

Social Security and African American Families: Unmasking Race and Gender Discrimination

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Abstract

Despite the greater dependency on social security of African Americans and women, specific elements of the social security system discriminate against these groups by penalizing dual-income couples. Although the redistribution of income under social security is complex and scholars debate the discriminatory impact of the system, the spousal benefits formula creates a two-earner penalty that causes a disproportionate number of African American families to receive lower monthly retirement benefits than white families. This article intends to reveal one form of race and gender discrimination embedded in the social security system in order to expand the discourse surrounding social security scholarship and reform and to place African American families at the center of policy debates.

Introduction

Created in 1935 to provide income to retired or disabled workers and their spouses,¹ social security is the United States' largest social welfare program.² Sixty-two percent of the elderly receive half or more of their income from social security benefits.³ Women depend more on social security than men because they generally live longer, earn lower wages, and have more intermittent work histories.⁴ African Americans depend on social security more than whites⁵ because they tend to earn lower wages and accumulate less wealth.⁶ Yet despite the greater need of women and African Americans, specific elements of the social security system discriminate against these groups by penalizing dual-income couples.⁷

Although the redistribution of income under social security is complex and scholars debate the discriminatory impact of the system, I will show that the spousal benefits formula, which provides benefits to spouses of retired or deceased workers, creates a two-earner penalty that causes a disproportionate number of African American families to receive lower monthly retirement benefits than white families.

The Two-Earner Penalty

2A. Introduction

As a result of the spousal benefits formula, the calculation of social security benefits penalizes two-earner couples as compared to single-earner couples.⁸ Through the 1939 amendments to the Social Security Act, wives of male workers were granted derivative benefits

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1. See Karen C. Burke & Grayson M.P. McCouch, *Women, Fairness, and Social Security*, 82 IOWA L. REV. 1209, 1209 (1997).

2. In 1995, the program costs for social security amounted to 22.1% of the federal budget, or \$334.8 billion dollars. See *id.* at 1209 n.3.

3. See Goodwin Liu, *Social Security and the Treatment of Marriage: Spousal Benefits, Earnings Sharing, and the Challenge of Reform*, 1999 WIS. L. REV. 1, 4 (citing U.S. Dep't of Health & Human Servs., *Fast Facts & Figures About Social Security* 6 (1988)). Social security constitutes 90% or more of the retirement income for 26% of the elderly and it is the only source of income for fifteen percent of the elderly. See *id.*

4. See Burke & McCouch, *supra* note 1, at 1218-19 (noting that the social security system reinforces the disadvantages of women in the workforce).

5. This paper follows the 1990 Census Bureau's definition of "white." The 1990 Census did not include "Hispanic" or "Spanish" categories within the definition of "white." See Alex M. Johnson, *The Underrepresentation of Minorities in the Legal Profession: A Critical Race Theorist's Perspective*, 95 MICH. L. REV. 1005, 1042 n.120 (1997).

6. See generally DALTON CONLEY, *BEING BLACK, LIVING IN THE RED: RACE, WEALTH, AND SOCIAL POLICY IN AMERICA* (1999) (explaining that class and property relations contribute to the wealth differentials between white and African American families).

7. See *Social Security and Minorities: Current Benefits and Implications of Reform, Testimony before Subcomm. on Ways and Means*, 106th Cong., 1st. Sess. 1 n.1 (1999) (statement of Cynthia M. Fagnoni); Dorothy A. Brown et al., *Social Security Reform: Risks, Returns, and Race*, 9 CORNELL J.L. & PUB. POL'Y 633 (2000). See generally, Burke & McCouch, *supra* note 1.

