the tension between the state’s regulatory role and this liberal freedom. On one hand, the state promotes the marriage contract as a tool for empowerment. On the other hand, the state maintains a biopolitical presence by imposing strict formal requirements through public notaries. Current Serbian legislation limits the notary’s role to a simple notification of consequences, which often fails to protect the “weaker” spouse. This suggests that while the state claims to grant autonomy, it remains concerned with managing the economic life of its citizens through procedural oversight. The marriage contract thus acts as a clear indicator of Serbia’s current position as a country navigating a path between its socialist foundations and a neoliberal future.

CONTRACTUALIZING INTIMACY

Legal history reveals a persistent move away from collective social structures toward a legal framework defined by individual autonomy. In traditional legal systems rooted in collective property, marriage was seen as a “status” through which the state set out the rights and duties of the parties. Contemporary legal frameworks moved away from this concept by treating marriage more like a private agreement. The introduction of the marriage contract in Serbia reflects this broader change in how the law governs personal relationships. As Maine (1897, 126) observed, the movement of progressive societies has been a transition from status to contract, where legal obligations arise from individual agreement instead of social position. In the earlier stages of social development, the legal position of an individual depended on their

place within a predetermined hierarchy, such as the family or the tribe. Status was not chosen but was inherited. These assigned roles defined the rights and obligations that governed a person throughout their life.

With the rise of liberal legal systems, this rigid structure has been replaced by the principle of contract. Under this framework, the individual is seen as an autonomous actor who creates their own legal obligations through voluntary agreement. This move toward individual autonomy is particularly visible in the institution of marriage. The marriage union has evolved from a religiously or socially mandated status into a private arrangement between two autonomous individuals. Serbia provides a complex example of this transition, which remains an ongoing process (Stjepanović 2021, 8). In the past, the Serbian family was organized as a communal unit - *zadruga*, where the welfare of the group always took precedence over the interests of the individual. In this traditional system, collective priority meant that family stability and survival were far more important than personal choice. Such a structure functioned as a social instrument with a high level of adaptability to economic problems, ensuring survival through redistributive justice and solidarity (Rajković and Miletić-Stepanović 2014, 86). However, this communal legacy is not merely a relic of the past. In modern Serbian society, these traditional household forms regain their importance during periods of social and economic crisis (Rajković and Miletić-Stepanović 2014, 83). As a result, the contemporary Serbian marriage exists in a state of tension between the neoliberal demand for individual contract and a re-traditionalized reality where kinship networks remain essential for survival.

The influence of global neoliberalism and the harmonization of domestic law with European standards have accelerated the contractualization of marriage (Stjepanović 2024a, 66–68). This change is not only a technical change in law but represents a biopolitical transformation. Biopolitics, as defined by Foucault (1978, 139–140), refers to the ways in which the state manages and regulates the biological lives of its citizens. Marriage

remains a central site of biopolitical intervention because it is the primary mechanism for the reproduction of the population and the socialization of future citizens. Even as the state allows more autonomy through marriage contracts, the legal system continues to exercise power by setting the limits of that autonomy.

The introduction of marriage contracts is often seen as a triumph of individual freedom. This approach suggests that a contractual model empowers individuals to organize their relationships based on their specific needs and personal values. However, this narrative of progress often ignores the structural inequalities that persist within the domestic sphere. When marriage is treated as a contract, the state assumes that the parties are equal bargaining agents, operating as neutral and rational actors (Stjepanović 2024b, 256). Yet the reality of marital life is often characterized by significant power imbalances. This creates the “dilemma of choice”, a conflict between promoting autonomy and protecting the “weaker” party from harmful consequences arising from power imbalances (Hadfield 1995, 337). The transition from status to contract thus creates a new set of challenges for the state, which must determine when to intervene in private agreements to ensure substantive fairness.

The biopolitics of modern marriage in Serbia operates at the intersection of socialist legacy and neoliberal pressure. In balancing the demand for individual autonomy with family stability, the state facilitates a transition that is far from neutral; instead, it frequently masks the marketization of the most intimate human spheres. The institutionalization of marriage contracts relies heavily on the neoliberal myth of the “sovereign individual” - an actor portrayed as operating independently of state influence. This narrative replaces the humanist vision of morally autonomous individuals with the colder logic of *Homo economicus*, where communal living and societal integration are reduced to utility calculations and competitive selection. This framework suggests that domestic relations have been successfully removed from the public sphere and placed into the hands of autonomous individuals. In reality, however, this process describes a strategic

marketization of private life rather than its true liberation, as it strips the family unit of its collective protections and reframes systemic vulnerabilities as mere individual choices.

