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Foster, Laura Ann

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# RECENT DEVELOPMENT

## **SOCIAL SECURITY AND AFRICAN AMERICAN FAMILIES: UNMASKING RACE AND GENDER DISCRIMINATION**

Laura Ann Foster\*

### 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, centralizing marriage, and linking benefits to wages. 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. In addition, the spousal benefits formula subordinates African Americans and women by preserving eurocentric family structures, traditional gender roles, and marketplace inequalities. 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.

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\* Associate, Beckman, Weil, Shepardson & Faller LLC, Cincinnati, Ohio. J.D., 2000, University of Cincinnati College of Law; M.A., 2000, University of Cincinnati; B.A., 1995, Georgetown University. Also the author of *A Modified Approach to Claims of Sexual Harassment under Title IX after Gebser v. Lago Vista Independent School District: Finding Protection against Peer Sexual Harassment*, 67 U. CIN. L. REV. 1229 (1999). I would like to thank Dorothy Brown, Patricia Hill-Collins, Marcia Bellas, Lisa Hogeland, Kathryn L. Moore, and Goodwin Liu for their helpful comments on earlier drafts. This paper is dedicated to the memory of my father, Dr. John Michael Foster.

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## I. INTRODUCTION

Created in 1935 to provide income to retired or disabled workers and their spouses,<sup>1</sup> social security is the United States' largest social welfare program.<sup>2</sup> 62% of the elderly receive half or more of their income from social security benefits.<sup>3</sup> Within this group, women and African Americans are especially dependent on benefits.<sup>4</sup> Women depend more on social security than

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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 15% of the elderly. See *id.*

4. See Burke & McCouch, *supra* note 1, at 1217-20 (discussing the social security system and its implications on women); see also Dorothy A. Brown, *Race, Class,*

men because they generally live longer, earn lower wages, and have more intermittent work histories.<sup>5</sup> African Americans depend on social security more than whites<sup>6</sup> because they tend to earn lower wages, accumulate less wealth, and lack job advancement.<sup>7</sup> Thus, African American women rely most heavily on social security benefits. 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, centralizing marriage, and linking benefits to wages.<sup>8</sup>

Unfortunately, these problems are not easily solved. Social security is difficult to reform because any proposed change would disadvantage one group over another.<sup>9</sup> Nevertheless, attempts are being made. Whereas social security has often been under intense scrutiny,<sup>10</sup> in recent years discussions of social security have been infused with a rhetoric of crisis.<sup>11</sup> As the baby

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

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

6. 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).

7. 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).

8. 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, Karen C. Burke, & Grayson M.P. McCouch, *Social Security Reform: Risks, Returns, and Race*, 9 CORNELL J.L. & PUB. POL'Y 633 (2000). See generally, Burke & McCouch, *supra* note 1.

9. See Theodore R. Marmor & Jerry L. Mashaw, *Introduction to SOCIAL SECURITY: BEYOND THE RHETORIC OF CRISIS* 3, 8-9 (Theodore R. Marmor & Jerry L. Mashaw eds., 1988). Marmor and Mashaw bring together a collection of articles that address the Social Security System in the wake of the 1983 Amendments to the Social Security Act. Marmor and Mashaw question the national rhetoric surrounding social security. The authors argue for a renewed optimism about the basic structure of social security and its ability to provide retirement security. See generally, C. EUGENE STEUERLE & JON M. BAKIJA, *RETOOLING SOCIAL SECURITY FOR THE 21ST CENTURY* 26 (1994) (noting that Social Security is influenced by politics).

10. See Burke & McCouch, *supra* note 1, at 1215.

11. See Marmor & Mashaw, *supra* note 9, at 4. Marmor and Mashaw note that support for the Social Security Act was questioned after the stagflation of the 1970's. The election of Ronald Reagan in 1980 stimulated a debate on the federal government's role in social policy. Opponents of reductions in social security benefits brought a rhetoric of "crisis" as a tactic to bring about reform. See *id.*

boomer generation retires, the rate of contributions will decrease while the rate of payments will increase.<sup>12</sup> According to recent projections, benefits will outweigh contributions by 2014 and the current social security surplus will be depleted by 2034.<sup>13</sup> This "impending doom" of the social security system has sparked calls for reform<sup>14</sup> while, simultaneously, the political entrenchment of social security makes such reform difficult.<sup>15</sup>

While the renewed interest in social security is promising, gender and race must figure more prominently in the discussion. 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. In addition, the spousal benefits formula subordinates women by preserving eurocentric family structures, traditional gender roles, and marketplace inequalities.

Scholars must acknowledge these discriminatory elements of social security when developing reform proposals. This Article reveals 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. In other words, its strategy is to raise questions and encourage deeper discussion.<sup>16</sup> Limited to African American married couples, this Arti-

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12. See Brown et al., *supra* note 8, at 634. Revenue from payroll contributions will only be sufficient to pay 71% of the benefits that will be expended to workers. See *id.*

13. See *id.* at 634, n.6.

14. See Mary E. Becker, *Obscuring the Struggle: Sex Discrimination, Social Security, and Stone, Seidman, Sunstein & Tushnet's Constitutional Law*, 89 COLUM. L. REV. 264, 285-88 (1989) (arguing for reform to social security based on social adequacy principles due to the system's inherent bias toward women); Burke & McCouch, *supra* note 1, at 1254 (arguing for the elimination of spousal benefits and the introduction of earnings sharing); Edward J. McCaffery, *Taxation and the Family: A Fresh Look at Behavioral Gender Biases in the Code*, 40 UCLA L. REV. 983, 996-1001 (1993) (arguing that spousal benefits reinforce the bias in favor of male-centered families and creates an incentive for women to remain at home).

15. See Marmor & Mashaw, *supra* note 9, at 4 (noting the legal flexibility for adjustments in spending programs, in contrast to the social rigidity and resistance to adjusting Social Security).

16. This strategy is carried out through methods of critical legal thinking and feminist thought. Professor Alex M. Johnson defines critical legal studies as "scholars who advocate a jurisprudential perspective [that some might call a] nihilist approach to legal scholarship." Alex M. Johnson, Jr., *Defending the Use of Narrative and Giving Content to the Voice of Color: Rejecting the Imposition of Process Theory*

cle intends to spark further analysis of the impact of social security on single African American women and other minority groups. This Article does not argue for the demise of the social security system or its spousal benefits formula; rather, it informs scholars and policymakers about the discriminatory elements of social security in order to encourage more meaningful reform and to place African American families into the center of policy discussions.

Part II provides a historical overview of the social security system that describes the exclusion of certain workers and the influence of the state over family policy and female roles. This section continues with a functional overview of social security and an introduction to the policy objectives behind the system. Part III exposes the two-earner penalty that results from basing social security benefits on marriage and explains how this penalty results in disproportionate levels of benefits being given to couples with the same total family income. Part IV then argues that the two-earner penalty disproportionately discriminates against African American couples because both spouses in African American couples are more likely to work, they are more likely to earn less and accumulate less wealth than their white counterparts, and they are less likely to conform to the eurocentric family ideal rewarded under the current social security system.

## II. OVERVIEW OF THE SOCIAL SECURITY SYSTEM

### A. *Historical Overview*

Social security is a complex tax-and-transfer system that provides benefits to retirees, disabled workers, and the spouses and dependents of these recipients.<sup>17</sup> When the Social Security Act

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*in Legal Scholarship*, 79 IOWA L. REV. 803, 810 n.31 (1994). Johnson also defines feminist theorists as “scholars who analyze the manner by which our legal system takes account of gender.” *See id.* In this paper, critical legal thinking is used to examine social security’s benefit formulas and reveal a two-earner penalty that disproportionately disadvantages African Americans, while feminist analysis unpacks the conclusions of the legal critique and exposes the broader effects of discrimination within social security.

