



Official Use

Conferencia Interamericana de Seguridad Social
Inter-American Conference on Social Security

february-01-2005

English - Or. English

CISS/CAJS/04/05
Official Use

**Effects on Social Security of the Evolution of the Family and
Family Law**

By Alejandro Cortizo, Attorney of the CISS

English - Or. English

1 Introduction

1. The twentieth century was a period of wonderful progress in external conditions that have greatly blessed families throughout the world. During no other comparable period of time in recorded human history there as many beneficial economic, educational, medical, social, and political developments that have contributed so much to the external welfare of families as during the twentieth century. Paradoxically, while external conditions have never been better for families in the world, internal conditions for families in many parts of the world have seriously degenerated.¹

2. Since the creation of Social Security Institutions in the first decades of the Twenty Century, the right to health care and pensions were established for the worker and his/her family, i.e. his/her spouse and his/her children. In these years, divorces, common law marriages and the number of mono-parental families were rare.

3. These new family structures and the increase of mono-parental families, orphans and common law marriages in the last decades were a new challenge for Social Security legislators to either constantly reform their laws or to implement new administrative policies or guidelines. First, to find a new definition for the concept of family, and second, to give the right, to current and previous spouses and children from multiple marriages, to receive health care and surviving Social Security pensions.

4. The objective of this document is to analyze how the Social Security Institutions are following up with this new reality by adapting its legislations. First, we will analyze demographic changes in the last four decades, specifically: divorces, mono-parental families, orphans, and common law marriages. Secondly, we will make a comparative law study from Social Security legislations as well as civil and family laws in several countries from three different continents²: Europe, Latin America and the Caribbean, and Asia; verifying if this part of society is or is not protected by law, considering that a perfect legal system must be based on the permanent actualization of legal frameworks by those legislators in charge of Social Security, civil and family reforms.

5. Basically, we will concentrate in answering specific questions related to surviving Social Security pensions: i) who is entitled to receive surviving pensions?; ii) how are pensions divided?; iii) how do pensions terminate?; iv) do children from multiple marriages or from common law relations have the right to receive pensions?; v) how to divide pension benefits between widows, widowers and orphans when there is a family disintegration before or after the insured dies?; vi) is there a continuity of Social Security services in case of family disintegration (for example, health insurance or maternity services)?; vi) are there certain limits for receiving several pensions at the same time?; vii) is there a possibility of changing surviving Social Security pension benefits from another Social Security pension in case the eligible prospect meets requirements for both pensions simultaneously?; viii) what happens when, after pension benefits are granted, new members of the family become present?, and ix) are there special programs or subsidies to protect these part of society by governments?.

¹ Lynn D. Wardle, *The Effects on Social Security of Changes in the Family and Family Law*.

² The countries selected for our study are: In Europe: Great Britain, France, Germany, Spain and Sweden; in Latin America: United States, Canada, Mexico, Colombia, Costa Rica, Cuba, Argentina, El Salvador, Honduras, and Chile; in the Caribbean: Dominican Republic, Haiti and the British Virgin Islands; and in Asia, Japan, Singapore and China.

6. Finally, we will make conclusions and present some recommendations that could be applied for better Social Security systems.

2 Evolution of family structure

7. Family is word wild recognized as the basic union structure in society, and exists in every precedent community with its own different characteristics and conditions in time and place³. This union is susceptible to several changes that can transform it into new structures, some of them never recognized in society before (same sex common law and legal marriages, and their right to adopt a child). After the Second World War, family law has significantly revolutionized, not only in terms of rights and obligations from each of its members, but also in the roll of State Governments. This evolution has come mainly in issues like: marriage, divorce, family conduct, women in the labor force, and their respective economical situations.

For the purpose of Social Security entitlements, new forms are of interest: divorces, mono-parental families, orphans, and common law marriages. The firs group are mono-parental families, constituted by only one of the parents and their children, and can come about through the breakdown of a relationship, either marriage or unmarried, with dependent children (where they are considered to be either aged under 16, or 16-24), or the birth of a child or children outside a partnership. Also they can become lone parents by the dead of one of the partner. The occurrence of lone parenthood has increased considerably in the last 20-40 years. It is said, in fact, that two out of three mono-parental families are constituted by the mother, issue that has become an international concerned by government countries and international organizations, such as: Pan American Health Organization and the World Health Organization, where they had mentioned, in several times, how fast and important has become these radical changes in the structure of the family units related also with the increase in the number of women and adolescents in the work force and the disappearance of extended families⁴. The second group are the high number of orphans in the world, considerate the most vulnerable population and far from reaching a survivor pension or any other economical or service assistance. Finally, the third group, common law marriages or as in some countries call it "cohabitating couples". These new structure units has also increased radically, but the main problem is that it is not legally recognized in some develop and developing countries, taking a way their main rights and obligations for each of its members. Moreover, in countries that do accept common law marriages, there rights and obligations are ambiguous.

2.1 Divorces

8. One of the basic problems that society has faced on the last decades is the enormous number of divorces and the decrease on marriages due, on what some experts think, "people use to married younger with no responsibility and knowledge of their rights and obligations; now, later age at marriage or not married at all⁵". Countries that seem to be culturally and politically conservative, have moved toward making marriage more freely terminable. Grounds of divorce resembles in the degree to which legal systems have accepted unilateral no-fault divorce, where free terminability of marriage in most countries, by no means, connotes freedom from economic responsibilities toward

³ La Familia y las Ciencias Sociales, Compilación de Ana Vera Estrada, Biblioteca Basica de Historia y Cultura de la Familia en Cuba. Centre de Investigación y Desarrollo de la Cultura Cubana Juan Marinello, pag. 79

⁴ Pan American Health Organization. World Health Organization. 44th Directing Council. 55th Session of the Regional Committee. Washington, D. C., USA, 22-26 September 2003. Resolution CD44.r12. Family and Health.

⁵ Marriage, Divorce, and Remarriage in the 1990s. Athur J. Norton and Louisa F. Miller. U-S. Department of Commerce. Economic and Statistics Administration. Bureau of Census.

former dependents⁶. It seems that the main idea has become a transformation of the judicial divorced process into a fast, light and softly concept.

The following Table 1 shows the rate of divorces during the 60s, 70s, 80s, and the 90s. Three aspects can be noted from this table. First, the rate of divorce has always been higher in the developed countries: most of the countries in Europe, United States, Canada and Japan (probably because they have better registration systems); second, the divorce rates begun rising after the liberalized laws went into effect in 1970s. Beginning in the late 1960s, the rates climbed rather steeply until the 1980s, when they seem to have stabilized at relatively high levels⁷. In general, between 80s and 90s the rate of divorces in Europe, Latin America and the Caribbean, and Asia grew 55 %, 69 % and 30 % respectively (See Graphs A, B, and C); and third, the difference of the number of divorces between woman and men are titanic across countries, being the rate of divorces among women almost twice the rate of divorce among men (this is possible due to the fact that some divorced woman are also widows).

**Table 1. Rate of Divorces in the Last Four Decades by Gender
(% of total population)**

Country	Divorces											
	60s			70s			80s			90s		
	M	F	Total	M	F	Total	M	F	Total	M	F	Total
Europe												
France	0.53	0.87	1.40	0.70	1.11	1.82	1.05	1.59	2.65	1.49	2.16	3.65
Sweden	0.96	1.30	2.26	1.64	2.06	3.70	2.42	3.05	5.47	2.76	3.86	6.62
England	0.15	0.25	0.40	0.17	0.31	0.48	0.21	0.36	0.57	0.98	1.39	2.36
Germany	0.29	0.53	0.83	0.33	0.69	1.02	0.49	0.95	1.44	1.27	1.75	3.02
Spain	0.03	0.06	0.08	0.09	0.15	0.24	0.25	0.39	0.64	0.42	0.67	1.09
Latin America												
United States	0.72	1.03	1.75	0.94	1.47	2.40	1.99	2.89	4.88	2.78	3.85	6.63
Canada	0.13	0.19	0.32	0.44	0.65	1.10	0.98	1.45	2.42	2.01	2.62	4.63
Mexico	0.10	0.21	0.31	0.08	0.17	0.26	0.08	0.21	0.29	0.13	0.35	0.48
Costa Rica	0.08	0.17	0.25	0.09	0.20	0.29	0.24	0.52	0.76			
Cuba	0.18	0.43	0.61	0.66	1.47	2.13	1.24	2.47	3.71			
Colombia *	0.25	0.56	0.81	0.22	0.66	0.88				0.94	2.34	3.28
Argentina	0.02	0.04	0.06							0.19	0.36	0.55
El Salvador	0.31	0.39	0.70	0.08	0.21	0.28				0.13	0.28	0.41
Honduras	0.04	0.12	0.16	0.06	0.21	0.27						
Chile *	0.36	0.75	1.11	0.38	0.86	1.24	0.60	1.30	1.89	1.01	1.70	2.70
The Caribbean												
Dominican Republic	0.14	0.48	0.61				0.20	0.66	0.85			
Haití	0.01	0.02	0.03	0.04	0.10	0.13	0.05	0.06	0.11			
Brithish Virgin Islands	0.19	0.12	0.31	0.40	0.30	0.69	0.65	0.80	1.45	1.22	1.48	2.71
Trinidad & Tobago							0.29	0.40	0.69	0.51	0.72	1.23
Asia												
Singapor	0.08	0.10	0.18	0.13	0.21	0.34	0.25	0.44	0.69	0.33	0.58	0.92
Japan	0.30	0.76	1.05	0.34	0.84	1.18	0.55	1.11	1.66	0.82	1.48	2.30
China							0.32	0.08	0.40	0.30	0.12	0.42

* Separated and Divorced

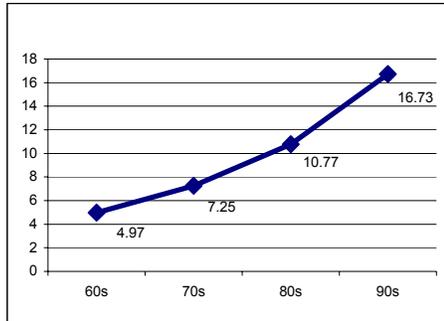
United Nations Demographic Yearbooks. (New York: United Nations)
US Census Bureau

⁶ Mary Ann Glendon. Abortion and Divorce in Western Law. American Failures, European Challenges.

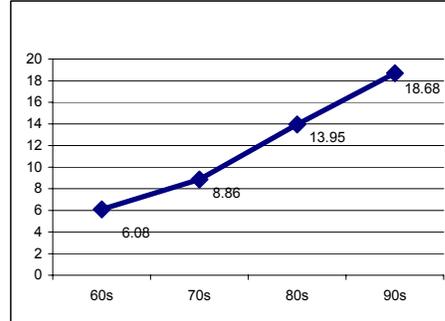
⁷ Mary Ann Glendon, The Transformation of Family Law. State, Law, and Family in the United States and Western Europe. Pag. 193.

9, According to the table above, the rates in the United States and Sweden seem to be the highest. A research done by the United Nations in 1988, concluded that in United States exists the highest rate of divorces in the world, where around 17.2 million woman between 15 and 60 years old got divorced in there first marriage, representing 28 % of divorced woman en the world. 40% of every adult married in the 90`s, got divorced. The average age for people get divorce in United States in the 90s is between 20 and 30 years old⁸.

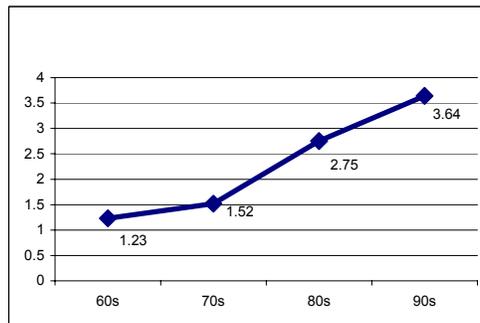
Graph A. Increase of Divorces in Europe in the last Decades as Percentage



Graph B. Increase of Divorces in Latin America in the last Decades as Percentage



Graph C. Increase of Divorces in Asia in the last Decades as Percentage



10. Laurence J. Kotlikoff and Scott Burns in their book called “The Coming Generational Storm; What you need to know about America’s Economic Future”, mentioned in “*The Personal Security System*”, point 5: that workers personal security system contributions should be shared fifty-fifty with their spouses. That provision will be designed to protect nonworking spouses and spouses who are secondary earners. “Married workers would have to split the contributions fifty-fifty with their spouses, so each would end up with equal-size of *personal security system*”. The provision will also protect disable and unemployed, where government would contribute on behalf of them. “By doing so, spouses who don’t work and who work but earn a lot less than their partner would receive the same retirement income. In addition, divorced spouses walk away with their own accounts”.

11. These are the main reasons, presented by some experts, about why divorces have increase so much in the last decades:

⁸ U.S. National Center for Health Statistics, 1991.

- Liberalization divorce laws went into effect⁹ (The basis of most divorces is not fault, but rather irreconcilable differences).
- The new role of woman in society and into the labor force¹⁰.
- Premature marriages¹¹.
- The composition of new family structures like the common law marriages, and the explosion of homosexual couples.

