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HOMEMAKERS AND RETIREMENT INCOME BENEFITS: THE OTHER HOME SECURITY ISSUE

SARA L. BERGDOLT-MUNZER

INTRODUCTION

I propose to discuss a home security issue. This is the security of retirement income benefits for those who work in the unpaid home labor force: the homemakers.

The issues surrounding the homemaker's position in society have engendered vigorous debate. The status of homemakers has been one of the areas of continuing controversy in the woman's movement. Opinions of those in the movement range from advocating abolishment of the career of full-time homemaker to defending a person's right to choose that occupation. While all this debate has not resolved the issue, it has heightened awareness of the many issues surrounding the homemaker's position in society.

While the homemaker issue cannot be seen as exclusively a woman's issue, this paper will assure that the homemaker role has been and is primarily a woman's issue. Most of the areas discussed in this paper, however, will apply to both male and female homemakers.

A central issue concerns the amount of retirement income benefits available to homemakers. Since the modern women's movement began in the 1960's, there has been a great deal of debate as well as legislation centered on the lack of homemaker's retirement income benefits. This paper will examine the role of retirement income benefits in society in general and relate this role to the particular situation of the homemaker. This will include an examination of current benefits for homemakers both in the United States and abroad.

Additionally, attention will be paid to current proposals for expansion of homemaker's retirement income benefits as well as how these proposals and this issue, in general, affect minority and low income homemakers. Finally, in light of the current trends both here and abroad, I will project a future for the controversial issue.

PENSION IN GENERAL

The concept of retirement is a relatively new development in the history of human civilization, often seen as a product of modern industrial society.¹ Retirement United States style, absent in preindustrial societies, is also absent in some non-Western industrial societies, as well.² Retirement and its corresponding economic benefits (e.g. Social Security and private pensions) have expanded quite rapidly in the United States in recent years. According to James Schultz, the Great Depression, with its attendant economic chaos, played an important role in generating extensive public support for public retirement income benefits in particular.³ Schulz has identified three factors which he states contributed to the general, "institutionalization of retirement," in the United States:

- (a) the needs of large numbers of elderly unable to work,
- (b) short-run fluctuation in employment opportunities for both the young and old, and
- (c) expanding economic resources over the long run.⁴

This resulted in an increased awareness and desire to create a rational means for supporting those elderly unable to work.⁵ The rapidly expanding economic growth, which occurred in the U.S. in the Twentieth Century, especially after the Depression, made it relatively easy for society to carry out this desire.⁶ "Retirement became economically feasible," Schulz points out, but ". . . the major motivating force behind the passage of the Social Security Act of 1935 was not the provision of adequate income in retirement, but the creation of jobs."⁷ Thus, another major motivation behind retirement income benefits was to develop a system that would generate jobs for younger workers by encouraging older workers to leave the paid labor force. Allen, Melone and Rosenbloom in *Pension Planning* also attribute growth, specifically of private plans, to:

The tax advantages for both the employer and employee; the War Labor Board's attempt to make the then enacted wage stabilization program more palatable to employees by permitting the establishment of employee benefit programs; union demands; business necessity (i.e. prospective employees expect a pension to be offered by the company); reward long-time employees for their service; the efficient essence of a plan (i.e. offering a group forced-savings approach) and the fact that those institutions pro-

1. Donahue, Orbach & Pollack, *Retirement: The Emerging Social Pattern*, in *HAND BOOK OF SOCIAL GERONTOLOGY* 236 (C. Tibbits ed. 1960).

2. L. HOLMES, *OTHER CULTURES, ELDERS YEARS: AN INTRODUCTION TO CULTURAL GERONTOLOGY* 32 (1983).

3. J. SCHULZ, *THE ECONOMICS OF AGING* 79 (1976).

4. *Id.* at 3.

5. *Id.* at 2.

6. *Id.* at 3.

7. E. ALLEN, J. MELONE & J. ROSENBLOOM, *PENSION PLANNING* 3 (1976).

viding pension-related services have aggressively promoted their services.⁸

There were many factors involved in the growth of both public and private pensions. Some theorists have not been content to merely list factors involved in this growth but have also sought to explain the growth of private pension plans in philosophical terms. Currently, two different theories claim to explain employer-based private pension plans. Both theories are based upon the philosophy that employers have a responsibility to provide economically for their retired workers.⁹

The first theory, commonly known as the human depreciation theory, utilizes an analogy between human labor and machines. It's basic view is that no employer has the right to use up an individual's working life and then abandon that individual.¹⁰ Clearly, under this theory, the employer is obligated to provide for the "maintenance" of the individual and "full depreciation" in the form of monetary retirement benefits in much the same way that buildings and machinery are depreciated.¹¹

The second theory, called the deferred wage theory, has achieved much wider support in the pension field.¹² According to this concept, a pension benefit is viewed as part of the entire wage parcel offered by management. The employee's pension is actually looked upon as that money which he or she has given up in the form of increased wages, in order to set up that employee's retirement income benefits.¹³ The bottom line is that no matter which theory one subscribes to or even if one subscribes to no theory at all, is that the U.S. pension system is based on paid labor. As the Task Force on Sex Discrimination of the Justice Department puts it:

The American pension system is implicitly based on the puritan work ethic. Retirement benefits, and a secure and comfortable old age, are reserved for those who have earned them by working during their productive years.¹⁴

The homemaker, while it would probably not be denied that she "works," would probably not be considered pension-worthy given the above statement. Moreover, the homemaker is not forced to retire in order to make way for younger workers in her field nor is she, generally, unable to continue working in her occupation past

8. *Id.* at 7-13.

