

Social Security and Marriage in Black and White

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Social security benefits are available for individuals and their spouses. Spousal benefits, however, are subject to certain limits where spouses also work in the paid labor market. Social security benefits are the greatest for spouses who do not work in the paid labor market and are the least for spouses who contribute roughly half of their household income.

Social security benefits also are available for surviving spouses. Surviving spousal benefits are reduced for dual wage earner couples. Surviving spousal benefits are the greatest for spouses who do not work in the paid labor market and are the lowest where wives contribute roughly half of their household income. Census Bureau data shows that African-American wives are more likely than White wives to contribute roughly half of their household income. As a result, African-American wives are more likely than White wives to be penalized by the social security limitations placed on dual wage earner couples. This Article should encourage scholars who are interested in examining how African-Americans fare under our current Social Security System to include married African-American couples in their analysis.

All [wives] are equal, but some [wives] are more equal than others.¹

I. INTRODUCTION

Much has been written about the two-earner bias in the Social Security System.² Briefly stated, social security benefits will generally be lower for a two-

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¹ Cf. GEORGE ORWELL, *ANIMAL FARM* 92 (Plume ed., 2003) (1946) (“All animals are equal but some animals are more equal than others.”).

² See, e.g., EDWARD J. MCCAFFERY, *TAXING WOMEN* 89–105 (1997); C. EUGENE STEUERLE & JON M. BAKIJA, *RETOOLING SOCIAL SECURITY FOR THE 21ST CENTURY* 207–16 (1994); Grace Ganz Blumberg, *Adult Derivative Benefits in Social Security*, 32 *STAN. L. REV.* 233, 246–251 (1980); Karen C. Burke & Grayson M.P. McCouch, *Women, Fairness, and Social Security*, 82 *IOWA L. REV.* 1209, 1225–32 (1997); Jonathan Barry Forman, *Promoting Fairness in the Social Security Retirement Program: Partial Integration and a Credit for Dual-Earner Couples*, 45 *TAX LAW.* 915, 944–47 (1992); Laura Ann Foster, *Social Security and African American Families: Unmasking Race and Gender Discrimination*, 12 *UCLA WOMEN’S L.J.* 55, 67–72 (2001); Goodwin Liu, *Social Security and the Treatment of Marriage: Spousal Benefits, Earnings Sharing, and the Challenge of Reform*, 1999 *WIS. L. REV.* 1, 12–18

earner couple than a single-earner couple with the same total household income.³ In addition, for two-earner couples, the greater the wife's contribution to household income, the less she receives in spousal and survivor benefits.⁴

What the literature largely ignores is the different impact that the two-earner bias will have on Black and White families.⁵ My prior research shows that two-earner couples are most likely Black and single-earner couples are most likely White.⁶ My research also shows that Black couples are far more likely than White

(1999); 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); Nancy C. Staudt, *Taxing Housework*, 84 GEO. L.J. 1571, 1596–99 (1996); C. Eugene Steuerle, *The Social Security System and Women Today*, 16 N.Y.L. SCH. J. HUM. RTS. 218, 221 (1999).

³ See Burke & McCouch, *supra* note 2, at 1226 (“The disparity may be exacerbated if each couple’s total wages exceed the earnings cap, since the Two-Earners will then pay higher payroll taxes than the One-Earners on identical total wages.”); Forman, *supra* note 2, at 944 (“[T]he provision of spousal and surviving spouse benefits result in two-earner couples generally receiving lower total benefits than would be received by one-earner couples with the same total covered earnings.”); Foster, *supra* note 2, at 68 (“[S]ingle-earner couples will *always* receive higher monthly social security benefits than two-earner couples [below the taxable maximum.]”); Liu, *supra* note 2, at 13 (“[F]or a given level of total earnings at or below the taxable maximum, a one-earner couple will *always* receive higher Social Security benefits than a two-earner couple under the current PIA formula.”). For 2003, the taxable maximum is \$87,000. See *infra* note 17 and accompanying text. It has been estimated that less than 25% of all married-couple households have money income exceeding the taxable maximum. See Liu, *supra* note 2, at 13–14 n.42 (“Approximately one-fourth of all married-couple households have money income exceeding the taxable maximum.”); cf. *infra* notes 69–74 and accompanying text (providing different estimates).

⁴ See *infra* notes 25–38 and accompanying text.

⁵ See, e.g., Blumberg, *supra* note 2, at 246–51 (does not address race issues); Forman, *supra* note 2, at 944–47 (does not address race issues); Liu, *supra* note 2, at 12–18 (does not address race issues). But see Burke & McCouch, *supra* note 2, at 1231 (“Because the spousal benefit provisions reinforce social security’s preference for conventional family structures, they are open to criticism for their adverse impact on various minority groups. The implications of the system’s underlying family norms for minority groups are often overlooked.”). Burke & McCouch’s reference to race discusses the adverse impact the spousal benefit provisions have on Blacks because they are less likely to be married. *Id.* at 1231 n.123. Burke & McCouch do not examine the Social Security System for its impact on married Black women. *Id.* Burke & McCouch refer to the fact that married Black women may not be secondary earners, but do not pursue the point. *Id.* (“For example, McCaffery apparently assumes that married women are universally perceived as second earners, without questioning whether this stereotypical perception is racially skewed.”); cf. Foster, *supra* note 2, at 72–85 (discussing how the two-earner penalty disproportionately discriminates against African-American married couples).

⁶ See Dorothy A. Brown, *Race, Class, and Gender Essentialism in Tax Literature: The Joint Return*, 54 WASH. & LEE L. REV. 1469, 1507 (1997) [hereinafter *Race, Class, and Gender*] (“[W]hite husbands are still more likely to be primary wage earners than African-American husbands at all income levels.”); Dorothy A. Brown, *The Marriage Penalty/Bonus Debate: Legislative Issues in Black and White*, 16 N.Y.L. SCH. J. HUM. RTS. 287, 295 (1999)

couples to contribute roughly equal amounts to household income.⁷ As a result, one would expect to see the two-earner bias result in lower social security benefits paid to married Black couples.⁸

Part II of this Article describes the calculation of spousal and survivor benefits. It then provides data showing the difference in social security benefits received by single-earner and two-earner couples. It describes how spousal benefits are reduced and then eliminated based upon how much income wives contribute to their households. It also describes how survivor benefits are reduced for two-earner couples and are the lowest where wives contribute approximately 50% to household income. Part III provides an empirical analysis of spousal contributions based upon race and class. The data shows that single-earner couples are most likely to be White and two-earner couples are most likely to be Black. As a result, social security benefits for married couples will differ along racial lines. Part III also shows that White wives are more likely than Black wives to be eligible for spousal and survivor benefits. This Article concludes by observing that any analysis of the two-earner bias of social security benefits must be broadened to include the racial differences in two-earner and single-earner couples.

II. CALCULATION OF SOCIAL SECURITY BENEFITS

A. Introduction

This Section begins by describing how spousal benefits are calculated and the reduced amount of social security benefits that are received by two-earner couples. This Section then describes how survivor benefits are calculated and the decreased social security benefits received by survivors of two-earner couples. This Section concludes by summarizing the benefits received by single and two-earner couples.

B. Calculation of Spousal Benefits

This Section will begin by describing spousal benefits for wives who do not work in the paid labor market. It will then describe spousal benefits for wives who

(“Conversely, at every income level, there are higher percentages of White couples who [are in single-earner households] than African-American couples.”).

⁷ See *Race, Class, and Gender*, *supra* note 6, at 1473 (“African-American spouses are more likely to contribute roughly equal amounts to household income.”); Brown, *supra* note 6, at 293–94 (“Notice the significantly high percentages of African-American wives who contribute between 40 and 60% to total household income.”).

⁸ See *infra* Part III.

do work in the paid labor market and the limitation in the social security benefit calculation that applies to those wives.

1. *Spousal Benefits for Wives Who Do Not Work in the Paid Labor Market*

A wife who does not work in the paid labor market receives 50% of her husband's social security benefits ("spousal benefits").⁹ The husband, or any other retired worker, is eligible to receive social security benefits once he has worked for ten years and is at least sixty-two years old.¹⁰ The husband's retirement benefits are a function of his primary insurance amount (PIA)¹¹ and his average indexed monthly earnings (AIME).¹² His PIA is the monthly benefit he would receive if he retired when he was sixty-five.¹³ To the extent he retires before age sixty-five, his PIA will be reduced and if he retires after age sixty-five, his PIA will be increased.¹⁴ His AIME represents the present value of his wages from his highest earning thirty-five years.¹⁵

For a worker first eligible for retirement benefits in 2003, his PIA is determined by the sum of 90% of his AIME below \$607, 32% of his AIME

⁹ See GEN. ACCOUNTING OFFICE, SOCIAL SECURITY: ISSUES INVOLVING BENEFIT EQUITY FOR WORKING WOMEN, GAO/HEHS-96-55, at 10–11 (April 1996) [hereinafter GAO REPORT]; STEUERLE & BAKIJA, *supra* note 2, at 80 ("A husband (or wife) of any insured worker is eligible, upon reaching age 65, to receive a 'spousal benefit' equal to 50 percent of the worker's [social security benefit]."); Blumberg, *supra* note 2, at 239 ("Spouses of retired, married workers would receive an additional supplement—50% of the retired worker's benefit—despite the fact that the married earner contributed no more in taxes than single workers."). This Article will not address spousal benefits that can be received by those who are divorced. See Liu, *supra* note 2, at 18 ("In general, a divorced spouse at normal retirement age can receive the fifty percent spousal benefit based on his or her ex-spouse's record if the divorced spouse is unmarried, if the ex-spouse has filed for benefits, and if the marriage lasted at least ten years.").