By treating marriage as a negotiable agreement, the legal system applies a commercial logic to personal bonds, transforming the home into a space of economic calculation where rights and duties are weighed like assets in a business transaction. This transition from status to contract is deeply embedded in the ideology of neoliberalism. Brown (2015, 31) argues that neoliberalism acts as a normative order of reason that economizes every sphere of human existence. One of the most pervasive myths is the belief that all human interactions, including those within the family, can be reduced to market-like transactions. In this worldview, the individual is reimagined as a market-driven actor who enters into a marriage contract to maximize personal utility and minimize risks. This marketization of domestic relations fundamentally alters how society understands love, commitment, and social responsibility, replacing relational bonds with the cold efficiency of the contract.

The neoliberal myth of the “autonomous individual” suggests that everyone is equally capable of navigating the legal and economic landscape. This move toward autonomy cannot, however, ignore the persistent realities of social stratification and resource inequality. (Stjepanović and Rajić Čalić 2025, 485) When the state promotes the marriage contract as a tool of “freedom”, it simultaneously privatizes the risks associated with family life. If a marriage fails, the consequences are treated as a private failure of the contract rather than a social problem requiring state support. This reconfiguration allows the state to withdraw from its role as a provider of social welfare, placing the burden of care and financial stability entirely on the individual. Spouses often exhibit “bounded rationality,” making them unable to make truly autonomous choices regarding distant and uncertain events like divorce (Eisenberg 1995, 251).

The biopolitical dimension of this marketization is evident in the way the state encourages “responsible” family planning

through contractual mechanisms. The marriage contract regulates the property and financial obligations of spouses, which in turn influences decisions regarding childbearing and career paths. By framing these decisions as “choices” made by rational actors, the state obscures the biopolitical pressures that shape those lives. For instance, the lack of affordable childcare and the persistent gap between male and female earnings in Serbia create a context where women are often forced to “choose” to prioritize family needs over their professional development (Blagojević Hughson 2011, 102).

This illustrates why the “myth of the small state” is so misleading. Foucault (2008, 77) noted that the modern state does not actually withdraw from public life, but rather turns toward new techniques of power that regulate the population through more subtle means. The state no longer dictates the terms of marriage through moral mandates, but manages the family through the legal regulation of contracts and the biopolitical management of the labor market. In Serbia, the state’s biopolitical presence is maintained through the notary, whose role is currently limited to a formal notification of legal consequences. This level of counseling is considered an insufficient system of protection because it fails to address power imbalances (Stjepanović and Rajić Čalić 2025, 491). The marriage contract thus becomes an instrument of neoliberal governance that aligns private life with the requirements of the global economy.

THE SERBIAN FAMILY AT A CROSSROADS

The Serbian family is in a state of transition that is described as being “at a crossroads” (Čović 2019, 360). This period is defined by the tension between traditional patriarchal values and the modern demands of an individualized society. On one hand, many Serbian citizens still view marriage as a communal or sacred bond. On the other hand, the increasing economic precarity and the influence of Western legal models have made the marriage contract an attractive option for those seeking to safeguard

individual assets. This move toward contractual relations aligns with what Rose (2009, 61-97) describes as “governing through choices”, where the state manages the population by encouraging individuals to act as self-governing actors.

This transition also involves spatial fragmentation and a miniaturization of domestic life, a phenomenon driven by new technologies and the changing nature of work (Jevtović 2025). The traditional extended family has largely been replaced by the nuclear unit, which itself is becoming increasingly fragmented as members retreat into virtual spaces. Such technological “evolution” carries profound biopolitical implications. The individualization of modern life forces people to seek private, biographical solutions to systemic contradictions (Beck and Beck-Gernsheim 2002, 22). In this context, the family is no longer a stable entity, but a dynamic network that must be constantly renegotiated within a “new technoculture” (Jevtović 2025).