9. Schulz, *supra* note 3, at 14.

10. Allen, *supra* note 7, at 14-15.

11. *Id.*

12. *Id.*

13. *Id.* at 16.

14. TASK FORCE ON SEX DISCRIMINATION, CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE PUB. NO. 8276, *THE PENSION GAME: AMERICAN PENSION SYSTEMS FROM THE VIEWPOINT OF THE AVERAGE WOMAN* 20 (1979) [hereinafter cited as *Task Force*].

a set retirement age—two reasons we have seen for retirement income benefits.

The homemaker has benefited from the development of the American pension system. Much of the ambivalence and controversy about the status of the homemaker seems to be reflected in how the U.S. pension system treats the homemaker.

HOMEMAKER'S BENEFITS

Stephen Crystal has said, "We do not have a coherent retirement income system but a patchwork of multiple, poorly articulated, public and private benefits."¹⁵ One example of the way in which this system is irrational and inconsistent is how it treats homemakers. On the one hand, the Social Security System takes what could be called a protectionist attitude toward the female homemaker; on the other hand, the private pension system has tended to completely disregard the homemaker as many plans have offered no secure dependent coverage.

Regarding Social Security it has been said that, ". . . without question, it has served women better than any other system."¹⁶ However, it was passed in 1935 and, as might be expected, Social Security reflects many of the social values and lifestyles of that time. As "homemaker" was the majority occupation of most adult women at that time, ". . . the priority was to provide for the non-working widow or the spouse of the retired worker."¹⁷ This may seem to be just what the homemaker would want, yet underlying suppositions built into the Social Security System can work to the homemaker's disadvantage. Martha Keys has identified four basic assumptions built into the Social Security System that work to the disadvantage of women:

- *Men are the sole wage earners for the family,
- *Woman are typically homemakers,
- *There is no economic value to work in the home, and
- *Marriages last a lifetime."¹⁸

This suggests two things. First, this means that Social Security does *not* give credit to individuals for their homemaking contribution. Second, it means that a homemaker should stay married to the covered spouse in order to obtain the maximum amount of benefits, an alternate not feasible to all women. A homemaker who is divorced prior to the tenth year of marriage has no rights to a de-

15. S. CRYSTAL, AMERICA'S OLD AGE CRISIS: PUBLIC POLICY AND THE TWO WORLDS OF AGING 103 (1982).

16. EVERY WOMAN'S LEGAL GUIDE 378 (B. Burnett ed. 1983) (Keys article).

17. P. DRUCKER, THE UNSEEN REVOLUTION: HOW PENSION FUND SOCIALISM CAME TO AMERICA 183 (1976).

18. Every Woman's Legal Guide, *supra* note 17, at 378.

pendent benefit based upon her former spouse's work record.¹⁹

The still-married homemakers and those divorced homemakers who do qualify under the ten year rule will be eligible for a benefit equal to fifty percent of the working spouse's or former working spouse's benefits, provided that that spouse or former spouse lives to reach retirement age and they, themselves, reach age 62.²⁰

For the homemaker who is widowed at age 60 or over, Social Security does provide dependent benefits.²¹ If the homemaker is widowed before age sixty, benefits can only be received if the homemaker is responsible for the deceased worker's children under the age of sixteen or if the widowed individual is disabled, which would then entitle that individual to receive a partial survivor benefit at age fifty.²²

Even though Social Security has always provided women with protection as survivors and/or dependents of covered employees, it has only recently begun providing this type of protection to men such as those who might fall into the homemaker classification and then only if these men were supported by their wives prior to her retirement or death.²³

While the Social Security System has always provided some type of retirement benefits to the homemaker, private pension plans have been slow to provide the homemaker with any benefits at all. Under private pension plans the homemaker receives no benefits on her own and has often received little or no benefits from the working spouse's pension. Frances Leonard has said that homemakers make up the biggest group of workers in the country,²⁴ but comprise the biggest occupational group left out of pension coverage.²⁵ This should not surprise us since pensions are based upon wage-earning activity. Although homemakers and worker spouses are usually thought of as one economic unit ("the household"), they have often been treated separately by the pension system:

Although the law generally regards a married couple as an integral economic unit, our nation's pension system continues to think in terms of 'worker and dependents.'²⁶

This has been particularly true in the area of private pensions. Prior to the passage of the Employee Retirement Income Security

19. *Id.* at 380.

20. *Id.*

21. *Id.* at 381.