¹⁰ See 42 U.S.C. §§ 402(a), 414(a)(1) (2000); see also Forman, *supra* note 2, at 921 ("In general, workers over age sixty-two are entitled to social security retirement benefits if they have worked in covered employment for at least ten years."); Foster, *supra* note 2, at 63 ("Retired workers over age sixty-two who have worked at least ten years are eligible to receive social security benefits.").

¹¹ See 42 U.S.C. § 415(a) (2000).

¹² See 42 U.S.C. § 415(b) (2000).

¹³ See Liu, *supra* note 2, at 11.

¹⁴ See STEUERLE & BAKIJA, *supra* note 2, at 79.

When workers retire earlier or later than the normal retirement age, their benefits typically are reduced or supplemented to some degree. If our hypothetical workers were to fully retire at age 62, for example, they would receive a monthly benefit equal to 80 percent of their PIA for the rest of their lives

Id.

¹⁵ See 42 U.S.C. § 415(b) (2000); see also Foster, *supra* note 2, at 63.

between \$607 and \$3653, and 15% of his AIME over \$3653 up to a specified maximum.¹⁶ For 2003, the specified maximum is \$87,000.¹⁷

As a result, the calculation of benefits is deemed progressive, since lower wage-earning beneficiaries receive a higher percentage of their monthly wages than higher wage-earning beneficiaries.¹⁸ The payment of social security taxes is deemed regressive since low-income wage earners pay a higher average rate than high-income wage earners.¹⁹

2. Spousal Benefits for Wives Who Work in the Paid Labor Market

A wife who works in the paid labor market is eligible to receive social security benefits based upon her own labor force participation or her spousal benefits as a result of her husband's labor force participation, whichever is greater.²⁰ This makes her a dually entitled beneficiary. Social security payments to wives who work in the paid labor market differ based upon the percentage they contribute to household income.²¹ The greater the wife's contribution to household income, the smaller her husband's contribution to household income

¹⁶ SOC. SEC. ADMIN., FAST FACTS & FIGURES ABOUT SOCIAL SECURITY 2 (2003).

¹⁷ *Id.* at 1.

¹⁸ See Liu, *supra* note 2, at 11 (“Thus, while Social Security’s payroll tax is regressive, its distribution of benefits is progressive. It provides low earners with a larger proportion of their monthly wages than it provides high earners.”).

¹⁹ See MCCAFFERY, *supra* note 2, at 91.

It is thus a regressive tax: lower-income persons pay a higher average rate than upper-income ones do. This is both because those individuals with unearned income from property are not taxed, and because high-income persons exceed the maximum amount subject to the tax and so pay a lower average rate.

Id.

²⁰ See GAO REPORT, *supra* note 9, at 11; Burke & McCouch, *supra* note 2, at 1214 (“Under the ‘dual entitlement’ provisions, the total benefit payable to a worker’s spouse is limited to the greater of (1) the derivative benefit attributable to the worker’s earnings, or (2) the primary benefit attributable to the spouse’s own earnings, if any.”); Liu, *supra* note 2, at 12 (“Under current law, the spouse of a wage earner has a dual entitlement to retirement benefits.”).

²¹ See GAO REPORT, *supra* note 9, at 17–18 (“[A]s the wife’s share of the couple’s AIME increases, the husband’s share falls. This reduces both the husband’s retired worker benefit and the spousal benefit based on it. Until the wife’s retired worker benefit exceeds her benefit as a spouse, the couples’ total benefits will fall.”). While recognizing that a wife can be a single earner with her husband receiving spousal benefits, this Article will only focus on the wife as the spouse to receive spousal benefits.

will be. The smaller her husband's contribution to household income, the smaller her spousal benefits.²²

3. *Spousal Benefits for Single-Earner and Dual-Earner Couples*

Single-earner couples and two-earner couples with the same household income make equal contributions into the Social Security System, yet they do not receive equal spousal benefits. Although both single-earner couples and two-earner couples are eligible for the spousal benefit, the single-earner couple receives the spousal benefit calculated on the basis of the husband's higher (when compared to the two-earner husband's salary) income.²³ The two-earner couple receives a spousal benefit calculated on the basis of the husband's lower (when compared to the single-earner husband's salary) income. As a result, the spousal benefit for the single-earner couple will always be greater than that of the two-earner couple.²⁴

The total monthly benefit of the two-earner couple is less than that of the one-earner couple where income is below the taxable maximum.²⁵ The dual-earner couple's social security benefits begin with a smaller spousal benefit because it is calculated on the lifetime earnings of the lower income husband, and their overall benefit is further reduced or eliminated because of the dual entitlement limitation.²⁶ It has been estimated that the monthly benefits for a two-earner couple can be as much as one-third less than those for a single-earner couple having identical lifetime earnings and demographic characteristics.²⁷ How much lower the two-earner couple's benefits will be than the one-earner couple's benefits depends upon the contribution percentage that each spouse makes in calculating the couple's total AIME.²⁸ Spouses that are in households where the

²² Cf. Steuerle, *supra* note 2, at 221 ("At the margin many secondary workers get absolutely nothing for their additional contributions to Social Security.").

²³ See GAO REPORT, *supra* note 9, at 4; Blumberg, *supra* note 2, at 251.

²⁴ See GAO REPORT, *supra* note 9, at 15 ("The unreduced spousal benefit for the two-earner couple will be smaller than that for the one-earner couple because it is based on the benefit of the couple's primary earner, whose lifetime earnings are smaller than those of the worker in the one-earner couple.").

²⁵ See Liu, *supra* note 2, at 13 ("[For] a given level of total earnings at or below the taxable maximum, a one-earner couple will *always* receive higher Social Security benefits than a two-earner couple under the current PIA formula.").

²⁶ See GAO REPORT, *supra* note 9, at 15 ("The dual entitlement limitation will further reduce, or perhaps eliminate, this smaller spousal benefit by subtracting the secondary worker's retired worker benefit from it.").

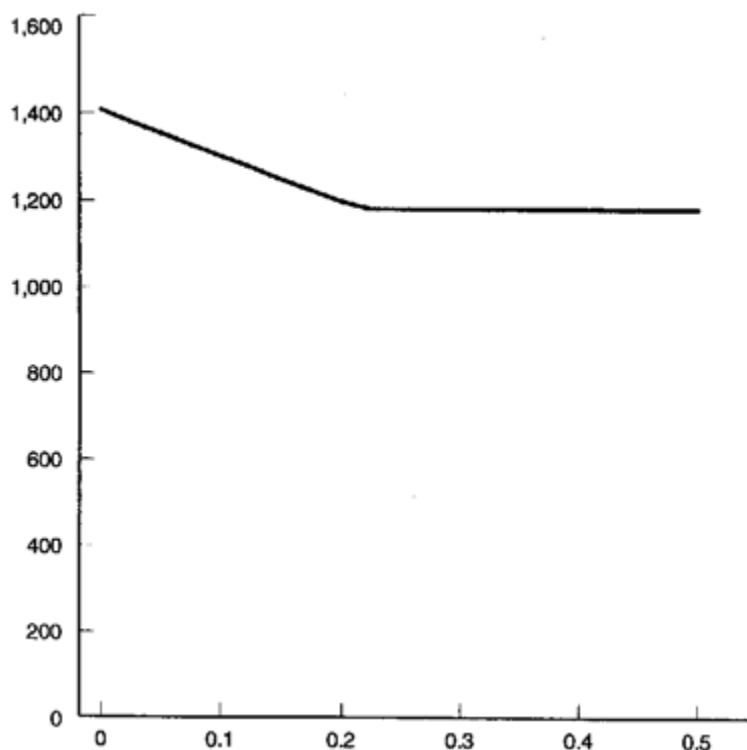
²⁷ See *id.* at 16 ("In some cases, a two-earner couple can receive total benefits that are one-third less than an otherwise identical one-earner couple's benefits.").

²⁸ See *id.*; see also Foster, *supra* note 2, at 67 ("As a result of the spousal benefits formula, the calculation of social security benefits penalizes two-earner couples as compared to single-

household income split is 100/0 will receive a greater spousal benefit than spouses that are in households where the household income split is 90/10, 80/20, 70/30, 60/40 or 50/50. Figure 2.1 shows the decrease in couple benefits based upon spousal contribution percentages.²⁹

FIGURE 2.1

TOTAL COUPLE BENEFITS FOR 65-YEAR-OLD COUPLES WITH VARIOUS WITHIN-COUPLE DISTRIBUTIONS OF A \$2000 AIME³⁰



As you can see from Figure 2.1, as the wife's contribution percentage increases, spousal benefits decrease, along with a decrease in total couple benefits. This is a result of the husband's declining income that is the basis for the spousal benefit calculation. Where the wife contributes less than 20% to household income, her spousal benefit is greater than her retired worker benefit

earner couples.”); Steuerle, *supra* note 2, at 221 (“The more evenly couples’ earnings are split, the more Social Security reduces their benefits.”).

