The Treatment of the Family and Divorce in the Social Security Program

Testimony Program before the Senate Special Committee on Aging

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Mr. Chairman and Members of the Committee:

This Committee is to be congratulated for delving into issues of how the family is treated under Social Security and potential reforms of that system. Despite the vital importance for almost all families and the hundreds of billions of dollars in annual spending involved, family issues for the most part have remained on the sidelines in the Social Security debate. These family issues derive from the adjustments that Social Security makes to benefits in cases where there are spouses, survivors, and divorced former partners of workers.

My comments can be summarized as follows:

1. The treatment of the family should follow from a set of basic principles.
2. The treatment of the family in today's Social Security program has a number of clear-cut inequities and distortions precisely because it does not follow cleanly from a set of principles.
3. Any reform creates winners and losers, but the fear of creating sympathetic losers locks Social Security into a mid-20th century structure and continues to keep on the back burner real reform in its treatment of the family.
4. In the case of divorce—the issue to which you asked me to pay special attention in my testimony—conditions in society itself have changed dramatically over the past several decades.
5. For divorced persons, a reformed Social Security should attempt to achieve the goal of meeting needs by using minimum benefits and adjusting its rate structure. Its equal justice or horizontal equity goals should try to insure that couples share more or less equally in Social Security benefits that *accrue* from their years together. Some of this can be done by formula, but some may involve further adjustments in divorce decrees.
6. In the case of individual accounts and USA accounts, they can easily be split at time of divorce to try to meet the equal justice criteria, but they generally are not designed to meet goals of redistribution according to need. Nonetheless, they should not be assessed in isolation but only as part of an entire package of retirement programs and government subsidies. The package itself can be made more progressive or less progressive with or without an individual account or USA account component.

Two Equity Principles for Social Security

There are two equity principles that should apply to Social Security and its treatment of the family:

(1) *Equal justice (or horizontal equity)*. Individuals in equal circumstances should be treated the same. In the case of divorce, this generally means that married couples should share equally in any accrual of assets during their time of marriage together, just as most of them usually shared equally in consumption during that same period of time. In some cases, however, the measure of accrual requires taking into account how future income will be related to sharing of resources, saving, and investment in education during years together.

(2) *Benefits related to need (or vertical equity)*. Social Security exists primarily to protect the truly old against poverty. This leads to such features as a progressive benefit formula and to such proposals as the one I recommended and that was adopted by the National Commission on Retirement Policy (NCRP): a wage-indexed minimum benefit that tried to insure that almost all the elderly were kept out of absolute and relative poverty.

It is important that these principles not be confused. For example, guaranteeing that a rich divorced person shares fairly in the assets that derive from his or her former marriage may have nothing to do with need or progressivity, but it may still be fair. Similarly, there are many poor elderly whose condition has nothing to do

with divorce, so granting extra benefits to someone simply because he or she is divorced could turn out to be progressive, but not fair nor well targeted.

Today's Social Security Approach

Family policy in Social Security can be likened to the following. Think of a part of a major metropolitan city in which many people on the street are poor. The government responds to this poverty situation by taking a basket of money and climbing to the top of a skyscraper and then throwing the money off the roof. Much of the money indeed reaches some of the poor. But some lands on penthouses occupied by rich people and some is acquired by middle-income people on other floors or on the ground. However, any time that reform is suggested, opponents point out that it would cut back on at least some of the money garnered by some of the sympathetic poor people on the ground.

Here are some examples of how Social Security treats divorce today. Many of these results follow from the rule that a divorced person married for 10 years or more is entitled to full spousal and survivor benefits, one married less than 10 years is entitled to none.

(1) If a spouse divorces a worker after 9 years, 11 months, and 27 days of marriage, the spouse gets absolutely nothing from Social Security is auxiliary benefits and is entitled to no share of the worker's benefit (spouses can still get benefits on their own earnings records).

(2) If a worker gathers five spouses over the course of a life, each for 10 years and 1 day of marriage, each of those spouses is entitled to hundreds of thousands of dollars of Social Security benefits because of the marriage. Correspondingly, a worker paying the same amount of taxes, but having only one spouse, generates hundreds of thousands of dollars less in potential auxiliary benefits.

