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Sex Discrimination in Government Benefit Programs

By COLQUITT M. WALKER*

Government benefit programs provide cash benefits to persons who, for reasons beyond their control, experience a loss of income. Unfortunately, the programs are not available or applied equally to all persons who otherwise qualify. In regard to women, they reflect and perpetuate the same social and financial inequities between men and women that exist in employment, echoing attitudes such as: women's place is in the home, housework is not valid employment, women are merely secondary workers, and wives are dependent appendages to their husbands.

This article shall focus on sexual discrimination as demonstrated in selected government benefit programs—federal old-age survivors and disability insurance,1 unemployment insurance,2 and certain aspects of public assistance.3 It will attempt to identify areas of discrimination and indicate how women are harmed by the laws and regulations governing those programs. These inequities represent another of the masculine restraints on women's efforts to gain self-sufficiency.

The Homemaker "Black-out Period"

In a society which seems to require constantly expanding government benefit programs, legislators and administrators are faced with the problem of finding enough money to finance their commitments and to satisfy all of the increasing demands of various interest groups. Pressured by economic realities, they constantly seek new ways of trimming their budgets. Since women are not adequately represented in legisla-

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* Dean of Admissions, University of California, Berkeley; A.B., 1962, Salem College; LL.B., 1967 Emory University; member, California Bar and Georgia Bar.

2. Id. §§ 501-03 (1964).
tive bodies⁴ and do not control or significantly influence powerful 
groups such as labor,⁵ they are the largest definable group in society 
without sufficient organization to protect their own interests and they 
are defenseless before economizing efforts. Thus, saving at the expense 
of women, demonstratively in social welfare programs, has become a fa-
vorite legislative tactic.

As a result, large numbers of women who have worked exclusively 
as homemakers are excluded from all government benefit programs, 
particularly during middle age. Insurance companies refer to this as the 
"blackout period;" for between the time her last child leaves home 
and she reaches sixty-two a woman is not eligible for any type of 
cash assistance or government insurance. She is not eligible as a widow 
or divorcee of a covered worker to receive social security retirement or 
survivors benefits until age sixty-two.⁶ Without children in the home, 
she cannot qualify for the aid to families with dependent children pro-
gram,⁷ and she is not eligible for old age assistance from the state wel-
fare department until age sixty-five.⁸

If a woman lives with her husband and is supported by him, there 
is no problem. But should she lose him through death, divorce or de-
sertion, there is no social insurance or welfare program to assist her.⁹ 
She has worked in the home as a wife and mother, but is not eligible 
for unemployment compensation should her "employer-husband" no 
longer need her services. She receives no social security coverage for 
the years she worked in the home, and is provided no protection against 
sudden economic crisis. If she never worked outside the home, or has 
not done so in many years, she has no skill with which to support her-

⁴ WOMEN'S BUREAU, U.S. DEP'T OF LABOR, BULL. NO. 294, 1969 HANDBOOK ON 
WOMEN WORKERS 118 [hereinafter cited as HANDBOOK].

In California there are no women in the state senate and three women in the state 
assembly. See MEMBERS OF THE CALIFORNIA LEGISLATURE AND OTHER STATE OFFI-
CIALS (1971).

⁵ The president, all members of Executive Council, and all regional directors of 
the AFL-CIO are men. All the presidents of state labor organizations are men. See 
BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, BULL. NO. 1596 (1968), DI-
RECTORY OF NATIONAL AND INTERNATIONAL LABOR UNIONS IN THE UNITED STATES FOR 
1967.

⁸ Id. § 306(a) (1964).
⁹ There are general assistance (GA) programs administered by individual coun-
ties, which may give such women a small grant if they can show they are unable to work, 
or work is not available, but there is no federal participation in these programs. Also, 
if the woman can prove she is permanently and totally disabled, she may qualify for the 
self. She may need additional training or education, but she has no income to sustain her while she trains. She is left in the degrading position of having to hound her ex-husband for alimony. She must retain her dependency upon him or rely on her children’s charity while trying to make the transition from homemaker to wage earner.

Why have the legislators failed to provide for these women? Is it simply a mistake, or an oversight in the law? The answer is negative. These women are deliberately excluded from benefits. The social security insurance and unemployment programs were designed for workers and are financed by contributions from the employer and the employee.¹⁰ Men making the laws simply gave no value to the work of homemakers and therefore did not include these women as covered employees.