²⁹ GAO REPORT, *supra* note 9, at 17 fig.2.1.

³⁰ *Id.*

and she will therefore receive the larger spousal benefit. A wife who contributes 10% to household income will receive a larger spousal benefit than a wife who contributes 20% to household income.³¹ Spousal benefits are completely phased out for wives who contribute between 20 and 30% to household income.³² In other words, spouses who contribute 20% to household income receive a spousal benefit and spouses who contribute 30% do not.

Where a wife's contribution percentage reaches slightly over 20%, the couple receives no spousal benefit.³³ Once the wife's retired worker benefit is greater than her spousal benefit, the couple's total benefit will either increase or remain unchanged.³⁴ This is true because once the wife contributes in excess of 20% to household income, neither spouse is eligible for a spousal benefit because of the dual entitlement limitation. The earnings that a wife contributes in excess of 20% to household income, therefore, does not increase the couple's social security benefits, even though she is paying social security taxes on that earned income. Therefore, the more a wife contributes to total household income, the less the spousal benefit she is eligible for because of the dual entitlement limitation. In that instance, the husband's social security benefits do not provide a spousal benefit for his wife. Further, working wives that pay social security taxes but receive no spousal benefits are subsidizing wives who do not work in the paid labor market but receive spousal benefits.³⁵ On the other hand, single-earner couples in households with income greater than the taxable maximum may not receive greater social security benefits than two-earner couples with equal household income.³⁶ To put the social security benefit calculation into context, consider the following hypothetical.

³¹ See Foster, *supra* note 2, at 67.

[A] spouse who does not work or earns no more than 20% of the other spouse's income has a right to 50% of the working spouse's social security benefits. 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.

Id.

³² Cf. Steuerle, *supra* note 2, at 221 ("At the margin many secondary workers get absolutely nothing for their additional contributions to Social Security.").

³³ See Liu, *supra* note 2, at 16 ("Married couples receive little or no additional retirement benefits from a secondary worker's taxable earnings; therefore, the spousal benefit rule frustrates individual equity.").

³⁴ See GAO REPORT, *supra* note 9, at 18 ("Once both husband and wife are receiving retired worker benefits, the couples' total benefit will either increase (if the wife's AIME puts her on a higher tier of the benefit formula than her husband . . .) or remain constant . . .").

³⁵ See Liu, *supra* note 2, at 16 ("In essence, the Social Security taxes paid by wives who engage in market work subsidize the benefits received by wives who work at home.").

³⁶ See *id.* at 14 n.42.

Ray and Debra Romano are married and Ray works in the paid labor market, but Debra does not. Ray earns a steady \$60,000 annual income and has consistently earned that amount for several decades. Cliff and Clair Huxtable are another married couple and both Cliff and Clair work in the paid labor market. Both Cliff and Clair each earn a steady \$30,000 annual income and have consistently earned that amount for several decades.

Debra Romano's spousal benefit will be 50% of Ray's social security benefit, which is based on his \$60,000 salary, even though Debra has not worked in the paid labor market and has made no social security contributions. She receives a spousal benefit under Social Security because she is married to Ray. On the other hand, Clair's spousal benefit will be 50% of Cliff's social security benefit, which is based on his \$30,000 salary. Recall, however, that Clair will only receive a spousal benefit if it is greater than her individual retired worker social security benefits. In this instance, Clair would not receive any spousal benefit since her spousal benefit will not be greater than her retired worker social security benefit.³⁷ The "whichever is greater" or dual entitlement limitation prevents Clair from receiving her retired worker social security benefit and her spousal benefit. Even though Ray Romano on the one hand, and Clair and Cliff Huxtable on the other hand, each contributed the same amount in social security taxes, only Ray's spouse will receive spousal benefits resulting in the Romanos receiving 150% of Ray's retired worker benefits in social security payments. The Huxtables will not receive any spousal benefits, which they are arguably entitled to receive. As a result, it has often been said that the Social Security System favors one-earner couples over two-earner couples.³⁸

For example, a couple in which one spouse earns \$80,000 and the other earns zero will receive \$2310 per month in retirement benefits, while a couple in which both spouses earn \$40,000 will receive \$2460 per month. This is because the one-earner couple cannot capture any returns on the \$11,600 of earnings above the \$68,400 cap [taxable maximum for 1998], whereas the two-earner couple gets returns on all \$80,000 of its earnings.

Id.

³⁷ *Cf.* GAO REPORT, *supra* note 9, at 15.

³⁸ *See* Burke & McCouch, *supra* note 2, at 1225 ("[I]n particular, the system tends to favor . . . one-earner couples over two-earner couples.").

C. Calculation of Survivor Benefits

1. Wives Who Do Not Work in the Paid Labor Market

When the husband dies, his widow is entitled to the greater of her own retired worker benefits or her husband's retired worker benefits.³⁹ For single-earner households, a widow's spousal benefit is 100% of her deceased husband's benefit.⁴⁰ The surviving member of a single-earner couple receives about two-thirds of the couple's total monthly benefit when both were alive. The retired worker benefit of 100% continues, and the spousal benefit of 50% of that benefit ends.⁴¹ When the husband dies, his widow receives 100% of her husband's retired worker benefit.⁴²

Wives who do not work in the paid labor market are eligible to receive social security benefits as a result of their husbands' labor force participation.⁴³ The wife's spousal benefit is 50% of the husband's PIA and will be reduced if received by her before age 65.⁴⁴

2. Wives Who Work in the Paid Labor Market

A widow of a two-earner couple is also entitled to the greater of her own retired worker benefits or her husband's retired worker benefits.⁴⁵ Widows of two-earner couples can receive as much as two-thirds of the couple's total monthly benefit if the spouse was dually entitled or as little as 50% if each earner

³⁹ See GAO REPORT, *supra* note 9, at 18.

⁴⁰ See *id.* at 10–11; STEUERLE & BAKIJA, *supra* note 2, at 80; Blumberg, *supra* note 2, at 239.

⁴¹ See GAO REPORT, *supra* note 9, at 10–11; STEUERLE & BAKIJA, *supra* note 2, at 80. While both spouses were alive, the couple received 150% of the single-earner husband's benefit. The retired husband received 100% of his benefit and his wife received 50% of his benefit (assuming he retired no earlier than age 65) for a total of 150%. When the husband dies, his widow receives 100% of her deceased husband's benefit. Her 100% is two-thirds of the couple's 150%.

⁴² See STEUERLE & BAKIJA, *supra* note 2, at 80 ("If the insured worker dies, a widowed spouse aged 65 or older may receive a 'survivors benefit,' which equals 100 percent of the worker's [social security benefits]."); Burke & McCouch, *supra* note 2, at 1214 ("[A] surviving spouse may be eligible for a 100% spousal benefit.").

⁴³ See GAO REPORT, *supra* note 9, at 10–11; STEUERLE & BAKIJA, *supra* note 2, at 80; Blumberg, *supra* note 2, at 239.

⁴⁴ See GAO REPORT, *supra* note 9, at 12 n.15.

⁴⁵ See *id.* at 18.

had identical lifetime earnings.⁴⁶ Recall that a spouse is dually entitled if they contribute no more than slightly over 20% to the AIME calculation.⁴⁷ Therefore, the surviving spouse of a two-earner couple where the wife contributes no more than slightly over 20% to the AIME calculation can receive as much as two-thirds of the couple's total monthly benefit. The surviving spouse of a two-earner couple where each partner had identical lifetime earnings will receive 50% of the couple's total monthly benefit.

Because of the "whichever is greater" limitation placed on the way spousal and survivor benefits are calculated, a two-earner couple will always receive a smaller spousal and survivor benefit than a one-earner couple with the same total household income.⁴⁸ As a result, the widows of two-earner couples always receive lower survivor benefits, whether the widow was a working wife who contributed less than 20% or a working wife who contributed more.⁴⁹ As a survivor, the widow will receive only the higher of the two retired worker benefits the couple earned.⁵⁰

Let's return to our earlier hypothetical. Assume that both Ray Romano and Cliff Huxtable die. Debra Romano will receive survivor benefits equal to 100% of Ray's social security benefits, which will be based upon her husband's \$60,000 salary. Clair Huxtable will receive survivor benefits equal to the greater of her own or 100% of Cliff's social security benefits, which will be based upon her husband's \$30,000 salary. Clair once again will not receive any benefits as a result of being Cliff's wife. She will receive social security benefits based upon her own social security contributions, which were based upon her own \$30,000 salary and her own social security contributions. Clearly, Clair Huxtable will receive significantly less social security benefits than Debra Romano, even though both households contributed the same amount in social security taxes. In effect, two-earner couples subsidize wives who do not work in the paid labor market.

⁴⁶ *See id.*

⁴⁷ *See supra* notes 32–33 and accompanying text.