17. *See Liu, supra* note 3, at 5. The social security system is actually comprised of three related programs. First, the old-age and survivors insurance program (OASI). Second, the disability insurance program (DI). Third, the hospital insurance program (HI). This paper focuses on the OASI program. *See Social Security Act*, Pub. L. No. 74-271, 49 Stat. 620 (1935) (codified as amended at 42 U.S.C. §§ 301-1397f (1992)).

was passed in 1935, the goal was to "provide safeguards against all of the hazards leading to destitution and dependency,"<sup>18</sup> and to combat the economic turbulence of the Great Depression.<sup>19</sup> The system originally provided for the creation of a substantial reserve, but shifted to a "pay as you go" system in 1939, financed by compulsory payroll taxes on U.S. workers.<sup>20</sup> Since 1939, social security has provided benefits to dependents, including spouses and children of retired and deceased workers.<sup>21</sup> Spousal benefits were based on the presumption that married women were economically dependent on their male spouses,<sup>22</sup> a reasonable conclusion in 1939 when only one in four women worked outside the home.<sup>23</sup>

Initially, social security excluded occupations that were dominated by female and African American workers. The major occupations excluded were "agricultural laborers, private domestic servants, local, state, and federal government employees, and workers in nonprofit religious, charitable, scientific, literary, and educational institutions."<sup>24</sup> In 1930, 10.5 million women participated in the labor force<sup>25</sup> in the areas of domestic service (29.6%), clerical work (18.5%), manufacturing (17.5%), professional service (14.2%), trade (9%), agriculture (8.5%), transportation and communication (2.6%), and public service (0.2%).<sup>26</sup>

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18. See *id.* (quoting *Economic Security Act: Hearings on H.R. 4120 Before the House Comm. on Ways and Means*, 74th Cong. 20 (1935)). Social security originally included Old Age Assistance, Aid to the Blind, Aid to Dependent Children, Old Age Insurance, Unemployment Compensation, and Public Assistance. See MIMI ABRAMOVITZ, *REGULATING THE LIVES OF WOMEN: SOCIAL SECURITY WELFARE POLICY FROM COLONIAL TIMES TO THE PRESENT* 215 (1996).

19. See ABRAMOVITZ, *supra* note 18, at 215. During that time, economic collapse, working-class militancy, and family erosion plagued the United States' economy. See *id.*

20. See Charles W. Meyer, *Social Security: Past, Present, and Future*, in *SOCIAL SECURITY: A CRITIQUE OF RADICAL REFORM PROPOSALS* 1, 8-9, 24 (Charles W. Meyer ed., 1987); Kathryn L. Moore, *Redistribution Under the Current Social Security System*, 61 U. PITT. L. REV. 955, 984-85 (2000).

21. See Moore, *supra* note 20, at 975.

22. See *id.*

23. See Richard V. Burkhauser & Karen C. Holden, *Introduction to THE CHANGING ROLES OF WOMEN AND MEN IN AMERICAN SOCIETY* 10 (Richard V. Burkhauser & Karen C. Holden eds., 1982).

24. See ABRAMOVITZ, *supra* note 18, at 233. The creators of the Social Security Act justified the exclusions of these occupations by arguing that the program was only meant to benefit workers engaged in interstate commerce and that collecting a social security tax from workers in decentralized occupations would be too administratively burdensome. See *id.* at 233-34.

25. See *id.*

26. See *id.*

However, over 50% of these women were concentrated in jobs that were excluded from the social security system.<sup>27</sup> African American women were particularly affected because they represented the majority of the 2.3 million domestic servants employed in private homes in 1940.<sup>28</sup> In addition, the exclusion of employees of nonprofit organizations, including “teachers, nurses, college faculty, physicians, clergy, social and welfare workers”<sup>29</sup> particularly affected women.<sup>30</sup> In 1945, of the 1.8 million workers employed by nonprofit groups, 1.1 million, or 61%, were women.<sup>31</sup>

African Americans were also disproportionately affected by the occupational exclusions<sup>32</sup> because the vast majority of African American workers were employed in occupations excluded from coverage under the Social Security Act.<sup>33</sup> In 1930, 40.7% of all African American males participating in the labor force were agricultural workers, and 62.6% of all African American females were employed in private domestic or personal service.<sup>34</sup> In fact, in 1930, only 8% of African American men and 4.2% of African American women were employed in jobs covered by social security.<sup>35</sup> By 1937, the 2.2 million African Americans employed in covered jobs represented only 6.9% of all qualified workers.<sup>36</sup> Moreover, employment in a covered job did not guarantee eligibility for benefits. In 1935, 42% of the African American workers in covered jobs did not earn enough to receive benefits starting in 1939,<sup>37</sup> as compared to 22% of white workers in covered jobs.<sup>38</sup>

However, occupational exclusions were not the only bias embedded in the early social security system. In 1939, amendments to the Social Security Act provided derivative benefits for spouses and children of retired or deceased workers, represent-

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27. *See id.*

28. *See id.* at 234. Domestic servants employed by private homes made up 4.4% of the labor force in 1940. *See id.*

29. *Id.*

30. *See id.*

31. *See id.*

32. *See id.* at 250; CONLEY, *supra* note 7, at 36.

33. *See* ABRAMOVITZ, *supra* note 18, at 250.

34. *See id.*

35. *See id.*

36. *See id.*

37. The social security system was created in 1935 but benefits were not distributed until 1939. *See* Moore, *supra* note 20, at 984-85.

38. *See* CONLEY, *supra* note 7, at 36.

ing a shift from an individual-focused policy to a more family-oriented policy.<sup>39</sup> Professor Mimi Abramovitz argues that these "amendments institutionalized state subsidization of families to carry out their reproductive and maintenance tasks, underpinned the state's role in mediating the conflict between women's home and market work, and reaffirmed the foundations of public patriarchy."<sup>40</sup> In adopting the derivative benefits, the Social Security Advisory Council stressed the great social need to support the aging wives and widows of male workers.<sup>41</sup> Wives were granted derivative benefits based on a percentage of their husband's benefits.<sup>42</sup> Abramovitz argues that "[i]ntentionally or not, the 1939 provisions presumed and supported the male breadwinner/female homemaker family model, encouraged women to choose traditional family life over work or alternative family forms, affirmed women's economic dependence on men, and otherwise enforced patriarchal arrangements that perpetuated the subordination of women."<sup>43</sup>

### B. *Functional Overview*

Social security is funded by joint employer and employee contributions used mainly to pay current benefits, while a small portion is invested in a trust fund.<sup>44</sup> As of 1998, 94% of civilian workers were covered employees under the social security system.<sup>45</sup> In 1999, total social security spending was estimated at \$509 billion, which amounts to 34% of the federal budget.<sup>46</sup> In 1998, payroll taxes were 12.4% of the first \$68,400 of wages,<sup>47</sup>

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39. See ABRAMOVITZ, *supra* note 18, at 253.

40. *Id.*

41. See *id.* ("The Social Security Advisory Council stated that 'the enhancement of the early old age benefits under the system, should be partly attained by paying . . . a married annuitant a supplementary allowance on behalf of the aged wife.'") (quoting *Advisory Council on Social Security, Final Report 1937-1938*, 109 NAT'L CONF. SOC. WELFARE 187, 189 (1985)).

42. See *id.*

43. *Id.* at 254.

44. See Moore, *supra* note 20, at 983-85.

45. See Jonathan B. Forman, *Promoting Fairness in the Social Security Retirement Program: Partial Integration and a Credit for Dual-Earner Couples*, 45 TAX LAW. 915, 915 (1992).