What the exclusion says, in effect, is that although men want and expect women to be in the home raising their children and doing their housework, the economic value to be given the work will be zero. These women will not be allowed to accrue benefits based on their labor, but will purposefully be kept dependent on the man’s charity. This enables men to perpetuate a position of power and control over such women who, with no other source of income and with no economic worth given to their labor, have a strong incentive to stay with their husbands, continuing to serve them.

Certainly a program could be arranged to give homemakers credit for the years of work they perform in the home, thereby giving them the dignity enjoyed by other workers. Such a program could include them in social security and unemployment insurance coverage during their employment in the home. Contributions could be paid by the “employer-husband” in a manner similar to other employers. The plan could also include a government assistance program for “mothers’ benefits” to provide cash income and training for a limited period of time primarily to women who, without husbands, have raised children on aid to families with dependent children or social security benefits and whose children are no longer in the home.

Another option would be to include these women in a guaranteed annual income program where an individual’s income is supplemented by the government. Unfortunately, the guaranteed annual income program now being considered by Congress would apply only to families; women without children would not be covered.¹¹ The possibility of

implementing a program which would give recognition to women for the work they do as homemakers seems remote. It is, however, important to call attention to the problem and the need for such legislation.

**Unemployment Insurance Benefits**

The unemployment insurance program\(^\text{12}\) has several regulations which result in disadvantages to women. Created by the Social Security Act, the program provides funds to assist states in the administration of their individual compensation laws. Each state makes its own laws concerning who may receive benefits, and the amount and duration of the payments.\(^\text{13}\) The purpose is to provide partial income replacement for a limited period to persons who become unemployed.\(^\text{14}\) In California, the insurance is divided into two programs—unemployment compensation\(^\text{15}\) and unemployment disability compensation\(^\text{16}\)—and it will be convenient to use this division in the following discussion.

**Unemployment Compensation**

Unemployment compensation is an insurance program with eligibility rights determined on the basis of the individual's work experience, not on the basis of need.\(^\text{17}\) A wealthy person can collect unemployment if he meets the coverage requirements. There are two areas, however, where legislators have carved out exceptions and introduced a factor of need—when the worker quits because of domestic obligations\(^\text{18}\) or pregnancy.\(^\text{19}\) Such regulations discriminate against women by denying them unemployment benefits on the theory that they are only secondary workers, supplementing the income of husbands, and do not really need un-


\(^{13}\) See id. § 503.

\(^{14}\) U.S. DEP'T OF HEALTH, EDUCATION, AND WELFARE, SOCIAL SECURITY HANDBOOK 425 (4th ed. 1964). See also CAL. UNEMP. INS. CODE § 100 (West 1956) (declaration of policy) which provides in part: "The Legislature therefore declares that in its considered judgment the public good and the general welfare of the citizens of the State require the enactment of this measure under the police power of the State, for the compulsory setting aside of funds to be used for a system of unemployment insurance providing benefits for persons unemployed through no fault of their own, and to reduce involuntary unemployment and the suffering caused thereby to a minimum."

\(^{15}\) CAL. UNEMP. INS. CODE §§ 100-2112 (West 1956).

\(^{16}\) Id. §§ 2601-3271.

\(^{17}\) Dahm, Unemployment Insurance and Women, UNEMPLOYMENT INS. REV., Feb. 1968, at 6. For the computation formula for unemployment benefits see CAL. UNEMP. INS. CODE §§ 1275-82 (West 1956), as amended, (Supp. 1971).

\(^{18}\) E.g., CAL. UNEMP. INS. CODE § 1264 (West 1956).

\(^{19}\) E.g., id. § 2626.
employment benefits. This "need" theory is not only discriminatory but also untrue. Of the 27.5 million women working in the United States in March 1967, 21.5 percent were single and another 20.7 percent were without a husband as a result of death, divorce or separation. This means 42.2 percent of the women working in 1967 were not secondary workers, but were, in fact, the primary source of income for themselves and their children. As of March 1966, 15.9 million married women were working. Of these working wives, 61.3 percent were working to supplement incomes of husbands making under $7,000 annually. To argue that the income from these women is not needed for their family's economic well-being is absurd.