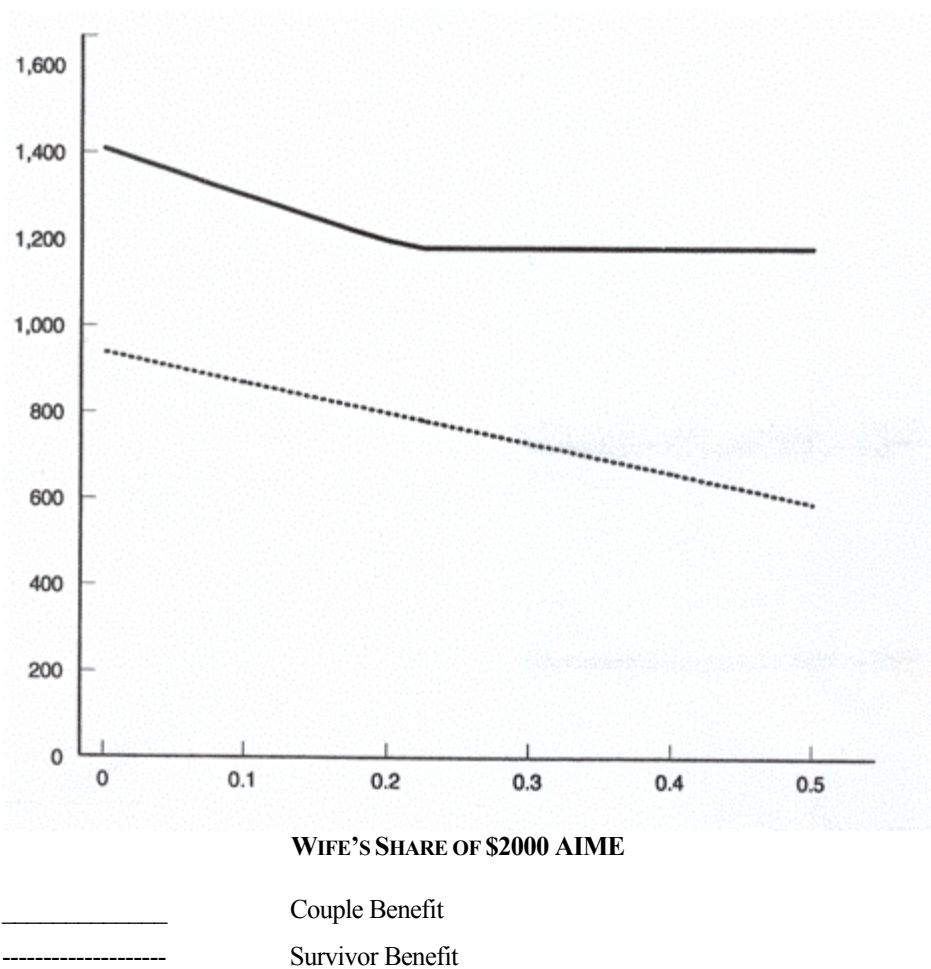
⁴⁸ GAO REPORT, *supra* note 9, at 15; Blumberg, *supra* note 2, at 246 ("The introduction of [spousal] benefits has led to a system that inequitably favors one-earner couples over two-earner couples . . ."); Burke & McCouch, *supra* note 2, at 1225 ("[T]he system tends to favor . . . one-earner couples over two-earner couples."); Steuerle, *supra* note 2, at 221 ("The more evenly couples' earnings are split, the more Social Security reduces their benefits.").

⁴⁹ *See* GAO REPORT, *supra* note 9, at 15–16.

⁵⁰ *See id.*

FIGURE 2.2

COUPLE AND SURVIVOR BENEFITS FOR DIFFERENT WITHIN-COUPLE DISTRIBUTIONS OF THE COUPLE'S TOTAL \$2000 AIME⁵¹



As seen in figure 2.2, the survivor benefit of a two-earner couple whose wife, the lower earning spouse, was dually entitled because the lower earning spouse contributed slightly more than 20% to the total AIME calculation, will receive a benefit one-third less than the couple's total benefit while both spouses were

⁵¹ *Id.* at 20 fig.2.2.

alive.⁵² Where the wife is the lower earning spouse, she is not dually entitled because she contributed more than 20% to the total AIME calculation. Her survivor benefit is reduced by more than one-third because the spousal benefit based on her husband's social security benefit is eliminated.⁵³

D. Summary

First, husbands who are the sole wage earners provide greater spousal benefits for their wives than husbands who are in two-earner households. Second, husbands who are in two-earner households provide no spousal benefits for their wives when their wives contribute at least 30% to household income. As a result, two-earner households subsidize single-earner households. Third, survivor benefits are greater for single-earner households. Fourth, survivor benefits decrease when a wife's contribution to household income increases. The next Section will discuss from a race and class perspective, which couples are most likely to be in single-earner households and which couples are most likely to be in two-earner couples based upon their race.

III. RACE AND CLASS ANALYSIS OF SPOUSAL AND SURVIVOR BENEFITS

A. Introduction

This Section will show that there is a greater percentage of White single-earner households than Black single-earner households and a greater percentage of Black two-earner households than White two-earner households. In addition, two-earner households where the spouse contributes 30% or more to household income and do not receive spousal benefits are also more likely to be Black than White. Black wives therefore will receive significantly less in social security benefits than White wives.⁵⁴ As a result, Black married couples that are

⁵² See *id.* at 20–21.

⁵³ See *id.* at 21.

⁵⁴ See OFFICE OF POLICY, SOC. SEC. ADMIN., ANNUAL STATISTICAL SUPPLEMENT 251 tbl.6.A3 (2002) (table 6.A3 provides that Black wives of retired workers receive significantly fewer social security benefits than White wives); *cf.* Madonna Harrington Meyer, *Making Claims as Workers or Wives: The Distribution of Social Security Benefits*, 61 AM. SOC. REV. 449, 460 tbl.3 (1996) (table 3 provides that the average monthly social security benefit is less for Black wives than for White wives); Martha N. Ozawa & Hak-Ju Kim, *Money's Worth in Social Security Benefits: Black-White Differences*, 25 SOC. WORK RES. 5, 11–12 (2001).

The probability of black married couples receiving either partial or full spousal benefits is only 51.6 percent, compared with 60.6 percent for white married couples. . . . The amounts of partial or full spousal benefits that black married couples receive are only 41 percent and 37 percent, respectively, of the amounts that white married couples receive. Even when a black spouse with higher earnings dies first, the survivor's benefit that the

contributing to Social Security but are not receiving spousal benefits are subsidizing White married couples who are receiving spousal benefits. This Section will provide data that shows that because Black married couples are most likely to be found in equal wage-earning households, Black widows are most likely to receive smaller survivor benefits than White widows.

This Section begins by providing Census Bureau data concerning the percentage of Black and White households below the taxable maximum and above the taxable maximum. Census Bureau data will be used as a proxy because I have not found published social security beneficiary data by race and household income level. This Section will then provide data regarding the contribution to household income by Black wives, followed by the contribution to household income by White wives. It then compares the percentage of Black and White households where there is a single earner. Single-earner households below the taxable maximum receive greater social security benefits than all other households.⁵⁵ Single-earner households above the taxable maximum receive lower benefits than dual-earner couples.⁵⁶ It then compares the percentage of Black and White households where the wives contribute less than 30% to household income. Households where wives contribute at least 30% are ineligible to receive spousal benefits.⁵⁷ It then compares the percentage of Black and White households where the wives and husbands contribute roughly equal amounts to household income. Equal wage-earning households receive the least amount in survivor benefits.⁵⁸

Four observations can be made from the data presented. First, White wives are eligible for the greatest spousal and survivor benefits. Second, White wives are more likely than Black wives to have their spousal benefits decreased due to their higher contribution to household income. Third, Black wives are more likely than White wives to receive no spousal benefit. Fourth, Black wives are more likely than White wives to receive the lowest survivor benefits.

surviving spouse receives is not much greater than what she or he received as a retired worker on her or his own records, compared with the amount that the white surviving spouse receives.

Id.

⁵⁵ See *supra* note 36 and accompanying text.

⁵⁶ See *supra* notes 23–33 and accompanying text.

⁵⁷ See *supra* notes 31–33 and accompanying text.

⁵⁸ See *supra* note 28 and accompanying text.

B. Households Above and Below the Taxable Maximum

1. Black Households

TABLE 3.1⁵⁹

BLACK HOUSEHOLDS

Household Income	Percent
\$0 to 10,000	12.11
\$10,001 to 20,000	17.93
\$20,001 to 30,000	19.83
\$30,001 to 40,000	17.47
\$40,001 to 50,000	12.83
\$50,001 to 60,000	8.35
\$60,001 to 70,000	5.09
\$70,001 to 80,000	2.89
\$80,001 to 90,000	1.46
\$90,001 to 100,000	.80
\$100,001 to 120,000	.64
\$120,001 and over	.59
Total	100.00

Table 3.1 shows that 12.11% of Black married couples were in households earning no more than \$10,000.⁶⁰ In households earning between \$10,001 and \$20,000, there are 17.93% of Black married couples.⁶¹ In households earning between \$20,001 and \$30,000, there are 19.83% of Black married couples.⁶² In households earning between \$30,001 and \$40,000, 17.47% of Black married couples are found.⁶³ In households earning between \$40,001 and \$50,000, 12.83% of Black married couples are found.⁶⁴ In households earning between \$50,001 and \$60,000, there are 8.35% of married Black couples.⁶⁵ In households earning between \$60,001 and \$70,000, there are 5.09% of married Black couples.⁶⁶ In households earning between \$70,001 and \$80,000, there are 2.89%

⁵⁹ The information in tables 3.1 and 3.2 is from a 1990 Public Use Micro-Data Sample (on file with author) and is based upon a 5% sample of the population of same race couples.