12. One of the most important consequence that these changes bring up in terms of family structure, is the enormous number of children that live in a families whose parents have divorced or never got married, without mentioning the psychological harms (In United States, one from every three children was borne from no married parents. Also in USA, almost one million of children suffer a trauma from their divorced parents. In the middle of the 90`s, 58 of every 100 children joined destroyed homes. In the United Kingdom From the 158,000 divorces in 1999, 70% had children and from those 56 % had children with less than 16 years old).

Box 1

In the next Table we can analyze the increase of divorces in some countries in Europe, by yearly average, before and after the liberalization of divorced laws among 1970s, where in Canada went to almost 7 times after the liberalization.

Comparison of the number of divorces by yearly average for the previous period of the liberalization of the divorce law and the three years period after.

Country	Three years previous to the liberalized divorce law	Last three years	Increase Average on divorces
Germany	98.526	192.479	+ 2,0 times
Australia	16.513	51.741	+ 3,1 times
Belgium	7.731	26.691	+ 3,5 times
Canada	10.126	69.341	+ 6,8 times
Denmark	7.079	13.353	+ 1,9 times
USA	535.333	1.157.519	+ 2,2 times
France	51.628	117.149	+ 2,3 times
Holland	9.121	33.560	+ 3,7 times
United Kingdom	45.900	145.486	+ 3,2 times
Sweden	13.937	21.088	+ 1,5 times

Source: The annual average of divorces is calculated as the arithmetic average of the number of divorces for the previous three years and the last three years of our study. U.S. Census Bureau, EUROSTAT (Yearbook 2001), Australian Bureau of Population, Institut National de Statistique (Belgique), Statistics Bureau Canada (Health Reports, 1996-1997, Historical Data), Danmark Statistik Office, Office for National Statistics UK (Population and Vital Trends: International, y Population Trends 1998: United Kingdom), Monthly Vital Statistics Reports (National Center for Health Statistics, 1995-1999), INSEE (France), Centraal Bureau voor Statisticks (Netherlands), IMF`s Dissemination Standards Bulletin Board: Sweden.

⁹ Mary Ann Glendon, The Transformation of Family Law. State, Law, and Family in the United States and Western Europe. Pag. 193.

¹⁰ Kelly Bedard, Oliver Desch enes. Sex Preferences, Marital Dissolution and the Economic Status of Woman. Department of Economics. University of California, Santa Barbara. June 2003.

¹¹ E. Oakes Smith. Woman and her needs. No. VII. Marriage-Divorce.

2.2 Widows and Widowers

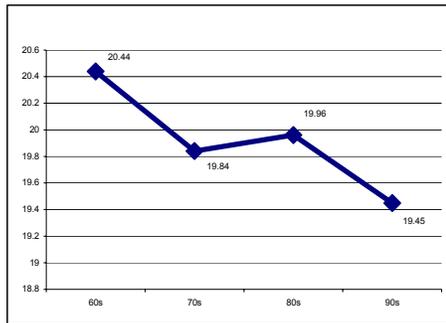
13. Widows and widowers tend to be the most vulnerable and unprotected part of the population due to low incomes and hard possibilities for working, basically woman. The number of widows/ers as percentage of the populations for the last four decades is presented in Table 2, where we can see three main aspects: first, the number of widows and widowers is higher in developed countries, such as Western Europe, United States, Canada and Japan, than in developing countries (probably because developed countries have the oldest population and better registration systems); second, the rates has decreased in Europe and Latin American continents and has increased in Asian countries (See Graphs D, E, and F); and third, the number of widows is much higher than the number of widowers, assuming that woman outlive their husbands, with the implication that woman will continue to be the economical family dispenser in the future.

Table 2. Rate of Widows and Widowers in the Last Four Decades by Gender as a percentage.

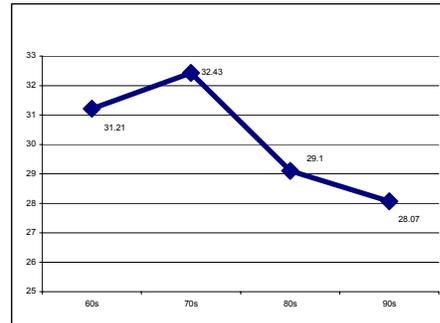
Country	Widowers											
	60s		Total	70s		Total	80s		Total	90s		Total
	M	F		M	F		M	F		M	F	
Europe												
France	1.47	6.71	8.18	1.32	6.16	7.48	1.20	5.93	7.13	1.11	5.74	6.85
Sweden	1.61	4.34	5.95	1.49	4.91	6.40	1.41	5.41	6.82	1.22	5.32	6.54
England	1.30	5.01	6.30				1.17	4.99	6.15			
Germany	1.03	5.22	6.25	0.99	5.70	6.68	1.00	5.91	6.91			
Spain	1.33	4.98	6.31	1.21	4.75	5.96	1.17	4.84	6.01	1.10	4.96	6.06
			20.44			19.84			19.96	3.43	16.02	19.45
Latin America												
United States	1.15	4.36	5.51	1.04	4.69	5.73	0.95	4.97	5.92	0.95	4.85	5.80
Canada	1.08	3.43	4.51	0.88	3.69	4.57	0.83	4.06	4.90	0.87	4.14	5.02
Mexico	0.83	2.60	3.43	0.49	1.85	2.34	0.54	1.96	2.50	0.49	1.90	2.39
Costa Rica	0.59	1.88	2.47	0.51	1.63	2.15	0.49	1.73	2.21			
Cuba	0.67	2.00	2.67	0.65	2.16	2.82	0.74	2.53	3.27			
Colombia	0.66	2.47	3.14	0.52	2.10	2.62				0.61	2.50	3.11
Argentina	0.87	2.96	3.83	0.92	3.58	4.50	0.88	3.97	4.85	0.84	4.14	4.97
El Salvador				0.41	1.25	1.66	0.39	1.25	1.64	0.66	2.36	3.02
Honduras	0.41	1.48	1.89	0.54	1.95	2.48						
Chile	0.88	2.88	3.76	0.77	2.79	3.56	0.82	3.00	3.81	0.75	3.01	3.76
The Caribbean			31.21			32.43			29.10			28.07
Dominican Republic	0.33	1.25	1.58	0.27	1.12	1.39	0.41	1.64	2.05			
Haití	0.23	0.90	1.13	0.37	1.66	2.03	0.57	1.99	2.56			
Brithish Virgin Islands	0.56	2.49	3.05	0.47	1.56	2.02	0.51	1.75	2.26	0.57	1.50	2.08
Trinidad & Tobago							0.71	2.45	3.16	0.79	2.62	3.41
Asia												
Singapor	0.80	3.51	4.31	0.71	3.43	4.14	0.68	3.44	4.11	0.86	3.32	4.18
Japan	1.12	5.24	6.36	1.01	5.29	6.29	0.96	5.29	6.26	1.04	5.59	6.63
China							1.54	3.30	4.84	1.39	2.96	4.34

United Nations Demographic Yearbooks. (New York: United Nations)

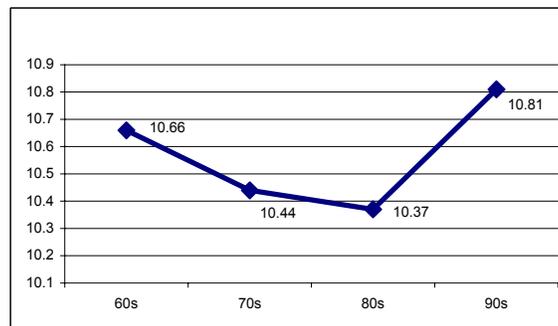
Graph D. Widows/ers in Europe in the last Decades as Percentage



Graph E. Widows/ers in Latin America in the last Decades as Percentage



Graph F. Widows/ers in Asia in the last Decades as Percentage



2.3 Orphans

14. Orphans, on the opposite as widows and widowers and at the same as divorces, tend to increase significantly. In Table 3¹², we can see the number of orphans in 2003 as a percentage to children population by country. Orphans are more common in countries like: Colombia, Argentina, El Salvador, Honduras, United States and Singapore, where they represent more than 5% of the children population. In Haiti, Dominican Republic and Trinidad y Tobago, the orphan rate reaches 15, 8 and 7% respectively. AIDS and war are the main causes of orphans (14 million children under 15 are estimated to have been orphaned as a result of AIDS alone¹³).

Protection of children is crucial to their survival, health, and well-being. Every day millions of children are: exploited, abused, or are victims of violence; bought and sold like commodities; forced to be soldiers, prostitutes, sweatshop workers, and servants; and, abuse, exploitation and violence, occurred usually in private are often elements in organized crime and corruption. Only time will reveal the consequences of children uneducated, unhealthy and impoverished. Children represent the highest number of the poverty population (By the year 2003, it was estimated that there was more than 143 million orphans ages 0 to 17 years old in 93 countries of sub-Saharan Africa, Asia, and Latin America and the Caribbean. Globally, this is only a 3 per cent increase in the number

¹² Children on the Brink 2004. A Joint Report of New Orphan Estimates and a Framework for Action. UNICEF

¹³ UNICEF. Child protection.

of orphans since 1990¹⁴. In Central and Eastern Europe alone, about 1.5 million children were living in public care at the end of the 1990s. Approximately 246 million children work with about 180 million engaged in the worst forms of child labour. An estimated 1.2 million children are trafficked every year. 2 million children are believed to be exploited through prostitution and pornography. At any given time over 300,000 child soldiers, some as young as eight, are exploited in armed conflicts in over 30 countries. And 40 million children below the age of 15 suffer from abuse and neglect, and require health and social care¹⁵).

15. Children born out of wedlock or raised without a father are in some ways semi-orphans and their quality of life and life opportunities are substantially curtailed compared to children born of married parents and raised with a mother and a father. Family income is directly linked to family structure; marriage-based families earn much more than the divorced or unmarried. Thus, it should come as no surprise that child poverty is more directly caused by single parenting than any other factor¹⁶.

Table 3. Number and Percentage of Orphans in year 2003

Country	Population (thousands)	Total of Children (thousands)	Orphans (thousands)	Percentage
France	60,144	13,493		
Sweden	8,876	1,898		
England	59,251	13,275		
Germany	82,476	15,226		
Spain	41,060	7,136		
United States	294,043	75,893	5,000	6.6
Canada	31,510	6,942		0.0
Mexico	103,457	39,800	1,900	4.8
Costa Rica	4,173	1,501	50	3.3
Cuba	11,300	2,747	130	4.7
Colombia	44,222	16,599	910	5.5
Argentina	38,428	12,384	700	5.7
El Salvador	6,515	2,655	180	6.8
Honduras	6,941	3,263	180	5.5
Chile	15,805	5,163	230	4.5
Dominican Republic	8,745	3,358	260	8
Haiti	8,326	3,853	610	15.8
British Virgin Islands	22			
Trinidad & Tobago	1,303	374	28	7.5
Singapore	4,253	1,048	21	2.0
Japan	127,654	22,153	655	3.0
China	1,304,196	369,191	20,600	5.6

Source: Children on the Brink 2004. A Joint Report of New Orphan. Estimates and a Framework for Action. UNICEF

¹⁴ Children on the Brink 2004. A Joint Report of New Orphan Estimates and a Framework for Action. UNICEF

¹⁵ Child Protection. UNICEF

¹⁶ Lynn D. Wardle, The Effects on Social Security of Changes in the Family and Family Law.

2. 4 Common Law Marriages

16. Another sector of the population which is also affected by surviving Social Security pensions are those couples that decide to cohabit under the concept of “common law marriages”, “cohabitating couples” or “un-marriage cohabiters”. In not all of the developed and developing countries, living together without being married is protected by law. In fact, in countries that legally accept this concept, it is done under certain requirements and conditions. Common law marriages has become so complex in legal terms that in countries with common law systems like the case of United States, it is only recognized in 18 from 50 States (American legislators believe that some States have transformed their legal frameworks based on the results, after a reasonable time, from other States practices¹⁷). Moreover, most of these couples in countries where common law marriage is accepted, they do not know their legal rights and obligations.

Box 2

The main problem remains in two main questions: it is necessary that common law marriages have to be legally accepted by civil or family legislations before it becomes legally accepted by Social Security legislations?; and, do common law marriages are constitute by the same requirements with the same rights and obligations in civil or family codes than in Social Security legislations?. We will answering these tow questions by presenting several arguments: a) it is more usual that Social Security Institutions first accept common law marriages as a legal concept than civil or family codes the formal wife or to the person that lived and economically by the diseased for a certain period of time before their couple dies; b) Social Security legislations have, in some cases, incompatible differences among Social Security and civil or family codes (in Mexico the Civil Code recognized the common law marriage after cohabitating a period of two years, when Social Security legislation established that the right to receive surviving Social Security pension for un-married couples will be for those who lived five years before the couple dies). c) in some countries, Social Security and Civil Committees in Congress are constituted by different Congress man); and d) there is no principle, fundament or constitutional law that obligate legislators to legislate first under Social Security, civil or family legislations.