Because many working women are also homemakers and mothers, they often have to leave their jobs for domestic reasons, such as caring for an ill child or moving with their husbands to a new job. In fifteen states, good cause for voluntarily leaving a job, as defined for purposes of unemployment compensation, is restricted to reasons connected with work, attributable to the employer or involving fault on the part of the employer. In these fifteen states, workers who quit for domestic reasons are disqualified from benefits by voluntary-quit provisions. In twenty-three other states, even though quitting for domestic reasons is considered good cause for leaving a job, special restrictions are

20. See Dahm, supra note 17, at 6.
21. HANDBOOK, supra note 4, at 23.
22. Eleven percent of all families were headed by women in 1967. Id. at 28. Almost one-third of them lived in poverty, according to the poverty index of the United States Social Security Administration. Id. at 31-32.
23. Id. at 34.
24. "Fifty-eight percent of all women sixteen years of age and over in the labor force in March 1967 were married." Id. at 23.
25. "Working mothers with children under eighteen years of age numbered 10.6 million in March 1967. They represented 38 percent of all such mothers in the population and 38 percent of all women workers." Id. at 37.

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placed on benefits for workers in such a situation. These special provisions usually disqualify workers until they have again become employed in bona fide employment for varying lengths of time.26 This means that in thirty-eight states workers (usually women) who quit jobs for domestic reasons are not eligible for unemployment benefits. Even though a woman may be "able and available for work" and actively seeking employment, she will not be eligible.27

Under all state unemployment laws, pregnant women are singled out for particularly harsh treatment.28 Instead of determining eligibility on an individual basis, thirty-six states and the District of Columbia


27. In five of these states (California, Nevada, Idaho, Illinois, and Pennsylvania) the disqualification is not applicable if the claimant is or becomes the sole or major support of herself or family. The California statute, CAL. UNEMP. INS. CODE § 1264 (West 1956), is typical. It provides: "Notwithstanding any other provision of this division, an employee who leaves his or her employment to be married or to accompany his or her spouse to or join her or him at a place from which it is impractical to commute to such employment or whose marital or domestic duties cause him or her to resign from his or her employment shall not be eligible for unemployment insurance benefits for the duration of the ensuing period of unemployment and until he or she has secured bona fide employment subsequent to the date of such voluntary leaving; provided that, notwithstanding any other provision of this division, this section shall apply only to claims for unemployment compensation benefits and shall not apply to claims for unemployment compensation disability benefits. The provisions of this section shall not be applicable if the individual at the time of such voluntary leaving was and at the time of filing a claim for benefits is the sole or major support of his or her family."

The relevant statutes of the other four states are: IDAHO CODE ANN. § 72-1366(c) (1949), as amended, (Supp. 1969); ILL. ANN. STAT. ch. 48, § 420 (Smith-Hurd 1966), as amended, (Supp. 1971); NEV. REV. STAT. § 612.415(2) (1967); PA. STAT. ANN. tit. 43, § 802(b)(2) (1964).

have adopted regulations which disqualify all pregnant women from benefits regardless of the circumstances.29 By adopting general policies, the states disregard the fact that the ability and desire to work before and after pregnancy varies from woman to woman, and that the circumstances of each individual should, therefore, be considered to prevent inequities.

If pregnant women were treated like other workers, quitting a job because of a physical inability to continue or because of simple disinterest in working would disqualify them from eligibility for benefits under the normal "able"30 and "available for work"31 test applied to all persons seeking unemployment benefits.32 However, if a pregnant

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U-141, COMPARISON OF STATE UNEMPLOYMENT INSURANCE LAWS § 450, at E-19 to E-21 (1970) [hereinafter cited as COMPARISON].


30. COMPARISON, supra note 28, § 405.
31. Id. § 410, at E-4 to E-5.
32. All state laws provide that, to receive benefits, a claimant must be able to work and must be available for work, i.e., he must be in the labor force and his unemployment must be due to lack of work. He must also be free from disqualification for
woman was involuntarily unemployed due to a layoff or the insistence of her employer simply because she was pregnant, she would be considered eligible. It is true that a pregnant woman might find it difficult to secure employment because of employer reticence to hire persons in her condition, but this should not alter the fact that she is available and willing to work and therefore eligible for unemployment benefits. Unfortunately, as stated above, a majority of the states have laws which put all pregnant women into one special category so that even those who want to continue working, and are able to do so, are punished and disqualified from unemployment benefits just because they are pregnant.