22. *Id.*

23. J. JORGENSEN, *THE GRAYING OF AMERICA: RETIREMENT AND WHY YOU CAN'T AFFORD IT* 195 (1980).

24. Leonard, *Older Women and Pensions: Catch 22*, 10 *GOLDEN GATE* 1191, 1193 (1980).

25. Leonard, *The Three Legged Stool: Woman and Retirement (In) Security*, 32 *HASTINGS L.J.* 1195, 1236 (1980).

26. J. JORGENSEN, *YOUR RETIREMENT INCOME* 59 (1982).

Act of 1974 (ERISA), most private pension plans provided benefits solely for the retired worker. In most cases, nothing was provided for a surviving spouse. ERISA mandated that any pension plan which provided benefits in an annuity form must make available an optional "joint and survivors annuity."²⁷ This option offered a reduced benefit in order to cover both spouses. Prior to the Retirement Equity Act of 1984, the worker could reject this option in favor of a higher immediate benefit as provided by a single annuity on the worker's own life. Such an annuity provided no benefits to the employee's survivor.²⁸

While this offer of an optional joint and survivor annuity can be looked upon as a step toward providing more coverage for a dependent homemaker, even the Department of Labor took a somewhat tongue-in-cheek view toward this "improved" situation of the homemaker:

If you are a homemaker, you will benefit from your spouse's pension if he is covered by one, stays married to you, doesn't die too soon to receive benefits, and is willing to take a reduction in his pension to provide you with a survivor annuity.²⁹

The Retirement Equity Act of 1984 has addressed many of the areas of concern expressed in the Department of Labor's statement. For example, widowed spouses of workers who were eligible for pension benefits will be guaranteed benefits starting as early as age 55.³⁰ Additionally, the joint and survivor annuity option has now been made virtually automatic as the spouse must give written permission waiving his or her rights to a survivor benefit before the plan member spouse can also waive that option.³¹ Moreover, divorced spouses can now become entitled to part of the pension benefit of a former spouse if ordered by the court during the divorce proceedings.³²

Employers, as a group have expressed little concern for the homemaker's pension plight. In fact employers may find it in their best interest to keep even working women, if not out of the private pension area altogether, then at least from working long enough to attain enough retirement income credits. Harold Sheppard and Sara Rix explain this view:

. . . If women are to remain in the labor force for longer periods of time, they will be accruing rights to pensions and Social Security benefits which will eventually add to the cost of supporting

27. *Task Force, supra* note 15, at 27.

28. *Id.*

29. H. BENSON, *WOMEN AND PRIVATE PENSIONS* 10 (U.S. Dep't of Labor, Pension and Welfare Benefit Programs, 1980).

30. 107 MONTHLY LAB. REV. 47 (1984).

31. *Id.*

32. *Id.*

the aged. In the past, contributions by women who did not work long enough to receive pensions tended to keep down pension costs.³³

If it in the employer's best interests (keeping their pension costs down) to hope that their women employees don't work long enough to gain pension credits, then it doesn't seem realistic to expect employers to be concerned about providing retirement income benefits for the homemaker spouses of their employees.

The reluctance of employers to concern themselves with the homemaker's pension dilemma is probably one reason why most expansions of homemaker's pension rights have come in the area of Individual Retirement Accounts (IRA's). In 1977, homemakers got their toe in the door with regard to IRA's. The 1976 Tax Reform Act opened the IRA for the first time to a non-wage earning spouse. This seems to have been done because Congress felt that the exclusion of provisions for homemakers in IRA's was not, "... fair to wives who contribute vital household services for the family instead of holding an outside job."³⁴

The law provided that a worker who was otherwise qualified to set up an IRA (i.e. an employee or self-employed person not covered by a qualified retirement plan, tax sheltered annuity or government plan) would be able to put his or her contribution into two separate IRA's or into one IRA with two separate subaccounts, one for the wage-earning spouse and one for the non wage-earning spouse.³⁵ The law encouraged the wage earning spouse to set up an IRA account for the non wage-earning spouse by offering the incentive of raising the total \$1500 maximum contribution allowed to \$1750.³⁶ However, until the Economic Recovery Tax Act of 1981 became law this remained the only way that homemakers could partake of some of the benefits of IRA's. It is interesting to note that proposals regarding expansion of IRA benefits for homemakers were still forthcoming during this period. In 1977, Representative Paul Trible of Virginia introduced in the House and Senator Wendell Anderson sponsored in the Senate, legislation that became known as the Homemaker's Retirement Bill.³⁷ The House Bill would have permitted homemakers to set up their own IRA's by enabling them to consider their wage-earning spouse's income as their own for the purpose of establishing IRA's. Even if the wage-earning spouse already had an IRA, the homemaker could set up

33. H. SHEPPARD & S. RIX, *THE GRAYING OF WORKING AMERICA: THE COMING CRISIS OF RETIREMENT-AGE POLICY* 34 (1977).

34. Porter, *Spending Your Money*, *LADIES HOME JOURNAL*, Mar. 1977, at 31.

35. *Id.*

36. *Id.*

37. R. ANDRE, *HOMEMAKERS: THE FORGOTTEN WORKERS* 217 (1976); *McCall's Family Lobby*, *MCCALL'S MAGAZINE*, Mar. 1978, at 49.

his or her own account and each would then be permitted to contribute up to fifteen percent of the wage-earning spouse's income.³⁸ The Senate Bill would have enabled homemakers to set up IRA's in their own name up to a \$1500 a year maximum provided they had no other retirement coverage.³⁹

Nevertheless, the IRA situation for homemakers did not change until 1981. The 1981 Tax Act allowed any wage earning individual to set up an IRA, beginning in 1982, for him or herself and for a non-working spouse if a joint tax return were filed by the couple.⁴⁰ The couple was allowed to put into employee and spousal IRA's up to a maximum total contribution of \$2250.⁴¹

