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SEX DISCRIMINATION IN INCOME SECURITY PROGRAMS

Martha W. Griffiths*

The income security programs of this nation were designed for a land of male and female stereotypes, a land where all men were breadwinners and all women were wives or widows; where men provided necessary income for their families but women did not; in other words, where all of the men supported all of the women. This view of the world never matched reality, but today it is further than ever from the truth. About fifteen million households are not supported by a man.¹ Among families which are supported by a man, husband-wife families where the husband works, almost half of the wives are in the labor force.² Forty-three per cent of school-age children and almost thirty percent of pre-school children have mothers who work outside the home.³

Women work because they need the money. Nearly two-thirds of all women workers are single, divorced, widowed, or separated, or have husbands who earn less than $7,000 a year.⁴ As Bernice Sandler, Director of the Project on the Status and Education of Women for the Association of American Colleges, has said, “[Women] do not work for little luxuries. . . . They work because they want a better life for themselves and their families; they work because they want their children to have a chance to go to college; they work to buy the food their children need to eat. For many families it is the wife’s earnings that keep the family off the welfare rolls and out of dire poverty.”⁵ Women play a crucial role in supporting themselves and their families.

Testimony presented at the Joint Economic Committee’s July 1973 hearings on economic problems of women shows the extent to which income security programs fail to recognize the economic contribution of women.⁶ Premised on false assumptions about male and female roles, the nation’s income security programs are riddled with inequities in their treatment of the sexes.

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¹ U.S. Bureau of the Census, Household and Family Characteristics: March 1972, CURRENT POPULATION REPORTS, Series P-20, No. 246 (February 1973), Table C.


⁵ Testimony before the Joint Economic Committee on July 11, 1973, to be published in Economic Problems of Women: Hearings before the Joint Economic Committee, 93d Cong., 1st sess. (1973) [hereinafter cited as Hearings on Economic Problems of Women].

⁶ For an extensive, detailed discussion of sex discrimination in income security programs and related topics, see Hearings on Economic Problems of Women, supra note 5. At these hearings the Joint Economic Committee investigated the treatment of women under social security, private pension plans, unemployment insurance, veterans programs, and welfare. The Committee also examined the following areas: the economics of sex discrimination in employment; federal efforts to end that discrimination; features of federal income, estate, and gift tax law having a disparate impact on women; and women’s access to credit and insurance.
I. Social Security

Women as individuals are far more closely identified with the family than are men. In this country, particularly in most aspects of the economy, there tends to be an automatic identification of a woman as a wife and mother; that is, the female adult in a family. Women are defined in terms of belonging to a family, the single woman being generally regarded as the exception, the oddity, or the abnormal. No comparable approach to men exists.

As far as social security goes, this definition of women in terms of the family means that most women receive benefits as a dependent, either wife or widow. The notion of dependency implicitly assumes that the family is supported by the man as husband (or father) and that the woman is therefore dependent upon male income and male earnings for her financial support. In recent years this has become far less true than previously. But the ambiguity persists in the system.

Carolyn Shaw Bell, Professor of Economics, Wellesley College

The adequacy and equity of the social security system are matters of concern to everyone, but they are of special concern to women. Fourteen percent of aged women, compared to one percent of aged men, have no income. Among persons age 65 or over who have income, the median annual income of men is about $3,750, while that of women is $1,900. Assuming that men were the workers who paid for the program, legislators designed the social security system to provide income protection for male earners and their dependents. Even after 37 years of amending the Social Security Act, major inadequacies and inequities still remain in social security's treatment of individuals and families that do not fit the stereotype.

Divorced homemakers are one such group, for a divorced homemaker is not permitted to draw on her ex-husband's social security unless she was married to him for at least twenty years. A homemaker who is divorced after five, ten, or even nineteen and one-half years of marriage will not receive social security payments for the years that her ex-husband worked under covered employment while she kept house for him. Until 1965 a divorced homemaker was not permitted to draw on her ex-husband's social security regardless of the length of their marriage. In this day of multiple marriages, a problem in reducing the required number of years of marriage is the cost of permitting several ex-spouses to draw on an individual worker's account, but certainly Carolyn Shaw Bell is

7 Testimony before the Joint Economic Committee on July 25, 1973, Hearings on Economic Problems of Women, supra note 5. (Remarks of Wellesley College Professor of Economics, Carolyn Shaw Bell.)


