Essays
In Political Economy
From the Ludwig von Mises Institute

The Roots of the Social Security Myth

By John Attarian

This is a concise critical history of the federal program of Old-Age, Survivors and Disability Insurance (OASDI), popularly known as Social Security. It focuses on a crucial but underexamined aspect of the program: how Social Security was marketed to the American public, the false consciousness which that marketing created, and how that false consciousness is a cause of the current political quagmire—and the likely meltdown of the program sometime in this century and its subsequent inability to pay full benefits on time to the retiring baby boomers.

John Attarian (PhD in economics) of Ann Arbor, Michigan,
writes for *Modern Age*, *Chronicles*, and other publications.

You can write him at 1001 Maiden Lane #1, Ann Arbor, Michigan 48105

The Roots of the Social Security Myth

by John Attarian

This is a concise critical history of the federal program of Old-Age, Survivors and Disability Insurance (OASDI), popularly known as Social Security. It focuses on a crucial but underexamined aspect of the program: how Social Security was marketed to the American public, the false consciousness which that marketing created, and how that false consciousness is a cause of the current political quagmire—and the likely meltdown of the program sometime in this century and its subsequent inability to pay full benefits on time to the retiring baby boomers.

As an intergenerational redistribution financed by payroll taxes, Social Security depends decisively for its legitimacy and its very existence upon how it is perceived by politicians, taxpayers, and beneficiaries. Social Security's architects and promoters were keenly aware of the decisive importance of beliefs. Not only their depiction of the program in its massively-disseminated communications to the public, but several of their key decisions about how Social Security was structured and financed, were made to foster certain perceptions and beliefs, in hopes of making Social Security accepted, popular, and ultimately, politically invulnerable. Social Security was presented as "retirement insurance" under which taxpayers pay "insurance premiums" or "contributions" to "buy" protection from destitution in old age, with their "contributions" being "held" for them in a "trust fund" which will be used to pay benefits which, having been "paid for" by their "contributions," will be theirs "as a matter of earned right," as America keeps its "compact between the generations."

The entire foregoing description is demonstrably, documentably false. At various times, various officials even admitted as much, arguing just the opposite before the Supreme Court, first to ensure Social Security's constitutionality (*Helvering v. Davis*, 1937) and second to uphold their prerogative to deny beneficiaries their purportedly "earned right" to "guaranteed" benefits (*Flemming v. Nestor*, 1960). Moreover, they never informed the public about Section 1104 of the Social Security Act: "The right to alter, amend, or repeal any provision of this Act is hereby reserved to the Congress." Congress has repeatedly exercised this right. Amendments to the Social Security Act have cut, delayed or taxed benefits or denied them to various classes of people, giving the lie to the vaunted guarantee and earned right.

Yet this promotion created a powerful false consciousness about Social Security, whereby most Americans, especially elderly ones, accept the myths of "insurance," "trust funds," and "earned rights" as self-evident truth. This false consciousness decisively shaped the actions taken when Social Security ran into financial difficulties. The rescue legislation of 1977 and 1983 relied mostly on tax increases and on cuts in future benefits rather than cuts in current benefits, which was in turn a decisive factor in the rising unhappiness about Social Security among young taxpayers in the last twenty years.

Meanwhile, the long-term financial outlook for Social Security has deteriorated since the 1983 rescue, and successive Social Security board of trustees have warned that the program is not in long-term actuarial balance, and have asked Congress to take remedial measures. But fear of Social Security's thoroughly gulled but politically formidable constituency has thus far precluded significant corrective action, let alone radical reform. Nearly two decades of precious time have been squandered.

Social Security is therefore trapped between the *imperatives of politics*, springing from a false consciousness, which forces policy makers to act as if

Social Security's myths are in fact true, thus locking Social Security into a rigid position, and the *imperatives of economics*, which require adjustment to changing conditions.

Awareness of the coming crisis has evoked reform and "privatization" proposals. Unfortunately, they have several problems. The final section gives them some critical scrutiny, and closes with proposals which are, by comparison, unvarnished, but have the redeeming virtue of honesty. Social Security has received precious little of that.

THE BEGINNINGS

Social Security is often called "social insurance." Isaac Rubinow, a pioneering advocate of social insurance, defined it in 1913 as the policy of society to furnish "that protection to one part of the population" which others are "able to purchase voluntarily through private insurance." The basic idea of insurance, Rubinow maintained, is a provision by a group of persons, each in danger of an unforeseeable loss, that if any one member of the group suffers that loss, the whole group will bear the cost, each member's cost thereby being small. Workers face serious risks, such as poverty in old age, but cannot afford private insurance. Protecting them, he argued, was "the concern of the modern progressive state," which may provide voluntary insurance and lower the premiums (for example, by subsidies), or even make workers' payments compulsory. Money thus collected would pay benefits compensating for the risks.[1] Such, in essence, is social insurance.

Intellectual Origins: Revolution from Above

Arthur Larson, undersecretary of labor under Dwight Eisenhower, observed that compulsory government social insurance "did not come in on a great wave of popular demand from the mass of people. It came largely because of the efforts of far-sighted individuals."[2] That is, it was imposed from the top down by politicians and intellectuals, for reasons pragmatic and philosophical.

The first national, government social insurance system was created by Germany's Chancellor Otto von Bismarck, to assist German industrial workers, and thus make them less susceptible to socialism. His Sickness Insurance Law was passed in 1883, followed by accident insurance in 1884 and old age and disability insurance in 1889.[3] Other European countries followed; for example, Britain in 1911.[4]

American "social insurance," too, came from above. In the latter half of the nineteenth century, an increasingly influential viewpoint held, as historian Sidney Fine put it, that "the state could best promote the general welfare by a positive exertion of its powers," and called for such things as antitrust laws and labor laws.[5] As this "progressive" movement grew early in this century, several states enacted social insurance measures, such as unemployment and old-age benefits. Agitation by academics, unions, social workers, and social insurance advocates such as Rubinow and Abraham Epstein for national social insurance rose.[6] It got nowhere, though, until the Great Depression's privations created a favorable climate for it.

President Franklin Roosevelt supported social insurance. When governor of New York, he repeatedly sought legislation for a state system of old-age insurance financed by premiums paid by young workers, employers and the state. In the 1932 campaign, Roosevelt again proposed old-age insurance.[7]

On June 8, 1934, Roosevelt informed Congress that next winter he would probably seek comprehensive social insurance against many of life's travails, especially unemployment and old age. He issued an executive order creating the apparatus for developing this program: a Cabinet Committee

---

[1]I.M. Rubinow, *Social Insurance: With Special Reference to American Conditions* (New York: Arno Press, [1913] 1969), pp. 3, 10–11.

[2]Arthur Larson, *Know Your Social Security* (New York: Harper and Brothers, 1955), pp. 10–11.

[3]Edward Crankshaw, *Bismarck* (New York: Viking Press, 1981), pp. 359–60, 378; Rubinow, *Social Insurance*, pp. 13–16.

[4]Rubinow, *Social Insurance*, pp. 21, 24.

[5]Sidney Fine, *Laissez Faire and the General-Welfare State: A Study of Conflict in American Thought, 1865–1901* (Ann Arbor: University of Michigan Press, 1956), pp. 167–68, and "Laissez Faire Under Attack: Emergence of the Concept of the General-Welfare State."

[6]Gerald D. Nash, Noel H. Pugash, and Richard F. Tomasson, eds., *Social Security, the First Half-Century* (Albuquerque: University of New Mexico Press, 1988), pp. 4–7.