17. It is important to mention that in most of the countries that accept common law marriages, they are not recognized as a legal marriage, especially in issues related to heritance and property. Why? because the main idea of legislators is that at the end, cohabitating couples understand the legal pros of getting officially marriage, giving them complete rights, benefits and obligations (for example, under several new divorced reforms, mother taking care of children will have the right to receive 50 % of all property bought during marriage in case of divorce. Housing obligations has become an official labour for lone mothers). Other important reason why common law marriages has not being recognize as a legal marriage is because of the difficulty for their official registration, make it complicated for government States to controlled demographic changes, basing their figures in doubtful information.

18. As we can see in Table 4, almost every Social Security law accept common law marriages, in some legislations by mention the concept of common law marriages, in other legislations by mentioning only by the person that has lived or was economically depended

¹⁷ Estates that approve common law marriages, with certain different rights and obligations among them: Alabama, California, Colorado, Columbia District, Georgia, Idaho, Iowa, Kansas, Montana, New Hampshire, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas and Utah

by the assured worker. In most countries in Latin America, common law marriages are legally accepted under civil or family and Social Security laws. This table will give us the parameter to understand how much common law marriage has been legally accepted.

Table 4. Countries that Accept Common Law Marriages

Country	Civil or Family Code	Social Security Law	Other Legislation	Time of Acceptance in Years
France	X			No specification
Sweden	X	X		No specification
United States	X	X	Under State Law, only in some States	No specification
Canada	X	X		2
Mexico	X	X		2 CC y 5 SSL
Costa Rica	X	X		2
Cuba				
Colombia	X			No specification
Argentina	X	X	Civil Code of Buenos Aires/Sistema Integrado de Jubilaciones y Pensiones	5
El Salvador	X			3
Chile		X	Régimen de Previsión Social	No specification
Dominican Republic		X		No specification
Haiti				
British Virgin Islands		X	Domestic Violence Act	No specification
Singapore		X		No specification

19. Common law marriages are divided in two main groups with different rights, benefits, obligations and responsibilities: the ones with children, which become the most likelihood to a marriage; and the ones without children, which they do not have any obligation to maintain each other and where in case of separation everyone takes what they had, and what was bought, during cohabitation, divide it by the fifty-fifty split rule. In countries where there are not specific legislation on the issue, family courts plays a very important roll. Courts normally held that where a man and woman live together making an agreement that one person will provide household services, the person who performed those services has the legal right to be compensated at the agreed amount, or at reasonable value for those services. Also, when an unmarried couple separates, the court has the power to divide the property according to the couples reasonable expectations during cohabitation. Nevertheless, intentions, expectations, and agreements of two people are very difficult to prove if they are no stated in some form of written agreement.

As we can see on the above table, the period for common law marriages for become legally accepted, differ between two to five years of cohabitation. In United States, France, Sweden, Colombia and Dominican Republic, there is no limit of time for common law

marriages being officially accepted, due that cohabitants can come into an agreement in any time, unless there is a child in common. On the other hand, Canada do not accept the term “common law marriage”, however, in certain local legislations mention the concept “common law status” which sometimes makes it confused, basically, because it is accepted in their Social Security Legislation as cohabitating couples. Canada and France have totally open their views to these kinds of concepts, they has gone so far to the acceptance of common law marriages for homosexual couples who does not want to get married, moreover, after living together for a certain period of time, they can legally adopt children¹⁸. Contrary to Asian countries, where common law marriages have not come to a perfect legal system.

20. On the following Table 5 we can analyzed how in Latin America the number of common-law marriages represents a significant number compared to separated, divorced, widow and single population, not only in developing countries like Honduras and Nicaragua, but also in developed countries like Denmark, Sweden, Finland and France, where the percentage of common law marriages becomes more than 30 % of the marital status population.

Table 5. Marital Status in Selected Countries as Percentage of Population Aged 15 years and over 2000-2004

Country	Year	Common-Law Union	Separated	Divorced	Widowed	Married	Single
United States ⁽⁵⁾	2000	3	12	20	8	36	21
Canada ⁽⁶⁾	2001	7		2	5	48	38
Chile ⁽¹⁾	2002	10	2	3	5	47	33
Honduras ⁽²⁾	2004	28	3	1	4	28	36
	2003	28	2	1	4	29	37
	2002	28	6	1	4	29	32
	2001	27	11	1	5	29	28
Mexico ⁽³⁾	2000	8	3	1	5	52	30
	2002	10	4	1	5	49	31
Nicaragua ⁽⁴⁾	2001	25	12	1	5	26	31

Source:

(1) Encuesta CASEN, Chile 2000.

(2) Encuesta Permanente de Hogares de Propósitos Múltiples, Honduras, 2001-2004

(3) ENIGH, Mexican National Household Income and Expenditure Survey in 2000 and 2002.

(4) Encuesta Nacional de Hogares sobre Medición de Nivel de Vida, 2001.

(5) U.S. Census Bureau 2000

(6) Statistics Canada 2001

21. In United States, a 72% increase in the number of unmarried partners living together without marriage, between 1990 and 2000.¹⁰ Now over 5.5 million couples live together without marriage, an increase of over 300 percent in the last 20 years. In 2000, non-marital cohabitation households accounted for 5% of all homes, up from 3% a decade earlier¹². Since 1985, approximately half of all persons who married lived together prior to

¹⁸ <http://www.justice.gouv.qc.ca/english/publications/generale/union-a.htm>

¹⁰ Genaro C. Armas, Cohabitation on the Rise: Unmarried-Partner Households Increase by 72%, The Associated Press (May 15, 2001), at <http://www.lafayettejc.com/Census/0520104.shtml> (last visited Oct. 21, 2003).

¹²¹¹ Statistical Abstract of the United States, 1999 at 67, Table No. 83.

marriage.¹³ Rates of divorce are significantly higher for married couples who cohabited before marriage.¹⁴

22. The number of mono-parental families in some countries in Europe and in Latin American, especially United States, can differ in age and race. With respect to race, in USA, premarital childbearing, separation, and divorce have caused one-parent family groups to become much more prevalent (and accepted) in the United States in the last 20 years. Now, about 3 out of 10 family groups are maintained by just one parent, but in 1970 only 1 out of 10 were. The trend toward more one-parent family groups holds regardless of race or Hispanic origin. However, the magnitude varies. In 1990, one-parent family groups accounted for 22.6 % of all White, 60.6 % of all Black, and 33.2 % of all Hispanic family groups (primarily their mother). For Black children, the one-parent family group is now the most common living arrangement. For White and Hispanic children, the one-parent family group is now a common living arrangement, but not the most common one¹⁹.

Table 6. Marital Status Distribution of woman aged 24-29 in 1996

Country	Common Law Union	Single	Married	Sep. Div, Wid.
Denmark	35	30	33	2
Sweden	33	37	29	1
Finland	27	23	47	3
France	30	35	32	3
Netherlands	15	25	56	4
Belgium	12	28	55	5
Luxemburg	10	50	35	5
Great Britain	12	28	52	8
West Germany	8	42	45	5
East Germany	7	25	56	12
Austria	7	36	50	7
Ireland	3	37	54	6
Spain	3	43	46	8
Portugal	2	33	63	2
Grece	1	30	66	3
Italy	1	62	36	1

¹³Hilda Rodriguez, Cohabitation: A Snapshot, Center for Law and Social Policy, at http://www.clasp.org/DMS/Documents/1011885243.62/cohabitation_snapshot.pdf (last visited Oct. 21, 2003).

¹⁴William Axim & Arland Thornton, *The Relationship Between Cohabitation and Divorce: Selectivity or Causal Influence*, 29 Demography 357 (1992).

¹⁹ Athur J. Norton and Louisa F. Miller, Marriage, Divorce, and Remarriage in the 1990s. U.S. Department of Commerce. Economic and Statistics Administration. Bureau of Census.

Table 7. Percentage cohabitating according to age group and sex in 1996

Country	Woman			Men		
	20-24	25-29	30-34	20-24	25-29	30-34
Denmark	45	35	19	43	43	23
Sweden	39	33	22	24	39	31
Finland	28	27	16	23	29	14
France	25	30	19	13	24	27
Netherlands	17	16	8	10	23	13
Belgium	15	12	7	6	16	8
Luxemburg	10	10	-	2	2	4
Great Britain	13	12	7	11	16	9
West Germany	16	9	7	10	15	11
East Germany	13	8	4	7	11	7
Austria	10	8	9	1	10	7
Ireland	2	3	4	3	6	3
Spain	3	3	3	1	2	4
Portugal	3	1	1	1	-	2
Grece	1	1	1	2	2	-
Italy	-	-	4	-	-	3
All countries	14	13	9	9	14	11

Source: Kathleen Kierman, Cohabitation in Western Europe. Department of Social Policy and Center for the Analysis of Social Exclusion. London School of Economics
Analysis of Eurobarometer No. 44, 1996

In the above Table 6, the Southern European countries of Greece and Portugal where over 60 % of women in their late 20s are married exemplify one extreme. However, within the set of Southern European countries there is a remarkable difference in the behavior of Italian and Spanish women as compared with the Portuguese and Greek women. In the Nordic countries of Denmark, Sweden and Finland as well as in France, the proportions in the three main marital status groups are similar at around one third. On the other hand, in Table 7, shows that across European states there is a good deal of diversity in the incidence of cohabitation. Cohabitation is strikingly most common in the Nordic countries of Denmark, Sweden and Finland, and France also has relatively high proportions cohabiting. There is also a middle group of countries which includes the Netherlands and Belgium, Great Britain, West and East Germany, and Austria with levels of cohabitation between 8 and 16 % amongst the group of women aged 25-29. At the other extreme is the group of Southern European countries and Ireland, where cohabitation is seemingly much rarer with around 3 % or less cohabiting²⁰.

23. As we can see from the previous paragraphs, the family today is not the family of the beginning of the twenty century, the family for which Social Security protection was designed. In the past, the family was composed of the father, the mother and the children. The father and the mother legally married. Today, many families have different structures. We can think of families in which the parents do not live together anymore, the children live with one of them. Even children living with two parents today are more likely to be living in a family that is not composed of two biological parents and only two biological

²⁰ Source: Kathleen Kierman, Cohabitation in Western Europe. Department of Social Policy and Center for the Analysis of Social Exclusion. London School of Economics. Analysis of Eurobarometer No. 44, 1996

siblings. It is more likely to have step-parents and half brothers/sisters than ever before. Also, there are some families whose parents live in common law. This new reality means that Social Security Institutions need to reform their legislation if the mission of Social Security will be met. In the next three tables we can make the following arguments related with monoparental families: a) They represent an important percentage of the total nucleus families; b) Female leaders are in most of the Latin American countries 2 to 5 times of the male leaders; c) A significant percentage of female home leaders do not work, specially in Argentina; and d) The incidence of poverty has an average of 40 % compared to 30 % for male leaders (See Tables 8,9 and 10).

Table 8. Distribution of Homes according to Type in Urban Areas, as a Percentage. 1990-2002

Country	Year	Total Homes	Type of Homes								
			Nonfamiliar Homes			Families					
			Unipersonal Home	Home without Conyugal Nucleus	Subtotal of Nucleus Families	Nucleus Families				Other Types of Families	
						No Children	Biparental with Children	Monoparental Male Home Leader	Monoparental Female Home Leader	Extendid	Compound
Argentina	2002	100	14.8	5.1	65.3	12.5	41.0	2.2	9.5	14.4	0.4
Bolivia	2002	100	8.7	4.2	69.4	5.1	52.0	1.8	10.5	16.9	0.8
Brasil	1990	100	7.9	3.9	71.1	10.0	51.6	1.2	8.4	16.0	1.1
	2002	100	9.8	4.0	68.7	10.7	46.5	1.3	10.2	16.7	0.8
Chile	1990	100	6.5	4.3	64.4	7.8	47.8	1.2	7.7	23.1	1.7
	2000	100	7.9	4.2	64.1	8.4	47.2	1.3	7.3	22.7	1.0
Colombia	1991	100	4.8	5.5	64.6	5.3	48.8	1.0	9.6	22.9	2.2
	2002	100	8.3	5.3	59.1	6.7	40.1	1.5	10.1	24.8	2.4
Costa Rica	1990	100	5.0	5.1	68.5	6.6	51.3	1.0	9.5	19.3	2.2
	2002	100	6.8	4.3	68.7	8.5	47.5	1.1	11.7	18.1	2.0
Ecuador	1990	100	5.5	4.5	64.1	5.5	50.2	1.5	6.9	29.0	2.8
	2002	100	8.7	4.9	61.5	6.2	44.2	2.5	8.5	21.0	3.6
El Salvador	1995	100	6.1	6.2	55.0	5.5	30.1	1.2	10.2	30.3	2.4
	2001	100	7.8	6.4	54.9	5.7	36.2	1.4	11.6	29.8	1.0
Guatemala	1990	100	4.3	4.1	63.3	5.6	46.0	1.3	10.4	26.6	1.5
Honduras	1990	100	4.2	5.9	57.0	4.5	41.8	1.2	9.6	27.8	5.0
	2002	100	5.1	5.8	55.4	4.3	30.9	1.5	10.7	24.7	8.9
Mexico	1989	100	4.6	4.1	71.6	6.3	57.6	1.2	6.4	19.2	0.5
	2002	100	6.5	3.2	70.8	8.3	51.7	1.5	9.4	19.0	0.4
Nicaragua	1993	100	5.2	4.2	54.5	3.5	40.0	1.4	9.5	34.2	2.0
	2001	100	4.1	4.3	53.3	3.7	37.7	1.1	10.8	36.1	2.2
Panama	1991	100	8.4	5.6	60.3	7.0	41.8	1.8	9.7	23.5	2.2
	2002	100	9.0	5.6	58.6	8.0	38.6	1.5	10.5	25.6	1.3
Paraguay	2000	100	6.4	5.6	57.0	6.0	41.0	1.4	6.6	25.8	3.2
Perú	2001	100	7.6	4.8	58.0	3.8	44.1	2.1	8.0	26.2	3.4
Dominican Republic	2002	100	9.4	6.8	56.6	7.4	36.4	1.5	11.3	23.3	3.9
Uruguay	1990	100	13.9	5.5	64.3	17.0	38.9	1.3	7.2	14.9	1.3
	2002	100	17.7	5.4	31.3	16.3	34.8	1.6	6.6	14.7	0.9
Venezuela	1990	100	5.1	5.2	57.0	4.3	43.9	1.3	7.6	30.3	2.4
	2002	100	6.8	5.1	56.9	5.2	41.0	1.3	9.4	28.5	2.7
Latin America	1990	100	6.7	4.8	63.1	7.2	46.3	1.3	8.4	23.0	2.4
	2002	100	8.4	4.0	64.9	7.7	42.0	1.5	9.5	22.8	2.1