If the ex-husband is dead and the ex-wife is caring for a child who is eligible for social security benefits on the basis of the deceased ex-husband's wage record, however, the twenty year requirement does not apply. 42 U.S.C. §§ 402(g), 416(d) (1970).
not alone in questioning the wisdom of “requiring a twenty year 'sentence' before becoming eligible for pension and parole.”

Like divorced homemakers, widowed homemakers may find themselves ignored by social security. Although a widow is entitled to the same social security payment that her deceased husband would have received had he retired as a widower, she may receive it only under certain conditions. Unless she is caring for a child under eighteen, a widow may not draw on her deceased husband's social security until she reaches age 60. But a woman who has devoted her working years to keeping house and rearing children may find it difficult to support herself through employment. Even if she is physically unable to work outside the home, a widow may not draw on her deceased husband's social security until she reaches age 50; yet an earner who becomes disabled may receive social security payments at any age.

The inadequacy of the social security system’s treatment of divorced and widowed homemakers grows out of the inadequacy of its treatment of homemakers in general. While social security places value on the fact of marriage, it places no value on the work done in the home. Whether she is married or unmarried, after a lifetime of housework a full-time homemaker may not qualify for social security payments in her own right. When a man retires or becomes disabled, he receives a 50 per cent increase in his social security payment as an allowance for his wife—in other words, he receives an increased payment because he has a dependent—but the homemaker receives no payment in recognition of the work she has performed. The exclusion of homemaking from covered employment results in lack of social security protection not only for homemakers, but also for families which lose the services of a homemaker.

The social security system also deals haphazardly with female earners. When a wife works outside the home, the social security taxes she pays do not qualify her for a full retirement benefit over and above the dependents' allowance which would have been received even if she had not worked outside the home. A woman who qualifies as both a dependent and an earner will receive the larger of the two payment amounts but not both. Thus, unless a wife's earnings entitle her to a benefit larger than half that of her husband's (and often they do not)—or, for a widow, a benefit larger than her deceased husband's full benefit—a married woman who pays social security taxes all her life will receive retirement benefits no larger than if she had never paid a dime. Even if her earnings do entitle her to a retirement benefit somewhat larger than she

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10 Testimony before the Joint Economic Committee on July 25, 1973, Hearings on Economic Problems of Women, supra note 5.
14 For a proposal to allow homemakers to accumulate credits under the social security system, see the prepared statement of Carolyn Shaw Bell, Hearings on Economic Problems of Women, supra note 5.
15 On July 30, 1973, Casper Weinberger, Secretary of the Department of Health, Education, and Welfare, testified as follows before the Joint Economic Committee: “The most recent data available indicate that over eighty per cent of married women who became entitled to their own retirement benefits in 1969, and whose husbands receive benefits, qualified for higher benefits based on their own earnings” (Hearings on Economic Problems of Women, supra note 5). This means that twenty per cent of working wives received absolutely nothing in retirement benefits that they would not have received if they had not worked at all.
would have received as a dependent, for that extra amount she will have paid a disproportionately heavy tax.

To state this problem in another way, the social security tax imposes an inequitably heavy burden on families with two earners. A retired couple where both husband and wife have worked may receive less in benefits than a single-earner family which had the same total earnings and paid no more in social security taxes. Robert Ball, Commissioner of the Social Security Administration from 1962 until 1973, has provided the following example:

[W]here only the husband works and has average yearly earnings of $9,000 the [retirement] benefit payable according to the table in present law would be $354.50 for the husband and $177.30 for the wife, a total of $531.80 a month; if the husband had had average earnings of $6,000 and the wife had had average earnings of $3,000—combined earnings of $9,000—his benefit would be $269.70 and hers would be $174.80, a total of $444.50; $87.30 less than the couple with the same total average earnings when only the husband worked. . . .

. . . .

There is no good reason in social insurance theory for this difference in treatment. . . .\(^{16}\)

Moreover, a retired couple where both husband and wife have worked may have paid more in social security taxes and yet receive less in benefits than a single-earner family which had lower total earnings. Where both husband and wife have paid the maximum amount in social security taxes each year, paying twice as much in taxes as a single-earner family where the husband paid the maximum, they will not qualify for twice as much but only one and one-third times as much in benefits; if a spouse in the single-earner family dies, the survivor will receive two-thirds as much in benefits as when both spouses were alive, but if a spouse in the two-earner family dies, the survivor will receive only half as much as before.