[7]Daniel R. Fusfeld, *The Economic Thought of Franklin D. Roosevelt and the Origins of the New Deal* (New York: Columbia University Press, 1956), pp. 158–61, 244.

on Economic Security to study social insurance and recommend legislation; an Executive Director for the Committee; a Technical Board of experts to advise the Committee and help the Executive Director develop a program; and an advisory council. The Committee contained Secretary of Labor Frances Perkins (chairman), Secretary of the Treasury Henry Morgenthau, Attorney General Homer Cummings, Secretary of Agriculture Henry Wallace, and Federal Emergency Relief Administrator Harry Hopkins.[8] Arthur Altmeyer, assistant secretary of labor, was picked to head the Technical Board. He recommended University of Wisconsin economist Edwin Witte for executive director. Witte in turn hired Wilbur Cohen, a former student of his, as an assistant.[9]

The Payroll Tax: "Politics All the Way Through"

As preparations advanced, Roosevelt insisted that old-age insurance must be self-financed, by payroll taxes on employees matched by excises on employers, so there would be "no money out of the Treasury."[10] But his primary motive for this lay elsewhere. As he told a visitor who complained that the payroll tax was regressive:

> I guess you're right on the economics, but those taxes were never a problem of economics. They were politics all the way through. We put those payroll contributions there so as to give the contributors a legal, moral, and political right to collect their pensions and their unemployment benefits. With those taxes in there, no damn politician can ever scrap my Social Security program.[11]

Roosevelt's words reveal the payroll tax as one of the main roots of the Social Security myths, and therefore of Social Security's crisis. It created—and was intended to create—a powerful sense of entitlement to benefits, which, being paid for out of taxes, were an earned right. The payroll tax was not about financing a program, but about creating a climate of belief. Payroll taxes would give taxpayers a stake in Social Security's survival, so as to be able to get their money back, and thereby create a constituency committed to Social Security and resistant to any attempt to tamper with benefits. Each generation of taxpayers would, upon becoming elderly, see to it that their benefits arrived and that the next generation pay their taxes to finance those benefits. As Roosevelt foresaw, it would make Social Security untouchable.

He did not foresee that the payroll tax would help trap Social Security in a position in which substantial benefit reduction for current retirees was unthinkable, forcing the government to meet projected financial crises first by tax increases, thereby creating serious disaffection with Social Security, and then by sheer evasion.

The Administration's Proposal

The Committee on Economic Security reported to Roosevelt on January 15, 1935. Two days later, the bill was introduced in Congress. It had nine titles; Titles III and IV were the original Social Security proposal. Title III created a payroll tax on workers and a matching "employment excise tax" on their employers, to finance old-age insurance.

---

[8] Arthur J. Altmeyer, *The Formative Years of Social Security* (Madison: University of Wisconsin Press, 1966), pp. 3, 7–8.

[9] Arthur J. Altmeyer, "The Wisconsin Idea and Social Security," *Wisconsin Magazine of History* 42, no. 1 (Autumn 1958): 21; Edward D. Berkowitz, *Mr. Social Security: The Life of Wilbur J. Cohen* (Lawrence: University Press of Kansas, 1995), pp. 20–24.

[10] Arthur M. Schlesinger, Jr., *The Age of Roosevelt*, vol. 2, *The Coming of the New Deal* (Boston: Houghton Mifflin, 1958), p. 308.

[11] Ibid., pp. 308–09.

Title IV, the benefit title, created a "Social Insurance Board" in the Department of Labor to supervise payment of "old-age annuities under a national contributory old-age insurance system." It also created an "old-age fund" in the Treasury to pay "old-age annuities." It could be invested in U.S. Treasury debt or any debt guaranteed by the government. The annuities, proportional to the worker's average monthly wage, were to be paid to persons who were no less than 65 years old; had had taxes under Title III paid on their behalf; and were not gainfully employed by others. There was a money-back guarantee:

> In no event shall the actuarial value of an annuity paid to a person under this section be less than the amount of taxes paid on his behalf together with interest accretions as determined by the Social Insurance Board.[12]

The bill did not say one had a contractual or other right to benefits. Moreover, Title X reserved to Congress the right "to alter, amend, or repeal any or all provisions of this act."[13]

Getting Through Congress: The First Falsehoods

Perkins, Witte, and other key figures in the preparation of the bill testified at House Ways and Means Committee and Senate Finance Committee hearings. Consistently, they described Social Security as a unified system, with the payroll taxes creating a fund for paying benefits. Taxes and benefits were explicitly linked. Witte, for example, described old-age insurance to the Ways and Means Committee as "a self-supporting system of old-age annuities."[14] The taxes, he said, were "to provide the money to pay the annuities."[15]

They also described Social Security not only as insurance, but as creating a "contractual right" to "contractual annuities"—*despite the absence of any contract language whatsoever in the bill*. Perkins, for example, told the Ways and Means Committee that Social Security would have workers "make a small contribution, a small percentage of their pay, to a fund which will later be used to pay them an insurance benefit which they have as a contractual right when they become 65 years of age."[16] Similarly, Princeton economist J. Douglas Brown, an advisor to the Committee on Economic Security, testified that

> It is insurance not relief. It is contributory and contractual and affords an annuity as a matter of right. . . . By contributing, the individual worker establishes an earned contractual right to his annuity through his own thrift.[17]

Yet these witnesses, presumably familiar with the bill, could hardly have not known that it created no contractual, or other, rights.

Another of the deepest roots of Social Security's crisis has its origin here. Americans are intensely rights-conscious. To assert or deny the existence of rights is to arouse intense sentiments which often preclude rational discourse. And once a right is entrenched in Americans' minds, abridging it is risky. In saying that Social Security's benefits would come as a matter of earned right, its proponents were taking a fateful step. This oft-reiterated assertion bought immense public support, but the long-run price, as we shall see, was to lock Social Security into rigidity about paying benefits, and seriously impair its ability to respond to changing circumstances.

Meanwhile, the administration was selling its bill to the public. On March 16, 1935, the Columbia Broadcasting System aired a symposium on "The Economic Security Program," later published as a pamphlet. One participant, Railroad Retirement Board chairman Murray Latimer, said that under the proposed old-age insurance system,

> men and women, with the aid of their employers, will, through their own contributions, build up the right to an annuity of their own *on an inalienable contractual basis*, which will

---

[12]Department of Health, Education, and Welfare, Social Security Administration, *Social Security Act of 1935: Reports, Bills, Debates, Acts, and Supreme Court Decisions* [hereafter, Social Security Administration, *Social Security Act of 1935*], 2 vols. (Washington, D.C.: U.S. Government Printing Office, n.d.), vol. 2, in Appendix, at "Administration Bills," H.R. 4120 text, pp. 1–63.

[13]Ibid., p. 63.

[14]U.S., Congress, House, Committee on Ways and Means, *Economic Security Act: Hearings before the House Committee on Ways and Means on H. R. 4120*, 74th Cong., 1st sess., 1935, p. 8.

[15]Ibid., p. 109.

[16]Ibid., p. 177.

[17]Ibid., pp. 240, 241.

> enable them to retire from gainful employment when they become old."[18]

Now the public too was receiving assurances of inalienable, contractual rights which did not exist.

Sneaking Past the Court: Semantic Cleansing and Other Dodges

Meanwhile, the Ways and Means Committee was working on the bill. Treasury Secretary Morgenthau, with Roosevelt's approval, insisted that the tax rates be raised enough to create a large reserve fund, projected to reach $50 billion by 1980; the Committee agreed.[19]

Most importantly, the bill was purged of insurance language, and the tax and old-age benefit titles physically separated. The administration and its allies in Congress feared that the Supreme Court would find Social Security unconstitutional. The Constitution gave the federal government a taxing power; that it gave power to create an insurance scheme was unclear. Witte wrote later, "It was understood that the validity of a federal old-age insurance system was doubtful, but it was thought that it might be possible to set up such a system under the taxing power of Congress."[20]

It was no idle concern. On January 7, just ten days before the bill was introduced, the Supreme Court ruled that the oil provision of the National Industrial Recovery Act (NIRA), giving the president authority to prohibit interstate transport of oil in amounts greater than those allowed by state laws, was unconstitutional.[21] Thomas Eliot was drafting the bill at the same time, so the Court surely figured in his thoughts. He tried to present federal old-age insurance "in as constitutionally plausible form as possible."[22] To lessen resemblance to an insurance plan, he separated the tax and benefit provisions into two titles, III and IV. However, they were physically adjacent, which gave an impression that the taxes and benefits did form a single, unified system—as of course they did. Moreover, Title IV, Section 403 appropriated proceeds from taxes under Title III, "to be allocated to the old-age fund established under this title," and Section 405 referred to taxes paid on one's behalf under Section 301 as a condition for getting benefits.[23] All too clearly, the two titles did create a unified system. And they were full of insurance language.