While all states deny benefits to unemployed pregnant women without regard to the individual's ability or willingness to work, the nature of the denial varies considerably. Many states disqualify pregnant women for a flat period of time, as this is the easiest type of law to administer. Periods of disqualification vary from four weeks to four months before confinement and from four weeks to three months after birth of the child. The longer the disqualification period, the more instances there will be in which benefits are denied women who in fact are able and available for work.

... such acts as voluntary leaving without good cause, discharge for misconduct connected with the work, and refusal of suitable work. See, e.g., Cal. Unemp. Ins. Code § 1253(c) (West 1956), as amended, (Supp. 1971) which provides: "An unemployed individual is eligible to receive unemployment compensation benefits with respect to any week only if the director finds that:

... (c) He was able to work and available for work that week."

33. See Comparison, supra note 28, § 435. This table compares the disqualification provisions for all the states and can be referred to for specific provisions.

34. See id.


Unemployment Disability Compensation

There are three states besides California—New Jersey, New York, and Rhode Island—which have programs that provide benefits for unemployment due to non-work-connected temporary disability. All four states exclude or limit benefits for disability due to pregnancy. In these states, pregnant women are caught in a double bind. If they are physically unable to work because of the pregnancy, they are disqualified for regular unemployment benefits because their disability renders them not "able and available" for work. In addition, under the unemployment disability laws, illness due to pregnancy is not covered, so the unemployed pregnant woman is denied benefits from either form of compensation. This is an example of the point made earlier in the article that when male legislators have to balance the budget of a government program, benefits to women are a favorite place to cut.

This kind of treatment is arbitrary and unfair, yet the California law was upheld as constitutional in a 1958 case. A pregnant woman who had stopped working on her doctor's advice, challenged the denial of disability benefits on the grounds that California Unemployment Insurance Code section 2626 subjected her to an "arbitrary classification and [deprived] her of the equal protection of the law, of due process of law, of the right to the pursuit of happiness, and of the enjoyment of


42. See, e.g., CAL. UNEMP. INS. CODE § 2626 (West 1956), which provides: "'Disability' or 'disabled' includes both mental or physical illness and mental or physical injury. An individual shall be deemed disabled in any day in which, because of his physical or mental condition, he is unable to perform his regular or customary work. In no case shall the term 'disability' or 'disabled' include any injury or illness caused by or arising in connection with pregnancy up to the termination of such pregnancy and for a period of 28 days thereafter."

43. See text accompanying notes 4-6 supra.

privileges and immunities . . . granted to other citizens." The court held that to include pregnant women in the disability coverage would undoubtedly cause increased financial demands upon the funds available and the cost of the program would go up. The legislators, therefore, were acting reasonably to protect the solvency of the disability fund when they excluded pregnant women. Thus, the law could be upheld as constitutional.

Public Assistance

Public assistance programs created by the Social Security Act are designed to give cash benefits to persons who meet a certain level of need. The programs are administered by the states, who set the level of need, the amount of aid, and to some extent the eligibility requirements. The federal government gives funds to the states for these programs and approves state plans to assure compliance with federal guidelines. Two examples of public assistance programs, notable for their sex discrimination are the work incentive program (WIN) and the aid to the permanently and totally disabled program (ATD).

Work Incentive Program

The WIN program was established under the 1967 amendments to the Social Security Act to provide jobs for adult recipients of aid to families with dependent children (AFDC). The program requires the secretary of labor to provide a program for placing individuals (1) in regular jobs and in on-the-job training; (2) in work training programs; and (3) in special work projects. Individuals enter the WIN program through referral from the local welfare department. The department will make a referral if it determines that any adult on an AFDC grant is “appropriate” for placement in the program, and whether there are suitable child care plans available so that a mother can perform

45. *Id.* at 329, 332 P.2d at 717.
46. *Id.* at 331-33, 332 P.2d at 719-20. This case might be decided differently today as the United States Supreme Court has held, in cases such as Shapiro v. Thompson, 394 U.S. 618 (1969), that a state may not deprive a person of constitutional rights in order to save money.
work or receive training. Mothers, therefore, are not "appropriate" for referral unless there is adequate care for their children.

The child care requirement can work against women in two ways. Since the states have great discretion in determining what is adequate care, a state may have a very lenient definition of suitable care which would make nearly every AFDC mother "appropriate" for mandatory referral to WIN. This could mean that even mothers without adequate care for their children would be forced to leave them and go into WIN. Or, a state may have such a narrow definition of adequate care that no mother would be considered appropriate for referral, even though the mother herself felt her children were well cared for and she wanted to go to WIN. These are extreme examples, but they illustrate the need for reasonable federal guidelines on child care to be applied to all state WIN plans so that mothers will receive equitable, uniform treatment from state to state.