Married women earners receive an unfavorable return on their social security taxes not only in terms of retirement benefits, but also in terms of dependents' benefits. When a father dies, leaving minor children, the mother may qualify for “mother’s insurance benefits”; but when a mother dies, leaving minor children, there are no “father’s insurance benefits” to help keep the family together.\(^{17}\) When a husband dies, retires, or becomes disabled, his wife may draw on his social security regardless of her actual dependence on him; but when a wife dies, retires, or becomes disabled, her husband may draw only if he received at least half of his support from her. Benefits for disabled widowers, but not for


\(^{17}\) Social security provides no benefits for fathers which correspond to the mothers’ benefits provided under 42 U.S.C. § 402(g).

Not until 1967 were the children of deceased female earners permitted to receive social security payments on the same basis as children of deceased male earners. See the prepared statement of Robert Ball, *Hearings on Economic Problems of Women*, supra note 5.
disabled widows, are also conditioned on a support test. Moreover, to qualify for benefits, a widow must not be married, but a widower must not have remarried; that is, when a widow applies for benefits, she may draw on her deceased husband’s account if she is not currently married, but when a widower applies for benefits, he may draw on his deceased wife’s account only if he had not ever remarried. In addition, there are benefits for divorced wives, but not divorced husbands. Thus, social security fails to recognize equitably the contributions of women earners.

II. Unemployment Insurance

Unemployment insurance discrimination against women has its roots in the concept that it is really a man’s responsibility to take care of his wife and family, and that women’s unemployment is just not very serious—in fact, that much, if not most, of it is voluntary.

Margaret Dahm, Director of Research and Actuarial Services, Unemployment Insurance Service, U.S. Department of Labor

Like social security, the unemployment insurance system reflects the misconception that women’s economic role is secondary. As a result of various types of statutory provisions and administrative approaches, unemployed women do not receive the same protection under unemployment insurance as do unemployed men.

Thirty-one states have special statutory provisions limiting the benefit rights of women who are pregnant. While all workers are subject to eligibility provisions which prevent them from receiving unemployment insurance payments for weeks during which they are unable or unwilling to work, pregnant women are also subject to special provisions which arbitrarily disqualify them because of pregnancy. Unemployed pregnant women need unemployment insurance payments just as much as, if not more than, other unemployed workers do. Moreover, since an employer’s unemployment insurance tax rate is determined by experience rating provisions designed to give lower taxes to employers who have favorable experience with unemployment, the flat denial of payments to pregnant women would seem to have the effect of reinforcing a practice which violates Title VII of the 1964 Civil Rights Act, that of firing women because of pregnancy.

Unemployed women who are able to work, available for work, and otherwise eligible for unemployment insurance should not be denied payments simply because they are pregnant.

Statutory provisions denying unemployment insurance payments to workers who leave their jobs because of domestic or marital obligations also have a disproportionately heavy impact on women. A worker who voluntarily leaves his

19 Until 1950 the Social Security Act made no provision for payments to husbands or widowers based upon the wage record of a female earner.
20 Testimony before the Joint Economic Committee on July 26, 1973, Hearings on Economic Problems of Women, supra note 5. Remarks of Margaret Dahm, Director of Research and Actuarial Services, Unemployment Insurance Services, U.S. Department of Labor.)
job will be eligible for benefits only if he quit for good cause; about half of the states limit "good cause" to job-related causes. In addition, fifteen states have special disqualifications for workers who leave their jobs to marry, to accompany their spouses to another location, or to fulfill marital, filial, or domestic obligations. Most of the people made ineligible by these special disqualifications are women.

Under eligibility provisions applying to all workers, a mother who leaves her job in order to care for a sick child is not eligible for unemployment insurance payments while she is caring for the child and unavailable for work. However, as Margaret Dahm has pointed out, "[W]hen the domestic crisis is over, and [the mother] again is actively looking for work in an area where work she can do is normally done, she might well expect to get benefits under the general eligibility provisions."22 Under the special provisions denying payments to those who leave their jobs because of domestic or marital obligations, however, she will be disqualified.

In light of the husband's legal right to choose the family domicile, the denial of unemployment insurance payments to workers who leave their jobs to follow their spouses to a new location seems especially unfair. If a husband moves and his wife without justification refuses to accompany him, she may forfeit her right to support and may be characterized under the divorce law as a deserter.23 If she goes with him, however, she loses her job and her right to receive unemployment insurance payments.