Moreover, even as the Ways and Means Committee toiled on the bill, a case involving the Railroad Retirement Act of 1934, which had created a compulsory, contributory retirement pension program for railroad employees similar to the bill's old-age insurance scheme, was before the Supreme Court. Just weeks later, on May 6, it did void the Railroad Retirement Act.[24] If the Court killed railroad pensions, what would it do to old-age insurance?

It was necessary, then, to destroy anything that could give the Supreme Court grounds for deciding that Social Security was an insurance program. So Middleton Beaman, chief draftsman of the House, rewrote the bill in consultation with Eliot.[25] References to "old-age insurance" and "old-age annuities" disappeared; the "Social Insurance Board" became the "Social Security Board." The Committee created a new Title II containing the benefit provisions, and a new Title VIII, covering the taxes, to create an impression that they were unrelated, and enable the bill to survive Court scrutiny. Neither title referred to the other.[26]

Eliot admitted later that the seemingly "awkward arrangement" of having the two titles widely separated, much criticized for its seeming disorganization, was deliberate, done "to make it easier for the

---

[18]Harry J. Hopkins, Arthur J. Altmeyer et al., *Toward Economic Security: A Review of President Roosevelt's Economic Security Program* (Washington, D.C.: President's Committee on Economic Security, 1935), p. 6; emphasis added.

[19]*Economic Security Act: Hearings*, pp. 897–900, 903; Edwin E. Witte, *The Development of the Social Security Act* (Madison: University of Wisconsin Press, 1962), pp. 150–51.

[20]Witte, *The Development of the Social Security Act*, p. 146.

[21]Basil Rauch, *The History of the New Deal 1933–1938* (New York: Capricorn Books, 1963), pp. 192–93.

[22]Witte, *The Development of the Social Security Act*, pp. 76–77, 146.

[23]Social Security Administration, *Social Security Act of 1935*, vol. 2, at "Administration Bills," pp. 23, 24, 25, 28, and 29.

[24]Arthur M. Schlesinger, Jr., *The Age of Roosevelt*, vol. 3, *The Politics of Upheaval* (Boston: Houghton Mifflin, 1960), pp. 274–75.

[25]Witte, *The Development of the Social Security Act*, p. 92.

[26]Author's comparison of texts of H.R. 4120 and H.R. 7260. The text of H.R. 4120 may be found in Social Security Administration, *Social Security Act of 1935*, vol. 2, in Appendix, at "Administration Bills." The text of the Committee's version of H.R. 7260 may be found in ibid., vol. 1, at Section I, "Reported to House."

Supreme Court to sustain the measure's validity—not to fool the court but to give the justices a technical peg on which to hang their hats if they so desired."[27] Given the effort the administration had put into preparing the bill, its anxiety about its reception by a hostile Court, and the semantic cleansing, this is disingenuous. Clearly, the separation was done in hopes of tiptoeing past a deeply-feared Court.

The Ways and Means Committee's minority members protested in the Committee's report that:

> These titles are interdependent, and neither is of any consequence without the other. Neither of them has relation to any other substantive title of the bill. Neither is constitutional. . . . There is no separation in spirit or intent. These two titles must stand or fall together.[28]

Moreover, the separation was only verbal. Nor did this separation escape notice from Republicans in the House debate that followed.[29] Senator Daniel Hastings (R-Del.) noted that the old-age reserve account "is not a contract that can be enforced by anybody." The bill "may be changed by any Congress in the future, and has in it nothing upon which American citizens can depend."[30]

To no avail. Social Security passed by lopsided margins: 372–33 in the House and 77–6 in the Senate. Most Republicans voted for it. Final House and Senate approval came on August 8 and 9, respectively, and Roosevelt signed it on August 14, 1935.[31]

[27]Thomas H. Eliot, "The Social Security Bill 25 Years After," *Atlantic Monthly*, August 1960, p. 73.

[28]U.S., Congress, House, *The Social Security Bill*, House Report 615 to accompany H.R. 7260, 74th Cong., 1st sess., 1935, p. 43.

[29]U.S., Congress, House, Representative Treadway speaking on the Social Security bill, 74th Cong., 1st sess., April 12, 1935, *Congressional Record*, 79:5530; U.S., Congress, House, Representative Jenkins speaking on the Social Security bill, 74th Cong., 1st sess., April 15, 1935, *Congressional Record*, 79:5683.

[30]U.S., Congress, Senate, Senator Hastings speaking on the Social Security bill, 74th Cong., 1st sess., June 17, 1935, *Congressional Record*, 79:9419.

[31]U.S., Congress, House, 74th Cong., 1st sess., April 19, 1935, *Congressional Record*, 79:6069–70; U.S., Congress, Senate, 74th Cong., 1st sess., June 19, 1935, *Congressional Record*, 79:9650; Witte, *The Development of the Social Security Act*, p. 108.

The Social Security Act

The Social Security Act of 1935 contained eleven titles, most of them not germane. Those which are, matter as much as for what they did not say as for what they did. Title VIII levied taxes on wage income received after December 31, 1936 by employees in employment other than agricultural labor, domestic service in a private home, casual labor outside the employer's line of work, service on an American or foreign vessel, work in state or local government, and work in any nonprofit organization. The maximum annual taxable income was $3,000. Tax rates were to rise gradually: one percent a year in calendar 1937–1939, 1.5 percent in 1940–1942, 2 percent in 1943–1945, 2.5 percent in 1946–1948, and 3 percent thereafter. Employers would pay matching excise taxes.[32]

Title II, Federal Old-Age Benefits, created an "Old-Age Reserve Account" in the Treasury to which, every fiscal year, funds would be appropriated sufficient to pay benefits, based on accepted actuarial principles and assuming an interest rate of 3 percent compounded annually. The secretary of the treasury was required to invest amounts credited to the account but unnecessary for current benefit outlays in interest-bearing U.S. government debt (including special unmarketable debt issued for this purpose) and debt guaranteed by the government.[33] But there was nothing stating that the money in the account belonged to the taxpayers or was held for them in a trust fund, or creating individual savings or annuity accounts.

Beginning January 1, 1942, monthly benefits would be paid to persons who were at least 65 years old; received wages on at least five days between December 31, 1936 and reaching age 65, each day in a different calendar year; earned no less than $2,000 in that period in employment other than the foregoing exceptions. The beneficiary had to be retired; if he received wages from such employment, he would lose his benefit for each month in which this occurred. Benefits were based on total earnings from December 31, 1936 to attaining age 65, the smallest benefit being $15, the largest $85. If the individual died before reaching

[32]Social Security Administration, *Social Security Act of 1935*, vol. 2, at VI, "Public—No. 271—74th Congress," text of Social Security Act of 1935, pp. 19–20, 22.

[33]Ibid., pp. 3–4.

65, his estate would receive a lump sum equal to 3.5 percent of his total wage income since December 31, 1936. If he died after starting to receive benefits, his estate would receive a lump sum sufficient to bring his benefit total to at least 3.5 percent of wages since end-1936.[34] Thus, the worker would always get back at least as much as he had paid in taxes. That is, he enjoyed a money-back guarantee. However, the Act contained no contract language, nor did it mention insurance policies.