⁶⁰ See *supra* tbl. 3.1.

⁶¹ See *supra* tbl. 3.1.

⁶² See *supra* tbl. 3.1.

⁶³ See *supra* tbl. 3.1.

⁶⁴ See *supra* tbl. 3.1.

⁶⁵ See *supra* tbl. 3.1.

⁶⁶ See *supra* tbl. 3.1.

of married Black couples.⁶⁷ Therefore, there are 96.50% of married Black couples in households below the taxable maximum.⁶⁸

There are 1.46% of married Black couples in households earning between \$80,001 and \$90,000.⁶⁹ There are .80% of married Black couples in households earning between \$90,001 and \$100,000.⁷⁰ There are .64% of married Black couples in households earning between \$100,001 and \$120,000.⁷¹ There are .59% of married Black couples in households earning over \$120,000.⁷² There are 2.03% of married Black couples in households above \$90,000, which is above the taxable maximum.⁷³ Accordingly, there is only an insignificant percent of the married Black population that would expect to benefit from being in a two-earner household.⁷⁴

⁶⁷ See *supra* tbl. 3.1.

⁶⁸ See *supra* tbl. 3.1. This is a result of adding the percentages for households earning up to \$80,000.

⁶⁹ See *supra* tbl. 3.1.

⁷⁰ See *supra* tbl. 3.1.

⁷¹ See *supra* tbl. 3.1.

⁷² See *supra* tbl. 3.1.

⁷³ See *supra* tbl. 3.1. This is a result of adding the percentages for households earning over \$90,000. Recall the taxable maximum is \$87,000. See *supra* note 36 and accompanying text.

⁷⁴ See *supra* note 36 and accompanying text.

2. White Households

TABLE 3.2

WHITE HOUSEHOLDS

Household Income	Percent
\$0 to 10,000	10.44
\$10,001 to 20,000	12.59
\$20,001 to 30,000	16.32
\$30,001 to 40,000	17.40
\$40,001 to 50,000	14.63
\$50,001 to 60,000	10.18
\$60,001 to 70,000	6.33
\$70,001 to 80,000	3.93
\$80,001 to 90,000	2.33
\$90,001 to 100,000	1.61
\$100,001 to 120,000	1.57
\$120,001 and over	2.68
Total	100.00

Table 3.2 shows that 10.44% of White married couples are in households earning up to \$10,000.⁷⁵ In households earning between \$10,001 and \$20,000, there are 12.59% of married White couples.⁷⁶ In households earning between \$20,001 and \$30,000, there are 16.32% of married White couples.⁷⁷ In households earning between \$30,001 and \$40,000, there are 17.40% of married White couples.⁷⁸ In households earning between \$40,001 and \$50,000, there are 14.63% of married White couples.⁷⁹ In households earning between \$50,001 and \$60,000, there are 10.18% of married White couples.⁸⁰ In households earning between \$60,001 and \$70,000, there are 6.33% of married White couples.⁸¹ In households earning between \$70,001 and \$80,000, there are 3.93% of married

⁷⁵ See *supra* tbl. 3.2.

⁷⁶ See *supra* tbl. 3.2.

⁷⁷ See *supra* tbl. 3.2.

⁷⁸ See *supra* tbl. 3.2.

⁷⁹ See *supra* tbl. 3.2.

⁸⁰ See *supra* tbl. 3.2.

⁸¹ See *supra* tbl. 3.2.

White couples.⁸² There is a total of 91.82% of married White couples in households earning less than the taxable maximum.⁸³

For households earning between \$80,001 and \$90,000, there are 2.33% of married White couples.⁸⁴ For households earning between \$90,001 and \$100,000, there are 1.61% of married White couples.⁸⁵ For households earning between \$100,001 and \$120,000, there are 1.57% of married White couples.⁸⁶ For households earning over \$120,000, there are 2.68% of married White couples.⁸⁷ For households earning over \$90,000, there are 5.86% of married White couples.⁸⁸ Therefore, only 5.86% of married White couples would potentially benefit from being in a two-earner household.⁸⁹

These tables show that virtually all married couples, regardless of race, are in households below the taxable maximum.⁹⁰ As a result, couples in two-earner households are far more likely to be penalized than receive a benefit. Notice however, that couples in households at or above the taxable level are twice as likely to be White than Black.

⁸² See *supra* tbl. 3.2.

⁸³ See *supra* tbl. 3.2. This is a result of adding the percentages for households earning up to \$80,000.

⁸⁴ See *supra* tbl. 3.2.

⁸⁵ See *supra* tbl. 3.2.

⁸⁶ See *supra* tbl. 3.2.

⁸⁷ See *supra* tbl. 3.2.

⁸⁸ See *supra* tbl. 3.2. This is a result of adding the percentages for households earning over \$90,000. Recall the taxable maximum is \$87,000. See *supra* note 17 and accompanying text.

⁸⁹ See *supra* note 36 and accompanying text.

⁹⁰ This is to be contrasted with published data showing that over 20% of married couples are above the taxable maximum. See *supra* note 3 and accompanying text.

C. Spousal Contributions

1. Black Households

TABLE 3.3⁹¹

HOUSEHOLD CONTRIBUTION BY AFRICAN-AMERICAN WIVES

Household Income	90% to 100%	80% to 90%	70% to 80%	60% to 70%	50% to 60%	40% to 50%	30% to 40%	20% to 30%	10% to 20%	0% to 10%
\$0 to \$10,000	42.27	1.40	1.60	1.57	1.83	2.89	2.23	2.05	2.36	41.81
\$10,001 to 20,000	22.31	2.19	2.53	2.88	4.45	7.63	6.22	5.41	5.30	41.09
\$20,001 to 30,000	10.37	1.68	2.70	4.15	8.32	15.70	12.94	9.17	6.48	28.51
\$30,001 to 40,000	5.28	1.39	2.41	4.73	11.37	21.35	15.57	10.40	6.65	20.84
\$40,001 to 50,000	2.43	1.01	2.00	5.71	13.28	23.46	20.93	11.86	6.23	13.07
\$50,001 to 60,000	1.06	.61	1.98	5.54	13.49	29.39	22.04	12.08	5.67	8.16
\$60,001 to 70,000	.75	.34	1.87	5.96	15.28	31.21	22.42	12.12	4.41	5.64
\$70,001 to 80,000	.82	.57	1.17	5.27	16.17	31.76	24.19	10.43	3.80	5.82
\$80,001 to 90,000	.47	.19	1.72	4.48	16.20	33.26	21.76	12.75	3.77	5.40
\$90,001 to 100,000	.65	.54	2.11	4.63	11.42	31.01	22.71	13.87	7.15	5.90
\$100,001 to 120,000	1.20	1.62	2.12	5.37	8.59	27.56	23.20	16.32	5.98	8.04
\$120,001 and over	5.46	2.56	2.55	3.07	4.63	17.14	9.09	11.43	12.13	31.94

Table 3.3 shows that other than at very low and high income levels, very few Black wives are in households where their husbands are the single

⁹¹ The information in tables 3.3 and 3.4 is from a 1990 Public Use Micro-Data Sample (on file with author) and is based upon a 5% sample of the population of same race couples. Tables 3.3 and 3.4 were previously published in *Race, Class, and Gender*, *supra* note 6, at 1492, 1496 (reprinted with permission of author).

earner.⁹² Table 3.3 shows that for households earning between \$30,001 and \$120,000, Black wives are most likely to contribute between 40 and 50%. In households earning up to \$10,000, the greatest percentage of Black wives, 42.27%, is found in households where they contribute between 90 and 100% to household income.⁹³ The second highest percentage of Black wives, 41.81%, is found in households where they contribute between 0 and 10% to household income.⁹⁴ The third highest percentage of Black wives, 2.89%, contributes between 40 and 50% to household income.⁹⁵ At this household income level, the vast majority of Black wives are in single-earner households.⁹⁶ They are slightly more likely than their husbands to be the primary wage earner.⁹⁷

In households earning between \$10,001 and \$20,000, the greatest percentage of Black wives, 41.09%, is found in households where they contribute between 0 and 10% to household income.⁹⁸ The second highest percentage of Black wives, 22.31%, is found in households where they contribute between 90 and 100% to household income.⁹⁹ The third highest percentage of Black wives, 7.63%, contributes between 40 and 50% to household income.¹⁰⁰ Again, the majority of Black wives are in primary wage-earner households.¹⁰¹ Black wives are almost six times more likely to contribute between 0 and 10% to household income than to contribute roughly equal amounts to household income.¹⁰²

In households earning between \$20,001 and \$30,000, the greatest percentage of Black wives, 28.51%, is found in households where they contribute between 0 and 10% to household income.¹⁰³ The second highest percentage of Black wives, 15.70%, contributes between 40 and 50% to household income.¹⁰⁴ The third highest percentage of Black wives, 12.94%, contributes between 30 and 40% to household income.¹⁰⁵

⁹² See *supra* tbl. 3.3.

⁹³ See *supra* tbl. 3.3.