8. See Liu, *supra* note 3, at 1-24.

based on a percentage of their husbands' benefits.⁹ These spousal benefits result in a penalty against two-earner families who earn less than \$80,000.¹⁰ Consider the following hypotheticals to illustrate the two-earner penalty:

1. Two-Earner Married Couple: Jack works as a safety inspector and earns \$30,000 a year. Jill works as a production assistant and earns \$20,000 a year. Jointly, Jack and Jill pay \$258 per month in social security taxes.¹¹ Assuming Jack and Jill maintain a continuous working pattern, they will receive \$1860 per month in social security benefits upon their retirement.¹²

2. Single-Earner Married Couple: Bob works as minister earning \$50,000 a year. Betty works at home performing household duties. Jointly, Bob and Betty pay \$258 per month in social security taxes.¹³ Assuming Bob and Betty maintain a continuous working pattern, they will receive \$2033 per month in social security benefits upon their retirement.¹⁴

In sum, a single-earner married couple earning \$50,000 per year receives \$173 more in monthly social security benefits than a two-earner couple earning the same combined income. In other words, two-earner couples making \$30,000 and \$20,000 receive \$173 less than a single-earner couple earning \$50,000. Thus, the social security system favors single-earner couples that maintain a breadwinner/homemaker model.

2B. Table One: Calculation of Two-Earner Penalty/Bonus

To determine if this trend holds true across income levels, it is important to similarly investigate benefits at *all* income levels. Table One shows the difference between benefits received by two-earner couples and single-earner couples for total family incomes of \$10,000 to \$100,000.

9. See MIMI ABRAMOVITZ, REGULATING THE LIVES OF WOMEN: SOCIAL SECURITY WELFARE POLICY FROM COLONIAL TIMES TO THE PRESENT 215, 253 (1996).

10. When calculating social security benefits, the lower income spouse will always receive benefits based on their own PIA. It is only when an low income spouse earns less than 20% of their spouses income does it make more sense for the low income spouse to take dependent spousal benefit of 50%. See Liu, *supra* note 3, at 13 n.42.

11. Jack pays 6.2% of \$30,000, which equals \$1860 per year or \$155 per month. Jill pays 6.2% of \$20,000, which equals \$1240 per year or \$103 per month. Together, Jack and Jill pay \$258 per month in social security taxes.

12. Jack's AIME would be \$30,000 divided by 12 = \$2500. Jack's PIA would be $0.9(\$455) + 0.32(\$2500 - \$455) = \1063 . Jill's AIME would be \$20,000 divided by 12 = \$1667. Jill's PIA would be $0.9(\$455) + 0.32(\$1667 - \$455) = \797 . Together, Jack and Jill would receive \$1860 per month in social security. See Liu, *supra* note 3, at 13 n.39.

13. Bob pays 6.2% of \$50,000, which equals \$3100 per year or \$258 per month.

14. Bob's AIME would be \$50,000 divided by 12 = \$4166. Bob's PIA would be $0.9(\$455) + 0.32(\$4166 - \$455) = \1355 . Betty would be entitled to 50% of \$1355, which equals \$678. Together, Bob and Betty would receive \$2033.