The crossroads also involves a conflict between competing sources of authority. While the state has updated the Family Act to allow for greater autonomy, religious institutions in Serbia continue to play a significant role in defining the moral parameters of family life. In many cases, the religious ceremony carries more weight than the civil contract, creating a duality in how citizens perceive marital obligations (Čović 2020, 10). This creates a complex biopolitical landscape where the state operates alongside traditional religious norms, both of which contribute to the governance of citizens’ intimate lives. This interplay between secular and traditional authority is further complicated by the presence of contemporary political myths. Modern myths differ from classical ones because they belong to the realm of the profane and often function as ideological illusions (Stojadinović and Đurić 2017, 59). In the context of Serbian family law, the marriage contract can be seen as a “false myth” or an ideological illusion of absolute sovereignty. While the law presents the contract as a tool for personal freedom, reality often contradicts this ideal by exposing the individual to systemic economic risks. This mythologization masks the state’s biopolitical objective of

shifting social responsibility onto the atomized individual. To fully deconstruct this illusion, it is necessary to employ Critical Discourse Analysis (CDA), which views language not as a neutral tool but as a form of social practice deeply embedded in power relations. As Pešić (2022, 91) observes, discourse does “ideological work” by representing historically transient and exploitative forms of social organization as natural, inevitable, or rational. From this perspective, the neoliberal focus on “contractual freedom” in the domestic sphere functions as a discursive hegemony. It “naturalizes” the economic vulnerability of the weaker spouse by framing systemic risks as private, autonomous choices. By “demystifying” these discourses, as Pešić suggests through the lens of Norman Fairclough’s approach, we can reveal the “hidden power” behind the discourse of family law. This power shapes the “orders of discourse” that define what is considered a legitimate marital agreement, often marginalizing relational and protective concerns in favor of market-oriented logic. Consequently, this transformation is not a neutral legal development, but a part of a broader trend of ideological controversies that require a rigorous gender-sensitive approach to be fully understood. In this light, contemporary social phenomena must be analyzed through a lens that accounts for how these shifting narratives impact the role and safety of women, particularly when structural risks are reframed as individual choices (Đorić 2023, 72). By masking the state’s biopolitical objective of shifting social responsibility onto the atomized individual, this myth exposes the most vulnerable to systemic economic risks. In order to prevent this, legal theory must rediscover the balance between individual autonomy and the protective “status” inherent in family life.

The marriage contract cannot be treated as a standard commercial contract because it operates within a framework where the state has a legitimate interest in preventing exploitation and ensuring a fair distribution of burdens (Bix 2006, 375). By reintroducing the concept of “status” into the contractual debate, it becomes possible to justify judicial interventions that protect

the weaker party without completely negating the principle of private autonomy.

In the transitional phase that Serbian legislation is currently in, the traditional boundaries of state intervention are being redefined. While excessive state involvement is often dismissed as paternalism, a policy of minimal intervention allows traditional inequalities to persist behind the thin veil of “freedom of contract”. Current global crises and social protests further highlight the fragility of the domestic sphere in the face of political instability (Jevtović 2025). In this uncertain environment, the marriage contract is often perceived as a source of personal stability and legal certainty. However, this certainty is an illusion, as the transition from status to contract remains a contested and fragmented process where new models have yet to prove themselves fair or sustainable.

The concept of the autonomy of the will serves as the primary legal justification for the marriage contract. This principle suggests that individuals possess the right to determine their own destiny through the exercise of free will. Within the Serbian legal system, the Family Law represented a significant recognition of this ideal. Yet, applying this principle to marriage is problematic because the domestic sphere differs fundamentally from the commercial arena (Stjepanović 2024b, 253-256). Unlike a business transaction, where parties are expected to be detached and self-interested, marriage is a relationship built on trust and emotional interdependence. Pateman (1988, 2) observes that the idea of a “contract” often presupposes an abstract equality that ignores the historically rooted power imbalances within the private sphere.

There is a fundamental “dilemma of choice” inherent in the conclusion of marriage contracts, where autonomy is legally presumed to exist in the absence of overt fraud or duress. In many cases, however, the “choice” to sign a contract occurs within a context of emotional pressure or social expectation. A spouse might agree to disadvantageous terms simply to avoid appearing distrustful or to preserve the relationship (Stjepanović 2024b,

256). In such instances, autonomy becomes a legal fiction that masks deep relational vulnerability. The law should focus on “vulnerability” rather than the myth of the “autonomous liberal subject”, as all individuals are inherently dependent on social and relational structures (Fineman 2004, 8).