⁹⁴ See *supra* tbl. 3.3.

⁹⁵ See *supra* tbl. 3.3.

⁹⁶ See *supra* tbl. 3.3.

⁹⁷ See *supra* tbl. 3.3.

⁹⁸ See *supra* tbl. 3.3.

⁹⁹ See *supra* tbl. 3.3.

¹⁰⁰ See *supra* tbl. 3.3.

¹⁰¹ See *supra* tbl. 3.3.

¹⁰² See *supra* tbl. 3.3.

¹⁰³ See *supra* tbl. 3.3.

¹⁰⁴ See *supra* tbl. 3.3.

¹⁰⁵ See *supra* tbl. 3.3.

In households earning between \$30,001 and \$40,000, 21.35% of Black wives contribute between 40 and 50% to household income.¹⁰⁶ The second highest category of Black wives in households earning between \$30,001 and \$40,000 is where they contribute between 0 and 10% to household income.¹⁰⁷ In that instance, 20.84% of Black wives contribute between 0 and 10% to household income. Their husbands therefore contribute between 90 and 100%.¹⁰⁸ Slightly more Black wives are in equal wage-earning households than single-earner households.¹⁰⁹ The third highest percentage of Black wives is found where 15.57% contribute between 30 and 40% to household income.¹¹⁰

In households earning between \$40,001 and \$50,000, 23.46% of Black wives contribute between 40 and 50% to household income.¹¹¹ The second highest category of Black wives is found in the 30 to 40% contribution range where 20.93% of Black wives contribute between 30 and 40%.¹¹² The third highest percentage of Black wives, 13.28%, contribute between 50 and 60% to household income.¹¹³

In households earning between \$50,001 and \$60,000, 29.39% of Black wives contribute between 40 and 50% to household income.¹¹⁴ The second highest category of Black wives is found where 22.04% contribute 30 to 40% to household income.¹¹⁵ The third highest category of Black wives is found where 13.49% contribute between 50 and 60% to household income.¹¹⁶

In households earning between \$60,001 and \$70,000, 31.21% of Black wives contribute between 40 and 50% to household income.¹¹⁷ The second highest category of Black wives is found where 22.42% contribute between 30 and 40% to household income.¹¹⁸ The third highest category of Black wives is found where 15.28% contribute between 50 and 60% to household income.¹¹⁹

¹⁰⁶ See *supra* tbl. 3.3.

¹⁰⁷ See *supra* tbl. 3.3.

¹⁰⁸ See *supra* tbl. 3.3.

¹⁰⁹ See *supra* tbl. 3.3.

¹¹⁰ See *supra* tbl. 3.3.

¹¹¹ See *supra* tbl. 3.3.

¹¹² See *supra* tbl. 3.3.

¹¹³ See *supra* tbl. 3.3.

¹¹⁴ See *supra* tbl. 3.3.

¹¹⁵ See *supra* tbl. 3.3.

¹¹⁶ See *supra* tbl. 3.3.

¹¹⁷ See *supra* tbl. 3.3.

¹¹⁸ See *supra* tbl. 3.3.

¹¹⁹ See *supra* tbl. 3.3.

In households earning between \$70,001 and \$80,000, 31.76% of Black wives contribute between 40 and 50% to household income.¹²⁰ The second highest category is where 24.19% of Black wives contribute between 30 and 40% to household income.¹²¹ The third highest category is where 16.17% of Black wives contribute between 50 and 60% to household income.¹²²

In households earning between \$80,001 and \$90,000, 33.26% of Black wives contribute between 40 and 50% to household income.¹²³ The second highest category is where 21.76% of Black wives contribute between 30 and 40% to household income.¹²⁴ The third highest category is where 16.20% of Black wives contribute between 50 and 60% to household income.¹²⁵

In households earning between \$90,001 and \$100,000, 31.01% of Black wives contribute between 40 and 50% to household income.¹²⁶ The second highest category is where 22.71% contribute between 30 and 40% to household income.¹²⁷ The third highest category is where 13.87% of Black wives contribute between 20 and 30% to household income.¹²⁸

In households earning between \$100,001 and \$120,000, 27.56% of Black wives contribute between 40 and 50% to household income.¹²⁹ The second highest category is where 23.20% contribute between 30 and 40% to household income.¹³⁰ The third highest category is where 16.32% contribute between 20 and 30% to household income.¹³¹

In households earning \$120,001 and over, 31.94% of Black wives contribute between 0 and 10% to household income.¹³² The second highest category is where 17.14% contribute between 40 and 50% to household income.¹³³ The third highest category is where 12.13% of Black wives contribute between 10 and 20% to household income.¹³⁴

¹²⁰ See *supra* tbl. 3.3.

¹²¹ See *supra* tbl. 3.3.

¹²² See *supra* tbl. 3.3.

¹²³ See *supra* tbl. 3.3.

¹²⁴ See *supra* tbl. 3.3.

¹²⁵ See *supra* tbl. 3.3.

¹²⁶ See *supra* tbl. 3.3.

¹²⁷ See *supra* tbl. 3.3.

¹²⁸ See *supra* tbl. 3.3.

¹²⁹ See *supra* tbl. 3.3.

¹³⁰ See *supra* tbl. 3.3.

¹³¹ See *supra* tbl. 3.3.

¹³² See *supra* tbl. 3.3.

¹³³ See *supra* tbl. 3.3.

¹³⁴ See *supra* tbl. 3.3.

2. White Households

TABLE 3.4¹³⁵

HOUSEHOLD CONTRIBUTION BY WHITE WIVES

Household Income	90% to 100%	80% to 90%	70% to 80%	60% to 70%	50% to 60%	40% to 50%	30% to 40%	20% to 30%	10% to 20%	0% to 10%
\$0 to \$10,000	43.08	1.03	1.17	1.16	1.35	2.44	1.75	1.66	1.92	44.45
\$10,001 to 20,000	24.67	1.71	2.06	2.45	3.23	5.95	5.06	4.93	5.35	44.59
\$20,001 to 30,000	10.31	1.30	1.96	2.75	4.90	9.47	9.40	8.46	8.44	43.00
\$30,001 to 40,000	4.11	.89	1.47	2.69	5.99	13.08	12.80	11.21	10.16	37.60
\$40,001 to 50,000	1.82	.57	1.17	2.69	7.11	15.13	16.48	13.05	10.76	31.23
\$50,001 to 60,000	.95	.42	.90	2.64	7.85	18.50	18.42	13.82	10.41	26.09
\$60,001 to 70,000	.70	.32	.83	2.57	8.35	19.54	19.09	15.53	9.60	23.47
\$70,001 to 80,000	.71	.28	.61	2.43	7.97	18.93	20.63	13.43	9.60	25.39
\$80,001 to 90,000	.64	.27	.64	2.17	7.85	19.19	17.95	15.21	10.17	25.91
\$90,001 to 100,000	.84	.30	.80	2.05	6.35	15.61	14.95	13.89	9.77	35.45
\$100,001 to 120,000	.73	.41	1.00	2.39	5.54	13.82	13.86	14.12	12.21	35.91
\$120,001 and over	1.20	.76	1.35	1.51	2.47	6.76	6.35	9.11	12.79	57.70

Table 3.4 provides that at all income levels, the greatest percentage of White wives are found in households where they contribute between 0 and 10% to household income.¹³⁶ In those households their husbands contribute between 90 and 100%.¹³⁷

¹³⁵ See *supra* note 91.

¹³⁶ See *supra* tbl. 3.4.

¹³⁷ See *supra* tbl. 3.4.

In households earning up to \$10,000, 44.45% of White wives contribute between 0 and 10% to household income.¹³⁸ The second highest category of White wives is 43.08% and is found in households where they contribute between 90 and 100%.¹³⁹ The third highest category is where 2.44% of White wives contribute between 40 and 50%.¹⁴⁰

In households earning between \$10,001 and \$20,000, the highest category of White wives is 44.59% and is found in households where they contribute between 0 and 10% to household income.¹⁴¹ The second highest category is 24.67% and is found in households where White wives contribute between 90 and 100% to household income.¹⁴² The third highest category is 5.95% and is found where wives contribute between 40 and 50% to household income.¹⁴³

In households earning between \$20,001 and \$30,000, the highest percentage of White wives, 43%, is found in households where they contribute between 0 and 10% to household income.¹⁴⁴ The second highest percentage of White wives, 10.31%, is found in households where they contribute between 90 and 100% to household income.¹⁴⁵ The third highest percentage of White wives, 9.47%, is found in households where they contribute between 40 and 50%.¹⁴⁶

In households earning between \$30,001 and \$40,000, the highest percentage of White wives, 37.60%, is found in households where they contribute between 0 and 10% to household income.¹⁴⁷ The second highest percentage of White wives, 13.08%, is found in households where they contribute between 40 and 50% to household income.¹⁴⁸ The third highest category of White wives, 12.80%, is found in households where they contribute between 30 and 40% to household income.¹⁴⁹

In households earning between \$40,001 and \$50,000, the highest percentage of White wives, 31.23%, is found in households where they contribute between 0 and 10% to household income.¹⁵⁰ The second highest percentage of White wives,

¹³⁸ See *supra* tbl. 3.4.

¹³⁹ See *supra* tbl. 3.4.