46. See Executive Office of the President, *Historical Tables: Budget of the United States Government, Fiscal Year 1998*, at 28, 30 (1998). This includes spending for Medicare as well. Social security outlays represent the largest spending figures within the United States budget. See *id.*

47. See Liu, *supra* note 3, at 10. A worker's pay stub reflects the payroll deduction for social security in the area known as FICA, the Federal Insurance Contribu-

with employees and employers each required to pay 6.2%.<sup>48</sup> Therefore, the maximum amount of social security tax an individual pays is \$4,241 because only the first \$68,400 in wages are taxed.<sup>49</sup> Goodwin Liu, a respected scholar on social security reform and gender, notes that “[b]ecause the 12.4% tax does not apply to earnings above \$68,400 or to non-wage investment income, high earners tend to pay a lower average rate on total income than low earners.”<sup>50</sup> Thus, although high earners receive less return on their contributions,<sup>51</sup> workers who earn over \$68,400 all contribute the same maximum allowable amount of \$4,241.<sup>52</sup>

Retired workers over age sixty-two who have worked at least ten years are eligible to receive social security benefits.<sup>53</sup> Calculation of benefits is based on a worker’s history of earnings. First, a worker’s average indexed monthly earnings (AIME) must be computed through a series of four calculations to determine the present value of wages during the thirty-five years in which she earned the highest income.<sup>54</sup> The second step is to determine the primary insurance amount (PIA),<sup>55</sup> which is the monthly benefit a person would receive if she retired at sixty-

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tions Act. This Act allows the employers to deduct social security and Medicare taxes from employees. See I.R.C. § 3101 (West Supp. 1998).

48. See Liu, *supra* note 3, at 10. A covered worker, in 1998, will pay taxes of 6.2% up to an earnings cap of \$68,400. Therefore, the maximum amount of social security tax paid is \$4,241 ( $\$68,400 \times .062$ ). See *id.* Thus \$4,241 will be withheld from the worker’s salary. In addition, the employer must pay 6.2% of taxes, which amounts to a maximum of \$4,241 as well. See *id.*

49. See *id.*

50. *Id.* One must also note that retired workers with taxable incomes over a base amount are taxed on their social security benefits. See I.R.C. § 86(a)(1) (as amended by Pub. L. No. 98-21, § 121, 97 Stat. 65, 80-84 (1983)). For example, John Doe and Mary Doe are a retired married couple. The sum of their adjusted gross income (\$35,000), tax-free interest income (\$4,000), and one-half of social security benefits (\$1,000) equals \$40,000. See Forman, *supra* note 45, at 920. The federal government then compares that sum to a base of \$32,000 for married couples. See *id.* The income of \$40,000 exceeds the base of \$32,000 so John and Mary must include the lesser of either one-half of the excess over the base (\$8,000) or one-half of the benefits received (\$500). See *id.* Therefore, John and Mary have to include \$500 in taxable income. See *id.*

51. See Liu, *supra* note 3, at 8.

52. See *id.* at 10.

53. See 42 U.S.C. §§ 402(a), 414(a)(2). Eligibility for retirement benefits requires a worker to accrue forty credits over her work history while earning a maximum of four credits per year. See *id.* § 414(a).

54. See *id.* § 415(b); see also Forman, *supra* note 45, at 922 n.55.

55. See 42 U.S.C. § 415(a).

five.<sup>56</sup> As of 1998, a worker's PIA was determined by the "sum of 90% of a worker's AIME below \$456, 32% of AIME between \$456 and \$2,741, and 15% of AIME above \$2,741 up to a specified maximum."<sup>57</sup>

### C. Policy Objectives

Social security reflects two basic policy objectives: social adequacy and equity.<sup>58</sup> However, these basic principles are in tension with one another and contribute to the difficulty of reform.<sup>59</sup> Social adequacy is the idea "that a standard of living should be provided for all contributors, regardless of the level of their contributions and implies some degree of income redistribution."<sup>60</sup> The social security system is designed to promote social adequacy in several ways. Through the progressive rate structure, workers with low wages get a greater marginal return on their contributions than workers with higher wages.<sup>61</sup> For example, social adequacy would require a low-wage worker that contributed \$1.00 to social security to receive a return of \$0.90 in benefits. However, a high-wage worker contributing the same \$1 amount would receive a return of \$0.75 in benefits. So, in absolute numbers, high-wage workers receive a larger social security check than low-wage workers,<sup>62</sup> but low wage workers receive a check that re-

56. See Liu, *supra* note 3, at 11. A worker's normal retirement age is considered 65. 41 U.S.C. § 416(1)(A). By the year 2021 the normal retirement age will be 67. See 41 U.S.C. § 416(1)(E).

57. Liu, *supra* note 3, at 11. The "specified maximum" is adjusted according to the cap on taxable earnings, which was \$68,400 in 1998. See *id.*

58. The policy objectives of adequacy and equity were reflected in the Final Report of the 1937-1938 Advisory Council on Social Security. See Liu, *supra* note 3, at 6 n.10.

59. See *id.* at 6.

60. Kathryn L. Moore, *Redistribution Under a Partially Privatized Social Security System*, 64 BROOK. L. REV. 969, 969-70 (1998). The founders of social security declared that the system should "'prevent dependency in old age' through the provision of benefits 'sufficient in amount to afford the aged recipient at least a minimum subsistence income.'" Liu, *supra* note 3, at 6 (quoting STEUERLE & BAKIJI, *supra* note 9, at 16).

61. See 42 U.S.C. § 541(a)(1)(C); see also Liu, *supra* note 3, at 5. Liu suggests that social security should be understood as a part of a whole national retirement security policy that includes private pensions and private savings. Higher income workers have greater access to private pension plans and 401(K) programs. Workers with higher income have the ability to build private savings for maintenance during retirement. Therefore, the progressive rate structure ensures that low wage workers will get a larger piece of the social security pie in terms of a marginal rate of return. See *id.*

62. See *id.*

flects a higher percentage of what they paid into the system.<sup>63</sup> Another way the social security system promotes social adequacy is by providing derivative benefits, which support the spouses and dependents of retired workers.<sup>64</sup> Thus, the goal of social adequacy creates a hybrid system with elements of redistribution and insurance.<sup>65</sup>

In contrast to social adequacy, equity requires that “each worker should receive a benefit that is directly related, or actuarially equivalent, to the amount of his or her contributions.”<sup>66</sup> The goal of equity is demonstrated by the close link between earnings, contributions, and benefits.<sup>67</sup> Equity can be divided into two concepts: horizontal equity and individual equity.<sup>68</sup> Horizontal equity means that similarly situated individuals should be treated the same under the law,<sup>69</sup> while individual equity refers to “actuarial fairness” or “marginal fairness.” In simplest terms, actuarial fairness would require that each dollar a worker contributes to social security should yield one dollar in benefits.<sup>70</sup> In other words, actuarial fairness would result in only high-income earners receiving adequate retirement security, because low-income workers would not contribute wages sufficient to yield adequate benefits on which to live. Individual equity can also be interpreted as “marginal fairness,”<sup>71</sup> that “anyone who

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63. *See id.*

64. *See Moore, supra* note 60, at 973 (noting that “[s]ocial security pays ‘auxiliary’ or ‘derivative’ benefits to certain family members or retired, disabled, and deceased workers to satisfy the presumptive needs of such dependents and survivors.”).

65. *See Burke & McCouch, supra* note 1, at 1211. Burke argues that the social security system is not an insurance or social welfare system. *See id.* Conceptually, social security is a hybrid that combines the elements of redistribution and insurance. *See id.*

66. *Moore, supra* note 60, at 969.

67. *See id.* at 971-72.

68. *See Liu, supra* note 3, at 7.

69. *See id.* Liu notes that horizontal equity is a concept that is common within the law, especially concerning public welfare programs. *See id.* Individuals that are in equal circumstances should be treated the same. Conversely, “individuals in different circumstances should be treated differently.” *Id.* Horizontal equity also applies to the progressive rate structure. Individuals are in different circumstances because their earnings differ. Thus, the rate of contributions and benefits received will be different for low-wage workers compared to high-wage workers. *See id.*

70. *See id.* at 8. Actuarial fairness would require that “the present value of a participant’s expected future benefits at retirement would be set equal to the participant’s contributions, adjusted to reflect an interest factor and pooled risks.” *Burke & McCouch, supra* note 1, at 1211.