Like these statutory disqualifications, the unemployment insurance system's traditional interpretation of availability to mean availability for full-time work discriminates against women. Although the wages of part-time workers are subject to unemployment insurance taxes on the same basis as those of full-time workers, an unemployed part-time worker generally may not qualify for unemployment insurance payments while looking for another part-time job. In 1972 6.4 million women age twenty or over either were voluntarily employed part-time or were unemployed and looking for part-time work; this was about one-fifth of all women workers age twenty or over, and two and two-thirds times the number of men age twenty or over who were in the part-time labor force.24 Thus, the unemployment insurance system's treatment of part-time work has serious implications for women workers.

In order to qualify for unemployment insurance payments, an unemployed worker not only must be available for work, but also must have worked recently, and for a certain minimum period of time, in covered employment. In effect, requirements of recent past covered employment deny payments to entrants and re-entrants into the labor force for nine months to a year after their first day of work, a period of exclusion which may be unnecessarily long. This is of particular significance to women because the majority of re-entrants into the labor force are female.

22 Testimony before the Joint Economic Committee on July 26, 1973, Hearings on Economic Problems of Women, supra note 5.
23 H. CLARK, LAW OF DOMESTIC RELATIONS at 150, 339 (1968).
Women's protection under the unemployment insurance system may also be adversely affected by the use of administrative discretion in determining eligibility. Since payments often may not be made to a worker whose unemployment results from such acts as a voluntary quit without good cause, a discharge for misconduct connected with the job, or a refusal of suitable work, or who is unable or unavailable to work, determining eligibility involves multiple personal judgments on the part of state agency staff. For example, if a worker has left his or her job voluntarily, agency staff must decide whether the worker's reason for quitting constitutes "good cause." Similarly, to determine whether a claimant is available for work, agency staff must evaluate whether he or she has done what a reasonable person who wanted work would do to find a job. In making such judgments, a staff member who viewed women as "secondary" workers, having no serious need or desire for employment, might well apply—consciously or unconsciously—different standards for women than for men.

Even women who succeed in qualifying for unemployment insurance payments may suffer discrimination, for women do not receive dependents' allowances on an equal basis with men. The eleven states which provide dependents' allowances provide them only for relatives who are wholly or mainly supported by the claimant. As Margaret Dahm pointed out, "[Since] a woman's wages are generally lower than her husband's, payment to the spouse who earned the higher wages would eliminate many working wives, even those whose earnings are essential to meeting the family's subsistence costs." Moreover, statutory and administrative definitions of dependency tend to discriminate against women. As a result, the eleven states which in fiscal year 1972 provided dependents' allowances paid such allowances to 53.9 per cent of the male claimants, but only 7.7 percent of the women.

III. Welfare

In most States a family cannot receive financial assistance if there is an able-bodied man in the household. Consequently, if a father is not bringing in any income and is not incapacitated by existing guidelines, his family is ineligible for assistance under any category. The mother is left with no alternative except to dismantle the family unit.

The mother at that point proceeds to seek assistance. AFDC now takes the tone of a super-sexist marriage. You trade in a man for the man. You can't divorce him if he treats you bad. But he divorces you by cutting off assistance.

Johnnie Tillman, Executive Director, National Welfare Rights Organization
Like other income security programs, welfare reflects the assumption that the father is the breadwinner. In fact, the nation’s major welfare program, Aid to Families with Dependent Children (AFDC), was originally envisioned as a program of widows’ relief. It is no accident that even today, of the more than three million families receiving AFDC payments, only about a fifth include a man, but almost all include a woman.

Twenty-seven states do not provide AFDC to families with two able-bodied parents. In order for such a family to qualify, one parent must leave home; and it is usually the father who leaves. In other words in these states, a mother may either live with the father of her children or receive welfare, but not both—since the father is supposed to be the breadwinner, the mother may not have him and welfare too. By “definition,” the father does not need welfare.

In the other twenty-three states families with two able-bodied parents may receive AFDC, but only if the father is unemployed. To be considered unemployed, a father must be working less than 100 hours per month; his family is ineligible for AFDC if he works 100 or more hours per month, no matter how little he earns. Apparently legislators do not believe that some employed fathers cannot earn enough to support their families.

In order for a two-parent family to qualify for AFDC, the father not only must be unemployed but also must not be receiving unemployment insurance payments. Fathers who meet the definition of being unemployed are likely to receive unemployment insurance payments. If they do, however, their families are ineligible for AFDC even though for many families—especially large ones—the AFDC payment would be larger than the unemployment payment.