Source: CEPAL

**Table 9. Working Type of Nucleus Families in Urban Areas, as a Percentage.
1990-2002**

Country	Year	Biparental Nucleus				Monoparental Nucleus			Total
		Without Children		With Children		Female Home Leader		Male Home Leader	
		Working Conyuge	Not Working	Working Conyuge	Not Working	Working	Not Working		
Argentina (1)	1990	6.4	15.8	23.5	43.4	5.4	38.0	1.7	100
	2002	7.5	13.6	36.9	35.5	7.0	5.0	3.6	100
Bolivia	1989	1.9	3.9	36.2	45.0	7.7	2.9	2.4	100
	2002	4.5	2.8	44.7	30.1	12.0	3.4	2.5	100
Brasil	1990	5.3	8.7	27.2	45.3	6.4	5.3	1.7	100
	2001	7.0	8.5	32.3	35.4	8.5	6.4	1.9	100
Chile	1990	3.3	8.8	20.5	53.6	5.5	6.4	1.6	100
	2002	4.5	8.5	28.0	45.5	6.7	4.7	2.0	100
Costa Rica	1990	2.8	6.8	22.8	52.2	7.6	6.3	1.5	100
	2002	4.7	7.8	29.4	39.6	11.0	6.0	1.5	100
Ecuador	1990	3.2	5.4	29.8	48.5	7.1	3.7	2.4	100
	2002	4.6	6.0	33.3	38.5	10.0	3.7	4.1	100
El Salvador	1995	4.7	5.3	34.7	34.5	12.6	5.9	2.2	100
	2001	4.5	5.9	35.2	30.7	13.9	7.3	2.5	100
Guatemala	1996	3.6	5.1	39.4	33.3	10.6	5.8	2.1	100
Honduras	1990	2.6	5.3	25.7	47.6	11.0	5.7	2.0	100
	2002	3.5	4.4	30.3	39.8	12.8	6.4	2.7	100
Mexico	1989	2.4	6.4	20.7	59.8	5.3	3.6	1.7	100
	2002	4.8	6.9	28.9	44.0	9.0	4.3	2.1	100
Nicaragua	1993	3.2	3.3	31.0	42.4	12.3	5.1	2.6	100
	2001	4.4	2.6	35.2	35.6	14.5	5.6	2.1	100
Panama	1991	3.1	8.6	29.9	45.9	8.5	7.5	3.0	100
	2002	6.6	8.1	30.0	35.8	10.3	7.6	2.6	100
Paraguay	1990	3.4	6.3	32.6	45.1	5.6	4.6	2.4	100
	2000	6.8	3.7	37.6	35.0	8.5	5.4	3.0	100
Peru	2001	30.0	35.0	42.1	33.9	9.5	4.3	3.6	100
Dominican Republic	2002	5.6	7.4	27.9	36.3	11.1	8.9	2.6	100
Uruguay	1990	7.7	10.0	27.4	32.9	5.6	5.6	2.0	100
	2002	8.3	18.4	28.6	29.2	7.5	6.5	2.6	100
Venezuela	1990	2.5	5.1	24.5	52.4	7.2	6.0	2.2	100
	2002	4.3	4.9	34.5	37.5	10.7	5.8	2.3	100
Latin America	1990	3.8	7.5	27.0	46.2	8.0	5.4	2.1	100
	2002	5.3	7.1	32.9	36.2	10.3	5.7	2.5	100

Source: CEPAL
1. Buenos Aires

Table 10. Incidence of the Poverty among Homes depending on their Type. Urban Areas and as a Percentage. 1990-2002

Country	Year	Total Homes	Type of Homes								
			Nonfamiliar Homes			FAMILIES					
			Unipersonal Home	Home without Conyugal Nucleus	Subtotal of Nucleus Families	Nucleus Families				Other Types of	
						No Children	Biparental with Children	Monoparental Male Home Leader	Monoparental Female Home Leader	Extendid	Compound
Argentina	2002	34.9	11.0	25.0	37.1	17.6	41.9	27.6	44.5	52.8	51.3
Bolivia	2002	44.9	20.1	31.4	45.7	17.3	53.3	42.6	42.2	45.6	30.2
Brasil	1990	37.6	31.6	32.3	32.1	23.3	36.1	33.6	40.0	43.6	33.3
	2002	27.4	8.6	17.1	29.1	10.2	32.9	22.5	32.5	33.7	30.9
Chile	1990	33.3	12.1	22.6	34.8	11.4	38.4	19.6	38.3	37.4	28.0
	2000	16.2	4.0	7.0	16.9	3.6	18.9	8.0	21.0	19.6	19.6
Colombia	1991	47.1	23.0	32.0	40.4	23.4	51.6	26.4	40.9	51.5	50.4
	2002	44.6	28.1	31.0	45.6	26.0	46.5	28.6	45.8	50.1	50.3
Costa Rica	1990	22.2	25.4	15.3	21.1	17.2	20.7	22.1	25.8	27.9	15.1
	2002	45.9	16.4	20.1	14.3	11.2	13.3	7.1	21.3	20.1	13.8
Ecuador	1990	55.8	24.8	45.0	56.6	33.3	58.9	43.2	61.6	63.3	56.5
	2002	42.7	20.6	35.5	41.7	23.8	43.8	28.4	48.2	54.9	49.7
El Salvador	1995	40.0	24.6	39.3	38.0	22.8	40.6	37.6	36.4	46.5	47.3
	2001	34.7	21.7	33.5	34.2	23.9	34.7	34.8	37.8	39.2	39.4
Guatemala	1990	41.2	15.7	21.2	40.3	19.2	44.4	30.7	34.8	51.0	36.8
Honduras	1990	41.2	15.7	21.2	40.3	19.2	44.4	30.7	34.8	51.0	36.8
Mexico	1990	34.0	6.1	21.2	33.5	12.7	36.6	23.0	27.9	45.6	38.0
	2002	25.0	5.3	21.5	25.5	11.1	28.0	5.4	27.3	35.8	33.2
Nicaragua	1993	60.3	35.4	56.3	59.7	40.7	60.3	66.5	63.0	66.1	48.5
	2001	57.8	35.0	47.3	55.8	25.0	57.2	48.5	62.4	63.9	71.2
Paraguay	2000	42.4	16.5	26.2	44.1	27.9	46.4	42.8	44.9	50.4	44.9
Peru	2001	34.0	7.2	23.4	34.6	18.9	37.5	18.9	31.4	42.2	36.1
Dominican Republic	2002	36.4	27.0	45.3	37.3	19.8	35.1	37.6	55.9	43.5	39.8
Uruguay	1990	11.8	1.9	8.9	12.4	2.0	16.5	9.1	15.5	18.9	20.1
	2002	9.3	0.4	4.9	10.4	1.7	14.4	7.2	11.5	16.0	24.3
Venezuela	1990	34.2	5.8	36.8	34.6	21.2	33.9	22.3	48.2	38.0	30.4
	2002	43.3	27.5	39.6	44.3	23.6	45.8	35.3	50.1	46.2	39.6
Latin America	1990	34.9	20.1	32.7	35.5	23.5	45.1	31.4	43.6	44.0	35.6
	2002	34.4	16.6	25.7	35.0	18.0	37.0	27.8	37.3	40.9	37.4

Source: CEPAL

24. Social Security is and most be the economical platform of family. The economical value of family is measured by their historical contributions to their respective Social Security institutions and for that main reason Social Security legislations must be the ones who take control over these new family structures, economically and for registration purposes. Social Security institutions most define the rules and guidelines following the rapid changes of family and society evolution.

3 New pensions Social Security laws for new family structures

24. In Law, there are two main groups of countries, the ones that base their legal frameworks on Roman Law or codified systems, and the ones that derive its Laws from judicial decisions and opinions: Common Law Systems. The rules that apply to family relations tend to arise differently between these two systems. The border between them is not absolute, where it seems that in common law countries there are basing their legal procedures in guidelines that have an effect on judicial decisions to a significant extent (for example, those issued by Justice Departments or General Attorneys in the United States). Civil codes, on the other hand, with their majestic style and great principles, are today less central to contemporary civil law systems than the mass of fragmentary statutory and administrative regulations, which have similarly displaced case law as the primary source of law in the Anglo-American systems. Nevertheless, both systems are trying to accomplish the same goal, which in simple words “is the protection and the support for new family structures”. To prove this, will analyze the treatment regarding surviving Social Security pensions that Social Security legislations grant to family members.

3.1 Who is entitled to receive surviving pensions?

25. After analyzing most of the Social Security legislations we can come to the conclusion that in most of the countries Social Security Institutions do accept those people who lived as cohabitation partners before one of them dies, having the possibility to receive a surviving Social Security pension. This means that most Social Security legislations have been following up with new family structures, starting with administrative rules or guidelines and then sooner than later transforming them into laws.

26. Table 11 shows who is entitled to receive surviving pensions in most of the countries of our study. Defining who, from all family members, is entitle and who is not.

Table 11. Entitled to Receive Survivors Pension according to Social Security Legislations.

Country	Partner in Common Law Marriage	Widow / Widower		Orphans	Parents	Other ex-wife /partner
		Without Children	With Children under			
France	YES	YES	16, 17 unemployed or 20 in school	YES	YES	YES, not re-married and just for the time married
Sweden	YES	YES	18 or 20 in school	YES	(1)	NO
England	NO	YES	19	YES	NO	YES, not re-married and just for the time married
Germany	NO	YES	18 or 27 in school	YES	YES	YES, not re-married and just for the time married
Spain	NO	YES	18 or 22 if earnings less than 75% of minimum wage, 24 no parents	YES	YES	YES, not re-married and in Proportion to the time Married
United States	In some States	YES	18 or 19 in school	YES	< 62 years	Minimum 10 years marriage
Canada	YES	YES	18 or 25 in school	YES	YES	Judicially recognized

Mexico	YES	YES	16 or 25 in school	YES	YES	NO
Costa Rica	YES	YES	18	YES	YES	NO
Cuba	YES	YES	17	YES	YES	YES
Colombia	YES	YES	18 or 25 in school	YES	YES	NO
Argentina	YES	YES	18	YES	YES	Judicially recognized
El Salvador	YES	YES	18 or 24 in school	YES	YES	Presented before 12 months
Honduras	YES	YES	14 or 18 in school	YES	YES	NO
Chile	YES	YES	18 or 24 in school	YES	YES	YES
Dominican Republic	YES	> 50=5 years pension, < 50= 6 year pension, < 55 lifetime pension	18 or 21 in school	YES	YES	NO
Haiti	NO	YES	18	YES	YES	NO
British Virgin Islands	NO	YES	15 or 21 in school	YES	YES	NO
Trinidad & Tobago	NO	YES	18 or 19 in school	YES	YES	NO
Singapore	NO	YES	16	YES	YES	YES
Japan	NO	YES	18	YES	YES	NO
China (2)	NO	YES	YES	YES	YES	NO

1. Guardian's allowance

2. A lump sum of between 6 and 12 months of the insured's wage, according to the number of surviving dependents.

26. As we can see from the above table, most of Latin American countries do accept common law widows and widowers in their Social Security legislations, except for most of Caribbean countries. Widows from official marriages and their children are accepted as long as the children don't reach their age limit, which varies from 15 and 16 years old in the British Virgin Islands and Singapore, to 25 years old in Colombia, Mexico and Canada (as long as they still in school).

Almost all of our countries but Sweden, parents have the right to receive pension and only in cases where there are no wife, husband or common law partner, of course with certain limitations, example, when parents and other beneficiaries have economically depend by the deceased person.