Title VII created a three-member Social Security Board to oversee Social Security. Chaired by John Winant, former governor of New Hampshire, the first board also included Altmeyer and Vincent Miles, former Democratic National Committeeman from Arkansas.[35]

The Act also included, in Title XI, a reservation of power clause, Section 1104: "The right to alter, amend, or repeal any provision of this Act is hereby reserved to the Congress."[36]

Marketing After Passage

Perkins and Altmeyer promptly began promoting Social Security in the media, depicting benefits as an earned right and Social Security as insurance. Just four days after Roosevelt signed the bill, an article by Perkins appeared in the *New York Times Magazine* describing the Act. Its "old-age annuities," she wrote, "will not be granted as a matter of charity" but will be "earned annuities to which the recipients are entitled as a matter of right."[37] On September 3, 1935, in a radio address, Altmeyer stated that benefits under "the Federal old-age insurance system will be paid as a matter of *right* to qualified individuals who have been paying their contributions into the Federal Treasury."[38] Benefits would go to "qualified individuals" in proportion to wages earned after January 1, 1937, when "they must commence making contributions to a Federal fund." Altmeyer drove the point home:

> It is most important to again emphasize that these payments will be made as a matter of right and not on the basis of showing a need. That is to say, qualified individuals will receive these benefits regardless of the amount of property or income they possess, just as they would receive benefits from a private insurance company to which they had paid premiums.[39]

The administration had been duplicitous in its initial approach to the other branches of the government. Fearing the Supreme Court, it had placed the tax and benefit provisions in separate albeit adjacent titles, to give the impression that Social Security was *not* insurance. Yet its witnesses told the congressional committees that it *was*. It was being duplicitous again now. The anti-Court precaution had been taken further, with the separation of titles and removal of insurance language. Yet in promoting Social Security to the public, the administration was leaning on insurance language. Two diametrically opposed versions of reality were being concocted, to manipulate their intended audiences. The administration wanted the people

---

[34]Ibid., pp. 4–7.

[35]Ibid., pp. 18–19; Altmeyer, *The Formative Years of Social Security*, p. 45.

[36]Social Security Administration, *Social Security Act of 1935*, vol. 2, at VI, "Public—No. 271—74th Congress," text of Social Security Act of 1935, p. 32.

[37]Frances Perkins, "Social Security: The Foundation," *New York Times Magazine*, August 18, 1935, pp. 2, 15.

[38]A.J. Altmeyer, "The New Social Security Act," *Vital Speeches of the Day*, October 7, 1935, p. 8; emphasis in original.

[39]Ibid., pp. 8–9.

to believe that Social Security was insurance, so they would support it. The administration did not want the Supreme Court to even suspect that Social Security was insurance, lest it kill it.

The Early Media Reception

Mainstream media reception to the Social Security Act was friendly. Reporting of its passage and provisions simply repeated the administration's depiction of the program. While the Act was still in Congress, *Time* wrote that "The U.S. government will in effect become a great U.S. Insurance Co."[40] Reporting on the bill's signing, the *New York Times* described Social Security as a government-run "annuity plan," which would give workers "earned annuities regardless of other income" out of "a fund built up by joint contributions of employers and employees."[41] *Newsweek* obligingly referred to "Old Age Insurance" and "insurance premiums."[42]

Editorial comment was lopsidedly favorable. According to the *United States News*, 63 percent of commenting newspapers approved of the Act, many quite warmly; the Altoona, Pennsylvania *Mirror* called it the administration's "greatest achievement."[43] Magazine articles explaining Social Security routinely used insurance language. Benefits, these writers added, would come as a right.[44]

Thus the media was disseminating the administration's depiction of Social Security pretty much uncritically to the public.

[40]"The Congress: Hustling Homeward," *Time*, July 1, 1935, p. 11.

[41]"How Security Bill Aids Aged and Idle," *New York Times*, August 15, 1935, p. 4.

[42]"Social Security," *Newsweek*, August 17, 1935, p. 5. So for that matter did *The Literary Digest* and *Independent Woman*. "Topics of the Day: Giving Hostages to Posterity," *The Literary Digest*, August 24, 1935, p. 3; Ruby A. Black, "At Last a Weary Congress Quits," *Independent Woman*, September 1935, p. 326.

[43]"Social Security Bill Widely Approved: Nearly Two-thirds of Editors Commend Passage of Measure," *United States News*, August 19, 1935, p. 12.

[44]"Look Ahead," *The Literary Digest*, May 2, 1936, p. 9; "Social Security," *The Literary Digest*, November 7, 1936, p. 8; George Creel, "What You Pay For," *Collier's*, January 23, 1937, p. 17; Eveline M. Burns, *Independent Woman*, April 1937, p. 108; John T. Flynn, "Fixed for Life," *Collier's*, August 8, 1936, p. 13; John Janney, "When You and I Are Old, Maggie," *The American Magazine*, January 1937, p. 95.

The 1936 Election: "Cruel Hoax," Pay Envelopes, and Lots of Insurance Talk

During the 1936 Presidential campaign, Social Security became the subject of bitter controversy. On September 26, Republican nominee Alfred "Alf" Landon, speaking in Milwaukee, denounced Social Security as "unjust, unworkable, stupidly drafted and wastefully financed." Beginning in January 1937 would impose "the largest tax bill in history." The administration said the taxes would go into a reserve fund, which would pay the old-age benefits. In fact, he charged, the Treasury would buy government bonds with the money and spend it. It was as if a father took deductions from his children's wages to invest for their old age, "invested" them in "his own IOU," and spent them, leaving the children nothing but those IOUs. Hence its forced savings were "a cruel hoax."[45]

Suddenly Social Security was a hot issue. Detroit industrialists, resentful of the tax and recordkeeping burden Social Security would impose, got the idea of using pay envelope inserts to convey attacks on Social Security to their workers, and asked the Republican National Committee to help. In October, the RNC shipped them millions of anti-Social Security inserts. Numerous employers in the Midwest inserted in pay envelopes for the next payday a notice that effective January 1, 1937, they had to deduct one percent of the workers' wages for payroll taxes, which might eventually hit four percent (counting unemployment insurance taxes). "You might get this money back in future years . . . but only if Congress decides to make the appropriation for this purpose. There is NO guarantee."[46]

Altmeyer retorted that the worker "will build up rights to the payment of regular monthly benefits," which will be "larger than he could purchase from any private insurance company with the taxes he will have paid the government"—benefits "paid as a matter of right."[47] Social Security mounted an

[45]Alfred M. Landon, "I Will Not Promise the Moon," *Vital Speeches of the Day*, October 15, 1936, pp. 26, 27, 28.

[46]"Industrialists Fighting Roosevelt by Tax Warning on Pay Envelopes," *New York Times*, October 24, 1936, pp. 1, 6.

[47]"'Pay Cut' Warnings on Pension Issue Assailed as Deceit," *New York Times*, October 26, 1936, pp. 1, 3; Arthur J. Altmeyer, "What the Worker Will Get From the Payroll Tax," *United States News*, November 2, 1936, p. 2.

intense promotional campaign. Fifty million copies of an explanatory leaflet were distributed at factory gates. A film, *We the People and Social Security*, originally scheduled for release after the election, was distributed immediately. By November 3, some four million people had seen it.[48] It included animated cartoon footage depicting dollars trotting into the hands of elderly persons[49]—a powerful device calculated to play upon fear of destitution in old age.

Democrats counterattacked too, stressing the insurance analogy. On October 29, in Wilkes-Barre, Pennsylvania, President Roosevelt himself portrayed Social Security as insurance:

> Get these facts straight.
>
> The Act provides for two kinds of insurance for the worker.
>
> For that insurance both the employer and the worker pay premiums, just as you pay premiums for any other insurance policy. Those premiums are collected in the form of the taxes you hear so much about.
>
> The first kind of insurance covers old age. Here the employer contributes one dollar of premium for every dollar of premium contributed by the worker; but both dollars are held by the Government solely for the benefit of the worker in his old age.
>
> In effect, we have set up a savings account for the old age of the worker. Because the employer is called upon to contribute on a fifty-fifty basis, that savings account gives exactly two dollars of security for every dollar put up by the worker.[50]

And in his Madison Square Garden speech on October 31, the president referred to both Old-Age Insurance and unemployment insurance as an "insurance policy," and added that "the insurance policy that is bought for [the worker] is far more favorable to him than any policy that any private insurance company could afford to issue."[51] As his landslide demonstrated, Roosevelt's credibility with the people was colossal. Hence his description of Social Security as "insurance" lent it vast credence.