¹⁴⁰ See *supra* tbl. 3.4.

¹⁴¹ See *supra* tbl. 3.4.

¹⁴² See *supra* tbl. 3.4.

¹⁴³ See *supra* tbl. 3.4.

¹⁴⁴ See *supra* tbl. 3.4.

¹⁴⁵ See *supra* tbl. 3.4.

¹⁴⁶ See *supra* tbl. 3.4.

¹⁴⁷ See *supra* tbl. 3.4.

¹⁴⁸ See *supra* tbl. 3.4.

¹⁴⁹ See *supra* tbl. 3.4.

¹⁵⁰ See *supra* tbl. 3.4.

16.48%, is found in households where they contribute between 30 and 40% to household income.¹⁵¹ The third highest category of White wives, 15.13%, is found in households where they contribute between 40 and 50% to household income.¹⁵² There is almost twice as many White wives who contribute between 0 and 10% to household income than White wives who contribute at either of the next two highest categories combined.¹⁵³

In households earning between \$50,001 and \$60,000, the highest percentage of White wives, 26.09%, is found in households where they contribute between 0 and 10% to household income.¹⁵⁴ The second highest percentage of White wives, 18.50%, is found in households where they contribute between 40 and 50% to household income.¹⁵⁵ The third highest percentage of White wives, 18.42%, is found in households where they contribute between 30 and 40% to household income.¹⁵⁶ At this income level, although the highest percentage of White wives is found in households where they contribute between 0 and 10% to household income, there are a significant percentage of White wives who contribute non-trivial amounts to household income.¹⁵⁷

In households where income is between \$60,001 and \$70,000, the highest percentage of White wives, 23.47%, is again in households where they contribute between 0 and 10%. Less than 1% contribute between 90 and 100% to household income.¹⁵⁸ The second highest percentage of White wives, 19.54%, is found in households where they contribute between 40 and 50% to household income.¹⁵⁹ The third highest percentage of White wives, 19.09%, is found in households where they contribute between 30 and 40% to household income.¹⁶⁰ The greatest percentage of White wives is found in households where their spouses contribute between 90 and 100%.¹⁶¹

In households where income is between \$70,001 and \$80,000, the highest percentage of White wives, 25.39%, is found in households where they contribute between 0 and 10% to household income.¹⁶² The second highest percentage of White wives, 20.63%, is found in households where they contribute between 30

¹⁵¹ *See supra* tbl. 3.4.

¹⁵² *See supra* tbl. 3.4.

¹⁵³ *See supra* tbl. 3.4.

¹⁵⁴ *See supra* tbl. 3.4.

¹⁵⁵ *See supra* tbl. 3.4.

¹⁵⁶ *See supra* tbl. 3.4.

¹⁵⁷ *See supra* tbl. 3.4.

¹⁵⁸ *See supra* tbl. 3.4.

¹⁵⁹ *See supra* tbl. 3.4.

¹⁶⁰ *See supra* tbl. 3.4.

¹⁶¹ *See supra* tbl. 3.4.

¹⁶² *See supra* tbl. 3.4.

and 40% to household income.¹⁶³ The third highest percentage of White wives, 18.93%, is found in households where they contribute between 40 and 50% to household income.¹⁶⁴

In households where income is between \$80,001 and \$90,000, the highest percentage of White wives, 25.91%, is found in households where they contribute between 0 and 10% to household income.¹⁶⁵ The second highest percentage of White wives, 19.19%, is found in households where they contribute between 40 and 50% to household income.¹⁶⁶ The third highest percentage of White wives, 17.95%, is found in households where they contribute between 30 and 40% to household income.¹⁶⁷

For households with income of \$90,001 to \$100,000, the highest percentage of White wives, 35.45%, is found in households where they contribute between 0 and 10% to household income.¹⁶⁸ The second highest percentage of White wives, 15.61%, is found in households where they contribute between 40 and 50% to household income.¹⁶⁹ The third highest percentage of White wives, 14.95%, is found in households where they contribute between 30 and 40%.¹⁷⁰

For households with income of \$100,001 to \$120,000, the highest percentage of White wives, 35.91%, is found in households where they contribute between 0 and 10% to household income.¹⁷¹ The second highest percentage of White wives, 14.12%, is found in households where they contribute between 20 and 30% to household income.¹⁷² The third highest percentage of White wives, 13.86%, is found in households where they contribute between 30 and 40% to household income.¹⁷³ At this income level there are 13.82% of White wives who contribute between 40 and 50% to household income.¹⁷⁴ Therefore, there are two and a half times as many White wives contributing between 0 and 10% to household income as there are White wives who contribute between 40 and 50% to household income.¹⁷⁵

¹⁶³ See *supra* tbl. 3.4.

¹⁶⁴ See *supra* tbl. 3.4.

¹⁶⁵ See *supra* tbl. 3.4.

¹⁶⁶ See *supra* tbl. 3.4.

¹⁶⁷ See *supra* tbl. 3.4.

¹⁶⁸ See *supra* tbl. 3.4.

¹⁶⁹ See *supra* tbl. 3.4.

¹⁷⁰ See *supra* tbl. 3.4.

¹⁷¹ See *supra* tbl. 3.4.

¹⁷² See *supra* tbl. 3.4.

¹⁷³ See *supra* tbl. 3.4.

¹⁷⁴ See *supra* tbl. 3.4.

¹⁷⁵ See *supra* tbl. 3.4.

In households greater than \$120,000, the greatest percentage of White wives, 57.70%, is found in households where they contribute between 0 and 10% to household income.¹⁷⁶ The second highest percentage of White wives, 12.79%, is found in households where they contribute between 10 and 20% to household income.¹⁷⁷ The third highest percentage of White wives, 9.11%, is found in households where they contribute between 20 and 30% to household income.¹⁷⁸ At this income level, there are only 6.76% of White wives who contribute between 40 and 50% to household income.¹⁷⁹ There are eight and one-half times as many White wives in households where they contribute between 0 and 10% to household income than contribute between 40 and 50% to household income.¹⁸⁰

D. Data Analysis

1. *White Wives Are More Likely to be Eligible for the Greatest Spousal and Survivor Benefits than Black Wives*

TABLE 3.5

PERCENT OF HUSBANDS WHO ARE SINGLE EARNERS¹⁸¹

Household Income	Black Wives Who Contribute Between 0 and 10%	White Wives Who Contribute Between 0 and 10%
\$0–10,000	41.81	44.45
\$10,001–20,000	41.09	44.59
\$20,001–30,000	28.51	43.00
\$30,001–40,000	20.84	37.60
\$40,001–50,000	13.07	31.23
\$50,001–60,000	8.16	26.09
\$60,001–70,000	5.64	23.47
\$70,001–80,000	5.82	25.39
\$80,001–90,000	5.40	25.91
\$90,001–100,000	5.90	35.45
\$100,001–120,000	8.04	35.91
\$120,001 & over	31.94	57.70

¹⁷⁶ See *supra* tbl. 3.4.

¹⁷⁷ See *supra* tbl. 3.4.

¹⁷⁸ See *supra* tbl. 3.4.

¹⁷⁹ See *supra* tbl. 3.4.

¹⁸⁰ See *supra* tbl. 3.4.

¹⁸¹ Table 3.5 is a compilation of data provided in tables 3.3 and 3.4 found at *supra* notes 91, 135.

Table 3.5 provides data for wives who contribute no more than 10% to total household income.¹⁸² Table 3.5 shows that at all income levels there is a greater percentage of White husbands who are single earners (or contribute at least 90% of household income) than are Black husbands.¹⁸³ Spousal benefits under the Social Security System are the greatest for households with one wage earner.¹⁸⁴ Survivor benefits are also greater for single-earner households than for two-earner households.¹⁸⁵ Therefore, White husbands are far more likely than Black husbands to provide the greatest spousal benefits for their wives. For households earning between \$40,001 and \$120,000, there are at least twice as many White husbands as Black husbands who are primary wage earners and at some income levels as many as six times as many White husbands as Black husbands who are primary wage earners.¹⁸⁶ Notice, however, at the lower income levels—households earning \$20,000 and less—the similar percentages of Black and White husbands who are the primary wage earners.¹⁸⁷

Table 3.5 also makes clear that the balance of households not included in this table include the majority of Black married households at all income levels and the majority of White married households in all but the upper income households.¹⁸⁸ Therefore, the decreased social security benefits received by Black married couples also will impact a majority of low and middle income White married couples.

¹⁸² See *supra* tbl. 3.5.

¹⁸³ See *supra* tbl. 3.5.

¹⁸⁴ See *supra* notes 25–29 and accompanying text; see also *supra* note 3 (describing the impact of the taxable maximum).

¹⁸⁵ See *supra* note 48 and accompanying text.

¹⁸⁶ See *supra* tbl. 3.5. Households earning \$90,001 and over are above the taxable maximum. Therefore, two-earner couples could receive social security benefits greater than single-earner couples. For further analysis, see *supra* note 36 and accompanying text.

¹⁸⁷ I believe that this is a function of the severe marriage penalties associated with the earned income tax credit and is the focus of a separate article that I am co-authoring. See generally Dorothy A. Brown, Stacy Dickert-Conlin, & Scott Hauser, *The Earned Income Tax Credit in Black and White* (Feb. 14, 2004) (unpublished manuscript, on file with author).