Table One: Two-Earner Penalty

Total Family Income (\$)	Income Earned by Spouse 1/Spouse 2 (\$)	Percentage of Income Earned by Spouse 1/Spouse 2 (%)	Two-Earner Couple Benefits (\$)	Single-Earner Couple Benefits for Same Total Family Income (\$)	Dual Income (Penalty)/Bonus (\$)
10,000	5,000/5,000	50/50	750	795	(45)
10,000	6,000/4,000	60/40	724	795	(71)
10,000	7,000/3,000	70/30	675	795	(120)
10,000	8,000/2,000	80/20	716	795	(79)
20,000	10,000/10,000	50/50	1,060	1,196	(136)
20,000	12,000/8,000	60/40	1,061	1,196	(135)
20,000	14,000/6,000	70/30	1,061	1,196	(135)
20,000	16,000/4,000	80/20	1,036	1,196	(160)
30,000	15,000/15,000	50/50	1,328	1,596	(269)
30,000	18,000/12,000	60/40	1,328	1,596	(268)
30,000	21,000/9,000	70/30	1,328	1,596	(268)
30,000	24,000/6,000	80/20	1,356	1,596	(240)
40,000	20,000/20,000	50/50	1,594	1,845	(251)
40,000	24,000/16,000	60/40	1,594	1,845	(251)
40,000	28,000/12,000	70/30	1,594	1,845	(251)
40,000	32,000/8,000	80/20	1,676	1,845	(169)
50,000	25,000/25,000	50/50	1,860	2,033	(173)
50,000	30,000/20,000	60/40	1,860	2,033	(173)
50,000	35,000/15,000	70/30	1,831	2,033	(202)
50,000	40,000/10,000	80/20	1,760	2,033	(273)
60,000	30,000/30,000	50/50	2,126	2,220	(94)
60,000	36,000/24,000	60/40	2,084	2,220	(116)
60,000	42,000/18,000	70/30	1,999	2,220	(221)
60,000	42,000/18,000	80/20	1,995	2,220	(225)
70,000	35,000/35,000	50/50	2,334	2,378	(44)
70,000	42,000/28,000	60/40	2,265	2,378	(113)
70,000	49,000/21,000	70/30	2,166	2,378	(212)
70,000	56,000/14,000	80/20	2,145	2,378	(233)
80,000	40,000/40,000	50/50	2,460	2,378	82
80,000	48,000/32,000	60/40	2,447	2,378	69
80,000	56,000/24,000	70/30	2,334	2,378	(44)
80,000	64,000/16,000	80/20	2,295	2,378	(83)
90,000	45,000/45,000	50/50	2,584	2,378	206
90,000	54,000/36,000	60/40	2,585	2,378	207
90,000	63,000/27,000	70/30	2,501	2,378	123
90,000	72,000/18,000	80/20	2,377	2,378	1
100,000	50,000/50,000	50/50	2,710	2,378	332
100,000	60,000/40,000	60/40	2,710	2,378	332
100,000	70,000/30,000	70/30	2,649	2,378	271
100,000	80,000/20,000	80/20	2,382	2,378	4

The values in Table One reveal that single-earner couples will *always* receive higher monthly social security benefits than two-earner couples, to an income of \$80,000.¹⁵ The two-earner penalty ceases to exist at \$80,000 because of the cap on taxable earnings at \$68,400.¹⁶ These findings can be illustrated further by returning to our previous hypotheticals. Jack and Jill, the two-earner couple, jointly earned \$50,000 a year. The proportion of income for each spouse was \$30,000 and \$20,000 or 60/40%. Table One shows that Jack and Jill will receive \$1,860 per month in social security benefits. Similarly, Bob and Betty earn \$50,000, but the proportion of income for each spouse is 100/0% because Bob is the sole income provider. Table One shows that single-earner couples like Bob and Betty will receive \$2,033 per month in social security benefits.

In contrast, couples earning \$80,000 or above receive a two-earner bonus rather than a penalty. For example, a couple that earns \$54,000 and \$36,000 for a combined income of \$90,000, will receive a “bonus” of \$207 in benefits. The couple will receive a bonus because their combined income is above the cap of \$68,400. The figures in Table One show that all two-earner couples jointly earning more than \$80,000 will be rewarded. However, in 1997, statistics from the United States Department of Commerce revealed that only twenty-three percent of married households have income over \$75,000.¹⁷ Thus, the number of two-earner couples receiving a bonus is much smaller than the number of two-earner couples receiving a benefits penalty.¹⁸

III. Two-Earner Penalty Disproportionately Discriminates Against African American Married Couples

The two-earner penalty disadvantages African American families. African American couples are more likely to receive lower monthly retirement benefits than white couples because African American couples are more likely to be two-earner couples.¹⁹

2a. African American Couples Are More Likely To Receive Lower Social Security Benefits

1. African American Couples Are More Often Two-Earner Couples

15. Table One reveals that single-earner couples will receive higher retirement benefits than two-earner couples even after their income reaches \$80,000 when compared with two-earner couples that earn a proportional distribution of income at 70% / 30% and 80% / 20%. Single-earner couples will also receive a benefit when their income is \$90,000 compared to a two-earner couple with a proportional income distribution of 80% / 20%.