71. *Id.*

pays more should get more, even if not everyone gets back as much as he or she paid in."<sup>72</sup>

The goals of social adequacy and equity are inversely related to one another.<sup>73</sup> If higher weight is given to equity, then less weight must be given to social adequacy and redistribution. The delicate balance between these policies must be reevaluated in light of changed social realities in recent decades.<sup>74</sup> First, in contrast to the situation in 1939, two-thirds of married women now work in the labor market,<sup>75</sup> with 73% of married African American women in the labor force compared to 64% of married white women.<sup>76</sup> Today, women are "breadwinners and homemakers; high and low wage earners; full-time, part-time, and intermittent employees; married, unmarried, widowed, and divorced; old and young; rich and poor."<sup>77</sup> Second, married women commonly provide a primary or dual income for their families.<sup>78</sup> Third, to the extent that the experiences of African American families vary from the eurocentric family norm, the social security system preserves a mythical social reality that disadvantages these groups.<sup>79</sup> In balancing policy objectives and recommending reform proposals, policymakers must consider the changing social realities and the diverse experiences and roles of women and African American families.<sup>80</sup>

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72. *Id.*

73. *See id.*

74. *See Liu, supra* note 3, at 2.

75. *See id.*

76. *See* Dorothy A. Brown, *The Marriage Bonus/Penalty in Black and White*, 65 U. CIN. L. REV. 787, 792 (1997).

77. *See generally* ABRAMOVITZ, *supra* note 18.

78. *See* Brown, *supra* note 4, at 1475. Brown argues that the tax literature is incorrect in presuming that married men remain primary workers and married women serve as secondary earners. *See id.* Brown presents data that demonstrates that women who rely on male bread-winning spouses are primarily upper-class white women. *See id.* at 1491. There are several other changing social realities that need to be mentioned. First, African American women are less likely to be married than white women. *See* Harriette P. McAdoo, *African-American Families: Strengths and Realities*, in *RESILIENCY IN AFRICAN-AMERICAN FAMILIES* 17, 25 (Hamilton I. McCubbin et al. eds., 1998). Second, the rate of divorce has increased. *See Liu, supra* note 3, at 25. In fact, the divorce rate for African American women is twice the rate of other women. *See* McAdoo, *supra*, at 25.

79. *See generally* ABRAMOVITZ, *supra* note 18; CONLEY, *supra* note 7.

80. *See generally* Burke & McCouch, *supra* note 1; ABRAMOVITZ, *supra* note 18.

## III. THE TWO-EARNER PENALTY

As a result of the spousal benefits formula, the calculation of social security benefits penalizes two-earner couples as compared to single-earner couples.<sup>81</sup> Through the 1939 amendments to the Social Security Act, wives of male workers were granted derivative benefits based on a percentage of their husbands' benefits.<sup>82</sup> Following this formula, a spouse who does not work or earns no more than 20% of the other spouse's income<sup>83</sup> has a right to 50% of the working spouse's social security benefits.<sup>84</sup> In other words, a low-earning spouse may opt to have her benefits calculated based on 50% of her spouse's PIA rather than her own PIA.<sup>85</sup> These spousal benefits result in a penalty against two-earner families who earn less than \$80,000.<sup>86</sup> 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.<sup>87</sup> Assuming Jack and Jill maintain a continuous working pattern, they will receive \$1,860 per month in social security benefits upon their retirement.<sup>88</sup>

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.<sup>89</sup> Assuming Bob and Betty maintain a

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

82. See ABRAMOVITZ, *supra* note 18, at 253.

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

84. See *id.*

85. See *id.*

86. See *id.*

87. Jack pays 6.2% of \$30,000, which equals \$1,860 per year or \$155 per month. Jill pays 6.2% of \$20,000, which equals \$1,240 per year or \$103 per month. Together, Jack and Jill pay \$258 per month in social security taxes.

88. Jack's AIME would be \$30,000 divided by 12 = \$2,500. Jack's PIA would be  $0.9(\$455) + 0.32(\$2,500 - \$455) = \$1,063$ . Jill's AIME would be \$20,000 divided by 12 = \$1,667. Jill's PIA would be  $0.9(\$455) + 0.32(\$1,667 - \$455) = \$797$ . Together, Jill and Jack would receive \$1,860 per month in social security. See Liu, *supra* note 3, at 13 n.39.

89. Bob pays 6.2% of \$50,000, which equals \$3,100 per year or \$258 per month.

continuous working pattern, they will receive \$2,033 per month in social security benefits upon their retirement.<sup>90</sup>

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.

#### A. *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.

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.<sup>91</sup> The two-earner penalty ceases to exist at \$80,000 because of the cap on taxable earnings at \$68,400.<sup>92</sup> 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

90. Bob's AIME would be \$50,000 divided by 12 = \$4,166. Bob's PIA would be  $0.9(\$455) = 0.32(\$2,741 - \$455) + 0.15(\$4,166 - \$2,741) = \$1,355$ . Betty would be entitled to fifty percent of \$1,355, which equals \$678. Together, Bob and Betty would receive \$2,033.

91. 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%.

92. 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  $\$80,000/12 = \$6,666$  and a PIA of  $0.9(\$455) + 0.32(\$2,742 - \$455) + 0.15(\$6,666 - \$2,741) = \$1,730.09$ . The spousal benefit would be  $\$1,730(.50) = \$865$ . The total monthly benefits for a single earner family would be  $\$1,730 + \$865 = \$2,595$  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  $\$68,400/12 = \$5,700$  and a PIA of  $0.9(\$455) + 0.32(\$2,742 - \$455) + 0.15(\$5,700 - \$2,741) = \$1,585.19$ . The spousal benefit would be  $\$1,585(.50) = \$792$ . The total monthly benefits for a single earner family under the cap is actually  $\$1,585 + \$792 = \$2,377$ .

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

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. If both couples have the same

household income, why do Bob and Betty receive \$2,033, when Jack and Jill receive only \$1,860, a \$173 penalty?

In contrast, couples earning \$80,000 or above receive a two-earner bonus rather than a penalty. In order to demonstrate the two-earner bonus, consider two additional hypotheticals:

1. Two-Earner Married Couple: Dan, a computer technician, earns \$36,000 per year, while his wife, Debra earns \$54,000 working as an accountant. Together, they earn \$90,000 per year and pay \$465 per month in social security taxes.<sup>93</sup> Dan and Debra will receive \$2,585 per month in social security benefits.

2. Single-Earner Married Couple: Ted works as a lawyer earning \$90,000 a year. Tina works at home performing household duties. Together, they earn \$90,000 per year and pay \$465 per month in social security taxes.<sup>94</sup> Dan and Debra will receive \$2,378 per month in social security benefits.

If both couples have the same household income, why do Ted and Tina receive only \$2,378, when Dan and Debra receive \$2,585, a \$207 bonus? Ted and Tina earn \$90,000, which is above the cap of \$68,400. Therefore, Ted and Tina's social security benefits are capped at the same level as a single-earner couple earning only \$68,400. The figures in Table One show that all two-earner couples jointly earning more than \$80,000 will be rewarded like Dan and Debra.

To summarize, Table One shows that two-earner couples earning less than \$80,000 are penalized compared to single-earner couples with the same total family income.<sup>95</sup> Single-

93. Dan pays 6.2% of \$36,000, which equals \$2,232 per year or \$186 per month. Debra pays 6.2% of \$54,000, which equals \$3,348 per year or \$279 per month. Together, Dan and Debra pay \$465 per month in social security taxes.