Although proposals were discussed in 1984 which would have increased the amount of IRA contribution for wage earners and their non-working spouses, these proposals did not make their way into law during the 1984 Congressional Session.⁴² The Tax Reform Act of 1984 did address an issue of IRA's for divorced homemakers. The law provides that effective January 1, 1985, all alimony payments may be considered by a divorced spouse for the purpose of setting up an IRA.⁴³ Previously, the divorced non-working spouse was limited to making less than a maximum \$2000 contribution.⁴⁴

OTHER COUNTRIES

There are countries, however, which do believe that homemakers are a pensionable group in and of themselves.⁴⁵ The national pension systems of such countries as the Federal Republic of Germany, Switzerland, Sweden, the United Kingdom and Canada all offer some type of retirement income benefits to the homemaker. These benefits which result from crediting homemakers, primarily women, with contributions for their jobs as homemakers/mothers have been seen as a response to the recent women's movement as well as a rational extension of those social security systems that already credit workers with theoretical contributions for periods when they are out of the labor force for such reasons as pursuit of higher education, training, unemployment or illness.⁴⁶

38. *McCall's Family Lobby*, MCCALL'S MAGAZINE, Mar. 1978, at 49.

39. R. ANDRE, *HOMEMAKERS: THE FORGOTTEN WORKERS* 217 (1976).

40. Jorgensen, *supra* note 27, at 127.

41. *Id.*

42. Sloane, *Your Money: How New Law Affects IRA's*, N.Y. Times, Aug. 18, 1984, at 30.

43. *Id.*

44. *Id.*

45. Leonard, *supra* note 25, at 1193.

46. KIRKPATRICK, *SOCIAL SECURITY BENEFITS FOR WOMEN IN THE FEDERAL REPUBLIC OF GERMANY, SWITZERLAND AND THE UNITED KINGDOM* 114 (Social Sec. Admin., U.S. Dep't of HEW No. 79-11948, 1979).

The systems vary in the kind of retirement income credits they offer the homemaker in his or her own right. In the United Kingdom, both men and women homemakers are to be credited with theoretical contributions for up to twenty years as long as that homemaker individual is also caring, during that period, for a child or an aged, sick or disabled relative.⁴⁷ Switzerland credits only married housewives, divorced women and widows for their homemaking years, whether or not they had children to care for during that time.⁴⁸

In Germany, the homemaker is able to enter that country's Social Security System by voluntarily making both the employee's and the employer's share of the contribution. In order to make it easy for the homemaker to voluntarily contribute to the system, a great deal of latitude is allowed to the homemaker in selecting the wage level upon which to base the contributions.⁴⁹

Another feature of the German system credits women with theoretical contributions for up to sixteen weeks of maternity leave as well as for the other times the system credits both men and women who are out of the labor force because of unemployment, training or illness.⁵⁰ However, unlike the United States system there is no dependency benefit on which a homemaker may rely.⁵¹ In the Swedish two-tier pension system, the first tier which consists of a flat-rate amount is paid to everyone when they reach 65 years, whether or not they spent any time in the paid labor force.⁵² The second tier is based on paid employment. Swedish homemakers who were never in the paid labor force would be entitled to receive, in their own right, the flat rate amount of retirement income benefits.

The Canadian Pension Plan recently was changed to allow higher pensions for parents who leave their wage-earning jobs to raise children.⁵³ The "Dropout Provision," as it is known, enables any parent to delete his or her child-rearing years before his or her pension is calculated.⁵⁴ This provision applies to men and women, but women are seen as the major beneficiaries. While this is not strictly a homemaker's provision, it does provide some national recognition for those who, while not in the traditional paid labor force, are contributing to society and home.

The various national pension systems just discussed do vary in

47. *Id.*

48. *Id.*

49. *Id.* at 126.

50. *Id.* at 125.

51. *Id.* at 126.

52. Leonard, *supra* note 26, at 1203.

53. *Ontario Bows to Motherhood*, MACLEAN'S MAGAZINE, Sep. 23, 1983, at 28.,

54. *Id.*

the type of retirement income benefits offered to a homemaker. Yet they all provide, in some measure, national recognition to those who toil in the unpaid home labor force. The national pension system of the U.S. (i.e. Social Security), as we have seen, makes none of these choices available to homemakers in order that they may establish retirement income benefits in their own right.

A possible explanation of the differences between the U.S. and foreign social security systems might reside in the most socialistic nature of the other countries discussed. For example, the fact that a country such as Great Britain has socialized medicine might logically also indicate a willingness to see that all members of its country would also be adequately covered in the area of retirement income benefits. In comparison, the values of American culture that shape every aspect of our society, including its pension system, have been said to emphasize individualism over community.⁵⁵

The fact that the national pension system of European countries commonly rely on their general revenue funds to support these national pension systems while the current U.S. Administration is opposed to that use of general funds for the U.S. Social Security System⁵⁶ also could be said to indicate the differences in values and culture between the United States and other countries.

PROPOSALS

The fact that the United States Social Security System offers no alternatives for homemakers to establish retirement income benefits in their own right, does not mean that proposals to help the homemaker in both the public and private pension areas have been lacking. In fact, the opposite is true. These proposals run the gamut from suggestions to homemakers on how to deal with the present pension system to congressional legislative proposals promoting pension equity for women.