It is important to mention that all disable persons either, widowers or widows, parents and children, have the right to receive surviving Social Security pensions until they physically reestablished to their normal and productive live.

27. There are certain countries where surviving Social Security pensions differ in amount and length depending on several requirements like age, income, or economic situation. Let's check a few clear examples:

a) In Cuba, if the widower or widow is under 40 years old with no children and able to have a profitable work, she will be entitle to receive only two years of pension and no more than 25 % of the total maximum pension.

b) United States, as in England, benefits to other spouse will only be eligible if she does not get married before the age of 60 years old. In United States her marriage will have to last more than 10 years. If the spouse gets married again after reaching age 60, she will continue to qualify for benefits on her deceased spouse's Social Security record. However, if the current spouse is a Social Security beneficiary, it may have a wife's or

husband's benefit on his or her record if it would be larger than your widow's or widower's benefit. Widowers can not get both surviving pensions. If the widow or widower are working or have an income and they are under full retirement age (65 years old), they will have a deduction of 1 dollar from their benefit payments for every 2 dollars they earn above the annual limit (in 2005 the limit is 12,000 dollars). The following Table 12 and Graph G²¹ gives us an idea of how much they will receive for the year 2005, based on their monthly benefits and estimated earning.

Table 12. Estimated Benefits and Earnings in USA

If Your Monthly Social Security Benefit Is	And You Earn	You Will Receive
		Yearly Benefits Of
\$500	\$11,640 or less	\$6,000
\$500	\$15,000	\$4,320
\$500	\$20,000	\$1,820

Graph G. Estimated Benefits and Earnings in USA



c) The European Economic Community (EEC) has also their own surviving Social Security pension system, since April 9th, 2001, the bereavement benefit scheme operated. Bereavement benefits are available to men and woman and are based on the National Insurance contribution record of their late spouse. Women who were already receiving widow's benefit before that date will continue to do so for as long as they satisfy the qualifying conditions. If the spouse dies in one EEA country but he or she was insured in another EEA country, the widow or widower may claim widows' benefits or bereavement benefits in either of the countries. If they claim in the EEA country where they live, that country will pass details of their claim to any other EEA country where their late spouse have been insured. The main idea is that each EEA country where you have paid insurance towards a State Pension will look at your insurance under its own scheme and will work out how much State Pension survivors can have. As long as it meets the rules, any one will get a State Pension from each country. Also, there are special rules about benefits for children of someone who has died. If you have been bereaved and your late spouse was insured only in one EEA country, that country pays the benefits for a child. It will work out what the benefits are using its own rules under its own scheme. They may be child benefits, orphan's pension or extra widow's pension, or some of each. If the late spouse was insured in more than one EEA country, it will usually be the country where the child lives that pays the benefits. But the late spouse must have been insured in that country, and there must be some benefit to be paid for the child. If the late spouse was not insured in the country where the child usually lives, or that country cannot pay any child benefits, the EEA country where the spouse was insured for the longest period has to pay the child's benefits.

d) In Singapore as in other Asian countries like, Hong Kong, Malaysia and Indonesia, there is a Central Provident Fund (CPF) where the amount saved will be paid directly to all nominees above 18 years of age. For nominees who are below 18 years of age, the CPF monies would be released to the Public Trustee to be kept in trust until these nominees turn 18. However, for a nominee who is below 18 years of age and who is a widow, the monies would be released to her directly. The Public Trustee is a government

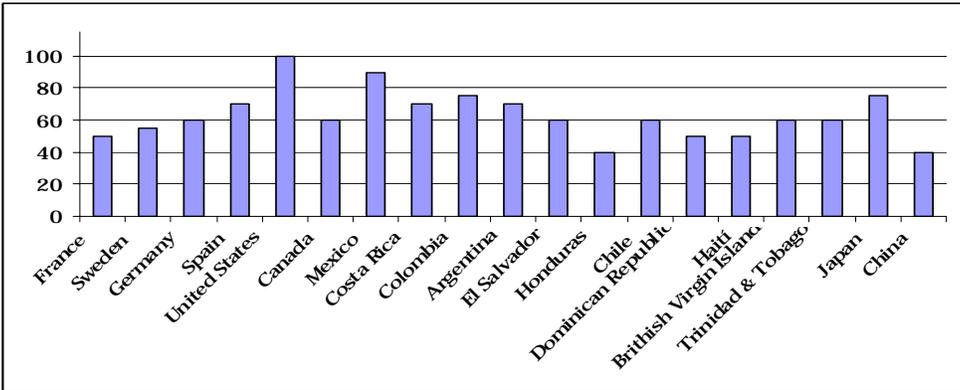
²¹ Social Security Administration. <http://www.ssa.gov/>

body that acts as a trustee of the deceased’s estate. It ensures that the assets of the deceased are distributed to the rightful beneficiaries.

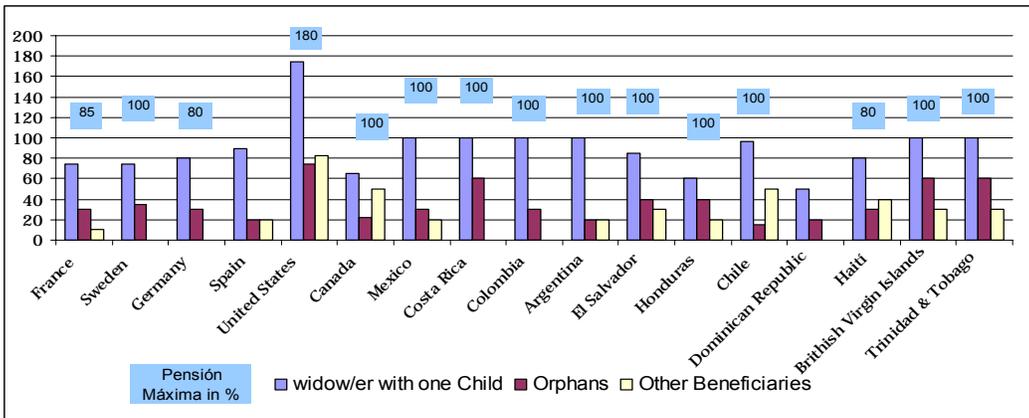
3.2 How are pensions divided?

28. The division of surviving pensions differs in most of Social Security legislations, especially with respect to widows and widowers with children and without children. They can go from 40% in Honduras and China to 90 or 100 % in Mexico and United States. The following Graphs H and I will show the percentage received by survivors described in the latest Social Security laws. An important point to mention from these graphs is the very low surviving Social Security pensions for orphans in most of the countries presented. They can go from less than 20 % as in Chile to 70 % in United States, but the average is around 35%. Social Security institutions most have financial reasons for doing it, however, they should consider these surviving Social Security pensions, basically because children without parents should have difficult times living with these very low pensions, especially in developing countries.

Graph H. Percentage of Surviving Social Security Pensions for Widows/ers.



Graph J. Percentage of Surviving Social Security Pensions for Widows/ers with one child, orphans and other beneficiaries.



Source: Social Security Legislations, U.S. Social Security Administration Website.

29. Even though it is not mention in the above graphs, other beneficiaries can include ex-spousals or ex-partners, which in most of the countries that do accept a surviving Social Security pension for this people, usually divide the pension in equal parts and for the time they have been married.

3.4 How do pensions terminate?

30. There are five main ways for ending Social Security surviving pensions according to the Social Security legislations studied:

a) For widows and widowers from legal or common law marriages:

- By getting married again²²;
- By having a common law marriage (this will be only permitted in the countries that officially accept cohabitation);
- When they reach the official retirement age.
- By getting a job;
- When beneficiaries can economically support themselves; and
- When the beneficiary dies.

b) For children with either mother or father:

- When they reach the age limit established in the respective Social Security legislations, including the years of elementary school.
- In some countries, when they have a formal and economically sustainable job, and
- By getting married.

c) Disable, in all countries have the right to receive a surviving Social Security pension. The amounts of surviving Social Security pensions are much higher than any other, and they will vary depending on each case. They could end either when they come to a possibility of maintaining themselves economically, or by a physical reestablishment.

An unusual reason for the terminality of surviving Social Security pensions established under the Social Security law in Cuba, is when the receiver leaves the country, or seems to leave the country for a reasonable period of time²³.

31. It is worth mentioning that in many countries surviving pensioners tend use tactical methods for not losing their surviving pensions. For example, by remarrying, widows and widowers do not get married again deciding to live as a common law marriage or cohabitation couples.

3.5 Do children from multiple marriages or from common law relations have the rights to receive pensions?

32. The Report of the Plenary Special Committee of the United Nations in the General Assembly, 2004, New York, NY, established that every child in the world, boys and girls,

²² Canada could be the exception for this conclusion. It seems that a widow, widower or partner do have a chance to get married again without losing their respective surviving Social Security pension. See the internet page: Government of Canada.

<http://www.sdc.gc.ca/asp/gateway.asp?hr=en/isp/cpp/survivor.shtml&hs=fzf>

²³ Social Security Law of Cuba 24/79. Article 106 (n).

will have the same human dignity and the same rights. However, the reality is different; children are abandoned by their parents living in the most terrible conditions, where most of them are exploited by others. Governments and international organizations are doing their best efforts for the protection of this vulnerable part of population, but has not been enough based on the enormous amount of orphans.

33. It is read in every Social Security legislation that every natural and adopted children has the right to receive a surviving Social Security pension for their main necessities and for finishing their basic school as always as they are under the age established in every Social Security legislation. On the other hand, every orphan, under every State law, has the right to demand the legal recognition of his parents in order to receive their legal rights.

3.6 How to divide pension benefits between widows/widowers and orphans when there is a family disintegration before or after the insured dies?, What happens when, after pension benefits are granted, new members of the family become present?

34. As we could see on the above table 8, widows and widowers who where legally married at the time their spouse died, have the complete right for a surviving Social Security pension. In case of common law partners, they will be entitle to a surviving Social Security pensions only if is established in the respective Social Security Legislations, as it does in United States (only in some States), Canada, Argentina, El Salvador, Dominican Republic, Cuba, Mexico, and Chile.

Ex-spouses will be admitted in countries such as: Spain, United States (only in some States), Canada, Argentina, El Salvador, Cuba, and Singapore. In order to receive part of the surviving Social Security pensions they will have to meet certain requirements such as: official documents demonstrating that they where legally married; written agreement in case of common law partners; present themselves to the family court before certain period of time (twelve months in case of El Salvador); and being judicially accepted under judicial decree. It is important to mention that for those divorced spouses, alimony pension contemplated in civil and family codes, have nothing to do with Social Security pensions.

Orphans, as we mention before, have the total and legal right to demand recognition from their parents and demand their Social Security rights, even if their parents got married again and have other children. Of course they will have to present the respective requirements established in their Social Security legislation.

Legally adopted children under age are also entitled to demand surviving Social Security pension. For Social Security purposes, a child is defined as a person and not as a *sub person* over whom the parent has an absolute possessor interest. All children are generally given the basic rights embodied in the Constitution in every country. They will have the right, under applicable State law to inherit intestate personal property from the insured worker as his or her child²⁴.

²⁴ Social Security Handbook. What is the definition of a child for Social Security purposes?. Social Security Administration USA

3.7 Is there is a continuity of Social Security medical services in case of family disintegration (for example, health insurance or maternity services)?

35. Table 13 shows who has the right to receive Social Security medical services after a family disintegration, either by divorce, separation (in case of common law marriages) or by the decease of one of the parents.

Table 13. Who is entitled to receive Medical Services for divorced or surviving family members

Country	Medical Services
France	Members of the deceased only in Countries from the European Economical Community
Sweden	
England	
Germany	
Spain	
United States	To elderly and children
Canada	
Mexico	Widower, widow, partner if lived 5 years before dead, children under 16 years old, and parents if are economically depended
Costa Rica	YES
Cuba	Everyone has medical services
Colombia	
Argentina	Children
El Salvador	Children under 12 years old
Honduras	
Chile	Widow and widower
Dominican Republic	
Haiti	
British Virgin Islands	To elderly and children
Trinidad & Tobago	
Singapore	To family members
Japan	
China	

36. Most of the countries do accept the continuity of Social Security medical services for those children and elderly who economically depended on their deceased parents. In countries like Cuba, every children and elderly no matter their family status are entitled to receive Social Security medical services. However, only in countries from the European Economical Community and Mexico gave the right to have medical services to widows, widowers and children under age. For those divorced parents, the only way to continue with Social Security medical services will be by getting a job, or by getting married again to a worker affiliated to a Social Security Institution.

3.8 Are there certain limits for receiving several pensions at the same time?, Is there a possibility of changing surviving Social Security pension benefits from another Social Security pension in case requirements for both pensions are met simultaneously?

37. In most of the countries of our study, no one can have several pensions at the same time. However, in most countries survivors can choose, between continuing with their surviving Social Security pension or change it to a retirement Social Security pension (when they reach the retirement age). The total amount of combined benefits paid can be adjusted based on the survivor's age, time of working, etc. In United States, for example, pensions cannot exceed 150 to 180 % per family, Argentina 100 % and Haiti 80% as we can see in the above graph J.