94. Ted pays 6.2% of \$90,000, which equals \$5,580 per year or \$465 per month.

95. See *supra* Table One. The data also reveals a contradictory secondary finding that two-earner couples earning wages closer to a 70%/30% split will incur a slightly higher penalty than two-earner couples earning income closer to 50%/50% split. This slightly higher penalty against a more "ideal" family form contradicts the previous finding that couples receive a bonus for adhering to a patriarchal family form. For example, a two-earner couple making \$42,000 and \$18,000 for a total of \$60,000 will incur a penalty of \$221 less in benefits than a single-earner couple. Yet, a two-earner couple making \$30,000 and \$30,000 for a total of \$60,000 will only incur a penalty of \$94 less in benefits than a single-earner couple. In other words, the benefits formula imposes a slightly higher penalty on two-earner couples who more closely represent a patriarchal family model of a single earner. However, noting that the secondary conclusion is truly a "secondary" point remedies these contradictory findings. The central question is whether a family fits the patriarchal ideal or not. Certain couples with a 70%/30% split are penalized more than couples that earn income along a 50%/50% split. However, the main point is that both couples fall outside the patriarchal model and are penalized, while a single-earner couple is re-

earner couples in this income category receive a greater return on their contributions because the nonworking spouse receives benefits based on 50% of the working spouse's earnings.<sup>96</sup> In contrast, two-earner couples earning *more* than \$80,000 per year receive a bonus compared to single-earner couples with the same family income. However, in 1997, statistics from the United States Department of Commerce revealed that only 23% of married households have income over \$75,000.<sup>97</sup> Thus, the number of two-earner couples receiving a bonus is much smaller than the number of two-earner couples receiving a benefits penalty.<sup>98</sup>

### B. *Limitations of Table One*

It is important to note, however, that Table One sacrifices real world variables in order to estimate social security benefits. The average indexed monthly earnings were based on the assumption that a worker has thirty-five years of continuous earnings.<sup>99</sup> This assumption is particularly problematic given the fact that women experience more intermittent work histories than men due to family and childcare concerns.<sup>100</sup> The estimate of social security benefits also assumes that couples are married and have maintained a continuous marital relationship with the same partner, an unrealistic assumption due to the rate of divorce and remarriage in today's society.<sup>101</sup> In addition, Table One always assumes that the lower income-earning spouse in a two-earner couple will only take the spousal benefit if her income is less than 20% of her spouse's income, although this may not always be the

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warded. Therefore, the overarching penalty on two-earner couples that preserves eurocentric patriarchal family forms clearly outweighs the impact of this secondary conclusion.

96. *See id.*

97. *See* U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 466, tbl.719 (1997) [hereinafter STATISTICAL ABSTRACT].

98. *See id.*

99. *See* Liu, *supra* note 3, at 11 n.27.

100. *See* Brown et al., *supra* note 8, at 638.

101. The United States divorce rate went from 2.2 divorces per 1,000 people in 1960, to 5.2 per 1,000 people in 1980. *See* Liu, *supra* note 3, at 18 n.67 (citing U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 86, tbl.126 (1990)); STATISTICAL ABSTRACT, *supra* note 97, at 105 tbl.145. The divorce rate slightly declined during the 1980's and then stabilized at 4.7 per 1,000 people in 1990 and 4.4 per 1,000 people in 1995. *See id.* Given the increase in the divorce rate it is important to note that a divorced spouse may choose benefits determined by her own earnings or her ex-spouse's earnings if they were married for at least ten years. *See id.* at 18.

case.<sup>102</sup> However, these factors are beyond the scope of this Article, although they do suggest paths for further inquiry.<sup>103</sup>

#### IV. TWO-EARNER PENALTY DISPROPORTIONATELY DISCRIMINATES AGAINST AFRICAN AMERICAN MARRIED COUPLES

The two-earner penalty disadvantages African American families in two ways. First, 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,<sup>104</sup> and because African Americans suffer the negative impact of racial inequality in the marketplace. Second, by encouraging a male breadwinner/female homemaker model, the two-earner penalty preserves eurocentric family structures that marginalize African American families.<sup>105</sup>

##### A. *African American Couples Are More Likely to Receive Lower Social Security Benefits*

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

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

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102. Due to the regressivity of the benefit formula, the lower income earning spouse will be more advantaged by taking benefits based on his or her own independent work history. In other words, the PIA of the lower income-earning spouse will always be higher than 50% of the PIA for the higher income-earning spouse when the lower income spouse earns greater than 20% of his or her spouse. See Liu, *supra* note 3, at 13 n.42.

103. See Liu *supra* note 3, at 18-21. A more accurate estimate of social security benefits would include factors such as work history, intermittent earnings patterns, divorce, remarriage, and disability. However, comprehensive data on these variables are unavailable or unreliable and are rarely compiled by race or gender. See Brown et al., *supra* note 8, at 638.

104. See Brown, *supra* note 4, at 1504-05.

105. See generally ABRAMOVITZ, *supra* note 18.

TABLE TWO: INCOME ALLOCATION BETWEEN SPOUSES FOR AFRICAN AMERICAN AND WHITE HOUSEHOLDS AT VARIOUS INCOME LEVELS<sup>106</sup>

Total Family Income (\$)	Percentage of Couples Earning at the Given Income Ratios <sup>i</sup>														
	100/0-90/10 <sup>ii</sup>			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 <sup>iii</sup>	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	

<sup>i</sup> "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.

<sup>ii</sup> 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.

<sup>iii</sup> 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%.

106. See Brown, *supra* note 4, 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 five percent sample of the population of same race couples. See *id.*

equally to household income.<sup>107</sup> 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.<sup>108</sup> Combined with the race and gender inequality present in the marketplace,<sup>109</sup> 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,<sup>110</sup> the penalty most significantly impacts the social security benefits of African American female widows, who will live with the retirement penalty the longest.

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107. *See id.*; *see also* Brown et al., *supra* note 8, 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> (last visited Sept. 17, 2002). 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 supra* 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.*

108. *See supra* Part III.

109. *See infra* Part IV.A.2.

110. *See generally* ABRAMOVITZ, *supra* note 18.

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.<sup>111</sup> They advocate that several countervailing features, such as the earned income tax credit (EITC),<sup>112</sup> may offset the discriminatory impact on African Americans.<sup>113</sup> However, any alleged beneficial features cannot erase the discrimination embedded in the social security system and should not silence a debate of these issues. The two-earner penalty discriminates against African American couples in a manner that goes beyond the actual amount of social security benefits received. The two-earner penalty and its patriarchal assumptions work together to create a discriminatory element of social security. Therefore, despite arguments of speculation and inconclusiveness, scholars must recognize that cumulating factors such as the two-earner penalty and its preservation of traditional gender roles discriminate against African American couples and especially African American women.

## 2. Link Between Wages and Benefits Sustains Marketplace Inequality

By linking benefits to wages, the social security system disadvantages African Americans and women by preserving marketplace inequality.<sup>114</sup> This linkage develops an emphasis on income that diverts attention away from African Americans' historical exclusion from jobs, lower wages, lack of job advancement, and lower levels of wealth accumulation. Beginning with slavery, African Americans were historically excluded from accumulating economic resources.<sup>115</sup> At the time of the Emancipation Proclamation in 1865, African Americans owned 0.5% of the United States' total wealth.<sup>116</sup> In 1990, 135 years after slavery was abolished, African Americans owned only 1% of the to-

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111. See Brown et al., *supra* note 8, at 638.

112. 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.*

113. See *id.*

114. See generally Becker, *supra* note 14, at 288.

115. See CONLEY, *supra* note 7, at 25.

116. See *id.* This lack of wealth accumulation is to be expected because African Americans were prohibited from earning wages and owning property under the system of slavery that exploited their labor. See *id.*

tal wealth in the United States.<sup>117</sup> Wage discrimination and occupational exclusion/segregation have contributed to African Americans' lack of progress in gaining assets.<sup>118</sup> In 1935, the majority of African American families earned an annual income that was less than \$903.<sup>119</sup> In 1964, only 9.4% of African Americans held professional or managerial jobs in comparison to 24.7% of whites who held such positions.