With regard to the strategy of coping with the present system, there are basically two approaches which have been taken. The first approach as exemplified by an article in *MS Magazine*, admonishes the homemaker to know what rights and coverage are afforded by a spouse's pension, especially in terms of any "joint and survivor" provisions.⁵⁷ James Jorgensen, in his book *Your Retirement Income*, is more specific in his advice and has advised homemakers to ask for a copy of the Summary Plan Description booklet of their

55. Lupsha, *Individual Choice, Material Culture and Organized Crime*, 19 *CRIMINOLOGY* 6 (1981).

56. Weaver, *Europeans' Pensions Rely on General Funds*, *N.Y. Times*, Nov. 17, 1982, at 21.

57. Van Ness, *Pensions: If You Even Plan to Stop Working . . .*, *MS MAGAZINE*, Feb. 1980, at 71, 73-74.

spouse's pension plan.⁵⁸ James Gollin advises a more dramatic approach:

Many of you, indeed, will have to take the first step . . . Maybe you will have to needle him. Be persistent! If all else fails, you might try to direct frontal attack . . . tell him bluntly that he has no right to keep you in the dark about an old age he might not be around to share with you.⁵⁹

A second approach emphasizes the fact that the current pension system is based upon paid labor and suggests that perhaps the homemaker should look for, at the very least, temporary or part-time paid employment. As Martha Keys expresses it:

This makes it essential for even the full-time homemaker to earn at least a minimal amount of money from paid work each year if she is to qualify for Social Security benefits herself, rather than being solely dependent on her husband's Social Security benefits . . . if a woman *doesn't* (her emphasis) earn any money from paid work, not only is she ineligible for her own individual Social Security benefits . . . she cannot open either an IRA or a Keough tax-deferred account.⁶⁰

A somewhat tongue-in-cheek proposal for homemakers was offered by the Task Force on Sex Discrimination. They suggest that if wives were unionized, they could secure pension coverage by collectively bargaining for it.⁶¹ The Task Force does admit, however, that this option is unrealistic and suggests that:

. . . so long as unions and employers fail to assert their interest for them, the burden of supporting them or providing for their support will fall on society.⁶²

This belief that society will probably bear the ultimate responsibility for providing homemakers with sufficient pensions can be seen in some of the proposals currently being offered with respect to the homemaker. William Lammers has urged serious consideration of changes in Social Security that would allow credit for homemaking.⁶³ This view is also expressed by the National Organization for Women's (NOW) Homemaker's Bill of Rights. NOW would also like to see independent Social Security coverage in the homemaker's own name.⁶⁴

Proposals regarding retirement income benefits for homemakers have also come out of many government agencies and commis-

58. Jorgensen, *supra* note 27, at 64.

59. J. GOLLIN, *THE STAR SPANGLED RETIREMENT DREAM: WHY IT'S GOING SOUR AND WHAT YOU CAN DO ABOUT IT* 200-201 (1981).

60. Every Woman's Legal Guide, *supra* note 27, at 374.

61. *Task Force*, *supra* note 15, at 23.

62. *Id.* at 24.

63. W. LAMMERS, *PUBLIC POLICY AND THE AGING* 214 (1983).

64. *A Challenge to Congress—NOW's Bill of Rights for Homemakers*, *MS MAGAZINE*, Oct. 1979, at 84-85.

sions. For example, the Department of Labor proposed in 1980 the following changes which would benefit homemakers:

- 1) prohibiting forfeiture of vested benefits upon an employee's death;
- 2) prohibiting plans from precluding participants from providing survivor benefits for a divorced spouse;
- 3) seeing that spouses are informed of any refusal or the survivor options;
- 4) even better, removing the costs to the participants in providing the survivor pension for the spouse; and
- 5) liberalizing IRA rules for homemakers.⁶⁵

Other groups studying social security and pension policies have also made recommendations that would benefit homemakers in their quest for pension rights. The 1979 Advisory Council on Social Security advocated that the concept of full-scale earnings sharing (i.e. dividing earnings credits equally between spouses) be further studied.⁶⁶ The Council also made the specific recommendation that individuals divorced after 10+ years of marriage be allowed to receive retirement benefits based on shared earnings.⁶⁷ The Council even advocated that proposals be considered that would allow parents to drop from the averaging period at least one year which was spent caring for children.⁶⁸

The Security of the Department of Health, Education and Welfare (HEW), now the Department of Health and Human Services (HHS), in a 1979 report, also presented the full-scale earnings sharing idea considered by the Advisory Council on Social Security.⁶⁹ The report, entitled "Social Security and the Changing Rules of Men and Women," also presented a universal, two-tiered system, very similar to the Swedish system previously discussed in this paper. Under HEW's proposal, the first tier would comprise a flat dollar amount benefit payable to everyone at age sixty-five or upon becoming disabled. The second tier would be a flat rate benefit based upon a percentage of an individual's average indexed monthly earnings from paid employment.⁷⁰ The report also suggests, under the title of "Limited Options," that the United States provide social security credits for homemaker services.⁷¹ The limited option feature is to be viewed, according to the report, as either an alternative for more radical change in the Social Security System or as a first step toward the extensive reform of the System.⁷²

65. Benson, *supra* note 30, at 10.

66. CONGRESSIONAL RESEARCH SERVICE OF THE LIBRARY OF CONGRESS, SUMMARY OF RECOMMENDATIONS AND SURVEYS ON SOCIAL SECURITY AND PENSION POLICIES 22 (1980).