38. In United States, benefits paid to a surviving divorced spouse who is 60 or older will not affect the benefit rates for other survivors receiving benefits. If she/he remarries after age 60 (50 if disabled), she/he can still collect benefits on her/his former spouse's record. When you reach age 62 or older, you may get retirement benefits on the record of your new spouse if they are higher. Your remarriage would have no effect on the benefits being paid to your children. If you are collecting survivors benefits, you can switch to your own retirement benefits (assuming you are eligible and your retirement rate is higher than the widow/widower's rate) as early as age 62. In many cases, you can begin receiving retirement benefits either on your own or your spouse's record at age 62 and then switch to the other benefit when you reach full retirement age, if that amount is higher.

39. In Japan, a beneficiary from a surviving Social Security pension can select one of the three kinds of the Basic Pension, even if he/she is eligible for two or more. With regard to the three kinds of the Employees' Pension, the insured have to select one that has basically the similar reason for the provision to that for the Basic Pension, because they are considered supplementary benefit to the Basic Pension. In the cases of the Old-Age Employees' Pension and the Survivors' Employees' Pension however, one can select one of the following patterns:

- Basic Pension + Old-Age Employees Pension
- Basic Pension + Old-Age Employees Pension \times 1/2 + the Survivors' Employees' Pension \times 2/3
- The Basic Pension + the Survivors' Employees' Pension

40. Another example, is Spain, where disabled children receiving surviving Social Security pension can change it, in case his father or mother in law dies, leaving them with a higher disable surviving Social Security pension.

4 Special programs to protect widows and orphans by the Government

41. An article published by The Economist in 1991 said that in England 77 percent of all separated and divorced mothers lived thanks to the State assistance. The goal of social expenditures is to improve societal well-being by collective provision of goods and services to those in particular circumstances or with certain needs. This broad goal covers many areas of social expenditure of widely different natures covering various groups of the population and can be divided in: pensions (old- age cash benefits and survivors); income support to the working-age population at risk from illness or loss of earnings (disability cash benefits, occupational injury and disease, sickness benefits, family cash benefits, unemployment benefits, housing benefits and other contingencies); public health expenditure and other social services (services for the elderly and disabled people, family

services and active labour market policies). For cross-country comparisons, the most commonly used indicator of what governments re-allocate to social effort is public social expenditure related to GDP. Public social expenditure is defined at the OECD as the provision by public institutions of benefits to households and individuals in order to provide support during circumstances which adversely affect their welfare, provided that the provision of the benefits and financial contributions constitutes neither a direct payment for a particular good or service nor an individual contract or transfer. Such benefits can be cash transfers, or can be the direct (“in-kind”) provision of goods and services²⁵.

42. Lynn Wardle, Professor at Brigham Young University, said that “when families are intact, stable and healthy, there is less draw upon the governmental social security programs. When families fail to form, are dysfunctional, or break up, there are greater demands upon the public social security programs. Thus, it is in the best interests of public social security programs to strengthen the institutions of marriage and marriage-based families”.

43. National governments often provide a safety net of social services. However, anybody will think that developed countries have better and bigger budgets to implement social protection programs, maybe it is true, European countries definitely have enormous amount and different types of social programs. However, these programs although have the same objectives may differ in different countries depending on several factors, among others: to whom they are made for, how much they want to spend, way of financing them, their political interests, if they are pilot or established programs, and made for the short or long run periods. In the next table, we will analyze how European governments provide more subsidies than any other continent. But the main difference becomes on the importance to whom and for what reason these programs are made for. As we could see on the following table, Latin American countries most of all use their programs to fight poverty instead of subsidies for people who really or probably don't need them as in some countries in Europe. Society plays an important role in the governments' agendas, this helps program planners to analyze and discuss more about society needs. This happens more in developed than in developing countries. Europe for example, has the best in quality and the biggest in monetary terms, compared to any other continent. European pensions are more generous and retirees are more reliant on them.

44. On the next Table 11, we will see subsidies and family allowances from governments' countries in Europe, Latin America and Asia. Information taken from every governmental web-page.

²⁵ 1980-1998. 20 Years of Social Expenditure. The OCDE Database

Table 14. Family Allowances by Governments per Country

	Disability	Birth Grants	Funeral Grants	Adoption Allowance	Single Parents Grants	Family Cash Benefits	School Allowance	Unemployment	Orphans	Work Injury	Tax Credit	Housing	Child Maintenance	Guardian's Allowance	Elderly Allowance
Europe															
France	√	√		√	√	√	√	√	√			√	√	√	√
Sweden				√	√	√		√	√	√			√		
England	√	√	√	√	√						√			√	√
Germany	√		√					√	√	√			√		
Spain	√	√	√	√	√	√	√	√	√						√
Latin America															
United States	√(1)		√(1)			√		√(2)	√		√				√
Canada	√					√					√		√		
Mexico						√(3)					√		√(3)		
Costa Rica	√(3)				√(3)	√(3)			√(3)						√(3)
Cuba															
Colombia												√			
Argentina				√	√		√						√		
El Salvador															
Honduras															
Chile	√				√	√	√								√
The Caribbean															
Dominican Republic	√				√			√							
Haiti															
British Virgin Islands															
Trinidad & Tobago						√(3)									
Asia															
Singapore		√									√	√			
Japan		√				√		√		√			√		
China	√					√(3)		√		√					√

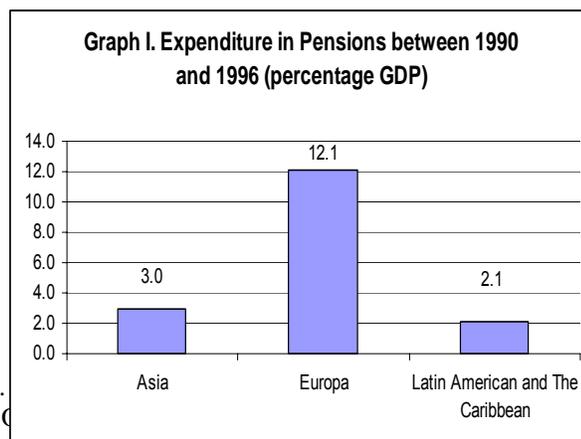
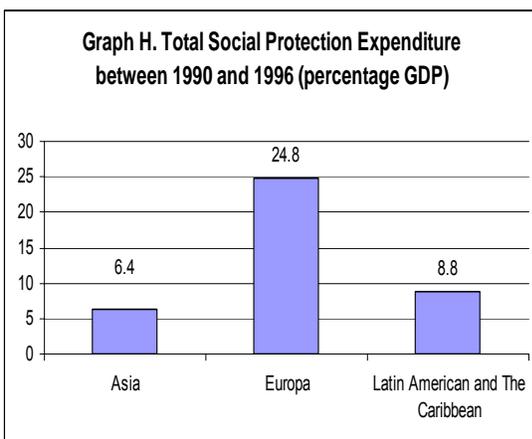
1. Total cost of pneumoconiosis benefits for insured persons coming onto the employment rolls before 1974.
 2. Federal government pays for the administration of state programs from the federal tax. The balance is used for loans to states or to finance the extended benefit program.
 3. Extreme poverty

There are wide variations in family allowances, which are the main components of cash benefits. Family benefits either in cash or service and can be defined as: disability, benefits paid independently of family allowances to support households and help them meet specific costs, such as families with handicapped children; birth, adoption or funeral grants, benefit normally paid as a lump sum or by installments in case of childbirth or adoption; parental leave benefit, benefits paid to either mother or father in case of interruption of work or reduction of working time in order to bring up a child, normally of young age; family cash benefits, they can be paid in cash, service or by certain products (food, cloth, medicines, etc); school allowances, the ones for supporting families who have children under age and attend school; unemployment, where most of them have specific periods of time; orphans, support those children who has lost both parents or for those children abandoned, taking them to beneficiary houses; work injury, governments support parents who had working injuries and can not economically support their families, especially fathers; tax credit, defined as the government tax discount; housing, provide them with subsidies for buying, renting or fixing their own homes; child maintenance, specially for mother who do not have an income and their children are under age; guardian's allowances, professionals for supporting children in their homework or by taking care while their lonely parents are working; and elderly allowance's, an extra support that can be in cash, service or product (special assistance, medicines, recreational institutions, etc)²⁶. These family cash benefits will varied depending on national legislation and policies.

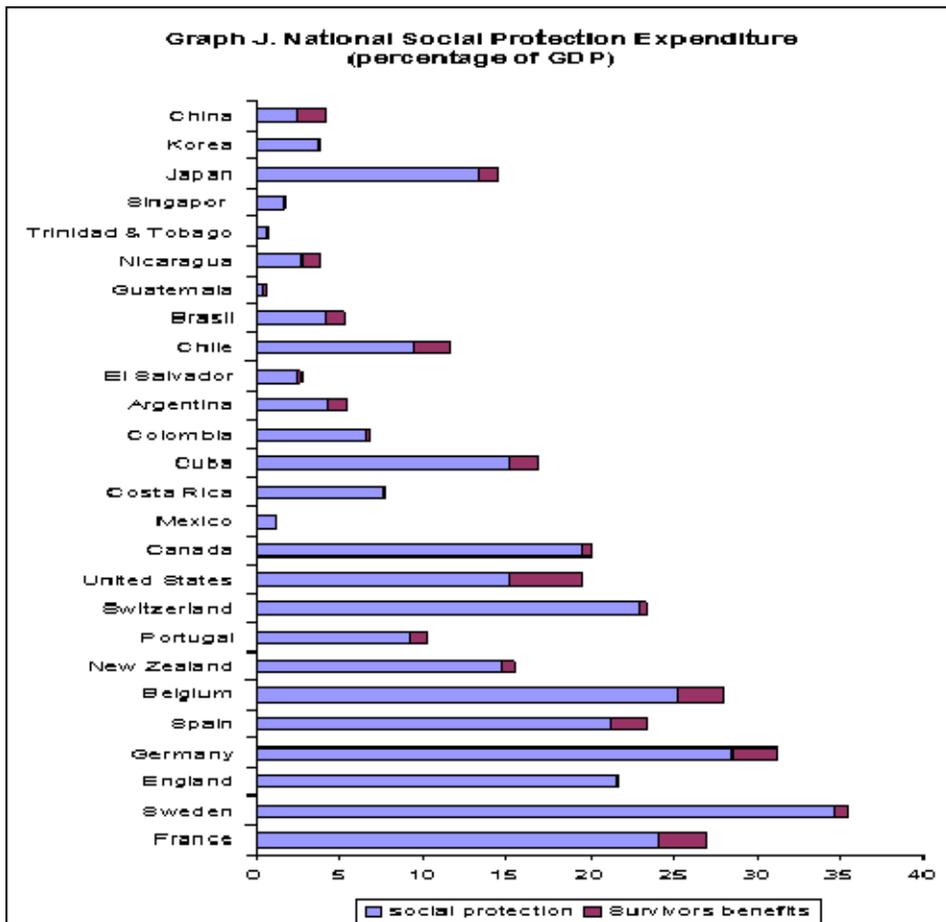
The Table above explain how European countries have much more subsidiary programs for the different family allowances presented compare to Latin American countries which in most cases government programs are focus in extreme poverty or for helping the most need ones.

45. Public social expenditure as a percentage of GDP, defined above, differs widely across countries. Public social expenditure levels are considerably higher in Europe than in most other continents. On average it accounts for some 21% of GDP, a considerable share since there is also private expenditure, as well as spending on education and other community needs. The figure is higher than 27% in Denmark, France, Germany, Sweden and Switzerland. Conversely, it is less than 10% in Korea and Mexico, and just over 10% in Japan, the Slovak Republic, Turkey and the United States²⁷.

46. Social protection expenditure in Europe was more than double compared to Latin American and the Caribbean and Asia. between 1990 and 1996 with 24.8 % of GDP, then Latin America and the Caribbean with 8.8 % and 6.4 % respectively, as it is shown in the following Graph H. In pensions, Europe still is the highest, but Asia turn out to be higher than Latin America and the Caribbean for more than one percentage point. (Graph I)



47. In terms of pensions, in the following Graph J, we will analyzed the national protection expenditure by country compared to surviving social protection expenditure in 1996, where as we already know, European countries have the highest expenditure like, France with 2.87 %, Germany 2.79 %, Belgium with 2.69 %, and Spain with 2.13 %, compared to some Latin American countries as Chile, 2.15 %, Cuba 1.73 %, Argentina 1.26 %, and Nicaragua with 1.09. Asia, China with 1.63 % and Japan with 1.09 %.



*In United States includes old age and surviving pensions.
Social Protection. Financial, Actuarial and Statistical Services Branch. ILO.