This historical lack of economic resources significantly impacted African American women. Excluded from occupations because of their race *and* sex,<sup>120</sup> African American women found themselves struggling to acquire economic resources. From 1919 to 1930, only 1% of all African American women were employed in white-collar jobs, compared to 22% of white women.<sup>121</sup> African American women also made few gains in blue-collar jobs.<sup>122</sup> The percentage of all employed African American women working in factories fell from 7% in 1920 to 5.5% in 1930 and then rose slightly to 6% in 1940.<sup>123</sup> One-third of all working white women held clerical jobs in 1940, compared to only 1.3% of all African American working women.<sup>124</sup> African American female workers predominately worked in low-paying and exploitative domestic service jobs.<sup>125</sup> Not surprisingly, these inequalities persist today. In 2000, the mean annual income for married white men was \$52,798, while it was only \$36,219 for married African American men. The same figure for married white women was \$23,510, and \$22,889 for married African American women.<sup>126</sup> Thus, married African American men earned only 68.59% of what married white men earned, and married African American women earned a mere 43.35% of what married white men

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117. *See id.*

118. Since the era of slavery, African Americans have made strides in the areas of education, occupation, and income. The median income of African Americans increased by 173% from 1949 to 1969, in comparison to whites who only saw a 110% increase. *See id.* at 9. However, this growth is only marginal when one considers the economic base from which they began. *See id.* at 9, 14.

119. *See* ABRAMOVITZ, *supra* note 18, at 219.

120. *See* ABRAMOVITZ, *supra* note 18, at 222.

121. *See id.*

122. *See id.*

123. *See id.*

124. *See id.*

125. *See id.* at 250.

126. *See* BUREAU OF THE CENSUS, U.S. DEP'T OF COM., SERIES P60, NO. 213, MONEY INCOME IN THE UNITED STATES, tbl. PINC-02 (2000) (Table of Marital Status — Persons 18 Years Old and Over, by Total Money Income in 2000, Age, Race, Hispanic Origin, and Sex). "White" does not include those of Hispanic origin.

earned.<sup>127</sup> From this data, we see that married white men make an overwhelmingly larger mean annual wage than African Americans and women.<sup>128</sup> African American women, although they are more likely than white women to participate in the labor force and to work full time, are paid the lowest annual wage.<sup>129</sup>

These marketplace inequalities have been intensified by economic restructuring. Advances in information technologies, transportation, investments, and trade regimes have restructured the economic climate, with a negative impact on African American workers.<sup>130</sup> As the United States economy shifts from manufacturing to high-tech service jobs, the blue-collar unemployment rate is growing and employment opportunities are becoming increasingly part-time and temporary.<sup>131</sup> As a result, the gap be-

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127. Similarly, married African American women earned 63.20% of what married African American men earned and 97.36% of what married white women earned. Married white women earned 44.53% of what married white men earned and 64.91% of what married African American men earned.

128. Figures show that the income disparity between African Americans, women, and white males is not going to converge in the near future. See CONLEY, *supra* note 7, at 86. Figures that do show a convergence in African American to white ratios usually reflect declining wages of whites rather than an increase in wages for African Americans and women. See *id.* Therefore, despite progress in achieving educational parity, this progress does not carry over to increased wages in the labor force. See *id.*

129. See Brown, *supra* note 4, at 1489. Social security further exacerbates these inequalities by requiring a flat-rate payroll tax withholding. Although lower-income workers that are predominately African Americans and women receive a higher return on social security contributions due its progressive rate structure, they will receive lower rates of return on their weekly paychecks because of the flat-rate payroll tax for social security. See generally Brown et al., *supra* note 8. The payroll tax liability of workers is subsidized and counterbalanced somewhat by the earned income tax credit (EITC) that provides a refundable tax credit to low-income workers. See *id.* at 641. It is unclear which factor, the progressive rate structure, the flat-rate payroll tax, or the EITC, has a greater impact on the income of African Americans and women. See generally *id.* However, a discussion about the degree to which African Americans and women are advantaged by the progressive rate structure and the EITC or disadvantaged by the flat-rate payroll tax misses the point. The critical analysis should be why white men earn considerably more than African Americans and women.

130. See Sarah Ryan, *Management by Stress: The Reorganization of Work Hits Home in the 1990s*, in AMERICAN FAMILIES: A MULTICULTURAL READER (Stephanie Coontz et al. eds., 1999). Changes in technology and jobs have altered the workplace by decreasing compensation, lowering expectations, and increasing work hours.

131. See Valentine M. Moghadam, *Gender and the Global Economy*, in REVISIONING GENDER 128, 134 (Myra M. Ferree et al. eds., 1999).

tween the rich and poor is steadily increasing as wages stagnate or decline.<sup>132</sup> Thomas J. Sugrue notes that:

In 1992, the average yearly income for the poorest fifth of families in the country was a mere \$9,708, in contrast to a remarkable and rising \$99,252 for the richest fifth. As economists Sheldon Danziger and Daniel Weinberg have shown, the income share of the poorest fifth of the population fell during the 1970s and 1980s, from a post-World War II high of 5.6 percent in 1969 to a low of 4.4 percent in 1992. The top fifth of the population, by contrast, made between 40 to 45 percent of the national income between 1947 and 1992, and almost all the income gains of the past twenty years have gone directly into their pockets.<sup>133</sup>

In other words, the income gains of the past twenty years have gone directly into the pockets of white men because they are at the top of the economic ladder.<sup>134</sup> As the pockets of white men get richer the pockets of African Americans and women get poorer.<sup>135</sup> In light of the staggering history of economic oppression and continuing marketplace inequalities, it is clear that so-

132. See Thomas J. Sugrue, *Poor Families in an Era of Urban Transformation: The "Underclass" Family in Myth and Reality*, in *AMERICAN FAMILIES*, *supra* note 130, at 243.

133. *Id.* at 244.

134. See CONLEY, *supra* note 7, at 44.

135. See *id.* at 83. African American workers experience a larger unemployment rate and hold very few professional jobs. In 1997, the unemployment rate for African American workers was 11%, compared to 4% for whites. In 1994, African Americans held only two chief executive officer positions out of 1,000 of the largest companies in the United States. In fact, sociologist Andrew Hacker reports that the other 998 companies are not preparing any top African American executives for a future chief executive officer position. See *id.* Conley further notes that, [I]n 1997, only 16 percent of employed African Americans held professional or managerial jobs, compared to 31 percent of employed whites. By contrast Black workers were over represented in the service sector, with its lower wages: 26 percent of employed African Americans worked in service industries in 1997, while only 15 percent of their white counterparts held jobs in this sector.