16. See Liu, *supra* note 3, at 13 n.42. Single-earner couples receive lower benefits than two-earner couples at \$80,000 because their earnings are above the \$68,400 cap. Single-earner couples will not get a return on the \$11,600 of earnings they receive above the cap. In contrast, two-earner couples will receive returns on all of their \$80,000 in earnings. For example, if a \$68,400 cap was not in place a single-earner family would have an AIME of $\$80,000/12 = \6666 and a PIA of $0.9(\$455)+0.32(\$2742-\$455)+0.15(\$6666-\$2741)=\1730.09 . The spousal benefit would be $\$1730(.50)=\865 . The total monthly benefits for a single earner family would be $\$1730+\$865=\$2595$ because the AIME and PIA calculation is based on \$80,000. However, because of the cap a single earner family would only have an AIME of $\$68,400/12 = \5700 and a PIA of $0.9(\$455)+0.32(\$2742-\$455)+0.15(\$5700-\$2741)=\1585.19 . The spousal benefit would be $\$1585(.50) = \792 . The total monthly benefits for a single earner family under the cap would be $\$1585 + \$792 = \$2377$.

17. See U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 466, tbl.719 (1997).

18. See *id.*

19. See Dorothy A. Brown, *Race, Class, and Gender Essentialism in Tax Literature: The Joint Return*, 54 WASH. & LEE L. REV. 1469, 1504 (1997) (discussing the racial bias against African Americans in the waged labor force).

Table Two:
Income Allocation between Spouses for African American and White Households at Various Income Levels²⁰

Total Family Income (\$)	Percentage of Couples Earning at the Given Income Ratios ⁱ									
	100/0 – 90/10 ⁱⁱ		90/10 – 80/20		80/20 – 70/30		70/30 – 60/40		60/40 – 50/50	
	African American	White	African American	White	African American	White	African American	White	African American	White
0-10,000	84.06 ⁱⁱⁱ	87.49	3.36	2.85	3.70	2.80	3.57	2.80	5.06	3.97
10,001-20,000	63.25	69.11	7.32	6.88	8.02	7.26	8.77	7.26	12.65	9.58
20,001-30,000	38.81	53.21	7.75	9.27	12.20	11.47	16.14	11.47	25.11	15.18
30,001-40,000	26.07	41.63	7.76	10.77	12.94	15.43	20.09	15.43	33.16	19.38
40,001-50,000	15.42	32.87	6.87	10.86	13.70	18.55	25.68	18.55	38.33	23.33
50,001-60,000	9.22	27.00	6.13	10.63	14.00	20.88	27.45	20.88	43.21	26.72
60,001-70,000	6.37	24.15	4.57	9.80	14.13	21.44	28.17	21.44	46.76	28.17
70,001-80,000	6.59	26.06	4.21	9.27	11.73	22.25	28.23	22.25	49.23	27.79
80,001-90,000	5.88	26.54	3.81	10.27	14.62	20.04	26.17	20.04	49.53	27.17
90,001-100,000	6.55	35.98	7.52	9.78	14.90	16.74	26.88	16.74	44.15	22.97
100,001-120,000	9.25	36.61	7.60	12.57	18.35	16.17	28.66	16.17	36.15	19.48
120,001-over	37.40	58.88	14.54	13.07	14.12	7.70	11.98	7.70	21.96	9.42

i. "Income ratios" are listed in the second row of the table: 100/0 – 90/10, 90/10 – 80/20, etc. To be more exact, these numbers actually represent a *range* of ratios.

ii. The figures in this row, ranges of income ratios, represent each spouse's contribution to the total family income. For example, a couple in which one spouse earns \$10,000 annually (or 10% of the total) and the other spouse earns \$90,000 annually (or 90% of the total) would fall into the first income ratio, "100/0 – 90/10." Similarly, a couple in which one spouse earns \$50,000 annually and the other spouse earns \$52,000 annually would fall into the "60/40 – 50/50" income ratio.

20. *See id.*, at 1493, 1497. Table Two is taken from Professor Brown's work on the marriage penalty. Professor Brown used information from the 1990 Census to show the household contributions of African American and white couples. The information is from the 1990 Public Use Micro-Data Sample and is based upon a 5% sample of the population of same race couples. *See id.*

iii. This figure means that, in 84.06% of all African American couples earning \$0 to \$10,000 annually, one spouse earns 90-100% of the total family income while the other spouse earns 0-10%.