48. As we mention before, in Latin American countries, governmental programs are generally based and focus for combating poverty. Some of them are just temporally programs, either budget ends or another politic comes along. Social Protection in Latin American countries could be understood as the range of public measures used to protect the most vulnerable and poor members of society in terms of health, alimony, and education. In relation to health terms, they consist in: pensions, facilitating the retirement of adult workers; health risks, looking to protect the workers and their relatives; old age severance, which gives assistance for those who lost their jobs; and social assistance, for those who does not included in contributed social security systems and has insufficient incomes. Most of the developing Latin American countries present similar problems related to: inequality, segmentation from incomes, weak and inadequate regulatory frameworks, and fragile systems of information from administrative sectors. Even tough, Latin American countries also presents enormous amounts of divorces, mono-parental

families and common law marriages, only the most poor ones are the luckiest to received support. Moreover because most of these programs are projected to mothers and children from separated, divorced or decease parents. Most of the times these governmental programs doesn't work as good as they seem to, basically because: provincial and local inequalities, fragmentation of systems in certain jurisdictions; difficulty to promote programs for the long runs due to political changes; hard to control national coverage; political interests (political campaigns); low quality and deficient services; and federal, provincial and local corruption. Millions of dollars are spend in combating poverty in most Latin American countries, providing them with the minimal necessities for leaving, which normally is not enough. Some of this programs look a like and in some countries are already contemplated in their Social Security legislations, as the cases of Dominican Republic and Cuba.

Europe

49. In 2001, social protection in the European Union dropped back in real terms and amounted to 27 % of GDP, down by nearly a whole percentage point compared with 1996. Between 1991 and 1993 the ratio showed an appreciable increase, riding by 2.4 percentage points to a high in 1993 of 28.8 per cent. This was both to a slow down in GDP growth and to an increase in benefits (particularly those related to unemployment). By 2000 the ratio was as lowest as 1992.

In Europe, the major amount of the population adults are woman, six of every ten persons are older than 65 years old and almost one third of the population is older than 75 years old are woman. Moreover, woman of 65 or more earn 10 per cent less than men of the same age. 85 percent of woman with 65 years old or more are more susceptible to fall in poverty. The difference of woman incomes in most of the countries in Europe, vary between 4 and 15 per cent, 4 in Spain and 15 per cent in Great Britain and Finland.

In Table 15²⁸, we will analyzed expenditure in social protection by country as a percentage in GDP, where the decline in expenditure between 1996 and 2000 was most marked in Finland, Ireland, Denmark and the Netherlands. However, the drop was fairly general. There is a group of countries where expenditure was low as a proportion of GDP, this was in the case in Greece and Portugal.

Moreover in Table 16²⁹, we will see the social benefits by group of functions in 2000 as a percentage of total social benefits If we analyzed the table above, we can see that benefits related to old age and survivors functions made up the largest portion of social protection expenditure in most States, accounting 46 % of all total benefits. Italy was the highest, even though he has the biggest percentage of the population aged 60 or over compare to Ireland where has the youngest population but with the highest percentage of sickness and health care functions. United Kingdom has a high old age and survivors percentage explained that also has a huge percentage of population aged 60 or over.

²⁸ The Social Protection in Europe. Manuscript Completed on 23.01.2003. ISSN 1024-4352. Eurostat. European Communities 2003.

²⁹ The Social Protection in Europe. Manuscript Completed on 23.01.2003. ISSN 1024-4352. Eurostat. European Communities 2003.

Table 15. Expenditure in Social Protection by Country as a % of GDP.

Country	1991	1993	1996	1998	1999	2000
Belgium	27.1	29.3	28.6	27.6	27.4	26.7
Denmark	29.7	31.9	31.4	30.2	29.8	28.1
Germany	26.1	28.4	29.9	29.3	29.6	29.5
Greece	21.6	22.1	22.9	24.2	25.5	26.4
Spain	21.2	24	21.9	20.6	20.2	20.1
France	28.4	30.7	31	30.5	30.2	29.7
Ireland	19.6	20.2	17.8	15.5	14.8	14.1
Italy	25.2	26.4	24.8	25	25.3	25.2
Luxemburg	22.5	23.7	24	21.7	21.8	21
The Netherlands	32.6	33.6	30.1	28.4	28	27.4
Austria	27.0	28.9	29.5	28.4	28.8	28.7
Portugal	17.2	21	21.2	22.1	22.6	22.7
Finland	29.8	34.6	31.6	27.3	26.7	25.2
Sweden	34.3	39	34.7	33.4	32.9	32.3
United Kingdom	25.7	29	28.1	26.9	26.5	26.8
Norway	27.3	28.4	26.2	27.5	27.9	25.4
Switzerland	21.3	24.8	26.9	28	28.3	28.7

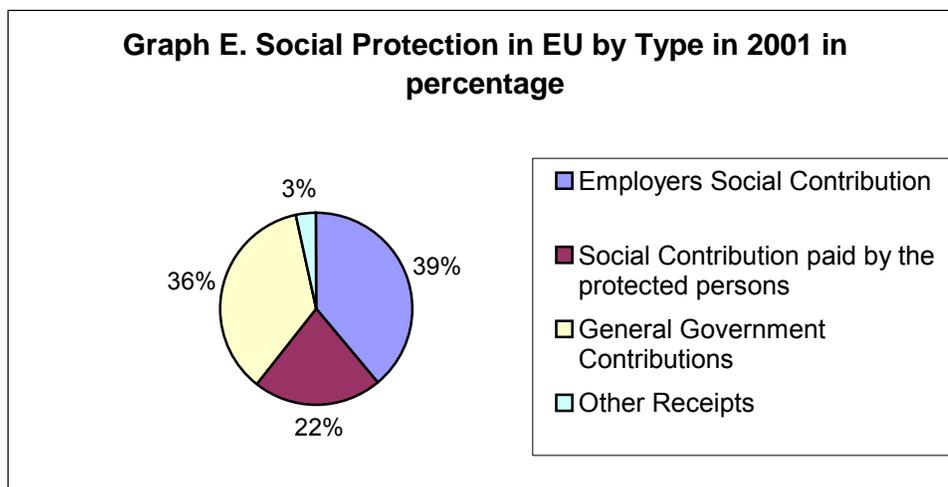
Table 16. Social Benefits by Groups of Functions 2000 as a % of Total Social Benefits.

Country	Old age and Survivors	Sickness/Health Care	Disability	Family / Children	Unemployment	Housing and Social Exclusion
Belgium	43.8	25.1	8.7	9.1	11.9	1.4
Denmark	38.1	20.2	12.0	13.1	10.5	6.1
Germany	42.2	28.3	7.8	10.6	8.4	2.6
Greece	49.4	26.6	5.1	7.4	6.2	5.4
Spain	46.3	29.6	7.6	2.7	12.2	1.6
France	44.1	29.1	5.8	9.6	6.9	5.4
Ireland	25.4	41.2	5.3	13.0	9.7	5.5
Italy	63.4	25.0	6.0	3.8	1.7	0.2
Luxemburg	40.0	25.2	13.7	16.6	3.3	1.2
The Netherlands	42.4	29.3	11.8	4.6	5.1	6.8
Austria	48.3	26.0	8.2	10.6	4.7	2.1
Portugal	45.6	30.6	13.0	5.5	3.8	1.5
Finland	35.8	23.8	13.9	12.5	10.4	3.5
Sweden	39.1	27.1	12.0	10.8	6.5	4.5
United Kingdom	47.7	25.9	9.5	7.1	3.2	6.8

Norway	30.7	34.2	16.4	12.8	2.7	3.3
Switzerland	51.6	24.4	12.5	5.1	2.8	3.6

50. As an additional information, social benefits per capita expenditure on the old age and survivors functions increased by 12 % in real terms between 1995 and 2000 in Europe (2.3 % per year), where United Kingdom, Portugal and Greece had the highest increase between 1997 and 1998. By the year 2000, the reduction in the rate of growth was particularly marked in Greece, Sweden and Italy, where United Kingdom and Portugal still the highest expenditure compared to the other countries³⁰. On the other hand, family and children functions increased also between 1995 and 2000, especially because some countries introduced reforms in their family codes and their family benefits systems, like it happened in Germany, Spain, Luxemburg, Finland and Portugal.

It is important to mention that in general, social benefits expenditures are highly based in general government contributions, where United Kingdom, Luxemburg and Sweden rely heavily on general government contributions. The divergence between European countries differ on their institutional rationale behind social protection systems. France for example, had a huge increase on general government contributions, especially between 1997 and 1998 due to the contribution sociale généralisée (CSG), or general social contribution, which is classified as tax revenue, which replace the sickness insurance contributions paid by protected persons. In Graph H³¹, we will see, in percentage, the social protection receipts by type in the year 2001, where the employers, social and general government contributions represents the highest.



In Table 17³², we can see a percentage of cash family benefits in the year 2000 in American dollars, where the variation between countries primarily reflects the different organization of family benefits in the Member States and the relative weigh of cash benefits and in kind (include, nursery facilities, nursing homes, foster families, goods and services provided for holidays and recreational activities) and maternity benefits, where

³⁰ The Social Protection in Europe. Manuscript Completed on 23.01.2003. ISSN 1024-4352. Eurostat. European Communities 2003.

³¹ Social Protection. Eurostat yearbook 2004.

³² Social Protection: cash family benefits in Europe. European Communities 2003

Germany spent more than Spain and France, where the impact of GDP between Germany and France is almost the same.

Table 17. Cash Family Benefits in 2000.

Country	As % of GDP	As % of total benefits	As % of family / children benefits	As constant price: index 1991=100 (US dollars*)
Belgium	2.0	7.7	84.6	152.2
Denmark	1.1	4.0	30.3	192.0
Germany	2.1	7.5	70.9	237.2
Greece	1.0	3.8	51.8	218.8
Spain	0.2	0.9	34.6	193.0
France	2.0	7.0	73.0	151.2
Ireland	1.5	11.2	85.9	218.0
Italy	0.5	2.0	52.2	168.5
Luxemburg	2.6	12.9	77.6	335.1
The Netherlands	0.8	2.9	64.4	113.1
Austria	2.3	8.2	77.5	175.0
Portugal	0.5	2.7	48.9	151.2
Finland	1.4	5.8	45.8	156.0
Sweden	1.0	3.2	30.0	0.0
United Kingdom	1.4	5.5	78.4	157.5
Norway	1.4	5.7	44.4	166.4
Switzerland	1.1	4.2	81.3	157.3

51. By 2003, France has become one of the most cash family benefits provider, where 40 % are mono-parental families from the total number of families. Family subsidy represent 40 % of all social expenditures. In the same year, there were 29 different subsidy programs, which assist an average of 187,637 mono-parental families, with a payment of around 400 hundred euros per month (524 US dollars). Their programs assist more than ten million families and the way these subsidies are financed, shown at the following Table 18 and Table 19 respectively.

Table 18. Subsidies in France 2003

Subsidies	Population	Grant per Month in US dollars *	How is Finance
Families	10 322 800 families 30 000 000 assured persons	790	FNPF
Housing	5 801 547 beneficiaries	200	FNAL/FNH
Mono-parental families (most of them mothers)	187 637 beneficiaries	482	Minister of Social Affairs

Disable	732 839 beneficiaries	660	Minister of Social Affairs
Subsistence	1 120 844	472	RMI

* Dollar-Euro= 1.31

Table 19. Institutions of Finance

FNPF National Fond for Family Support	Employers Fees of 5.4 % from the workers monthly salaries
FNAL National Fond for Housing Support	Employers Fees of 0.4 % from the workers monthly salaries plus 0.1 % from limit salaries
FNH Housing National Fond	Minister of Housing
FNAS National Fond of Social Action	Deduction from the employers fees that pays the FNPF
RMI Subsistence salary	Contribution from the Minister of Social Affairs
Disable	Contribution from the Minister of Social Affairs
FNGA National Administration Fond	Deduction from the employers fees that pays the FNPF

Finally, France also has certain family benefits under the FNAL considered outreach from other states benefits such as: wet nurse for children, nannies (which help children make their homework), summer clubs and camps, vacation subsidies, rental housing for two months, electricity, water and gas bills, and housing reshaping (around 10 000 euros).

52. England is another country provider of interesting subsidies, there is a governmental program called "Home Responsibilities Protection (HRP), which helps to finance your retirement pension, either as a additional pension or for certain professions or for disable persons. Also, under this program, the State helps single mothers with 16 year old children or 19 if they are in school, with an amount of 16.50 pounds per child, and around 11.50 pounds for every extra child. They also have free health services and a special package for taking care of just born children until 12 or 20 first weeks of birth. In case children would have to leave out of the country for more than 12 weeks with their parents, they still receive certain benefices such as: full time education in any country of the European Community, as well as medical services. Other program is the Child Maintenance Program (CM), which includes the costs of the born child and a economic subsidy of 10,000 pounds per child³³; another subsidy of 79.60 pounds if you have a child with mother or father working out of England, and 1,000 pounds until that parent comes back home³⁴; subsidies for changing jobs with a requirement of being more than four weeks in your old job³⁵; and supports for buying or renting house, and fiscal reductions in Christmas eve³⁶.