¹⁸⁸ See *supra* tbl. 3.5.

E. White Wives Are More Likely than Black Wives to be Found in the Spousal Benefit Phase-Out

TABLE 3.6

PERCENT OF WIVES WHO CONTRIBUTE NO MORE THAN 20%¹⁸⁹

Household Income	Black Wives Who Contribute Between 0 and 20%	White Wives Who Contribute Between 0 and 20%
\$0–10,000	44.17	46.37
\$10,001–20,000	46.39	49.94
\$20,001–30,000	34.99	51.44
\$30,001–40,000	27.49	47.76
\$40,001–50,000	19.30	41.99
\$50,001–60,000	13.83	36.50
\$60,001–70,000	10.05	33.07
\$70,001–80,000	9.62	34.99
\$80,001–90,000	9.17	36.08
\$90,001–100,000	13.05	45.22
\$100,001–120,000	14.02	48.12
\$120,001 & over	44.07	70.49

Table 3.6 provides racial data for households where wives do not contribute more than 20% to household income.¹⁹⁰ Spousal benefits are still paid for households with this income contribution percentage, but those spousal benefits are declining.¹⁹¹ At every income level, there is a greater percentage of White wives who contribute no more than 20% to household income than Black wives.¹⁹² In fact, 7 of 12, or 58.3%, of the income categories have over 40% of White wives contributing no more than 20% to household income.¹⁹³ For Black wives, the calculation is 3 out of 12, or 25%.¹⁹⁴ Therefore, a far greater percentage of White wives than Black wives based on each income category are eligible for spousal benefits and subject to the phase out.

¹⁸⁹ Table 3.6 is a compilation of data provided in tables 3.3 and 3.4 found at *supra* notes 91, 135.

¹⁹⁰ See *supra* tbl. 3.6.

¹⁹¹ See *supra* notes 28–36 and accompanying text.

¹⁹² See *supra* tbl. 3.6.

¹⁹³ See *supra* tbl. 3.6.

¹⁹⁴ See *supra* tbl. 3.6.

There are similar percentages in households earning up to \$20,000, even though there is a slightly greater percentage of White than Black wives.¹⁹⁵ For households between \$40,000 and \$120,000, the differences are greater.¹⁹⁶ In many of those households, White wives are up to three times more likely than Black wives to contribute up to 20% to household income.¹⁹⁷ At the very high income levels, there are a significantly higher percentage of White wives eligible to receive spousal benefits than Black wives.

F. Black Wives Are More Likely than White Wives to Receive No Spousal Benefits

TABLE 3.7

PERCENT OF WIVES WHO CONTRIBUTE AT LEAST 30%¹⁹⁸

Household Income	Black Wives Who Contribute At least 30%	White Wives Who Contribute At Least 30%
\$0–10,000	53.79	51.98
\$10,001–20,000	48.21	45.13
\$20,001–30,000	55.86	40.09
\$30,001–40,000	62.10	41.03
\$40,001–50,000	68.82	44.97
\$50,001–60,000	74.11	49.68
\$60,001–70,000	77.83	51.40
\$70,001–80,000	79.95	51.56
\$80,001–90,000	78.08	48.71
\$90,001–100,000	73.07	40.90
\$100,001–120,000	69.66	37.75
\$120,001 & over	44.50	20.40

Recall that wives who contribute at least 30% to total household income receive no spousal benefits.¹⁹⁹ Table 3.7 provides that at every household income level there is a greater percentage of Black wives who contribute at least 30% to total household income and would be ineligible to receive spousal benefits.²⁰⁰

¹⁹⁵ See *supra* tbl. 3.6.

¹⁹⁶ See *supra* tbl. 3.6.

¹⁹⁷ See *supra* tbl. 3.6.

¹⁹⁸ Table 3.7 is a compilation of data provided in tables 3.3 and 3.4 found at *supra* notes 91, 135.

¹⁹⁹ See *supra* notes 28–36 and accompanying text. Certain wives who contribute between 20 and 30% to household income receive a spousal benefit and others do not. This table therefore did not include the percentage of wives who contribute between 20 and 30%.

²⁰⁰ See *supra* tbl. 3.7.

Again, at the lower income levels Black and White wives contribute at least 30% in similar percentages.²⁰¹ In 10 of the 12 different income categories, over half of Black wives would be ineligible to receive spousal benefits.²⁰² In 3 of the 12 different income categories, over half of White wives would be ineligible to receive spousal benefits.²⁰³ Over two-thirds of Black wives in 7 of 12 different income categories would be ineligible to receive spousal benefits.²⁰⁴ There is no income level for which over two-thirds of White wives are ineligible to receive spousal benefits.²⁰⁵ In 3 of the 12 different income categories, at least 75% of Black wives would be ineligible to receive spousal benefits because of the significant amounts she is contributing to household income.²⁰⁶

G. Black Wives Are More Likely to Receive the Lowest Survivor Benefit

TABLE 3.8

PERCENT OF WIVES WHO ARE CO-EQUAL WAGE EARNERS²⁰⁷

Household Income	Black Wives Who Contribute Between 40 and 60%	White Wives Who Contribute Between 40 and 60%
\$0-10,000	4.72	3.79
\$10,001-20,000	12.08	9.18
\$20,001-30,000	24.02	14.37
\$30,001-40,000	32.72	19.07
\$40,001-50,000	36.74	22.24
\$50,001-60,000	42.88	26.35
\$60,001-70,000	46.49	27.89
\$70,001-80,000	47.93	26.90
\$80,001-90,000	49.46	27.04
\$90,001-100,000	42.43	21.96
\$100,001-120,000	36.15	19.36
\$120,001 & over	21.77	9.23

²⁰¹ See *supra* tbl. 3.7.

²⁰² See *supra* tbl. 3.7.

²⁰³ See *supra* tbl. 3.7.

²⁰⁴ See *supra* tbl. 3.7.

²⁰⁵ See *supra* tbl. 3.7.

²⁰⁶ See *supra* tbl. 3.7.

²⁰⁷ Table 3.8 is a compilation of data provided in tables 3.3 and 3.4 found at *supra* notes 91, 135.

Table 3.8 shows that at all income levels, Black wives are far more likely than White wives to contribute roughly equal amounts to household income.²⁰⁸ In households earning between \$50,001 and \$100,000, over 40% of Black couples and over 20% of White couples live in households where the husbands and wives contribute roughly equal amounts to household income.²⁰⁹ In households earning over \$120,001, there are more than twice as many Black husbands contributing roughly equal amounts to household income as there are White husbands.²¹⁰ At the very lowest income levels, households earning \$20,000 and under, the percentage differences between White and Black households are the smallest.²¹¹

In households earning \$90,001 and over, two-earner households may receive greater social security benefits than single-earning households.²¹² However, only 2.03% of married Black couples²¹³ and only 5.86% of married White couples²¹⁴ are at or above the taxable maximum.

Survivor benefits decrease the greater the wife's contribution to household income.²¹⁵ According to this data, Black wives are far more likely than White wives to contribute equal amounts to household income and, therefore, receive the least amount in survivor benefits.²¹⁶ Black wives are working more and contributing more in social security payments but are not receiving more in spousal benefits. White wives are working less and not contributing as much as Black wives to Social Security, but are receiving spousal benefits. It thus appears that Black wives who work in the paid labor market and do not receive spousal benefits are subsidizing White wives who do not work in the paid labor market, yet receive spousal benefits.

IV. CONCLUSION

Spousal and survivor benefits are rarely analyzed from the perspective of the impact on African-American families. This Article provides such an analysis. It shows that because of the differences in spousal contributions by wives based upon race, social security benefits will differ. Those differences result in decreased spousal and survivor benefits received by Black wives when compared with benefits received by White wives. Black wives are less likely to receive

²⁰⁸ See *supra* tbl. 3.8.

²⁰⁹ See *supra* tbl. 3.8.

²¹⁰ See *supra* tbl. 3.8.

²¹¹ See *supra* note 187.

²¹² See *supra* note 36 and accompanying text.

²¹³ See *supra* note 73 and accompanying text.

²¹⁴ See *supra* note 88 and accompanying text.

²¹⁵ See *supra* notes 23–35 and accompanying text.

²¹⁶ See *supra* tbl. 3.8.

spousal benefits than are White wives, and Black wives are more likely to receive the lowest amount in widow benefits. Further, two-earner Black couples' social security contributions are being redistributed to White couples where the wife does not work in the paid labor market and makes no social security contributions but receives social security benefits. All of this is a result of the dual entitlement limitation that treats contributions as individually made, ignoring marital status, but calculates benefits based on marital status.²¹⁷ Those that study the racially disparate impact of social security benefits should expand their analysis to include married Black women.

²¹⁷ See MCCAFFERY, *supra* note 2, at 91 ("Spouses are separated for purposes of paying social security taxes, but only partially so for purposes of receiving benefits. Each spouse must pay into social security as though he or she were not married, but the ultimate benefits a spouse receives turn on marital status."); Forman, *supra* note 2, at 945 ("[S]ocial security presents the worst of both worlds: the social security retirement tax is based upon individual filing units (workers), while social security retirement benefits are paid based on certain family unit relationships (workers and their auxiliaries).").