
# The Phyllis Schlafly Report

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# Tax Exemptions for Children

In 1950, I had my first child, a bouncing baby boy whom we named John. In addition to all the love and sunshine he brought into our home, he also brought an income tax exemption of $600 per year. That amounted to 18 percent of the median annual income of all American families (which was then $3,319).

A family of four in 1950 (husband, wife, and two children) had four times $600, or $2,400 in income tax exemptions. Those exemptions amounted to 72 percent of the American family's median family income.

This year, I had my first grandchild, a bouncing baby boy whose parents named him Tom. In addition to the love and sunshine he brought into our lives, he brought an income tax exemption to his parents of $1,000 per year.

Does the increase in a child's income tax exemption from $600 to $1,000 indicate that a baby is worth more in income tax exemptions in 1982 than in 1950? On the contrary, when you compare the child's income tax exemption to median family income, the U.S. tax code has determined that my grandson Tom is worth less than one-fourth as much as my son John was worth 32 years ago.

Today's $1,000 income tax exemption is only 4 percent of the American family's median family income in 1982 (which is now between $23,000 and $24,000), compared to the 18 percent of the 1950 median famiy income that the $600 exemption was.

A family of four (couple and two children) this year would have $4,000 in income tax exemptions, which adds up to only 17 percent of the American family's median family income. The 17 percent in exemptions that today's family of four can deduct on its income tax return is only a pittance compared to the 72 percent that a family of four would have been able to deduct in 1950.

If my grandson Tom were to get the same income tax exemption today that my son John got in 1950, Tom's exemption would be at least $4,000 per year.

These figures show how the income tax burden over the last three decades has been shifted onto the backs of the people with children. Yet they are the ones on whom the future of our nation depends.

I have examined both my 1950 son and my 1982 grandson very closely. I've held them and hugged them and loved them. There is no way anyone can convince me that the 1982 baby is worth only one-fourth as much a tax exemption as the 1950 baby.

A 1982 baby is far more costly to have and bring up than a 1950 baby. The doctor's fee for pre-natal care and delivery of a baby today is approximately five times what it was in 1950. A new book says that it literally costs a fortune to raise a child; in today's dollars it costs $226,000 to raise a son and $247,000 to raise a daughter from birth through age 22.

When a couple has one child, it needs a 26 percent increase in income after taxes in order to maintain its former standard of living. If a couple has two children, it needs an income increase of 47 percent in order to maintain its previous standard of living.

Yet, over the last three decades, couples with two children have suffered a 43 percent increase in federal income taxes. Couples with four children have been hit with a 223 percent hike in federal income taxes. On the other hand, the federal income tax burden on single persons and on couples with no children is about the same today as three decades ago.

Are these figures a surprise and a shock to you? They were to me when I sat down and figured out from the U.S. tax code how American families have been ripped off through manipulation of the income tax rates and tables. And it's all been done without any discussion or debate of this major policy change.

One hesitates to say that Congress made these changes secretly, but ask yourself: Did you ever hear a Congressman discuss or defend his votes for the legislation that shifted the tax burden so massively onto the backs of families with children? If not, isn't it time that they answer to the voters for their stewardship of the U.S. tax structure?

This injustice should be remedied in the very next tax bill passed by Congress. The people with children need their own hard-earned money to support their families. This is where the future of our nation lies.

# Community Property Laws—Justice For Wives

The enactment of community-property laws in all 50 states would provide a measure of economic protection for wives that is often needed and that, in any case, is deserved. Such laws would be a recognition by society of the dignity and importance of the role of homemaker, and of the nature of marriage as an institution whose essence is sharing.

The division of labor between husbands and wives has traditionally been the central economic feature of the institution of marriage. The big majority of married couples lived together throughout their adult lives; the husband worked outside the home to bring economic resources into the family, while the wife assumed primary responsibility for the home and the day-to-day management of the family.