*Id.* at 11. Little opportunity for executive positions results in income disparity along racial lines and lower levels of wealth accumulation. See *id.* at 83. In 1997, only 9% of African American men made over \$50,000 in comparison to 24% of white men. See *id.* In addition, high-prestige jobs such as professional and managerial positions lead to higher levels of wealth accumulation through job perks such as expense accounts, company cars, profit-sharing plans, matching-contribution retirement plans, and 401(K) plans. See *id.* at 44. Economic restructuring leads to increased inequalities between workers. Furthermore, women are greatly disadvantaged by economic restructuring. A 1996 survey showed that women made up 37.2% of employees but only 16.9% held management positions and only 6.6% held executive management positions. See GWYN KIRK & MARGO OKAZAWA-REY, *WOMEN'S LIVES: MULTICULTURAL PERSPECTIVES* 218 (1998). A 1995 survey of the 1,500 largest companies in the United States found that only 5% of the senior managers were women. See *id.*

cial security, intentionally or unintentionally, perpetuates wage discrimination by linking benefits to wages. The linkage between wages and benefits reflects the different labor experiences that workers face depending on their race, class, and gender.<sup>136</sup> African American workers earn less income than their white counterparts, therefore, they receive fewer benefits.<sup>137</sup>

In addition, African Americans at all income levels have substantially fewer assets than whites, as illustrated by Table Three.<sup>138</sup>

TABLE THREE: MEDIAN NET WORTH BY RACE AND ANNUAL INCOME IN 1994

Annual Income (\$)	Median Net Worth of African Americans (\$)	Median Net Worth of Whites (\$)
< 15,001	0.00	10,000.00
15,001-35,000	11,000.00	45,700.00
35,001-50,000	40,000.00	81,000.00
50,001-75,000	54,000.00	140,200.00
> 75,000	114,600.00	308,000.00

In 1994, whites earning between \$35,001 and \$50,000 possessed *twice* as much wealth as African Americans at the same income level, while whites with income above \$75,000 possessed *three times* as much wealth as their African American counterparts.<sup>139</sup> Such unequal levels of wealth accumulation are explained by the historical denial of opportunities to African American workers.<sup>140</sup> Dalton Conley argues that wealth distribution is not determined by race per se, but primarily by parental net worth.<sup>141</sup> In other words, parents with more net worth can increase the wealth of their children by giving gifts such as trusts, down payments for homes, college tuition, etc.<sup>142</sup> Due to the historical lack of asset accumulation among African Americans, the paren-

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Although these findings are not broken down by race, one can presume that African American women hold even fewer management and professional positions.

136. See BUREAU OF THE CENSUS, *supra* note 126. "White" does not include people of Hispanic origin.

137. See Brown, *supra* note 4, at 1489.

138. See CONLEY, *supra* note 7, at 26-27.

139. See Table Three.

140. See CONLEY, *supra* note 7, at 53.

141. See *id.* at 52.

142. See *id.* at 50.

tal net worth of African Americans is less than whites.<sup>143</sup> In addition, lower levels of income among African American workers may be a result of individual or institutional racism that has cumulative effects over a worker's lifetime, affecting the worker's ability to give to the next generation.<sup>144</sup>

By linking wages to benefits, social security emphasizes income as the primary indicator of the economic health of a family, which diverts attention away from the inequities of wealth distribution among workers. A monthly social security check to an elderly African American family with \$54,000 in assets provides a different standard of support than the same check provides to an elderly white family with \$140,200 in assets.<sup>145</sup> Because social security benefits are determined solely by wage contributions, levels of wealth accumulation are not acknowledged and many elderly African American families will continue to have lower standards of living than their white counterparts.

While the social security system benefits many elderly African Americans, it prevents a deeper discussion concerning wealth and the inequalities of the United States economy. The exclusive focus on income as a measurement for retirement benefits shields attention away from considering history, economic restructuring, and wealth accumulation. By giving elderly African Americans a monthly social security check based on lifetime wages, the social security system contributes to the preservation

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143. *See id.* at 52.

144. *See id.* In order to compensate for the lower levels of wealth among African American couples, one may argue that benefits should be based upon wealth rather than wages. However, such an answer is unrealistic. Levels of "wealth" are difficult to measure and impossible to incorporate into the existing social security system. Furthermore, redistributing benefits based upon wealth could cause a disincentive to accumulate wealth because couples with fewer assets would receive more social security benefits than couples with more assets. However, this result is unlikely. Only 15% of the elderly rely on social security as their single source of retirement income. *See Liu, supra* note 3, at 4. Thus, one can assume that 85% of the elderly population rely on other sources of income for their retirement income. Therefore, couples would still have an incentive to accumulate wealth in order to fund their retirement savings plans such as pensions, 401(K)s, or IRAs.

Regardless, it is realistic to argue that the link between wages and benefits excludes a discussion of wealth. The emphasis on wages constructs income as the primary indicator of the economic health of a family and the subsequent standard of living for retired workers. However, the standard of living for a retired worker is deeply affected by her level of wealth accumulation as well as income.

145. *See id.*

of the intricate web of marketplace inequality and discourages a larger progressive movement to establish true equality.<sup>146</sup>

B. *Centrality of Marriage and Link Between Wages and Benefits Preserves Eurocentric Patriarchal Family Structures*

Proposals for social security reform must acknowledge the consanguineal family forms of the African American community and question the discriminatory results of basing benefits on marriage.<sup>147</sup> Scholars are also encouraged to question how the ideal family form marginalizes African American female-headed households. This continued discussion is intended to shift African American families to the center of current reform proposals.

By basing benefits on marital status and penalizing two-earner families, the social security system preserves traditional gender roles and eurocentric patriarchal family structures.<sup>148</sup> The social security system's focus on marriage through the spousal benefits formula idealizes the eurocentric family structure of a married couple with a male breadwinner and stay-at-home wife.<sup>149</sup> Although the emphasis on the "ideal" family af-

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146. When benefits are linked to wages, a worker's monthly social security paycheck is a reflection of the inequality and discrimination that they faced while working towards a mythical American dream. One may argue, given that social security benefits comprise a larger share of retirement income for African American elderly than white elderly, African Americans are actually advantaged by the system and reap the rewards of the social adequacy policy behind the progressive rate structure. See generally Brown et. al., *supra* note 8. Yet, the centrality of wages and the supportive progressive rate structure are simply tools in the intricate masking of marketplace inequality. The notion of wages appears to be a logical and universal measurement of a worker's employment history and economic resources. However, by focusing simply on wages and salary, the system disregards alternative forms of income such as bonuses and financial "perks" and ignores resource disparity. The progressive rate structure accounts for a worker's lower wages and accordingly redistributes the contributions of higher-wage earners to low-wage earners. See *supra* Part II. C. Yet, the progressive rate structure does not account for a worker's lack of wealth accumulation, job advancement, educational resources, prejudice, and historical discrimination. The linkage between wages and benefits and the progressive rate structure attempt to give African American workers a piece of the pie in order to dispel their craving for the entire feast of marketplace equality.

147. "Public policy is not typically based on a clear understanding of how family members work together and how existing family culture provides a background for cooperative efforts — these policies are therefore detrimental to black families." Michael C. Thornton, *Indigenous Resources and Strategies of Resistance: Informal Caregiving and Racial Socialization in Black Communities*, in *RESILIENCY IN AFRICAN-AMERICAN FAMILIES* 49, 55 (Hamilton I. McCubbin et al. eds., 1998).

148. See ABRAMOVITZ, *supra* note 18, at 254.

149. See generally *id.*

fects all two-earner couples, African American families are affected more than white families.<sup>150</sup>

At its inception, the goal of social security was to benefit workers by providing for them in retirement.<sup>151</sup> However, social security benefited white male workers and their dependents<sup>152</sup> because the majority of workers included in the system were not African Americans or women.<sup>153</sup> The social security system was designed around the conceptualization of the American family as a married couple with a bread-winning white husband and a stay-at-home white wife.<sup>154</sup> By designing benefits based on marriage, the social security system implicitly preserved the eurocentric patriarchal family structure of the white American family.<sup>155</sup> Because many African American families are founded upon kinship ties and consanguinity, these family forms may not adhere to this idealized eurocentric family.<sup>156</sup> While it is true that many white families do not adhere to this eurocentric family form either, African American families are disproportionately affected because they are more likely to be two-earner families and have more consanguineal kinship-based family structures than white families.<sup>157</sup>

African American families are often organized around consanguineal cores consisting of spouses, children, adult siblings, in-laws, and other patrilineages or matrilineages.<sup>158</sup> Modeling the

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150. See *supra* Table Three.