The biopolitics of the autonomy of the will involves the state using the concept of choice to limit its own responsibility for the welfare of the spouses (Foucault 2008, 77). By accepting every contract as a valid exercise of free will, the state can ignore the substantive inequalities produced by such agreements. It is argued that this approach particularly harms women, who are statistically more likely to sacrifice economic interests for the sake of the family unit. The presumption of autonomy thus becomes a mechanism for the state to validate the exploitation of the “weaker” party. From a biopolitical perspective, the state is not withdrawing but instead delegates the management of inequality to the individuals themselves. This reality necessitates a reconsideration of the limits of state intervention. The autonomy of the will is not an abstract absolute but a principle requiring a careful balance with the necessity of substantive equality (Stjepanović and Rajić Čalić 2025, 483). This necessitates a move beyond purely procedural reviews toward a fairness-based assessment of contracts. The state maintains a biopolitical interest in ensuring that marriage contracts do not lead to social exclusion or impoverishment. Consequently, the autonomy of the spouses must be bound by mandatory rules that protect the essential interests of the family.

The principle of the autonomy of the will in Serbian family law remains in a state of tension. The state must decide whether to continue treating marriage like a standard commercial agreement or to recognize its unique biopolitical nature by providing specialized protections for the spouses. Relational contract theory offers a vital counter-narrative to the rigid individualism of modern legal frameworks. Originally developed by Macneil (1980) to explain long-term commercial cooperation, this theory suggests that the text of an agreement cannot be understood in isolation from the relation between the parties. In a marriage, individuals

are not merely contracting for property, but constructing a shared life over decades. The relational context encompasses emotional bonds, shared investments, and the fluctuating needs of the spouses, all of which defy the static logic of traditional contract law.

Relational contract theory challenges the conventional view of a contract as a fixed agreement to be enforced according to its literal, original terms. Instead, it posits that a contract is a dynamic framework that must adapt to the evolving reality of the partnership. Since most marriage contracts are signed during an initial period of optimism, parties often find it impossible to predict the hardships that may lie ahead. Over time, however, circumstances can change dramatically, whether through illness, unemployment, or the decision to prioritize childcare over professional growth. If the original agreement is then strictly enforced without accounting for these changes, it can produce outcomes that are fundamentally unfair and entirely detached from the parties' initial intent. The biopolitics of relationality suggests that the state should view the family as a unit of interdependence rather than a collection of atomized individuals. Within this perspective, the role of the state extends beyond merely enforcing a transactional agreement. The state must actively safeguard the stability and fairness of the relationship itself. This requires a formal recognition of "relational vulnerability", a concept that arises when one spouse becomes dependent on the other through non-financial contributions such as homemaking (Gordon-Bouvier 2018, 54). A marriage contract that ignores this vulnerability fails as a biopolitical instrument, as it undermines the social function of the family as a primary provider of care and mutual support.

The Serbian legal system should implement mechanisms allowing for the dynamic review of marriage contracts, ensuring that legal agreements adapt to the evolving realities of family life. Such reforms could involve periodic reassessments of the agreement or granting judges the authority to modify terms that have become unconscionable due to altered life circumstances.

This approach would align Serbian law with the relational reality of marriage, moving away from the rigid and often oppressive contractual model favored by neoliberal ideology. By embracing relational theory, the state can better navigate the limits of its intervention, respecting the autonomy of the spouses while fulfilling its biopolitical duty to protect citizens from the risks of an unjust contract.

THE DYSFUNCTION OF THE CONTRACTUAL MODEL UNDER ASYMMETRIC RISKS

The transition from status to contract in marriage carries specific implications for gender equality that are often regressive in practice. In Serbian society, where traditional roles remain deeply entrenched, the negotiation and execution of marriage contracts are never neutral processes; these agreements inevitably reflect and formalize existing power asymmetries. The phenomenon of the socio-cultural imperative of care, where domestic labor is expected as a natural obligation, serves as a primary driver of domestic inequality in the Serbian context, where the state overlooks the systemic labor and professional opportunity costs borne primarily by women (Stjepanović and Rajić Čalić 2025).