The rise in the divorce rate, the increasing percentage of wives in the labor force, and the growth of single-parent households have changed this traditional pattern for millions of couples. Whether those changes are permanent, or are due to temporary causes such as inflation, remains to be seen.

Despite the media attention widely given to these changes, about half of American married couples still live in a lifestyle in which the husband is the primary breadwinner and the wife is the primary homemaker. The key word here is "primary," since hardly anyone is the "exclusive" or "sole" breadwinner or homemaker.

Our laws should provide a just way to recognize the fact that the homemaker's economic contribution to the marriage is essential not only to current income but to the breadwinner's increase in earning capacity. This is difficult because the breadwinner's economic contribution is quantified in dollars while the homemaker's is not.

In our U.S. federal system, family law is part of the legal domain reserved to the states, rather than delegated to the federal government. The marriage laws of the 50 states have evolved differently for historical reasons, but the common denominator of all 50 states was that every state (by statute, common law, or case law) made it the obligation of the husband to support his wife. As stated in American Jurisprudence 2d: "One of the most fundamental duties imposed by the law of domestic relations is that which requires a man to support his wife and family."

However, the legal rationale behind the legal rights and duties was different. Of the 50 states, 42 are based on English common law, and 8 are based on the French/Spanish community-property rationale.

## The Problem: Inadequate Protection

Under English common law in regard to marriage, the wife was accorded many important rights which no one could take from her. But since the system was designed principally to serve primogeniture (that is, to preserve the landed property for the eldest son), it did not accurately characterize the economic partnership that typically existed between husband and wife. Under English common law, "the husband and wife were one, and that one was the husband" who became the legal owner of all of his wife's property.

The English system of family law adapted only imperfectly to the American society, especially as money came to replace land as the principal store of wealth. During the 19th and early 20th centuries, all the American states enacted the Married Women's Property. Acts which generally gave wives the right to own, inherit, give, and sell all kinds of property.

However, these acts really substituted a regime in which the spouses were treated as economic strangers to each other. These acts worked well enough to protect women of means from unscrupulous or incompetent husbands, but they did little or nothing for the typical wife or her family. The Married Women's Property Acts, fastened onto the common-law foundation, left all the economic assets in a typical marriage as belonging to the husband simply because it was purchased with the money he earned outside the home rather than with the benefits of the intangible assets resulting from her labor within the home.

While this formal characterization of the property as belonging to the husband would normally make no difference in a marriage in which the spouses are committed to sharing their lives and resources, it leaves the wife severely disadvantaged in cases of premature widowhood, divorce, bad faith, a husband's miserliness, or economic disorder. The psychological effect is also significant; a woman who would be otherwise happy and proud to be a homemaker may find it unsettling that the law regards the money she spends and the house in which she lives as her husband's property and not hers.

The law should accord formal recognition to the fact that a husband and wife may choose to divide their labors into wage-earner and homemaker, while retaining their equal dignity in a true economic partnership.

## Inadequate Solution: ERA

Proposals such as the Equal Rights Amendment (federal or state), and other gender-blind or sex-neutral laws, would do absolutely nothing to alleviate the real economic inequality of the wife, since the problem does not result from laws treating men and women unequally but from laws that do not take account of their differences in economic behavior. Indeed, the problems of disadvantaged and displaced homemakers, and of wives who do not formally own any property, have long coexisted side by side with the gender-neutral Married Women's Property Acts and with State Equal Rights Amendments.

Equal Rights Amendments (federal and state) would require only a sex-blind treatment of individuals by the government. ERAs would not require any change whatsoever in the system under which a husband who works outside the home owns all his earnings, and everything purchased with them, to the exclusion of the homemaker wife. Indeed, the only effect of Equal Rights Amendments (federal or state] would be to force states to repeal or modify special advantages or protections which wives and widows now enjoy (and which have been upheld by the U.S. Supreme Court under the Equal Protection Clause of the Fourteenth Amendment). It is clear that, when it comes to the matter of justice for wives, ERAs are a fraud and a delusion.