67. *Id.*

68. *Id.*

69. *Id.* at 31.

70. *Id.* at 32.

71. *Id.* at 33.

72. *Id.*

The President's Commission on Pension Policy in its 1981 Final Report also addressed areas of interest to homemakers. It recommended that post-retirement survivor protection under a pension plan be required unless it is not in the best interests of the couple.⁷³ In this instance, they do allow that a couple could agree to waive this joint and survivor option, but insist that both sign the waiver.⁷⁴ The Commission also recommended that the joint and survivor option be provided automatically to spouses of deceased workers who die within ten years prior to the normal retirement age of a pension plan.⁷⁵ As regards to divorce and pensions, the Commission recommended that pension credits earned during a marriage be divisible.⁷⁶ The Commission also recommended that earnings sharing be used upon divorce with regard to Social Security.⁷⁷

The question of pension benefits for women in general and homemakers in particular is still apparently very much on the minds of the members of Congress, as can be seen by recent proposals and laws that have come out of the House and Senate. Many of these proposals and laws have incorporated some of the recommendations offered by the various groups discussed above. One such proposal that has not been enacted as of yet would have allowed a married couple with a non-working spouse to deposit up to \$4000 in an IRA account.⁷⁸

The Retirement Equity Act of 1984, as we have seen, incorporated those proposals dealing with survivor's benefits.

While many of these recent legislative actions are focused on the area of private pensions, possibly as a response to the precarious condition of Social Security, it would appear that homemakers' pension rights are beginning to secure a firm place on the governmental agenda.

LOW INCOME AND MINORITY HOMEMAKERS

The pension benefits of low income and minority homemakers, however, seem to be taking a back seat if, indeed, a seat at all, among the recent developments in the homemaker pension arena. The movement seems to be directed primarily at upper income, mostly white homemakers. Two possible considerations may be cited to explain this point of view.

First, the percentage of married women who are not in the la-

73. *Final Report By President's Commission on Pension Policy*, [Part II] PENS. PLAN GUIDE (CCH) No. 309, at 45 (Feb. 27, 1981).

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.* at 48.

78. *Pension Equity for Women: Higher IRA Limit*, U.S. NEWS & WORLD REPORT, Mar. 5, 1984, at 62.

bor force is higher for whites than, for example, blacks (who comprise the largest minority category of married women).⁷⁹ Also, Cuban married women and "other" (not Mexican, Puerto Rican or Cuban) married women of spanish origin, have a higher labor force participation than white married women.⁸⁰ Percentage wise, there are fewer Mexican and Puerto Rican married women than whites in the labor force but in terms of sheer numbers, the total number of Mexican and Puerto Rican married women not in the labor force is far less than the number of white or even black married women.⁸¹

Thus, either by sheer numbers or percentage of married women in the labor force, the homemakers' pension benefits issue could be seen, primarily, as a white woman's issue.

A second reason has to do with the emphasis that the homemakers' pension benefits movement has demonstrated. As mentioned earlier, recent pension legislation benefiting homemakers has centered in areas relating to private employers and IRA's. It has been demonstrated that members of the middle class are the primary recipients of pension benefits.⁸² The legislative emphasis upon the private sector coupled with research identifying those in the middle income brackets as the main beneficiaries appear to exclude the lower income and minority homemakers. To the extent that income is related to ethnic background (whites more prevalent in higher brackets blacks or spanish)⁸³ the minority homemaker appears to be denied.

This is clearly demonstrated when considering IRA's, where, as we have seen, many of the recent legislative proposals have resided. A pool taken by the Washington Post and ABC News indicated the greater probability of upper over lower income families having IRA's.⁸⁴ The poll found that nearly 60% of U.S. households, in the \$50,000 + income bracket had IRA's,⁸⁵ while only 1 in 25 households of income under \$12,000 had an IRA.⁸⁶

To the extent that the number of white households in the \$50,000 plus bracket greatly exceeds the number of minority households in that same bracket,⁸⁷ it appears that minority homemakers

79. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, NO. PC80-1-C1, LABOR FORCE CHARACTERISTICS BY SPANISH ORIGIN, TYPE OF SPANISH ORIGIN AND RACE: 1980 1-165, Table 168 (1980) [hereinafter cited as *Business Bureau*].

80. *Id.*

81. *Id.*

82. Hershey, *Washington Watch-Tax Caution for Pensions* N.Y. Times, Sep. 3, 1984, at 32.

83. *Bureau*, *supra* note 80, at 1-167.

84. John, *IRA Appeal, High Income Linked*, Washington Post, Mar. 12, 1983, at B1 & 3.

85. *Id.* at B1.

86. *Id.* at B1 & B3.

87. *Bureau*, *supra* note 80, at 1-167, Table 170.

benefit less than white homemakers from the expansion of IRA coverage.