Latin America and the Caribbean

53. In countries like United States and Canada, are working and debating on how to find the best way to support this vulnerable sector of the population. An article by David Brooks published by The New York Times on January 4th, 2005, mentioned that Americans

³³ http://www.dwp.gov.uk/lifeevent/benefits/child_maintenance_bonus.asp

³⁴ http://www.dwp.gov.uk/lifeevent/benefits/widowed_parents_allowance.asp

³⁵ <http://www.jobcentreplus.gov.uk/cms.asp?Page=/Home/Customers/WorkingAgeBenefits/1010>

³⁶ http://www.dwp.gov.uk/lifeevent/benefits/christmas_bonus.asp

have been having, over the past 50 years, debates over two rival economic systems, where the Conservatives favor the American model, with the smaller government and lower taxes, but less social support, and the Liberals for supporting programs that lead to the European model, with bigger government and more generous support and less inequality. The problem is, according to the writer, that in the next decades the American model is going to be challenge a huge problem: aging populations, what in Europe seems to be an unsustainable situation. Basically because European population is aging faster and their pensions are more generous and retirees are more reliant on them. Definitely, European government will have to rise their subsidies, where as we see in Graph E, government spending correspond to a 36 per cent for social protection. A Standar & Poor´s survey predicts that France and Germany could see their public debt grow to more than 200 per cent of GDP by 2050. It seems that according to the O.C.D.E., the dependency ratio (defined as the number of people over 65 as a percentage of the number of people 20 to 64 years old) will rise to 37 per cent from 22 percent in the United States by 2050, and it will go up to 52 per cent from 26 per cent in the European Union. Mr. Brooks concludes that with a low tax, high-growth economic model, the United States will have the resources and the flexibility to deal with the problems caused by a aging population without having to face, at leas for now, the horrific choices that confront their European friends, leaving the question if they will really leave to their children a system as flexible, dynamic and productive?, my question for me will be: who is doing the right thing?.

Mary Ann Glendon, an expert on family issue, on her book called “Abortion and Divorce in Western Law, American Failures, European Challenges”, makes a comparison related on how English and West European divorced laws of recent years emerged from a law reform process that differs from the American, mentioning several important points from an interesting point of view, especially about how things are doing differently between European countries and United States. She said that “divorce legislation on European countries has nationwide application, so reform proposals are intensely discussed in the national press and on radio and television. The debate achieves a degree of sustained public attention that is never secured by a proposed change in the divorced law of a single American State. Any important change in family law in a European country is typically preceded by extensive studies of behavior and opinion in the areas involved. Draft laws are typically accompanied by carefully researched reports or working papers discussing the operation o the existing laws, as well as the likely advantages and disadvantages of proposed changes. On the Continent this work is usually carried out under the direction of full-time staff members of the ministries of justice”.

54. Argentina, Costa Rica and Uruguay, are the ones that present the highest expenditure in health, as is demonstrated in the next Table 20³⁷, and are, at the same time, the countries with the highest rates in aging populations.

³⁷ Protección Social y Mercado Laboral en Argentina, Chile, Paraguay y Uruguay. Santiago de Chile, junio de 2004. Fabio Bertranou, María Gabriela Loyo y Mario Velásquez.

United Nations. Economic and Social Council. Social Development Commission. 39th Session Period. Reforms in Social Protection in Latin America.

http://www.redsegsoc.org.uy/1_ONU_EM_Comision_de_desarrollo.htm

Table 20. Public Expenditure in Latin America as a Percentage on GDP between 1996 and 1997.

Country	As a % of GDP	Education	Health	Social Security	Housing and Social Assistance
Latin America					
Mexico	8.5	3.7		3.6	1.2
Costa Rica	20.8	5.8	7.3	5.5	2.2
Cuba					
Colombia	15.3	4.4	3.7	5.4	1.8
Argentina	17.8	3.8	4.1	8.0	1.9
Uruguay	22.5	3.0	3.7	15.3	0.5
El Salvador	7.6	2.6	2.8	2.0	0.2
Honduras	7.2				
Chile	14.2	3.3	2.5	6.7	1.7
The Caribbean					
Dominican Republic	6.1	2.3	1.4	0.7	1.7
Average	13.3	3.2	2.8	5.2	1.2

In this table also, we can see how there is a significant expenditure disparity among countries. Uruguay has three times expenditure in social security than the rest of the countries where there average is around 5 per cent. Costa Rica and Colombia have the highest percent of GDP compared to 8.5 in Mexico.

For a better understanding of the Latin American situation, you will see on the next Table 21³⁸, an average of the poorest homes in some of the countries of our study, as well as the coefficient by income.

³⁸ United Nations. Economic and Social Council. Social Development Commission. 39th Session Period. Reforms in Social Protection in Latin America. http://www.redsegsoc.org.uy/1_ONU_EM_Comision_de_desarrollo.htm

Table 21. Average of the poorest homes in Latin American Countries and distribution by there income in 1996 and 1997.

Country	% of poor homes	Coefficient by gini to:
Latin America		
Mexico	43.0	0.3920
Costa Rica	20.0	0.3570
Cuba		
Colombia	45.0	0.4770
Argentina	13.0	0.4390
El Salvador	48.0	0.3840
Honduras	74.0	0.4480
Chile	20.0	0.4730
The Caribbean		
Dominican Republic	32	0.432

In the table above the highest coefficient is the one that has the worst income distribution, as in Chile, Honduras and Colombia, where this two last ones had the highest percentage of poor homes before El Salvador and Mexico.

55. Millions of dollars are spend in combating poverty in most Latin American countries, providing them with the minimal necessities for living, which normally is not enough. Some of this programs look a like and in some countries are already contemplated in their Social Security legislations. In the next Table 22, we well see some of the most important governmental social assistance programs in the last years.

Table 22. Social Governmental Programs in Latin America

Country	Program	Assists	Amount received per month in US dollars
Latin America			
United States	Temporary Assistance for Needy Families (TANF)	Poor parents and their children	
Canada			
Mexico	Oportunidades / Nacional Program Development Plan 2001-2006 / Habitat Program / Liconsa / Diconsa	Poor families and communities / Poores in main and metropolitan cities / milk for woman and born children / primery products	118
Costa Rica	Social Development and Family Allocation Fund FODESAF	Extreme poverty	
Cuba	Regime for Social Assistance	Families economically unprotected	
Colombia			
Argentina	Social Assistance Program / Not contributed Program / Support to Mother and Child / Housholders / Vulneral Goups	Vulnerable population / mothers and their children / Parents	150 a 300
Uruguay			
El Salvador			
Honduras			
Chile	Old Age, Solidarity and Investment Social Fond FOSIS / Unique Familiar Subsudy SUF / Housewives Program	Poverty / children to school / Mothers	252
The Caribbean			
Dominican Republic	Pension for a Subsidiary Regime	Disable, unemployd and mothers that have children under age	
Haiti			
Brithish Virgin Islands			
Trinidad & Tobago			

Conclusions

1. Demographic changes and the new family structures in the last decades has transformed Social Security legislations and Civil and Family codes. The problem has caused the new implementation of administrative and financial rules for those Social Security Institutions that in some cases are not established in civil or family codes. This has caused a complex and multifaceted legal procedures in most of Social Security Institutions.

2. Divorce has come to the extreme where the only agreement of one of the spouses and in the term of six weeks as in the Estate of Nevada in United States, to five years as in Mexico, Argentina and Chile (approved reforms in Chile in 2005) spouses can receive the decree of divorced. This has caused a enormous amount of divorces in all of the world, affecting most of all economically and psychologically mothers and children.

3. Widows, widowers and orphans represent a significant number in society on the last decades. The number of widows are more much higher than widowers, and a big percentage of them have more than 60 years old. Every orphan, under state law, has the right to demand the legal recognition of his parents in order to receive their legal rights.

4. Couples are considering the idea of living under common law marriages without knowing the legal pros and cons compared with legal marriages. Even though countries are reforming their laws for the acceptance of this concept, legislators are trying to make people understand the importance of being legally married. Moreover, for those countries where common law marriages are not legally accepted, contribute to the migration of couples to places where their legal status is protected under law, as in the case of United States.

5. Social Security legislations are more common to accept common law marriages instead of civil and family codes. Basically with respect to surviving Social Security pensions, where in most Social Security legislations accepts the person that had lived a certain period of time before the worker died.

6. Members from disintegrated families should have the right to receive surviving Social Security pensions, however, only in a few countries accept ex-wives or ex-husbans, with certain requirements which the most important is not to get marriage again. Children under age and disable have the total and legal rights for receiving surviving Social Security pension.

7. The percentage of the surviving Social Security pensions differs in most of Social Security legislations, especially with respect to widows and widowers with children and without children.

8. There are five main ways for ending Social Security surviving pensions according to the Social Security legislations: a) For widows and widowers from legal or common law marriages: by getting marriage; by having a common law marriage (this will be only permitted in the countries that officially accept cohabitation); when they reach the official retirement age; by getting a job; and when beneficiaries can economically support themselves. b) For children with either mother or father: when they reach the age limit established in the respective Social Security legislations, including the years of elementary school; in some countries, when they have a formal and economically sustainable job; and by getting married. c) Disable in all countries have the right to a surviving pension, they end either when they come to a possibility of maintaining themselves economically, or by a physical reestablishment.

9. Every natural and adopted children has the right to receive a surviving Social Security pension for their main necessities and for finishing basic school, as always being under age established in every Social Security legislation.

10. In all counties there is the continuity to provide Social Security medical services to children under age from disintegrated families. In most cases, the divorce, widow or widower do have the right only if is not working, got married again or lives in precarious economical conditions.

11. Government social assistance programs for mono-parental families are much better in type and amount in Europe than in any other Continent. Their programs are more directed to family benefits, old age and surviving pensions.

12. In Latin American and the Caribbean countries government social assistance programs are focus for combating extreme poverty. Their budgets are low and their targets more specific.

Recommendations

1. Marriages have decrease severely on the last decades and divorces tremendously increased. Legislators should focus more in rules where divorce should be the last exit of finishing marriage. Basically due to the psychological and economic problems to family members.

2. Based on the complexity of rules that constitute common law marriages, legislators should established obligatory marriage after a certain period of cohabitation time. People most understand that in order to be legally protected, either in terms of Social Security pensions, as many other rights, marriage is the best way for being protected under law. Couples are more protected by marriage than from any other status, in fact, marriages are more economically productive than any other relations.

3. Social Security institutions most protect those who live in common law marriages under their legislations. By doing this, they will have a better control of the increase of this type of new families, giving them better rights and benefits.

4. Orphans should have better surviving Social Security pensions considering that in some countries they received only 20 %..

5. Social Security institutions most based their work in legislations and procedures followed by:

- Certainty and clarity in legal definitions on civil and social security legislations.
- Equity, impartiality and fairness are the basic terms for administrative and legal procedures applied.
- Objectivity of Justice Departments or General Attorneys to propose guidelines according to the evolution of family law.
- Better diffusion and communication of laws and guidelines, and
- Monitoring systems in short periods to see if those new policies or guidelines are working fine and most be translate into State or Federal laws.

6. Governments, most find the best financial way in order to keep supporting those vulnerable part of population, specially in terms of health, alimony and housing. Government interest should be based in the recognition and commitment to family

protection as the essential element for a protective family environment, including an adequate legislative framework, its consistent implementation, accountability and a lack of impunity. Government Programs should also need an effective monitoring systems that records and analyzed the different result of programs, with cost-benefits analysis, projected to the society in general and with no political interests.

Bibliography

1. Athur J. Norton and Louisa F. Miller, Marriage, Divorce, and Remarriage in the 1990s. U.S. Department of Commerce. Economic and Statistics Administration. Bureau of Census.
2. Mary Ann Glendon. Abortion and Divorce in Western Law. American Failures, European Challenges.
3. Mary Ann Glendon, The Transformation of Family Law. State, Law, and Family in the United States and Western Europe.
4. Kotlikoff and Scott Burns, The Coming Generational Storm.
5. Bedard Oliver Deschénes, Sex Preferences, Marital Dissolution and the Economic Status of Woman. Department of Economics. University of California, Santa Barbara. June 2003.
6. E. Oakes Smith, Woman and her needs. No. VII. Marriage-Divorce.
7. Gérard Abramovici, Social Protection: cash family benefits in Europe. Eurostat
8. Fabio Bertranou, María Gabriela Loyo y Mario Velásquez, Protección Social y Mercado Laboral en Argentina, Chile, Paraguay y Uruguay. Santiago de Chile, junio de 2004.
9. Lynn D. Wardle, The Effects on Social Security of Changes in the Family and Family Law.
10. Ana Vera Estrada, La Familia y las Ciencias Sociales, Biblioteca Basica de Historia y Cultura de la Familia en Cuba. Centre de Investigación y Desarrollo de la Cultura Cubana Juan Marinello.
11. Charles Murria, *Welfare and the Family: The US Experience*.
12. Marco Antonio Ortiz Porras, *Historia del Derecho Mexicano*.
13. Iván Escalona M., *La Familia en el Derecho Civil Mexicano*.
14. Ingrid Brena Sesma, *Reformas al Código Civil en Materia de Matrimonio*.
15. Rafael Rogina Villegas, *Derecho Civil*.
16. Don Aguilino Polaino, Doctor Psiquiatra y Catedrático de Psicología de la Universidad Complutense de Madrid.
17. Linda J. Waite, publicada en el libro The Case of Marriage