A mere requirement of gender-blindness or sex-neutrality would not solve the real problem of inadequate legal recognition of the homemaker's interests, because "homemaker" is a gender-neutral term. If a husband stays home to manage the home and children while his wife works as an attorney or plumber, ERAs would simply saddle him with the same economic problems as are now faced by wives who do not work outside the home.

However, just because the problem of justice to wives cannot be solved by ERAs or by gender-blind laws, that does not mean that it cannot be solved at all. Justice for wives can be achieved by community-property laws.

## What Are Community Property Laws?

The essence of the community-property concept is that husband and wife jointly and equally own all the property earned or acquired by either of them during the marriage. This recognizes the economic partnership of the two spouses, and the equal though different contributions they make to the family unit under the traditional division of labor.

Community property is of Germanic origin and came to America with the Spanish and French settlers. In eight of the United States — Louisiana, Texas, New Mexico, Arizona, Nevada, California, Washington and Idaho — the community property law of Spain became the basic matrimonial regime. Thus, one-half of Ronald Reagan's salary as President is actually owned by Nancy Reagan, since they are California residents.

Under Spanish law, community property is the property earned by each of the spouses during the marriage; the husband and wife continue to own individually the property they owned before marriage, as well as gifts and inheritances acquired after marriage.

When the U.S. progressive income tax rates rose sharply during World War II, the dramatic tax advantages enjoyed by community-property states over the common law states became obvious. To secure those same tax benefits for their own citizens, Hawaii, Michigan, Nebraska, Oklahoma, Oregon and Pennsylvania converted to community-property regimes during the 1940s.

In 1948, the federal income tax law recognized the fairness of the community-property concept when it adopted the joint income tax return for all states. The aforementioned six states subsequently repealed their community-property laws.

More recently, some states have adopted a concept of "marital property" providing for the division of "marital property" at time of divorce in "just proportions." These schemes depend on judicial discretion and do not affect the rights of spouses during marriage, or of widows, so they should not be considered equivalent to community-property laws.

The 1981 Reagan tax law was a tremendous tax reform for the benefit of widows. Federal tax law now considers all property jointly-owned by husbands and wives to be owned half by each spouse upon the death of the first spouse. Furthermore, a husband can arrange his property so as to leave his entire estate to his widow completely free from federal death taxes. But since this law pertains only to taxes at death, it cannot be considered a community-property system.

The community-property system is based on a just theory, and the historical experience of the eight states proves that it is the best system of addressing the economic reality of the marriage relationship. It recognizes the wife as a partner in the family enterprise, in which each spouse fulfills a specialized but equal function. The community-property concept is based on marriage as an economic partnership. It is the only system that provides adequate protection for the career homemaker.

## Some Community-Property Questions

Enactment of a community-property system to replace a common-law system is complicated and is not a panacea. If not carefully legislated, some features of the community-property system could work to the disadvantage of the homemaker whose spouse is greedy or irresponsible. The facts of *Kirchberg v. Feenstra*, in which the U.S. Supreme Court held unconstitutional a Louisiana provision giving husbands but not wives certain powers over community property, are a good illustration. However, the Louisiana statute in question was changed by the State Legislature even before the Court's decision, and the injustice was not the fault of the community-property concept but of a loophole in a particular community-property statute.

Between 1967 and 1978, all eight community property states overhauled their laws to provide for gender-neutral matrimonial regimes. The problems faced by these states, the solutions at which they arrived, and particularly the arguments for and against these solutions will be useful to legislators in common-law states considering adoption of a community-property system.

A good matrimonial regime should set the fairest standard for the largest number of couples, should take people as it finds them, must be designed to be acceptable to spouses throughout their lives, and should be self-operative to the maximum extent possible.

To what extent should the spouses, before or after marriage, be allowed to contract for a different economic relationship than that provided by a community-property statute? All the present community-property states allow the spouses to contract *before* marriage for some alternate matrimonial system. By allowing people with special needs to provide in advance for those needs, the general law can tailor its provisions better to suit the needs of most married couples.