(3) If a spouse divorces a worker after 40 years of marriage, as long as the worker is alive the spouse is entitled as a spousal benefit of only one-half of the benefit garnered by the worker. However, should the worker die, the divorced spouse is entitled to a survivor's benefit equal to the worker's full benefit itself. Thus, the divorced spouse's well-being is inversely related to the remaining lifespan of the worker (thus creating an interesting set of incentives for an P.D. James mystery novel but which I will not explore further here). Put another way, the benefits to the divorced spouse are not prorated according to her or his own need and, given the separation of spouses, are too dependent upon the life span of the worker.

(4) If a single head of household raises children and works for 40 years at $10,000 a year (wage-indexed) and contributes every year to Social Security, she will be entitled to substantially fewer Social Security benefits than a divorced (or married) person who never works, never raises children, and never contributes to Social Security, as long as she happened to be married to a rich worker for 10 years or more.

(5) A divorced person who was married to a much older worker on average will get substantially more benefits than a divorced person who was married to a worker of the same age. (In effect, those who marry older workers are more likely to get survivors' benefits, which are more generous than spousal benefits, than are those who marry younger workers.)

(6) A middle class divorced person of a rich worker could face a significant marriage penalty and forfeit some survivors benefits if she marries another middle-class worker.

Why do these inequities and anomalies arise? They are the consequence of formulas for both spousal benefits and benefits for divorced persons that are poorly targeted at either of the two issues that should be at stake: the well-being of spouses or divorced persons or anyone else, for that matter, based upon need; and the right of each spouse to share in the fruit of the household during years of marriage.

The Reform Dilemma: Winners and Losers

What typically stymies reform is that it inevitably would involve winners and losers. By practice, past Congresses have patched on new benefits for spouses and divorced persons in ways that pretended only to create winners. A new sympathetic case leads to the demand for some new patch—but without regard to whether the patch is well placed or whether some of the old patches should be removed. Today, however, the current level of promises in Social Security probably cannot be sustained, so it is no longer possible to pretend that legislation can create only winners. An opportunity is present to engage in reforms that, whatever the total to be spent, address better the needs of the older population, as well as provide more equal justice or horizontal equity.

Still, any reform will still face obstacles. Somewhere there will be a divorced person with low wages who was married for 11 years to a higher income worker. Following a set of principles, it would be hard to set up a system where this divorced person was entitled, as is the case today, to significantly more benefits than many other low-income workers who were married for less than 10 years or the lifetime spouses of many middle-income workers. While a reformed system as a whole can easily direct a greater portion of resources to those with greater needs, it cannot hold everyone harmless. Thus, reducing the poverty rate among older divorced individuals may still lead to some future retirees who are divorced to receive lower benefits than under current law.

How the World of Divorce Has Changed

The following data provides you with many details on the increasing prevalence of divorce in today's society. Formerly, whatever the inequities of the Social Security treatment of divorce, it affected only a modest number of retirees because of the smaller frequency of divorce and the higher frequency of remarriage in the case of divorce.

As compared to 1970, we can note the following trends:

- The percentage of women currently divorced has risen from 2.54 in 1970 to 8.16 in 1997.
- This increase in the percentage of women currently divorced has occurred for all age groups, and it has been most dramatic for middle-aged women (see Figures 1 and 2 in the Appendix).
- Among middle-aged women (aged 45-49), the percentage currently married has dropped sharply (from 81.36 to 67.89), the percentage currently divorced has increased sharply (from 5.25 to 17.69), and the percentage who never married has also risen sharply (from 3.90 to 8.00). (See Table 1 in the Appendix).
- Older men and women (aged 65 and over) who are currently divorced are more likely to fall below the poverty line than those who are married. The probability of falling below the poverty line is even greater for men and women who are widowed, separated, or were never married. Finally, the probability of falling below the poverty line is much higher for women than for men. (See Table 2 in the Appendix.)
- Among older men and women (aged 65 and over) below the poverty line, 24.79 percent are married, 10.41 percent are divorced, 52.81 percent are widowed, 2.57 percent are separated, and 9.42 percent never married. Women comprise 73.40 percent of this poverty group, and men 26.60 percent. (See Table 3 in the Appendix.)

Because of the substantial increase in divorce with less than 10 years of marriage, the decrease in remarriage rates, and the increasing prevalence of unmarried individuals, the protection provided to some lower-income individual women has partially eroded. As in the case when women entered the workforce in increasing numbers, the system as a whole may be saving money, but at the cost of greater inequity.