A comparison between the "home security" issue discussed in this paper and the more widely recognized home security issue referred to earlier offers an interesting analogy. Some criminologists have discovered that low income people are the most frequent victims of such crimes as robbery and burglary: "In short, garden-variety crimes were commonly directed at economically disadvantaged rather than being instances of 'Robin Hood' crime aimed at the affluent members of society."⁸⁸ These social scientists have also determined that whites are less likely to be victims of crimes than nonwhites with the exception of grand larceny.⁸⁹

To analogize these crime victim statistics to the area of pension coverage for homemakers, it would appear from the preceding discussion that the lower income and minority members of the homemaker population seem more likely to be "victims" of the current direction in the expansion of homemakers' retirement income benefits. However, research, unlike the situation of crime victims, appears to be lacking not only in the area of pension benefits received by low income and minority homemakers but also regarding pension benefits received by all types of low income and minority Americans.

This maybe due to the purported middle class emphasis surrounding pension benefits that was cited earlier. Whatever the reason, further research is needed. The current direction in homemaker legislation is ostensibly failing to consider the needs of the very homemakers who may have the greatest need for secure retirement income benefits.

THE FUTURE

The idea that a homemaker is worthy of paid compensation is a concept whose time has come. While the issue of actual pay for homemakers may or may not be an area of actual concern in many areas of society, our discussion of the recent proposals and legislation regarding homemaker's pension rights has demonstrated that the concept of homemakers' pension rights is apparently on the agenda in various sectors of society.

The next logical area to turn to is a discussion of the chances for additional progress in this area of homemakers' pension rights. A review of the current literature does not appear to present one with a very clear picture of this future. In the Second Appendix to the report of the Hearing before the Select Committee on Aging,

88. D. GIBBONS, *SOCIETY, CRIME AND CRIMINAL CAREERS: AN INTRODUCTION TO CRIMINOLOGY* 89 (1977).

89. *Id.* at 108.

House of Representatives, 97th Congress, First Session, February 26, 1981, the Citizens Commission on Pension Policy (incidentally composed of homemakers as well as workers and retirees) boldly asserts that, "The very workers, homemakers and retirees most victimized by unfair or inadequate retirement income programs can be a powerful influence in correcting national policy."⁹⁰

Rae Andre, in her book *Homemakers: The Forgotten Workers*, lauds the "new homemaker movement" and its potential to create far reaching social change.⁹¹ Others, including former Democratic vice-presidential candidate, Geraldine Ferraro, have admonished women in leadership to "look out" for other women and to fight for keeping women's issues on the public agenda.⁹² She, herself, sponsored the recent legislation known as the Retirement Equity Act of 1984 which has previously been discussed.

All of these views might seem to point to a universal support of the homemaker's quest to secure better pension rights. Anti-homemaker feelings can also be found. Andre's book also reviews the work of Sociologist Ann Oakley who has called for the abolition of the "housewife" role.⁹³ Apparently, Oakley is against securing paid compensation for housewives because she feels women would still be equated with the homemaker role even if they were paid for that work.⁹⁴ Additionally, Betty Friedan maintains that the current social reality is such that women really don't have the choice of deciding whether to be, as she puts it, "lifelong, full-time housewives."⁹⁵

One also has to wonder if the homemaker role will even be around in any significant capacity in the years ahead. *U.S. News and World Report* does not tell us that the woman's issue of the 1980's will be the latest homemaker's movement but rather the issue will be balancing a job with marriage and motherhood.⁹⁶ The magazine also tells us that the nuclear family with a wage-earning father and a full-time housewife/mother even now only represents twelve percent of American households.⁹⁷ Nonetheless, Congress is giving renewed attention to areas of pension reform which concern women, as seen most recently in the Retirement Equity Act of 1984.

At a more basic level some have argued that the question of retirement income benefits for homemakers is ridiculous since

90. *Citizens Commission on Pension Policy: Hearings Before the Select Committee on Aging*, 97th Cong., 1st Sess. Appendix 2 (1981).

91. Andre, *supra* note 38, at 4.

92. Ferraro, *Who Will Fight For the Worth of Women's Work?*, VITAL SPEECHES OF THE DAY Nov. 15, 1982 70, 73.

93. Andre, *supra* note 38 at 29.

94. *Id.*

95. B. FRIEDAN, *THE SECOND STAGE* 48-49 (1981).

96. *She's Come a Long Way or Has She?*, U.S. NEWS & WORLD REPORT, Aug 6, 1984, at 44, 48.

97. *Id.*

homemakers never really "retire" from their homemaking jobs of cooking, cleaning, shopping, etc. Some writers have even hinted that this lack of retirement experience for homemakers is beneficial, as it, by providing more role continuity, is less stressful than being suddenly cut off from those activities engaged in during one's paid employment.⁹⁸

Another possible argument concerns the question of equity between homemakers and working individuals. For example, should those individuals who have an outside-the-home job as well as responsibility for homemaking duties be included in a homemakers' pension scheme? This indeed poses a major policy question that must be dealt with in any discussion of the homemakers' retirement income benefits issue.

Even in those countries which provide some type of retirement benefit for homemakers, there are related problems concerning equity. For example, in Switzerland, a married individual who receives credits for his or her homemaking years and who has a partial work history, would end up receiving a larger retirement income benefit than a single person with the same work history.⁹⁹ This occurs because the single person's pension is reduced for any time spent out of the labor force but the married person is credited for the period spent as a homemaker.¹⁰⁰

One might suppose that homemakers' pension rights will be tied, in some way, to the whole issue of pension reform in general. The progress on that front seems less than assured. Stephen Crystal, in his book, *America's Old Age Crisis*, says that, "In pension policy, many of the themes we found in long-term care recur: exploding costs, random and systematic inequity, ambiguity in defining government and non-government roles."¹⁰¹ This comparison between pension policy and long-term care issues does not give one much cause for optimism that either issue will be resolved quickly.