This structure encourages a model of social identity where individual value is derived through domestic self-sacrifice. As Federici (2012, 16) has argued in a broader context, this idealization of sacrifice serves to obscure the fact that domestic labor is, in reality, uncompensated reproductive work that sustains the entire economic system. This imperative directly undermines the substantive fairness of marital agreements. An individual socialized within this framework is statistically less likely to demand an equitable distribution of assets, often perceiving such legal assertions as being at odds with the relational commitment. The biopolitical pressure to maintain the role of “primary caregiver” inevitably leads to career interruptions and a significant depreciation of human capital. When individuals in these circumstances accept a formal separation of assets, they

effectively institutionalize their own economic dependency by forfeiting claims to wealth generated during the partnership. In the event of a dissolution, the contract becomes a mechanism that translates years of domestic specialization into long-term economic insecurity. This is exacerbated by the biopolitics of the Serbian labor market, where structural inequalities ensure that many women enter into such agreements from a position of inherent weakness. Fraser (2016, 112) describes this as the “crisis of care”, where neoliberalism demands total professional availability while simultaneously dismantling the social supports necessary for family life. In this environment, the marriage contract does not facilitate genuine autonomy; instead, it formalizes economic subordination through the appearance of a voluntary agreement.

Within a neoliberal framework, the marriage contract is often presented as a sophisticated tool for “calculating” and “managing” risk. Yet, this calculation fundamentally fails because it treats marital risks as if they were purely financial and easily severable. Relational vulnerability is not a variable that can be easily quantified or hedged like a market asset. When a spouse decides to prioritize domestic stability and childcare, they are making a non-diversifiable and often irreversible investment in the relationship. If the union dissolves, that investment frequently results in a total loss of market-based professional capital. The law must find a way to “value” these relational contributions, protecting those who are most vulnerable to the externalization of these risks.

In many Serbian marriages, the burden of unpaid labor falls disproportionately on women, while their professional capital diminishes the longer they remain outside the workforce (Shehaj 2022, 23). A marriage contract based on a “separation of property” model effectively assigns the entirety of this economic risk to the provider of care. Viewing the family as a rational factory of utility, as suggested by the “New Home Economics”, masks the inherent power imbalances produced when market power and domestic specialization are divided between partners (Becker 1991, 30).

The state's biopolitical role should be to redistribute this risk more fairly. This could be achieved through compensatory mechanisms or through the recognition of a "relational interest" in the future earnings of the higher-earning spouse, ensuring that domestic dedication is not translated into personal economic failure. The calculation of domestic risks must also account for the "biopolitical tax" paid for reproducing the population. As Fraser (2016, 112) and Federici (2012, 16) demonstrate, the neoliberal state benefits immensely from unpaid labor yet avoids offering systemic compensation by framing this work as a private, emotional duty.

This allows the state to withdraw from social welfare, while the "separation of property" model ensures that the economic risk of this labor remains a private burden. The marriage contract thus becomes the site where this systemic imbalance is formalized. By intervening in these agreements, the state recognizes and compensates for essential social labor, which is not merely a matter of fairness between individuals but a question of social justice and long-term sustainability.

Achieving substantive equality necessitates a critical re-evaluation of the biopolitical conditions that sustain these domestic structures. This requires moving beyond formal legal updates toward a regulatory framework that addresses the structural imbalance of domestic responsibilities. Rather than viewing caregiving through a purely gendered lens, the legal system must recognize care as a fundamental social utility. If the state incentivizes a more balanced distribution of caregiving roles, it reduces the systemic dependency that currently compromises the bargaining power of the vulnerable spouse.

At this point, the state must decide whether to remain a passive enforcer of private agreements or an active protector of the relationship's internal fairness. While a mandatory pooling of all assets could be interpreted as a disproportionate infringement on property rights, allowing individuals to "contract into poverty" represents a failure of the social contract. In order to resolve this, a middle path is needed - a mandatory minimum of protection that

functions as a biopolitical safety net. This mechanism ensures that the essential socio-economic security of a spouse cannot be waived through a private contract. Without such structural safeguards, the marriage contract risks functioning merely as a modern label that formalizes archaic inequalities under the guise of contemporary legal autonomy.