How a Reformed Type of System Might Work

If one redesigns Social Security according to a set of principles, I believe that it would incorporate the following elements:

(1) A minimum benefit, along the lines of the National Commission on Retirement Policy, that would remove most elderly from absolute and relative poverty. That particular minimum benefit required years of coverage, but they are fairly easy to obtain; in any case, it is possible to design such a minimum so almost all women and men in future decades could be made to quality a minimum benefit.

(2) A system of earnings sharing or benefit sharing for couples. Such a system would approximately prorate benefits of either spouse according to the share of a normal working life that they spent together. Congress ought to consider whether further adjustments could be provided in divorce decrees if it was felt that the accumulation of future earnings (e.g., returns to education) would only show up in later earnings. Today, however, Social Security cannot handle that type of adjustment. Note that private plans are going through a similar turmoil over how to handle rights to pension assets in the case of divorce.

(3) Capping of a spousal and survivor's rule that provides the largest windfall welfare benefits to the spouses of the richest workers regardless of whether they raise children and inversely to their own work efforts and contributions to Social Security. Thus, the system would no longer provide substantially more benefits to a couple with $50,000 in combined earnings split $45,000/$5,000 than to an equal income couple with earnings split $25,000/$25,000.

(4) The creation of an actuarial balance to which individuals would be entitled, with spousal and survivors benefits calculated off of that actuarial balance according to the age of the partners. Thus, the system would no longer provide greater benefits to couples simply because their ages were far apart rather than close together.

Individual Accounts and USA Accounts

Individual accounts and USA accounts can be designed easily to be shared more or less equally, thus helping to meet the principle of equal justice or horizontal equity in the case of divorce. Essentially each member can be entitled to one-half of the moneys in those accounts due to years of marriage—again, with further adjustments sometimes made in divorce courts. Some favor splitting deposits up front on an individual basis; some employers instead prefer that these divisions be made in divorce court. Either way, however, the equal justice principle can be approximated.

On the other hand, individual accounts and USA accounts are not designed or intended to deal with the issue of insuring against poverty in old age. For this reason, it is hard to set them up to replace a Social Security system that inevitably has a significant element of redistribution to it. By the same token, individual accounts and USA accounts do not necessarily reduce progressivity, any more than do private pensions.

The battle over individual accounts and USA accounts, therefore, is often misdirected. On the extreme of one side will come the proclamation that no transfer system is necessary (or hint that somehow there will be a costless welfare system that backs up a completely privatized Social Security system). On the extreme of the other side will come the proclamation that every element of the system must have significant redistribution attached to it. In truth, there is a lot of middle ground.

What also confuses matters is that many people look at reforms one at a time. For example, if all that happened were that individual accounts were to replace part of the existing system, there could be a decrease in progressivity. On net, however, progressivity might be enhanced—whether or not individual accounts of USA accounts replaced part of the existing system or were added on top of it—if the benefit formula itself was made more progressive, either by changing its rate schedule or by providing for a minimum benefit.

Conclusion

The treatment of the family in Social Security, unfortunately, does not take into account the circumstances of families today. We may soon undertake a significant reform of Social Security, one that could shift around trillions of dollars in future benefits, yet these family issues have been given little consideration in the debate to date. Many inequities can only be addressed by adherence to a set of principles. Such principles could help insure both that more of the elderly are kept out of poverty and that spouses share more equally in the retirement benefits accruing from and attributable to years spent together.

Finally, let me make a plea that Congress try to insure that a much more thorough and systematic examination of these family issues be undertaken. I would be glad to try to help you find experts who could help perform such an examination in a nonpartisan manner.