John Kingdom in his recently published study of how policy items actually appear on the governmental agenda, does not give an optimistic picture for the presence of the long-term health care issue on the government agenda.¹⁰² His study quotes one respondent, referring to the long-term health care issue, ". . . Nobody can figure out how to handle it, and they're scared to death of trying."¹⁰³

These sentiments would seem to mirror Crystal's concern regarding pension policy. Kingdom does give one some cause for opti-

98. Holmes, *supra* note 2, at 33.

99. Kirkpatrick, *supra* note 47, at 118.

100. *Id.*

101. Crystal, *supra* note 16, at 103.

102. J. KINGDON, *AGENDAS, ALTERNATIVES AND PUBLIC POLICIES* 135, 145 (1984).

103. *Id.* at 145.

mism. He quotes another respondent who says that, "It [long term health care] has to come as an issue."¹⁰⁴

The same is true of pension policy reform in general and more specifically of the area of homemakers' pensions. Also, as Kingdon suggests, ideas, in general, must go through a "softening up" period before they will be accepted by those groups who are likely to be affected or who will be those doing the affecting.¹⁰⁵ Kingdon maintains that, "Softening up seems to be necessary before a proposal is taken seriously."¹⁰⁶

This "softening up" period, according to Kingdon, often takes years. It consists of a process which involves initially "floating" ideas followed by a period of drafting proposals/bills, debating and then amending these proposals/bills in response to reactions, at which time the whole process starts over with the floating of the amended proposals.¹⁰⁷

One could argue this is what is taking place even now in the area of pension reform for homemakers as evidenced by the various proposals presented and the specific legislative action that has taken place.

CONCLUSION

Further expansion of pension benefits for homemakers appears to involve basically two alternatives:

1. Continuing to make retirement benefits for homemakers tied either directly (Social Security) or indirectly (IRA) to their spouse's income.

or

2. Obtaining some type of monetary compensation or credit plan for those who do work in the home.

The second alternative, however, seems more remote for it strikes hard at the very heart of traditional American views about the value of work. Andre hits on this problem when she says:

. . . people in our society tend to believe that certain kinds of work should earn money, power or prestige, while certain others should not. Work considered deserving is that done in the marketplace for money; work that does not earn as much status is that done in the home, without pay.¹⁰⁸

Taking these thoughts into consideration, it is not hard to understand why no serious proposals for paying homemakers have been heard (although recently one proposal for paying homemakers

104. *Id.* at 135.

105. *Id.* at 134-135.

106. *Id.* at 137.

107. Kingdon, *supra* note 104, at 123.

108. Andre, *supra* note 38, at 254.

has come from the Vatican).¹⁰⁹ Indeed, the first alternative seems more likely as indicated by the recent legislative action in the homemaker pension rights area. As we have seen, legislation has either centered on the IRA concept which ultimately is funded with the non-homemaker spouse's income or on the concept of expanding benefits to the non-working spouse which are derived exclusively from the worker's pension.

Given the fact that the current retirement income benefits system is based on wage earning, it would seem logical to conclude that in order for homemakers to acquire retirement income benefits on their own (for their unique contribution to the national good), they will need to be paid. Yet, this idea seems to be less than possible given the American attitude toward work. Indeed, the whole idea of paying homemakers for their services may be too impractical. For example, who would pay the homemaker? The government? The wage-earning spouse? The employer of the wage-earning spouse in recognition of the homemaker's contribution to the employee's well-being? The Vatican's proposal suggests that the government pay homemakers.¹¹⁰

Even if it could be decided who would pay the homemaker, the cost would most likely be prohibitive. Thus, where does one go to further pension benefits for homemakers? Given the existing concepts of work and individualism in our society and the current problems of Social Security, the only way appears to be the way we are going; in the direction of homemakers' IRA's, established exclusively by the wage-earning spouse's revenue.

This belief seems to be borne out in a recent Reagan administration proposal that would allow each working and each non-working spouse to contribute up to a maximum of \$2500 to an IRA.¹¹¹ Yet it is primarily the upper class, white homemaker who will appear to benefit from this direction in the homemakers' pension area. The surface of the issue of retirement income benefits for lower income homemakers (and relatedly also of minority homemakers) has not even been scratched. It is an express purpose of this paper to stimulate discussion and hopefully action so that the issue of retirement income benefits for minority and lower income homemakers can get on the "agenda."

But, perhaps, this aspect of the homemakers' pension issue, as well as any significant future expansion of the homemaker pension issue in general, can only be addressed if there takes place a rethinking of some very basic values and concepts in our society. Such

109. *Vatican Says Housewives Deserve Government Pay*, Washington Post, Nov. 25, 1983, at A27.

110. *Id.*

111. Cohen, *IRA's To Escape Campaign Against Tax Breaks*, ALBUQUERQUE JOURNAL BUSINESS OUTLOOK, Mar. 11, 1985, at 4.

rethinking would appear to constitute no less than a social revolution. While this does not seem likely, anything less than this appears to leave all homemakers with a limited, less-than-secure pension rights outlook.