THE LIMITS OF STATE INTERVENTION AND THE GERMAN MODEL

The debate over marriage contracts is ultimately an inquiry into the legitimate boundaries of state intervention. While a liberal democracy typically mandates that the state remain distant from the private lives of its citizens, the family remains far from a purely private institution because the family unit performs vital social and biopolitical functions. When a marriage terminates and leaves a spouse in poverty, the burden of social assistance falls upon the state, creating a clear public interest in ensuring that marital agreements are equitable. Therefore, legal frameworks must prevent the production of a class of economically marginalized citizens. Just society must be structured so that its rules do not disadvantage the most vulnerable, especially in institutions as fundamental as the family. When a marriage contract allows for the total externalization of relational risks onto one spouse, it fails this primary test of justice. Within the “original position”, no rational individual would agree to a legal framework that permits “contracting into poverty” without a mandatory safety net (Rawls 1971, 75). Therefore, the state’s intervention is not a violation of autonomy, but a prerequisite for a just contractual environment.

Defining the limits of state intervention requires balancing three competing interests: individual autonomy, relationship stability, and social welfare. Current legal trends in Serbia appear overly focused on a narrow, almost atomized conception of autonomy, often at the expense of social cohesion. By allowing spouses to contract away essential rights, the state effectively erodes the social safety net and promotes a model of

disproportionate wealth accumulation within domestic life. The law should be interpreted through a prism of integrity, where individual rights are not seen as isolated, absolute priorities, but as part of a coherent moral framework that values every citizen's life equally (Dworkin 1986, 190).

Biopolitical intervention should therefore be guided by the principle of proportionality. When parties are genuinely equal, and the contract is fair, intervention should be minimal. Yet, when a clear power imbalance exists or when the contract threatens the well-being of the family unit, robust state action becomes a necessity. Establishing rigorous standards for contract formation, such as a mandatory review by a specialized authority, would ensure that both parties fully comprehend the long-term ramifications of their choice. These limits are also profoundly shaped by the rights of children, who often constitute the unrepresented third parties in inequitable marital agreements. In this context, the biopolitics of child protection must override the absolute autonomy of the parents, as the state must ensure that no private agreement can waive the fundamental obligation to provide for the best interests of the child (Stjepanović 2021, 73). Necessity for intervention mirrors the ongoing legal struggle to reconcile the "status" of the family with the "contractual" nature of modern marriage. The challenge for contemporary family law lies in seeking a balance between these two paradigms - ensuring that private agreements do not erode the essential protections that the legal status of marriage is intended to provide (Bix 2006, 375). To overcome this, a turn toward feminist relational contract theory is required. This theory rejects the image of spouses as atomized market actors, recognizing instead that marriage contracts are embedded in long-term, interdependent relationships where risks and contributions are fundamentally asymmetrical (Thompson 2018, 620). By adopting this relational lens, the law acknowledges that an agreement which seemed fair at its inception may become unconscionable over time due to the evolving lived reality of the domestic partnership.

This theoretical shift finds its most robust practical application in the German legal system. The German tradition is unique in its ability to balance private autonomy with the protective function of the state (Zweigert and Kötz 1998, 330). This is operationalized through a dual review process where the court first assesses the procedural fairness at the time of signing and subsequently applies “effect control” (*Ausübungskontrolle*). This second phase is a direct manifestation of relational fairness, allowing courts to adjust contracts based on the principle of good faith (*Treu und Glauben*) when unforeseen changes—such as those arising from traditional gender expectations—render the original terms unjust (Stjepanović and Rajić Čalić 2025, 494). The German model distinguishes between the procedural fairness of contract formation and the substantive fairness of the terms through a rigorous two-phase evaluation process. The initial validity review (*Sittenwidrigkeitsprüfung*) assesses whether a contract was signed under a structural power imbalance, such as extreme emotional dependence or a lack of legal guidance, which would render the agreement null from its inception. Furthermore, the German approach acknowledges the dynamic nature of marital life through “effect control”. This allows courts to adjust contracts when unforeseen fundamental changes (such as those arising from traditional gender expectations) render an originally valid contract unconscionable (Stjepanović and Rajić Čalić 2025, 494). Based on the principle of good faith (*Treu und Glauben*, § 242 BGB), the court maintains the power to intervene if one partner’s domestic specialization facilitated the other’s career growth, ensuring that domestic dedication does not result in personal economic failure.