Soon after the election, Social Security began issuing application blanks for Social Security numbers. *Newsweek* referred to "old-age annuities," "premiums," "26,000,000 insurance accounts", captioned a photograph of a postman holding an application blank "Insurance agent", and said Social Security's purpose was to provide old-age income "as a matter of right."[52]

By the end of 1936, then, the administration's depiction of Social Security was determining the nation's frame of reference and the very language in which Americans thought about the program.

Helvering v. Davis

Less than two years after passage, the Social Security Act's constitutionality was challenged in three Supreme Court cases. On May 24, 1937, the Court upheld the Act. One decision, *Helvering v. Davis*, established the constitutionality of the Social Security program.

The administration's arguments in the case contradicted both its testimony to Congress and the promotion of Social Security to the public. Yet they prevailed, for the decision was not made in a vacuum; it was reached when the Court was in the worst crisis of its entire existence.

The Political Context: Roosevelt versus the Court

By 1937 only the Supreme Court stood between Franklin Roosevelt and complete domination of America. The Court contained four conservatives who believed that the Constitution should be interpreted narrowly, adhering to the intent of the Framers: George Sutherland, Willis Van Devanter, Pierce Butler, and James McReynolds. In their view, the federal government had no right to interfere in the economy or in local matters, and the Constitution did not authorize the New Deal legislation. The Tenth Amendment—"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people"—sharply limited what the government could legitimately do. By

---

[48]Altmeyer, *The Formative Years of Social Security*, p. 69; McKinley and Frase, *Launching Social Security*, p. 358.

[49]"Here Come Those Payroll Taxes," *Business Week*, October 31, 1936, p. 40.

[50]Franklin D. Roosevelt, *The Public Papers and Addresses of Franklin D. Roosevelt*, vol. 5, *The People Approve 1936* (New York: Random House, 1938), p. 548.

[51]Ibid., pp. 569–70.

[52]"Security," *Newsweek*, November 28, 1936, pp. 28–29.

contrast, liberals Harlan Fiske Stone, Louis Brandeis, and Benjamin Cardozo believed that what the Constitution authorized had to be construed flexibly, to meet changing circumstances, some of which, such as the Depression, the Framers had not foreseen. A clause in Article I, Section 8, "The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States"—the taxing power and "general welfare" clause—could be construed as authorizing New Deal laws. In between, but usually conservative, were Chief Justice Charles Evans Hughes and Owen Roberts.[53]

The Court had found many New Deal laws unconstitutional. It invalidated the Railroad Retirement Act on May 6, 1935. On May 27, it voided the National Industrial Recovery Act and the Frazier–Lemke Farm Bankruptcy Act. It struck down the Agricultural Adjustment Act on January 6, 1936, the Guffey Coal Act on May 18. Finally, on May 25, the Court voided the Municipal Bankruptcy Act and a New York state law setting minimum wages for women. After all this, two major New Deal laws, Social Security and the Wagner Labor Relations Acts, seemed vulnerable to invalidation by the Court.[54]

The decisions enraged Roosevelt. On February 5, 1937, he sent Congress a proposal to appoint one new justice for every justice who reached the age of 70 and did not retire, for a maximum of six, enlarging the Supreme Court from nine justices to potentially fifteen.[55]

An uproar ensued. Opponents called the proposal a Court pack, intended to overpower its opposition to the New Deal—which it was. Even liberals unhappy with the Court balked at packing it. Roosevelt's own party was split. On March 22, Senator Burton K. Wheeler (D-Mont.), leading the opposition, read to the Senate Judiciary Committee a letter from Hughes demolishing Roosevelt's claim that the Court could not meet its workload without new blood.[56]

Threatening to destroy the Supreme Court's independence, Roosevelt's pack put great pressure on it to act in self-preservation. On March 29, the Court issued four pro-Administration decisions, upholding a revised Frazier–Lemke Act; the National Firearms Act; the Railway Labor Act, which promoted collective bargaining; and a Washington state law providing for minimum wages for women.[57] The case for packing the Court was undercut accordingly.

But then cases arose involving two key New Deal laws: the Wagner Act, which created the National Labor Relations Board and asserted the right of workers to unionize and bargain collectively, and the Social Security Act. As Joseph Alsop and Turner Catledge wrote, "On the Court's decisions on these two laws hung the whole future of the court fight." Each law greatly extended government powers, which the majority of justices opposed. "Yet if the Court balked, the court bill would surely pass."[58]

Thus the Court further relieved the pressure on April 12 by upholding the Wagner Act.[59] Then, on May 18, Van Devanter announced that he would retire effective June 1. Roosevelt could nominate a justice now, and the case for his plan weakened. The same day the Senate Judiciary Committee reported his bill unfavorably. But Roosevelt persisted; the fight was still on.[60]

Such was the situation when the Supreme Court confronted the issue of Social Security's constitutionality.

The Case: The Court Under the Gun Again

Helvering v. Davis originated on November 12, 1936, when George Davis, a stockholder of Edison Electric Illuminating Company of Boston, filed suit in the U.S. District Court for the District of

[53]Schlesinger, *The Politics of Upheaval*, pp. 455–67.

[54]Rauch, *The History of the New Deal 1933–1938*, pp. 192–222; Schlesinger, *The Politics of Upheaval*, pp. 274–83.

[55]Joseph Alsop and Turner Catledge, *The 168 Days* (Garden City, N.Y.: Doubleday, Doran, 1938), pp. 17–21; Robert H. Jackson, *The Struggle for Judicial Supremacy: A Study of Crisis in American Power Politics* (New York: Alfred A. Knopf, 1941), pp. 329–37.

[56]Alsop and Catledge, *The 168 Days*, pp. 113–27.

[57]Jackson, *The Struggle for Judicial Supremacy*, pp. 203–05, 206–13.

[58]Alsop and Catledge, *The 168 Days*, pp. 142–43.

[59]Ibid., pp. 145–46; Rauch, *The History of the New Deal 1933–1938*, pp. 277–79.

[60]"Judiciary: Justice Retired," *Time*, May 31, 1937, p. 17; Alsop and Catledge, *The 168 Days*, pp. 205–11.

Massachusetts alleging that Title VIII's taxes were unconstitutional, and asking that the company be kept from paying them. The District Court upheld the taxes, but the Circuit Court of Appeals reversed it. Commissioner of Internal Revenue Guy Helvering asked that the case go to the Supreme Court to determine the validity of the taxes.[61]

So far, the Court's strategy of winning by losing had worked. But if it invalidated Social Security, it could revive Roosevelt's campaign to pack it. Indeed, some of his circle were hoping that it would do so.[62] Unquestionably, all this was on the justices' minds as they considered the brief filed by the Attorney General and the Social Security Board's general counsel, Thomas Eliot.

Mendacity and Duplicity: The Administration Brief

The questions to be decided, it stated, were whether the tax on employees was at issue; whether Social Security's taxes were valid exercises of the taxing power; whether a Social Security taxpayer had standing to question the old-age benefits; whether providing them was valid under the "general welfare" clause; whether Titles VIII and II, taken together, are an exercise of powers not granted by the Constitution; and whether the taxes violated the Fifth Amendment, which forbids depriving individuals of "life, liberty, or property, without due process of law" and taking private property for public use "without just compensation."[63]

The brief then described the Act. Title II's old-age benefits, it stated, "are gratuities (not based on contract, but based on a Congressional direction expressly subject to amendment or repeal [Section 1104])."[64] The administration was contradicting its public record. Hadn't Secretary Perkins told the committees that benefits would be paid "as a matter of contractual right"?