The other aspect of WIN that can discriminate against women is the requirement that unemployed fathers on AFDC must be referred to WIN within thirty days after the family begins receiving assistance, and that these fathers be given first priority in the WIN program. If WIN programs had adequate space for all the men who must be referred, and all the women who want to be referred, there would be

52. Id. § 602(a)(20).
53. See id. In California as of April 1970 there were the following number of day nurseries licensed by the State Department of Social Welfare and therefore qualifying as adequate child-care plans for WIN mothers:

- 1,042 proprietary (private, for profit)
- 429 nonprofit
- 620 church affiliated

2,091 total number of nurseries

The capacity of the nurseries was:

- 45,044 proprietary
- 15,543 nonprofit
- 28,786 church affiliated

89,373 total number of children

HUMAN RELATIONS AGENCY, CALIFORNIA DEP'T OF SOCIAL WELFARE, AR-1-12, PUBLIC WELFARE IN CALIFORNIA, table 41 (1969-1970). The inadequacy of the available care is clear, as there are 808,570 children who received welfare in fiscal year ending June 30, 1970. Id., table 1.


55. In California, July 1969 to June 1970, 27,936 men were referred to WIN. HUMAN RELATIONS AGENCY, CALIFORNIA DEP'T OF SOCIAL WELFARE, AR-1-12, ANNUAL STATISTICAL REPORT SERIES, table 60 (1969-70).

56. In California, from July 1969 to June 1970, 16,112 women were referred to WIN. Id.
no problem of discrimination, as every woman who wanted to participate could do so. This, however, is not the case, as funds for the program are limited, and therefore the number of participants is also limited. Because the men get first priority on referral, they fill the available places, and make it difficult, if not impossible, for the women to participate.

For example, in California's Alameda County no women have been enrolled in the WIN program since April 1969. There are 457 women now in the program, but they were enrolled when the program was initiated. Since that time, all vacancies have been filled by men. As of March 1971 there were 1,103 women on the waiting list for WIN, some of whom have been waiting as long as two years. In an interview with the author, the director of the Alameda County WIN program expressed his opinion that more women were interested in WIN than those currently on the waiting list, but they know they have no chance of getting into the program and do not bother signing up. The director stated it was cheaper to have men in WIN than women, because men do not require a child care allowance. Women who participate in the program have all child care expenses paid by WIN. The cost averages about $100 per family. Women also need more money than men for transportation as they often have to take children to a babysitter or nursery school.

Despite the fact that women are more costly to train, the director felt experience had shown that the program was more successful with women. A higher percentage of women than men complete the training (which may be basic education courses, junior college, or vocational training) and a higher percentage of women obtain and keep jobs related to their training. Men, on the other hand, take the first job offered them and seem less interested in the training.

From the standpoint of cutting costs, it is more profitable to the states to have men participate in WIN because their training allowance

57. In California the WIN normal capacity for active training participants at any one time is 16,800 slots. Id., table 61.
59. Id.
60. Interview with Mr. Vancy Bulluck, Vocational Supervisor II, Vocational Services Section, Alameda County Welfare Department, in Alameda, California, Apr. 1971.
61. Id.
62. Id.
63. Id.
is generally lower and they drop out more quickly to take jobs. Once men have a job, their families must go off public assistance, and the state can therefore reduce the welfare rolls. Women, however, may stay on AFDC after completing WIN and getting a job. Since women's wages are usually low, they generally cannot earn enough to meet their families' needs, and hence must continue on aid.

In excluding women from WIN by giving men priority for participation, the legislators have saved money at the expense of women. What the legislators are saying by this is that they are not particularly concerned with increasing a person's chances in life by training them for better opportunities, rather their specific concern is with getting people off welfare and saving the state money. Since women will probably stay on welfare anyway, even after training, their participation in WIN is given lower priority. The fact that the large majority of families on welfare are headed by women who are unable to break out of the poverty cycle because they lack such training seems to be overlooked.

64. See text accompanying notes 61-63 supra.

65. In California, 3,185 AFDC-U (unemployed father) cases were closed in the period July 1969—June 1970 because of employment or increased earnings within 6 months following participation in WIN. However, only 1,101 of the cases where women were the WIN participants were closed during the same period. ANNUAL STATISTICAL REPORT SERIES, supra note 55, table 61.