This relational approach directly addresses the rigidity found in the Serbian system. Implementing similar mechanisms, such as mandatory independent legal counsel and a dual review system, would ensure that the state remains a guarantor of fairness in the domestic sphere. The German model demonstrates the possibility of respecting individual autonomy while maintaining the strict biopolitical safeguards necessary to prevent the “autonomy of the

will” from becoming a tool for its own negation. By adopting this framework, Serbian law could move toward a “middle path” that protects the socio-economic security of the vulnerable spouse without a disproportionate infringement on property rights.

CONCLUSION

The transition from status to contract in Serbian marriage law reflects the broader biopolitical transformations of modern society. While the introduction of the marriage contract was a necessary step toward recognizing individual autonomy, it has simultaneously created a new landscape of risks and structural inequalities. The analysis conducted throughout this research suggests that autonomy of the will often functions as a legal fiction, masking systemic power imbalances and the atomizing myths of neoliberalism. This reality places the Serbian family at a crossroads, necessitating a choice between continuing down the path of total marketization of family relations and embracing a more relational and equitable model of marital life.

To address these challenges, the Serbian legal system must move toward a substantive fairness review of marriage contracts, empowering judges to set aside or modify contracts that violate fundamental equity or result in profound economic disparity. Implementing this substantive review ensures that freedom of contract does not become a license for the economic exploitation of the more vulnerable party. The German legal framework illustrates the necessity of acknowledging the dynamic nature of marital life, allowing courts to modify agreements if a change in domestic roles, such as one spouse transitioning into a homemaker role, renders the original separate property regime inequitable upon divorce. However, legal updates alone are insufficient, and the state must also address the root causes of domestic imbalance by closing the wage disparity between genders and providing adequate support for childcare. Without these structural changes, the marriage contract will continue to formalize pre-existing social disadvantages rather than alleviating them.

Acknowledging these systemic imbalances necessitates a re-evaluation of the state's role. Therefore, the biopolitics of modern marriage should not revolve around the withdrawal of the state, but rather its re-engagement as a protector of the public interest. The limits of state intervention should be defined not by market ideology, but by the principles of dignity, equality, and relational fairness. Marriage remains more than a mere transaction, representing a shared community of life that requires a legal framework capable of recognizing such emotional and social complexity. Serbia has the opportunity to lead in this area by fostering a model of relational autonomy - one that respects individual freedom while ensuring that no citizen is left behind by the cold logic of the commercial contract.

The movement from status to contract must not signify a return to a "state of nature" where the strong dominate the weak. Instead, it should represent a transition toward a more democratic and egalitarian form of personal life. This requires the state to remain vigilant against neoliberal myths and to serve as a guarantor of justice within society's most intimate institution. The future of the Serbian family depends on our ability to find a balance between the "freedom of the will" and the ethical "responsibility for the other".

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ОД СТАТУСА КА УГОВОРУ: БИОПОЛИТИКА МОДЕРНОГ БРАКА И ГРАНИЦЕ ДРЖАВНЕ ИНТЕРВЕНЦИЈЕ У РЕПУБЛИЦИ СРБИЈИ**

Резиме

Усвајање Породичног закона Србије 2005. године означило је прекретницу у односу државе према породичном животу, трансформишући брак из статусне институције у уговорни однос. Ова промена представља суштину шире неолибералне трансформације друштва, где држава кроз институционализацију брачног уговора промовише идеале индивидуализма. Иако овај процес делегира већу регулаторну моћ приватним лицима, држава не нестаје из приватне сфере, већ задржава свој утицај кроз нотарску процедуру, вршећи специфичан биополитички надзор. У овом контексту брачни уговор представља политичко оруђе које уноси тржишну логику у интиму, ефикасно замењујући механизме заштите из социјалистичког периода. Истраживање указује на то да структуралне баријере и даље спречавају стварну једнакост уговорних страна, при чему се посебно издваја „дилема избора“ обликована идеолошким илузијама и родно осетљивим асиметријама моћи. Из тог разлода се српска

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породица данас налази на раскршћу између традиционалних патријархалних структура и нових притисака глобализованог неолибералног поретка. Рад закључује да је за постизање стварне правде и једнакости страна уговорница неопходно напустити крути комерцијални модел и прихватити релациону теорију уговора, која омогућава држави да заштити достојанство слабије стране и спречи да брачни уговор постане инструмент доминације јаче уговорне стране.

Кључне речи: брачни уговор, биополитика, неолиберализам, аутономија воље, Србија, релациона теорија уговора

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