The taxes under Title VIII "are not earmarked for any special purpose."[65] Moreover,

> These are true taxes, their purpose being simply to raise revenue. . . . The proceeds are paid unrestricted into the Treasury as internal revenue collections, available for the general support of Government.[66]

Yet the administration's testimony had it that the purpose of the taxes was to build up a fund to pay old-age annuities. Explanations of Social Security to the public said the same thing. Congress and the public had been told too that payment of taxes would give the worker an "earned right" to benefits.

But if they are "true taxes"—as they are, being federal levies—then they are neither "contributions" nor "insurance premiums."

Obviously, the motive for claiming that Social Security's levies are "true taxes" was to be able to argue that they were valid exercises of the taxing power, which was done. The brief also argued that a taxpayer could not attack the expenditure of Treasury funds unless revenues were earmarked for a specific purpose—which the Act, it argued, did not do. It invoked the routing of Title VIII revenues into general revenue and then putting them in the

---

[61]"In the Supreme Court of the United States, October Term, 1936, *Helvering v. Davis*, Brief for Petitioners Helvering and Welch," in U.S., Congress, House, Committee on Ways and Means, *Analysis of the Social Security System: Hearings before a Subcommittee of the House Committee on Ways and Means*, 83rd Cong., 1st sess., 1953, Appendix II, Miscellaneous Documents [hereafter, "Brief for Petitioners Helvering and Welch," *Analysis of the Social Security System: Hearings*, Appendix II], pp. 1427, 1431; *Helvering v. Davis*, 301 U.S. 619, at 619.

[62]Alsop and Catledge, *The 168 Days*, p. 214.

[63]"Brief for Petitioners Helvering and Welch," *Analysis of the Social Security System: Hearings*, Appendix II, p. 1427.

[64]Ibid., p. 1428.

[65]Ibid., p. 1429.

[66]Ibid., p. 1432.

Old-Age Reserve Account by appropriations.[67] While this gives *prima facie* support for that view, the spirit of the law, and all testimony and promotion, was that the revenues were for a specific purpose.

The government then argued at length that indigence in old age was a national problem, that private charity and state governments could not cope with it, and that old-age benefits were therefore valid expenditures to promote the general welfare. Since the titles were valid separately, their combination was valid too.[68]

The administration denied that Titles II and VIII, together, were an invalid regulation of employment.[69] As to the charge that the titles in combination create "a scheme for compulsory insurance invalid under the Tenth Amendment," the brief denied this, in a passage flatly contradicting the testimony to Congress, the promotion of Social Security after passage, and Roosevelt's campaign speeches:

> Whether or not the Act does provide an insurance plan within the accepted meaning of the term "insurance" is a doubtful question. It is to be noted that the correlation between taxes paid and benefits received is far from complete. . . . Some of the taxpayers receive benefits greater than the amount of taxes paid with respect to them. On the other hand, some taxpayers will receive benefits smaller than the amount of taxes paid. . . . Moreover, the Act creates no contractual obligation with respect to the payment of benefits. This Court has pointed out the difference between insurance which creates vested rights and pensions and other gratuities involving no contractual obligations.[70]

The administration then contrasted World War I's War Risk Insurance for servicemen, which had policies which, "being contracts, are property and create vested rights," with pensions, which are "gratuities. They involve no agreement of parties; and the grant of them creates no vested right. The benefits conferred by gratuities may be redistributed or withdrawn at any time in discretion of Congress."[71] The contrast was clearly meant to include Social Security benefits among gratuities. Not possessing the legal properties of insurance, Social Security was constitutional.

The government's summary declared flatly that the Act "*does not constitute a plan for compulsory insurance within the accepted meaning of the term 'insurance*'."[72] Arguing before the Court, Assistant Attorney General Robert Jackson reiterated that

> these benefits are in the nature of pensions or gratuities. There is no contract created by which any person becomes entitled as a matter of right to sue the United States or to maintain a claim for any particular sum of money. Not only is there no contract implied but it is expressly negated, because it is provided in the Act, Section 1104, that it may be repealed, altered, or amended in any of its provisions at any time. This Court has held that a pension granted by the Government is a matter of bounty, that the pensioner has no legal right to his pension, and that they may be given, withheld, distributed, or recalled at the discretion of Congress.[73]

Yet for two years, officials had been telling Americans that they would get benefits "as a matter of right." Either the brief and Jackson's argument, or the rights talk, was false. They cannot both be right.

Whether or not Social Security "may properly be designated as old-age insurance" was, the brief declared, "completely immaterial." The law involved a valid use of the taxing power and valid spending of money for the general welfare with no regulatory aspect, so it was valid "whether it be labelled as insurance or not."[74] Yet Eliot didn't deem the insurance label "immaterial" when drafting the bill, or when helping the Ways and Means Committee semantically cleanse it.

67Ibid., pp. 1436–39.

68Ibid., pp. 1440–55.

69Ibid., p. 1455.

70Ibid., pp. 1455–56.

71Ibid., p. 1456.

72*Helvering v. Davis*, 301 U.S. 619, at 624; emphasis added.

73U.S., Congress, Senate, *Oral Arguments in Helvering et al. v. Davis involving the Old-Age Benefit Provisions of the Social Security Act Before the Supreme Court of the United States, May 5, 1937*, S. Doc. 71, 75th Cong., 1st sess., 1937 [hereafter, *Oral Arguments, Helvering v. Davis*], p. 16.

74"Brief for Petitioners Helvering and Welch," *Analysis of the Social Security System: Hearings*, Appendix II, p. 1456.

Oral Argument: Mendacities Unmasked

Some of the mendacities of the administration's position were exposed by Edward McClennen, arguing before the Court on Davis's behalf on May 5. He exploded the claim that the Social Security tax was levied simply to raise revenue for general use; rather, "there can be no question in anyone's mind but what this levy was made to provide old-age benefits." For one thing, taxing the smallest wage earners in the country and exempting all income above $3,000 a year is a peculiar way to raise general revenue. Rather, the tax was levied on those incomes because the workers getting them "would be the ones who were going to have the security of an old-age benefit."[75]

Also, McClennen asked, if the idea is to raise general revenue, why not tax laborers exempted from the Social Security tax? "Why, for the obvious reason that this idea of old-age benefits was one that was to be limited to the same classes of people." And although men over 65 were certainly suffering then, in 1937, Social Security didn't start paying out any benefits until 1942. If the idea was to provide out of general revenue for these needy elderly, why the delay? Obviously, because the money raised under Title VIII was meant to create a reserve fund for paying benefits.[76]

He added that the Social Security Act was essentially the proposal of the President's Committee on Economic Security, which, he rightly noted, had been created to propose legislation for economic security, not revenue. Its report discussed not raising revenue, but rather the different subjects addressed by the Social Security Act. He quoted the report's assertion that the best way to provide for the old age of the young was with "a contributory system of old-age annuities."[77]

Yet in the oral argument, the justices pursued none of this.

The Decision: Let it Slide, and Take off the Heat

On May 24, by a vote of 7–2, the Supreme Court found Social Security constitutional. Justice Cardozo wrote the opinion for the majority. He was joined by Justices Brandeis, Stone, Hughes, Roberts, Van Devanter, and Sutherland.