66. The median income for a white female in 1959 was $1,441 as compared with $4,103 for a white male. A nonwhite female had a median income of $909. H. MILLER, U.S. BUREAU OF THE CENSUS, INCOME DISTRIBUTION IN THE UNITED STATES (A 1960 CENSUS MONOGRAPH) 198 (1966).

67. Under the federal provisions, deprivation due to unemployment of the parent is limited to the unemployment of the father. 42 U.S.C. § 5607(a) (1964). Thus, the employment of the father may eliminate the source of deprivation on which aid is predicated. However, the employment of the mother may not eliminate the source of deprivation under statutes based on the federal requirement and under California provisions when another source of deprivation exists. See CALIFORNIA DEP'T OF SOCIAL WELFARE, PUBLIC SOCIAL SERVICES MANUAL OF POLICIES & PROCEDURES 42-301.1 (1967) and accompanying interpretation. "Aid, services, or both shall be granted . . . to families of related children under the age of 18 years . . . in need thereof because they have been deprived of parental support or care due to: (a) The death, physical or mental incapacity, or incarceration of a parent; or (b) The divorce, separation or desertion of a parent or parents and resultant continued absence of a parent from the home for these or other reasons; or (c) The unemployment of a parent or parents. CAL. WELF. & INST'NS CODE § 11250 (West 1956); accord, CALIFORNIA DEP'T OF SOCIAL WELFARE, PUBLIC SOCIAL SERVICES MANUAL OF POLICIES & PROCEDURES 42-301.1 (1967).

68. In California, in 1970, 972,646 persons (adults and children) receiving AFDC were in women-headed families, as opposed to 168,440 persons in families where the father was present and unemployed. PUBLIC SOCIAL SERVICES MANUAL, supra note 67, app. J. For the national picture, in 1969, AFDC mothers were present in 92 percent of the families receiving aid. Eppley, The AFDC Family in the 1960's, WELFARE IN REVIEW, Sept.-Oct. 1970, table 12.
Aid to the Permanently and Totally Disabled

Another example of such discrimination in public assistance occurs in the Aid to the Permanently and Totally Disabled Program (ATD). Federal funds are made available to complement state financing once a state has submitted an aid plan which receives the approval of the Secretary of Health, Education, and Welfare. The Social Security Act describes as eligible for such assistance those "needy individuals eighteen years of age and older who are permanently and totally disabled . . . ." Disability is not further defined in the federal statute, leaving the states to decide for themselves what "permanently" and "totally" mean. However, the Department of Health, Education and Welfare (HEW) does have guidelines for the states which, though not mandatory, have considerable influence on the states' policies.

Until recently, HEW regulations on disability gave the following definition:

"[P]ermanently and totally disabled" means that the individual has some permanent or mental impairment, disease or loss that substantially precludes him from engaging in useful occupations within his competence, such as holding a job or homemaking.

The term "totally" . . . is not an absolute in that it must be considered in reference to the ability of the person . . . to perform those activities necessary to carrying out specified responsibilities such as those necessary to employment or homemaking. [It] involves considerations in addition to those verified through medical findings, such as age, training skills, and work experience, and the probable functioning of the individual in his particular situation in light of his impairment.

. . . . [A]dults are ordinarily expected to take care of themselves and their families. For some people this means engaging in gainful employment; for others, it means the maintenance of a home and caring for children. . . . In order to function in either capacity, individuals must be able to perform certain activities in assuming a given role in society. . . . The individual's capacity for functioning in society will therefore derive from a relationship between the kinds of activities that are necessary in his individual role as an employable person, as a homemaker . . . and his use of his families in carrying such a role.

70. Id. In California, the State Department of Social Welfare handles the program. Cal. Welf. & Inst'ns Code §§ 13500-800 (West 1956).
States seem to have taken the HEW regulations as an authorization to create a special category for women seeking disability benefits. If a woman can do light tasks around her own home, such as washing dishes and making up a bed, she may not be considered totally disabled and may have benefits denied. A man, however, will be judged on his ability to work in full time employment at his usual occupation. If he can no longer hold a job, he will be considered totally disabled. Under such tests it is obviously easier for a man to prove his disability than a woman.