The requirements that the father be unemployed and that he not be receiving unemployment insurance payments do not apply to one-parent families. A one-parent family may qualify for AFDC regardless of the number of hours which the parent works; the parent’s earnings are partially counted in determining the family’s need (as with two-parent families), but the number of hours worked is not taken into consideration. Similarly, a one-parent family may qualify for AFDC even if the parent receives unemployment insurance payments; the unemployment payments are counted in determining the family’s need, but the fact that they are received does not disqualify the family. Thus, even in states that make AFDC available to two-parent families, in order for a family to qualify, often one parent must leave home.

The financial incentive which the AFDC program provides for families to split up may be substantial. In Atlanta, Georgia, for example, in 1972 an unemployed mother with three children could qualify for AFDC payments plus accompanying food and medical benefits which, in total, were worth $2,710 a year (equivalent to taxable income of $2,860). However, since Georgia does

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31 45 C.F.R. § 233.100 (1972).
not provide AFDC to two-parent families, a family composed of an unemployed father, a mother, and two children, could qualify for only $474 worth of food benefits.\textsuperscript{33} Even in states which provide AFDC for two-parent families and which provide relatively generous state public assistance for non-AFDC families, two-parent families still may have considerable financial incentive to split up.\textsuperscript{34} Thus, although federal law states that the AFDC program is intended to help maintain and strengthen family life,\textsuperscript{35} in reality the program encourages fathers to desert their families, leaving mothers to bear the responsibilities of parenthood alone.

Although federal law also states that a purpose of the AFDC program is to help parents become self-supporting,\textsuperscript{36} women who become dependent on welfare receive little help from the federal government to achieve independence. Federal job training programs, accurately called "manpower" programs, fail to provide welfare mothers with adequate opportunities for employment. The Work Incentive (WIN) Program provides job training and employment services for AFDC recipients, but federal law gives fathers first priority for enrollment;\textsuperscript{37} unemployed mothers who volunteer to participate in WIN have only second priority. Although women represent about ninety per cent of the able-bodied parents receiving AFDC,\textsuperscript{38} they represent only sixty per cent of those enrolled in WIN.\textsuperscript{39} Moreover, although women's rates of dropout from WIN are lower than men's, women are less likely to be placed in employment after they complete WIN training.\textsuperscript{40} Even among WIN trainees who are lucky enough to find jobs, women receive considerably lower wages than men.\textsuperscript{41} Legislators and administrators are obsessed with the idea of putting fathers to work, but they couldn't care less about finding jobs for women.

\textsuperscript{33} See J. Storey, Public Income Transfer Programs: The Incidence of Multiple Benefits and the Issues Raised by Their Receipt, a study prepared for the Subcommittee on Fiscal Policy of the Joint Economic Committee, Joint Committee Print (April 1972), at 11-18.

\textsuperscript{34} See the prepared statement of Blanche Bernstein (Director of Research on Urban Social Problems, Center for New York City Affairs, New School for Social Research), Hearings on Economic Problems of Women, supra note 5. See also Lerman, Incentive Effects in Public Income Transfer Programs, in Income Transfer Programs: How They Tax the Poor, a volume of studies prepared for the Subcommittee on Fiscal Policy of the Joint Economic Committee, Joint Committee Print (December 1972), at 68-70; and J. Storey, A. Townsend, and I. Cox, How Public Welfare Benefits Are Distributed in Low-Income Areas, a staff study prepared for the Subcommittee on Fiscal Policy of the Joint Economic Committee, Joint Committee Print (March 1973), at 7-8, 50-43, 91-92.


\textsuperscript{36} Id.


\textsuperscript{39} Manpower Report of the President, transmitted to the Congress March 1973, at 234.

\textsuperscript{40} J. Goldstein, The Effectiveness of Manpower Training Programs: A Review of Research on the Impact on the Poor, a staff study prepared for the Subcommittee on Fiscal Policy of the Joint Economic Committee, Joint Committee Print ' (November 1972), at 54.

\textsuperscript{41} See Manpower Report of the President, transmitted to the Congress March 1973, at 56.
AFDC eligibility requirements also show legislators' lack of concern about unemployment among women. In states which provide AFDC to two-parent families, families with an unemployed father and an employed mother may qualify, but families with an employed father and unemployed mother may not. In 1961 when Congress first provided for federal aid to children who were in need as the result of the unemployment of a parent, such unemployment included that of either a mother or a father. However, in 1968 Congress changed the law to include only the unemployment of the father. 42 Such is the strength of the assumption that the father is the breadwinner.

In sum, public income security programs reflect traditional false assumptions about the economic roles of men and women. 43 These programs must be reformed to match reality.

43 For a more complete discussion of sex discrimination in income security programs, see Hearings on Economic Problems of Women, supra note 5.