The twelve-page opinion is curious reading. Its first three pages or so describe Titles II and VIII and follow the brief almost verbatim.[78] Thus the brief, on Title VIII:

> Title VIII imposes two distinct types of taxes, each beginning in the calendar year 1937.
>
> It imposes upon *employers, excise* taxes with respect to having individuals in their employ, measured by wages paid during the calendar year [Section 804]. It also imposes upon *employees, income* taxes measured by wages paid to them during the calendar year [Section 801]. . . .
>
> The proceeds of both taxes are required to be paid into the Treasury of the United States as internal revenue collections, and neither tax is earmarked in any way. Section 807.[79]

The *Helvering v. Davis* opinion:

> Title VIII, as we have said, lays two different types of tax, an "income tax on employees," and "an excise tax on employers." The income tax on employees is measured by wages paid during the calendar year. § 801. The excise tax on the employer is to be paid "with respect to having individuals in his employ," and, like the tax on employees, is measured in wages. § 804. . . . The proceeds of both taxes are to be paid into the Treasury like internal-revenue taxes generally, and are not earmarked in any way. § 807(a).[80]

There follow about a page and a half of description of Davis's suit and its treatment so far, then a half-page on Cardozo's own view that the Court should simply dismiss the case, then another half-page reporting that the majority of the Court disagrees.[81]

The rest is much the same: much descriptive material, most of it closely following the brief, and little argument. The arguments are mostly in five pages maintaining that Title II's benefit scheme

---

[75]*Oral Arguments, Helvering v. Davis*, p. 27.

[76]Ibid., p. 28.

[77]Ibid., p. 33.

[78]Author's comparison of texts of *Helvering v. Davis*, 301 U.S. 619, at 634–37 and "Brief for Petitioners Helvering and Welch," *Analysis of the Social Security System: Hearings*, Appendix II, pp. 1427–30.

[79]Ibid., p. 1428.

[80]*Helvering v. Davis*, 301 U.S. 619, at 635.

[81]Ibid., at 637–40.

does not conflict with the Tenth Amendment. Of these, there are little over two pages of actual argument, making five points: that Congress may spend money to promote the general welfare; that the concept of the general welfare changes with the times, and that the depression had made indigence in old age a national problem; that Congress didn't conjure a judgment that old-age benefits would promote the general welfare out of thin air, but drew on an extensive administration report on economic security, plus hearings; and that whether or not Title II's old-age benefits were wise is a matter for Congress to decide, not the Court; and that the concept of general welfare is for Congress to decide, not the states. The first two of these, occupying about three-quarters of a page, draw heavily on the brief, using similar language. Altogether, of twelve pages, there are almost nine of description, six lifted from the brief; about a page on odds and ends; and roughly two pages of constitutional argument, of which about three-quarters of a page is largely from the brief.[82]

The bulk of the *Helvering v. Davis* opinion, then, is simply a scissors-and-paste assembly of extracts, mostly merely factual, from the administration's brief, with often only minor changes. Of actual independent argument the opinion contains next to nothing.

Regarding whether Titles II and VIII together were an invalid old-age insurance scheme, Cardozo merely notes Davis's argument that they dovetail so as to justify concluding that Congress would not have wanted to pass one without the other and the government's opposing position that Congress could spend the revenue as it willed. "We find it unnecessary to make a choice between the arguments, and so leave the question open."[83] The Court ducked the whole issue. Why?

Moreover, Cardozo evaded McClennen's exposure of Social Security as a program of forced contributions for old-age benefits, and rebutted only his final, utterly ungermane argument: that Social Security was regulating the internal affairs of Massachusetts. One who read only the *Helvering v. Davis* opinion would get the misleading impression that this was McClennen's main point.

The majority of the majority, Hughes, Roberts, Van Devanter and Sutherland, were conservatives, the latter two consistently. Hughes, Roberts, and Sutherland had been scathing critics of the New Deal. Why did they concur in such a sketchily-argued opinion which mostly just regurgitated the administration's brief? Is it plausible that they found it an adequate expression of their views on the constitutionality of contributory federal old-age benefits?

Only McReynolds and Butler dissented; Cardozo noted that they deemed the Act's provisions "repugnant to the Tenth Amendment."[84] But they wrote no opinions. Did these two stalwart opponents of Social Security really have nothing to say about it? Or were they anxious not to give the Court's critics anything to work with? Here is the key to the mystery. The Court was in enormous danger, and the justices knew it. In saving Social Security, the Court saved itself.

This was seen at the time. The *Washington Post* editorialized that the Supreme Court's approval of the Social Security Act

> has driven another nail in the coffin of the President's plan to enlarge the court's membership. . . . It removes the last flimsy argument for the appointment of additional justices who could be expected to reflect the President's viewpoint.[85]

---

[82]Author's comparison of texts of "Brief for Petitioners Helvering and Welch," *Analysis of the Social Security System: Hearings*, Appendix II, pp. 1441–49, and *Helvering v. Davis*, 301 U.S. 619, at 640–47.

[83]Ibid., p. 646.

[84]Ibid.

[85]"Social Security Upheld," *Washington Post*, May 25, 1937, p. 6.

The Court pack failed. Certainly the Social Security decisions prevented its revival. All the evidence—the Court's earlier retreat; the mendacity of the brief; the Court's evasion of McClennen's exposure of Social Security's true purpose; its perfunctory opinion, so derivative from the brief; the acquiescence of most of the Court's New Deal opponents; the silence of the dissenting rump—indicates that the decision was not reached on its merits. Rather, the Court found Social Security constitutional for political reasons, to take off the heat.

Launching the Insurance Myth

After Helvering v. Davis*: Insurance Again*

With Social Security safely past the Court, the denial that it was insurance had served its purpose. The same day the Court ruled, Wilbur Cohen got Altmeyer's approval to send the staff a memo "stating that because of the decision we could now call the old-age benefits program 'old-age insurance'."[86] Altmeyer, now Chairman of the Social Security Board, issued a press release stating, "The decision in the Massachusetts case validated the Federal old-age insurance program contained in the Social Security Act." He repeated himself the next day speaking in Indianapolis.[87]

Social Security's Bureau of Federal Old-Age Benefits became Bureau of Old-Age Insurance. Its documents were rewritten to insert insurance language. Thus, in Informational Service Circular No. 1, for instance, *A Brief Explanation of the Social Security Act*, for example, the section "Federal Old-Age Benefits" was retitled "Federal Old-Age Insurance."[88] Circular No. 4, *Federal Old-Age Benefits established by The Social Security Act*, became *Federal Old-Age Benefits (Old-Age Insurance) established by The Social Security Act*.[89]

[86]U.S., Congress, Senate, Senator Edward Kennedy, 94th Cong., 1st sess., September 16, 1975, *Congressional Record*, 121:28872.

[87]*Analysis of the Social Security System: Hearings*, p. 882.

[88]Social Security Board, *A Brief Explanation of the Social Security Act*, Circular No. 1, July 1937, p. 2; Social Security Board, *A Brief Explanation of the Social Security Act*, Circular No. 1, December 1937, p. 2.

[89]Social Security Board, *Federal Old-Age Benefits Established by The Social Security Act*, Circular No. 4, August 1937; Social Security Board, *Federal Old-Age Benefits (Old-Age Insurance) Established by The Social Security Act*, Circular No. 4, November 1937.

To summarize: the Social Security bill was introduced as old-age insurance—then scrubbed of insurance language. After passage, the administration promoted Social Security as "insurance" charging "premiums" to holders of "insurance policies." Then, before the Supreme Court, the administration *denied* that Social Security was insurance. Now it was insurance again.

The media continued to disseminate the government's depiction of Social Security, further disposing Americans to see Social Security as insurance. *Time* opened a Social Security article thus:

> It is an axiom in the insurance business that insurance is not bought but sold. In 1935 Franklin Roosevelt sold Congress and Congress sold the U.S. the Social Security Act, the biggest, most comprehensive, most expensive *mass insurance policy* ever written. Since then, its *purchasers*, the nation's taxpayers, had had occasion to read their policy carefully.[90]

The Reserve Fund Controversy

On one aspect of Social Security, however, heated discussion did rage: the Old-Age Reserve Account at the Treasury.