Allowing modification of the community-property regime *after* marriage is more controversial, although the revised laws of all eight community-property states also allow such contracts. While there are good arguments for and against this result, allowing full freedom of contract between spouses would prevent what otherwise might be unfair and unpredictable results of applying a community-property regime to marriages which were entered into under a common-law system of separate property.

What property should be characterized as community property and what should remain the separate property of each spouse?

The most acceptable general rule, which is followed by all eight community-property states, is that the property owned by each party prior to the marriage remains his or her separate property, and that property earned by either spouse during the marriage belongs equally to both spouses. The universal experience of all

community-property regimes is that most couples prefer to share the property *of the marriage*.

This rule avoids disinheriting relatives of a spouse who dies after inheriting property from an ancestor who did not want the property to pass out of his family. In case of a marriage followed shortly by divorce, no injustice is worked by equally dividing all the property acquired during the marriage; whereas dividing the premarital property might depend on many circumstances such as who was at fault.

Inheritances and gifts are the major exceptions to the rule that property acquired after marriage belongs to the community. Neither of those depend on the earnings, skill or industry of the spouses. An inheritance should be presumed to belong to the heir and not to his or her spouse. Gifts and bequests should be allocated according to the intention of the donor.

## Management of Community Property

The most complicated and controversial question pertaining to community-property laws is the question of the management (as opposed to ownership) of the community money and assets. Since each spouse owns an equal, undivided, present interest in the community property, who has the authority to manage and dispose of it? It isn't always practical, or even desirable, for two people to *deal* simultaneously with the same asset in an equal and undivided manner.

The eight community-property states (patterned on the Spanish and French laws) originally resolved this difficulty by giving the husband the power to manage the community property, and by granting the wife corresponding privileges and immunities against the husband and against third parties with whom he might deal. When community-property states adopted a gender-neutral system in recent years, they had to choose among three basic management methods:

1) The consent of both spouses could be required in order to control, manage or dispose of community assets. This method was rejected by all eight states as an impractical way of dealing with most commercial and consumer transactions, although all the community-property revisions require both spouses to consent to some kinds of transactions such as real estate.

2) Either spouse, acting alone, could control, manage and dispose of community assets. This method was selected by all the community-property states except Texas.

3) Each spouse could control, manage and dispose only of those community assets that he or she brought into the community, subject to the ultimate rights of the other spouse as co-owner. This method was chosen by Texas despite the arguments that it would not bring about "true equality" and that it assumed a lack of trust between spouses.

At first glance, those arguments appear to have merit. However, the charge that a wife is denied "true equality" unless she has the same power to dispose of her husband's earnings during marriage as he has to dispose of those same earnings, fails to address the real needs of most marriages. A good marriage law should not concentrate on giving the spouses equal *power* to harm each other, but on giving them equal *protection* against harms that the other spouse might deliberately or inadvertently inflict.

The Texas plan has three principal features. (1) The consent of both spouses is required to dispose of certain classes of community property: real estate, a community business, home furniture, clothing, and joint property. (2) Either spouse can act to bind the community property in order to provide for the necessary expense of the marriage, including food, clothing, shelter, and the children's education. (3) In all other cases, each spouse has the power to dispose of his or her separate property. (4) Where community property under the management of one spouse has been commingled with property under the management of the other, or of both, then both spouses must act in order to dispose of the property. (5) Both spouses must concur for the making of gifts of community assets.

Texas has achieved a workable compromise of the various management methods and best meets the real problem of giving protection to the wife in a community-property system.

## Recommendation

Adopting a community-property system in the 42 states that do not now have it would be a practical way to provide legal recognition of the equal dignity and the equal value of the homemaker wife's contribution to marriage. Although a changeover from a common-law system of marriage law to a community-property system would present some difficulties and complications, this would provide more tangible "homemaker's rights" than any other legislation currently being debated. It would provide a system of equal justice for wives that is tangible, meaningful, and long overdue.

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