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## For Mert Bernstein, Inventor of a Field

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# FOR MERT BERNSTEIN, INVENTOR OF A FIELD

LANCE LIEBMAN\*

Life brings odd cycles and conjunctions.

More than twenty years ago, as a brand new law teacher, I was assigned by Dean Derek Bok to teach “urban law.” I said, “Derek, what is that?” He said: “You have been Assistant to Mayor Lindsay of New York for two years. You figure it out.”

Perhaps because I was not more imaginative, I failed to invent the field of urban law. (With ninety-five percent of the population in urban areas, that might have meant taking responsibility for the entire curriculum.) Instead, I made my way into two different fields: the various urban topics that are included in the first-year Property course; and, quite separately, what began for me as Welfare Law, changed into Income Transfer Law, then became Law of the Social Welfare System, and now—because so many of America’s social welfare arrangements operate in relationship to the job system—sometimes Employment Law.

Beginning to teach AFDC law, I soon realized that what Americans call “welfare” is a tiny part of a big and evolving structure of income shuffling.<sup>1</sup> Even in the early 1970s, this system was central to the lives of millions of people, dealt with billions of dollars, and was filled with challenging legal questions. Yet almost no one was teaching and writing about it in American law schools.

The major reason that the word is “almost” and not “no one” was (and is) Mert Bernstein. After early service as a lawyer working with these problems, he had become a law professor who wrote about the most important legal and policy issues concerning Social Security, private pensions, and health insurance. What he wrote was always intelligent and often imaginative. It certainly helped me understand the issues. Also, it was based on a deep commitment to the core ideas of the social insurance movement: grouping the population so that all would contribute and all would be protected. As only one example of his foresight, Mert wrote before anyone else about the outrage of paying women workers smaller

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1. After the 1993 budget enactment, even the Earned Income Tax Credit will be larger than Aid to Families with Dependent Children.

pensions (or charging them larger contributions) simply because actuarially the group of all women live longer than the group of all men. His scholarship<sup>2</sup> underlay the successful litigational effort to end gender-based classifications in both the private pension system and Social Security in which now-Justice Ruth Bader Ginsburg played such a large role.<sup>3</sup>

As a scholarly advocate of and expert on social insurance, Mert is in the direct tradition of the legal realists who worked at Columbia Law School between World War I and World War II. This is appropriate since Mert's legal education was at Columbia immediately after the Second World War. The cycle of my life thus leads, coincidentally but appropriately, from young teacher admiring Mert Bernstein's work to dean proud of his connection to Columbia. This tribute thus comes with the warm feelings of his legal alma mater.

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2. See, e.g., Bernstein & Williams, *Title VII and the Problem of Sex Classifications in Pension Programs*, 74 COLUM. L. REV. 1203 (1974).

3. See, e.g., *Arizona Governing Comm. v. Norris*, 463 U.S. 1073 (1983); *City of Los Angeles v. Manhart*, 435 U.S. 702 (1978) (citing Bernstein & Williams, *Title VII and the Problem of Sex Classifications in Pension Programs*, 74 COLUM. L. REV. 1203 (1974)); *Califano v. Goldfarb*, 430 U.S. 199 (1977).