The California disability guidelines are a flagrant example of how a state has used the homemaker test to exclude women from benefits. The California welfare department’s definition of homemaker is as follows:

A homemaker is defined as a person of either sex who carries homemaking responsibilities for at least one person in addition to himself. A homemaker is evaluated against both employability and ability to carry the major duties of homemaking. A person living alone shall not be evaluated as a homemaker.

A person who has carried the responsibilities for both homemaking and employment and is unable to continue employment shall be evaluated against homemaking. Homemaking responsibilities include maintenance of the home in an acceptable state of cleanliness, laundry, preparation of meals, procurement of necessary supplies. Activities of homemaking also include: the care of young children, such as lifting and carrying infants, and in an

disabled' means that the individual has some permanent physical or mental impairment, disease, or loss, or combination thereof, that substantially precludes him from engaging in useful occupations within his competence, such as holding a job.

"Under this definition . . . 'totally' involves considerations in addition to those verified through the medical finding, such as age, training, skills, and work experience, and the probable functioning of the individual in his particular situation in light of his impairment; an individual's disability would usually be tested in relation to ability to engage in remunerative employment. The ability to keep house or to care for others would be the appropriate test for (and only for) individuals, such as housewives, who were engaged in this occupation prior to the disability and do not have a history of gainful employment . . . ." 36 Fed. Reg. 3867-68 (1971).

California, however, has made no attempt to bring its regulations into conformity with this new HEW regulation.

73. E.g., compare CALIFORNIA DEP'T OF SOCIAL WELFARE, PUBLIC SOCIAL SERVICES MANUAL OF POLICIES & PROCEDURES 43-203.31 (1967) (useful occupations "other than homemaking") with id. 42-203.32 (homemakers).

74. See id. 42-203.32. But cf. id. 42-203.22. "Total disability within the definition does not mean inability to perform all tasks in a given occupation. For example, a homemaker confined to a wheelchair would be eligible even though she could perform some of the tasks in homemaking, but there remain a substantial number which she cannot perform without assistance." Id. 42-203.22 (emphasis added).

75. Id. 42-203.33 (provision is not limited to males).
emergency, preschool children, accompanying children to community activities; to sources of medical care; and in primitive settings, carrying water or fuel and building fires. A finding that a person is unable to perform the occupation of homemaking shall require a determination that he is unable to perform a significant combination or grouping of homemaking activities because of his permanent impairment.76

The regulation, though applicable on its face to persons of either sex, is in practice used almost exclusively for women. Men are usually awarded benefits on the finding that they can no longer hold a job. A woman, however, is tested not only against her ability to hold a job, but also against her ability to act as a homemaker.

What the homemaker regulation totally ignores is the fact that the ability to do homemaking in her own home is in no way related to meeting a woman’s economic needs. A woman who can make a bed and wash the dishes in her own home still has no money and still has need of assistance if she is too disabled to get out and earn enough money to sustain herself. Such regulations are cruel in their application and work hardships on the very women the program should be helping—those who are too sick to earn a living wage.

In California, the homemaker test is now being challenged in the case of Doffer v. Martin.77 One of the plaintiffs who was denied ATD benefits is a forty-seven year old disabled woman who lives with her disabled husband (who receives ATD) and cannot continue in her employment as a domestic. The other plaintiff is a fifty-three year old woman living with her mentally retarded, adult daughter. Although disabled, these women have been denied disability benefits because they live with another person and presumably act as a homemaker for them, even though the other person also has no income and cannot pay for the homemaking services. It is outrageous that a state would use such methods to avoid helping those in society who cannot, because of physical infirmity, help themselves. It is a disgusting example of how far legislators and administrators will go to keep down the costs of government programs, and how little they care about what happens to the individual citizen.

Conclusion

This article has examined various governmental programs and their discrimination against women. Discrimination exists at all levels

of government—federal, state, and local—and operates to deny benefits to many women when their need is most critical. It is time that such inequalities be exposed and the needs of women cease to be ignored or sacrificed for the sake of the economy. The laws and regulations are vulnerable to challenge. They often violate the articulated legislative intent of the Social Security Act and deny benefits to persons whom the statute was supposedly intended to help. Male legislators are not likely to recognize these inequalities or to change them on their own initiative. It will be necessary to challenge the laws in the courts of each state where such discrimination exists. It will be necessary to alert legislators to the fact that women are aware of such discrimination and intend to fight for equality. Finally, and most importantly, women must acquire equal representation on legislative and administrative bodies. That is where the power is and that is where women's rights have been disregarded, diluted and bargained away.