Table Two shows that the largest percentages of African American couples earn income at a 60/40 -- 50/50 proportion, implying that in most African American couples, spouses contribute nearly equal amounts to household income. In contrast, spouses in white two-earner couples are less likely to contribute equally to household income.²¹ In fact, only at income levels of approximately \$60,000 to \$90,000 do white two-earner couples fall fairly heavily into the 60/40 - 50/50 income ratio. Yet, even at these income levels, the percentage of white two-earner couples is much lower than that of African American two-earner couples. Table Two shows similar results at the income ratio of 70/30 -- 60/40.

Given that African American couples are more likely to equally contribute to household income than whites, the social security system's two-earner penalty disproportionately discriminates against African American couples, resulting in lower social security benefits for these couples.²² Combined with the race and gender inequality present in the marketplace, a disproportionate penalty on African Americans' social security benefits reduces the standard of living of retired African American couples. Furthermore, given the fact that women have a longer life span than men,²³ the penalty most significantly impacts the social security benefits of African American female widows, who will live with the retirement penalty the longest.

Some scholars argue that the rate of return on social security contributions for African American households is speculative and that the racial impact of social security is a complex issue.²⁴ They advocate that several countervailing features, such as the earned income tax credit

21. *See id.*; *see also* Brown et al., *supra* note 7, at 644. Although Table Two only supplies percentages of couples in each category, median income data can be used to infer that most couples fall into the middle income ranges where the stated trends are true. For example, according to U.S. Census Bureau data, the 2000 median income was \$59,953 for white married-couple families and \$50,741 for African American married-couple families. *See* Bureau of the Census, U.S. Dep't of Commerce, Table 4: Median Income of Families by Selected Characteristics, Race, and Hispanic Origin of Householder: 2000, 1999, and 1998, at <http://www.census.gov/hhes/income/income00/inctab4.html>. Furthermore, the 2000 median income of white married-couple families with a wife in the paid labor force was \$70,462, and \$40,145 when a wife was not present in the paid labor force, while the 2000 median income of African American married-couple families with a working wife was \$59,423 and \$30,369 when the wife did not work. *See id.* If we apply the median income levels for white and African American married-couple families to Table Two, we see that most couples fall into income brackets between \$30,001 and \$80,000. *See* Table Two. In all of the income brackets in this range, the percentages of African American couples in which the spouses earn nearly equal income (i.e. couples falling into the 60/40 – 50/50 income ratio) is much higher than that for white couples. Conversely, the percentages of white couples in which one spouse earns almost all the income for the family (i.e. couples falling into the 100/0 – 90/10 income ratio) is much higher than for African American couples. *See id.* For example, in the \$50,001 to \$60,000 income bracket, 43.21% of African American couples fall within the 60/40 - 50/50 income ratio, while only 26.72% of white couples do. In contrast, in the same income bracket, 27.00% percent of white couples fall into the 100/0 - 90/10 income ratio, while only 9.22% of African American couples do. *See id.*

22. *See supra* Part II.

23. *See generally* ABRAMOVITZ, *supra* note 9.

24. *See* Brown et al., *supra* note 7, at 638.

(EITC),²⁵ may offset the discriminatory impact on African Americans.²⁶ However, any alleged beneficial features cannot erase the elements of discrimination embedded in the social security system and should not silence a debate of these issues.

VI. Conclusion

Despite its seemingly objective and neutral structure, social security contains a two-earner penalty that has a discriminatory effect on African American couples and especially African American women. The spousal benefits formula penalizes two-earner couples by reducing their benefits, which disproportionately affects African American couples because they are more likely to be two-earner couples than whites. Despite these serious flaws in the social security system, this article does not argue for the demise of social security or for the elimination of spousal benefits. Until a more progressive movement towards substantive equality begins, social security is a needed program to preserve the economic health of the elderly and their families. However, reform proposals must acknowledge the two-earner penalty and its disproportionate impact on African American families. The goals of social security cannot be met without placing African American families at the center of reform proposals.

25. Scholars argue that the earned income tax credit may counteract the discriminatory impact of social security on African American families because the credit subsidizes the payroll tax liability of low-income workers. *See id.* Scholars also note that African American families receive a benefit because they are awarded a large percentage of disability benefits under social security. *See id.*

26. *See id.*