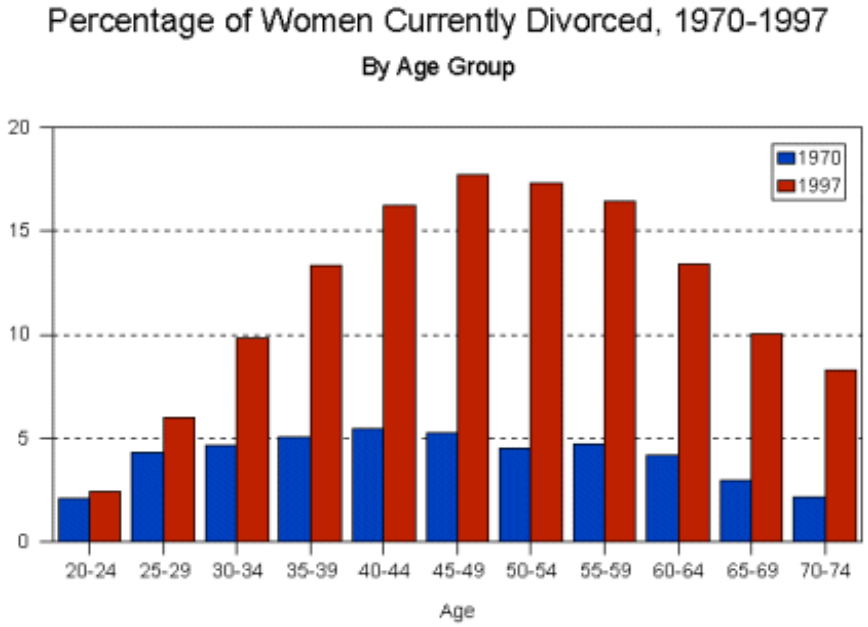
APPENDIX

Table 1. Change in Marital Status Among Women Aged 45-49, 1970-1997		
	1970	**1997**
Married	81.36	67.89
Divorced	5.25	17.69
Widowed	6.18	2.94
Separated	3.31	3.49
Never Married	3.90	8.00
Source: The Urban Institute, 1999. Based on the Current Population Survey		

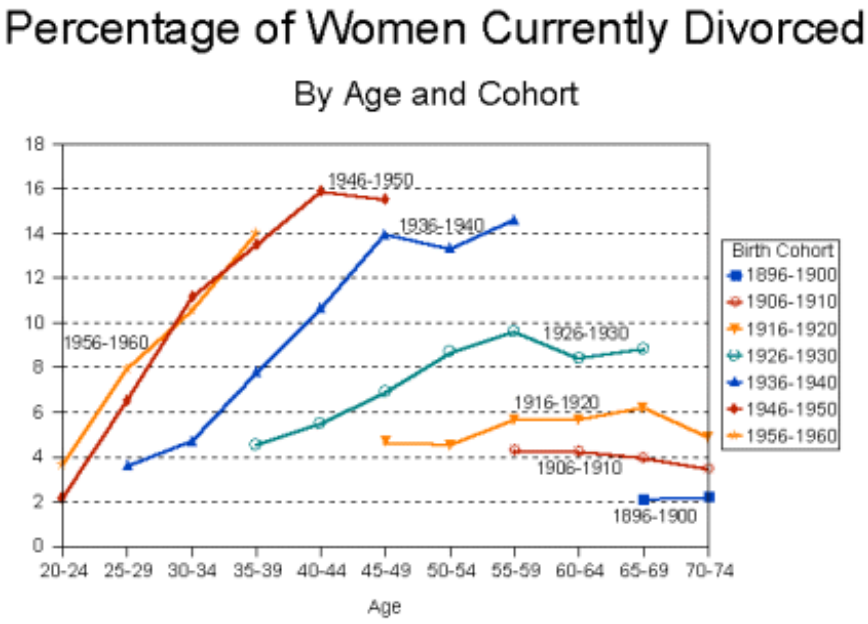
Table 2. Probability That People Aged 65 and Over Will Be Below the Poverty Level, Given Their Marital Status or Sex (1997).	
Married	4.88
Divorced	16.45
Widowed	16.99
Separated	28.74
Never Married	24.00
All Men	6.80
All Women	13.62
Source: The Urban Institute, 1999. Based on the Current Population Survey	

Table 3. Percentage of People Aged 65 and Over and Below the Poverty Level, By Marital Status and Sex (1997).			
Married	24.79		
Divorced	10.41		
Widowed	52.81		
Separated	2.57	All Men	26.60
Never Married	9.42	All Women	73.40
Total	**100.00**	**Total**	**100.00**

Source: The Urban Institute, 1999. Based on the Current Population Survey



Source: The Urban Institute, 1999. Based on the Current Population Survey.



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Other Publications by the Authors

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