151. See ABRAMOVITZ, *supra* note 18, at 233.

152. See *id.* at 254. Abramovitz notes that the 1939 amendments to the Social Security Act disadvantaged women workers. The author notes that "[w]omen workers remained disadvantaged by rules that geared benefits to wages, reflected male work patterns, and ignored the impact of occupational segregation, sex discrimination, and family responsibilities on the labor force participation of women." *Id.* at 254.

153. Women and African Americans predominated among the occupations that were excluded from the Social Security Act because they were overrepresented in domestic service and agricultural labor. See *id.* at 250.

154. See *id.* at 253.

155. See ABRAMOVITZ, *supra* note 18, at 253.

156. See Niara Sudarkasa, *Interpreting the African Heritage in Afro-American Family Organization*, in AMERICAN FAMILIES, *supra* note 130, at 60.

157. See *id.* at 60. Sudarkasa notes that families have two bases for membership, consanguinity and conjugality. Consanguinity refers to kinship that is biologically based and centered around blood ties. Conjugality refers to kinship that is between spouses. European families emphasize a conjugal structure. African families are typically based on consanguineal cores. See *id.*

158. See *id.* at 69. Studies have shown that contemporary Black American families, particularly in rural and urban areas, exhibit consanguineal family forms. See *id.*

principles and values of African cultural heritage,<sup>159</sup> African American slaves formed an expansive network of kinship ties and obligations.<sup>160</sup> During slavery, extended kin participated in raising children, assisted in childbirth, and performed other various domestic, social, and economic tasks.<sup>161</sup> Thus, in order to understand the composition of African American families, a distinction must be made between household<sup>162</sup> and family.<sup>163</sup> Niara Sudarkasa argues that “among Black Americans the concept of ‘family’ historically meant first and foremost relationships created by ‘blood’ rather than by marriage.”<sup>164</sup>

In contrast, using marriage to define family is derived from the Western European conjugal family.<sup>165</sup> Since the Middle Ages, the conjugal family of a married couple and their children has been the ideal, as well as the norm, in Western Europe.<sup>166</sup> European families focus on the marital relationship as the source of “household formation, decision making, property transmission, and socialization of the young.”<sup>167</sup> Because the social security system places marriage at the center of its redistribution policies, it fails to take account of families who define themselves

159. *See id.* at 60.

160. *See* Bonnie T. Dill, *Fictive Kin, Paper Sons, and Compadrazgo: Women of Color and the Struggle for Family Survival*, in *AMERICAN FAMILIES*, *supra* note 130, at 6.

161. *See id.*

162. Households are considered the units within which people share resources and divide tasks. *See generally* Rayna Rapp, *Family and Class in Contemporary America: Notes Towards an Understanding of Ideology*, in *AMERICAN FAMILIES*, *supra* note 130, at 180. They are considered the residential units within which people and resources are distributed. *See id.* Households vary in their members and in their ability to accumulate and transfer wealth and income. *See id.*

163. Families are distinguishable from households. *See id.* The notion of family has two different levels of meaning. *See id.* One is a normative meaning referring to husbands, wives, and children. *See id.* The second refers to an extended network of kin relations that are formed by blood and marriage. *See id.*

164. Sudarkasa, *supra* note 157, at 69.

165. *See id.* at 61. Sudarkasa notes:

[a]ccording to current historical research on the family in Europe, the principle of conjugality appears to have dominated family organization in the Western part of that continent (including Britain) at least since the Middle Ages, when a number of economic and political factors led to the predominance of nuclear and/or stem families built around married couples.

*Id.*

166. *See id.* “European families, whether nuclear or extended (as in the case of stem families), tended to emphasize the conjugal relationship in matters of household formation, decision making, property transmission, and socialization of the young.” *Id.*

167. *Id.*

by blood and kinship ties, rather than by the marital relationship.<sup>168</sup>

In practical terms, this failure means that some families receive benefits while others do not. For example, a retired couple may receive social security benefits based on each spouse's individual contributions or solely on the contributions of the higher earning spouse, if the spousal benefit is chosen.<sup>169</sup> When one spouse dies, the other spouse only receives the greater of her benefits or her deceased spouse's benefits.<sup>170</sup> This decrease in income can dramatically impact a remaining spouse who is the caretaker for a sibling or grandchild and who, despite her spouse's death, has nearly the same expenses. This eventuality should be of great concern given that African American women are more likely to care for their elderly and to engage in female-centered childcare than white women.<sup>171</sup> By basing benefits on marriage, the social security system assumes that spouses only care for each other and their children. The social security system's emphasis on marriage supports the assumption that all functions of families are focused around a marital couple, rather than a broader array of kinship ties. This denial of the kinship network and obligations of families deeply impacts African American families.

Further, by emphasizing eurocentric family structures, the spousal benefits formula of the social security system contributes to defining the African American family as deviant. The notion of family is "a socially necessary illusion which simultaneously expresses and masks recruitment to relations of production, reproduction and consumption."<sup>172</sup> Thus, the illusion of the eurocentric family ideal subordinates women by masking the gender stratification within the marital unit. This construction of consanguineal family forms as deviant hits African American women the hardest. Married African American women, in contrast to white women, are more likely to be in a two-earner family and to be employed full time.<sup>173</sup> They often participate in consanguineal family structures that result in lower social security

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168. See Dill, *supra* note 160, at 6. The emphasis on blood ties rather than the marital unit may stem from the fact that black slaves in the United States were not permitted to marry. See *id.*

169. See *supra* text accompanying notes 83-86.

170. See Liu, *supra* note 3, at 16.

171. See Dill, *supra* note 160, at 53.

172. Rapp, *supra* note 162, at 181.

173. See Brown, *supra* note 4, at 1489.

benefits and they are less likely than white women to adhere to traditional gender roles.<sup>174</sup> The marginalization of African American women is problematized further in regards to African American women who are single.<sup>175</sup> Although a deeper discussion of single African American women is beyond the scope of this Article, scholars are encouraged to further explore the impact of the two-earner penalty on single African American women.

In conclusion, reform proposals must recognize that the focus on marriage emphasizes eurocentric patriarchal family forms, which contributes to the marginalization of African American families, particularly African American women. Policy makers must bring a discussion of African American families into reform debates in order to achieve the goals of social security.

## 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. In addition, the spousal benefits' focus on marriage preserves eurocentric family forms, contributing to the marginalization of African American families. Furthermore, social security benefits are based on a worker's lifetime wage contributions. Wage contributions for African Americans, in particular African American women, are lower than their white counterparts because of historical exclusion, lower wages, lack of job advancement, and lower levels of wealth. This link between wages and benefits excludes a discus-

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174. *See id.*

175. This paper is limited to a discussion regarding African American women that are married. However, it is important to begin a dialogue on the connections between the spousal benefits formula and African American women who are single. Single women are increasingly becoming heads of households. Families headed by women with no husband present rose from "11% of family households in 1970 to 15% in 1980 and 17% in 1990." Marilyn L. Cantwell & Dorothy I. Jenkins, *Housing and Neighborhood Satisfaction of Single-Parent Mothers and Grandmothers*, in RESILIENCY IN AFRICAN-AMERICAN FAMILIES, *supra* note 147, at 100. Female-headed households constituted 44% of all black families. *See id.* This figure is three to five times higher than for white households. *See CONLEY, supra* note 7, at 109. African American female-headed households have the lowest median wealth levels because black females are less likely to accumulate assets to pass on to their children. *See id.*

sion of the marketplace inequalities and lack of wealth accumulation that impact African Americans' standard of living.

Despite these serious flaws in the social security system, this Article does not argue for social security's demise or for the elimination of spousal benefits. The social adequacy objectives of the retirement system bestow a benefit upon African Americans and women that ensures their survival in retirement. Until a more progressive movement towards real 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. Policy makers must also recognize how the centrality of marriage and link between benefits and wages contributes to the marginalization of African American families. The goals of social security cannot be met without placing African American families at the center of reform proposals.