The Social Security Act required that every year, an amount determined sufficient to pay benefits was to be appropriated to the account, and any of this money not needed for benefits was to be invested in interest-bearing U.S. government debt (including special unmarketable debt issued exclusively for this purpose). In an explanation of Social Security in April 1936, M. Albert Linton, president of Provident Mutual Life Insurance, who had been an actuarial consultant to the Committee on Economic Security, noted that the account was estimated by the Senate Finance Committee to be roughly $47 billion by 1980. Eventually, he pointed out, interest on securities in the account would pay roughly 40 percent of benefit outlays.[91] This meant payroll taxes would be lower than they would be otherwise, and the plan would be self-supporting, requiring no money from the Treasury.

Winthrop Aldrich of Chase National Bank retorted that the reserve would be fictitious; the

[90]"Social Security: Pie from the Sky," *Time*, February 13, 1939, p. 14; emphasis added.

[91]M. Albert Linton, "Old-Age Security for Everybody," *Atlantic Monthly*, April 1936, p. 490.

government would merely be issuing promissory notes to itself. As to the interest lightening the future tax burden, the government would get the interest from "the only source it could obtain it—the general taxpayer. The whole elaborate reserve set-up would not relieve him of any burden whatever."[92]

In 1936 Landon and Roosevelt fueled the controversy, Landon attacking the reserve fund as a sham, Roosevelt defending it.

General Hugh Johnson, former head of the National Recovery Administration, weighed in with a radio speech attacking the payroll tax and reserve fund. He noted that though the payroll tax "is supposed to be like a premium for life insurance," the analogy was bogus. Insurance companies invest premiums to earn money to pay policyholders; the government was merely spending one's taxes, and its reserve was only "a paper IOU. When the time comes to pay, there won't be any more value there than if the workers had paid nothing in taxes all over these years." One's taxes only bought a promise "to tax your children to take care of you in your old age."[93]

Defenders responded that the talk of IOUs was misleading; after all, aren't all private investments, such as stocks and bonds, nothing but IOUs really, their value depending on the assets and ethics of the firms issuing them? In investing in government bonds, Beulah Amidon argued, the Treasury was behaving just like a bank, which does not hoard its depositors' money but invests it.[94]

The critics were right. Of course the Treasury spent the money it obtained in exchange for depositing government debt in the old-age reserve; what else could it do with it? Of course the bonds were IOUs; all debt instruments are. Of course the interest would come from the general taxpayer; where else could it come from?

In 1939, as preparation began to amend the Social Security Act, a vigorous essay by John T. Flynn in *Harper's* argued that the reserve was bogus, hence analogies between government old-age insurance and private insurance and between government and private insurance company reserves founder. Flynn added that there would be a growing tax burden to pay the interest on the reserve in the future. He concluded that a public old-age insurance plan could be financed only on a pay-as-you-go basis, with current revenues paying current costs.[95] Others made similar criticisms.[96]

Pressure to Liberalize: Philosophical and Political

Meanwhile, pressure was rising to liberalize Social Security. In one of the seminal articles in the Social Security literature, Metropolitan Life Insurance executive Reinhard Hohaus observed that Social Security's benefit formula recognized two principles: *individual equity*, insofar as benefits were proportional to wages and payroll tax contributions, and *social adequacy*, insofar as those who had lower earnings and contributions received benefits which were *relatively* larger compared to their contributions. In serving the principle of individual equity, Social Security resembled private insurance, which, seeking to protect individuals from risks and being voluntary, must as much as possible make one's benefit proportional to one's contribution. Social insurance, by contrast, seeks to give people a minimum of protection against a widespread dependency problem, hence "views society as a whole" and deals with the individual only secondarily. Its "first objective" regarding benefits should be that beneficiaries will receive enough income to "prevent their becoming a charge on society." Social adequacy should "control the pattern of social insurance" and of the two principles is "the more essential." The existing combination of individual equity and social adequacy, he complained, "unduly stresses the former." He concluded that social insurance "should be founded on broad social concepts rather than on reasoning centered around the individual." Hence we should

[92]Winthrop W. Aldrich, "Social Security: An Appraisal of the Federal Act," *Vital Speeches of the Day*, August 1, 1936, p. 687.

[93]General Hugh S. Johnson, "A Hokus-Pocus: The Social Security Tax," *Vital Speeches of the Day*, December 1, 1937, p. 116.

[94]Beulah Amidon, "Old Age Reserve," *Survey Midmonthly*, September 1938, p. 284.

[95]John T. Flynn, "The Social Security 'Reserve' Swindle," *Harper's*, February 1939, pp. 240–45.

[96]Arthur H. Vandenberg, "A Great Adventure in Humanity," *Vital Speeches of the Day*, February 1, 1939, pp. 236–38; "Make Social Security Secure," *Collier's*, March 25, 1939, p. 78.

"substitute for the present approach stressing private individual insurance ideas one aiming at a substantially social interpretation of values." Specifically, Hohaus called for larger initial benefits and broadening coverage to "aged widows of pensioners" and others.[97]

There was expansionism in the administration, too. Altmeyer suggested that Congress recommend persons to advise the Social Security Board about how to get rid of the reserve through program liberalization. The resultant advisory council reported on December 10, 1938. The board itself then recommended starting monthly old-age benefits in 1940 rather than 1942; increasing benefits in early years; expansion to include survivors' insurance, paying benefits to widows and orphans; and extending coverage to other categories of employees.[98]

The 1939 Amendments: Institutionalizing Appearances with Insurance Language

On January 16, 1939, President Roosevelt transmitted the Social Security Board's report to Congress. He described Social Security as a "Federal old-age insurance system" containing "individual accounts covering 42,500,000 persons who may be likened to the policyholders of a private insurance company," and requested amendment of the Act to pay monthly benefits sooner, liberalize benefits in the early years, and expand Social Security to give monthly benefits to dependent children of workers who die before retirement.[99]

The administration's bill was introduced the next day. The Ways and Means Committee held hearings February 1–April 7, and on June 2 reported it favorably without amendment. It passed both houses overwhelmingly, and Roosevelt signed it on August 10.[100]

The administration's bill loaded the text of the Social Security Act with insurance terminology. "Title II—Federal Old Age Benefits" became "Title II—Federal Old-Age and Survivor Insurance Benefits." "Old Age Reserve Account" was now "Federal Old-Age and Survivor Insurance Trust Fund"; "Old-Age Benefit Payments" was now "Old-Age and Survivor Insurance Benefit Payments"; and so on. Title VI of the new Act took the original Title VIII's Sections 801 and 804, the employee and employer taxes, into the Internal Revenue Code as the "Federal Insurance Contributions Act." And the program was now officially "Old-Age and Survivors Insurance" (OASI).[101]

While many investments, business and financial institutions, and financiers had lost prestige during the Depression, the insurance industry's standing with the public had actually risen. Insurance companies were lenient to policyholders beyond legal requirements, and promptly paid death claims, matured endowments, and disability benefits when they came due.[102] Clearly, the reversion to insurance language in the bill—like the intense marketing of Social Security as insurance after passage—was an attempt to give Social Security legitimacy by association.

It was, too, both a cynical reversal of 1935's meticulous semantic cleansing, and a momentous victory for the administration, for its public-relations language was now written into the law, as Social Security's official semantics, the very language in which Americans would think about the program.

"Trust Funds" and "Contributions"

On the recommendation of Treasury Secretary Morgenthau, an Old-Age and Survivors' Insurance Trust Fund at the Treasury was created. The only substantial difference from the existing Old-Age Reserve Account was the elimination of the routing of Social Security revenues to the Treasury's general fund, followed by their transfer via specific appropriation to the Reserve Account. Instead, a

---

[97]Reinhard Hohaus, "Equity, Adequacy, and Related Factors in Old Age Security," *The Record of the American Institute of Actuaries* 27, pt. 1, no. 55 (June 1938): 78, 82–85, 92.

[98]Altmeyer, *The Formative Years of Social Security*, pp. 89–91; U.S., Congress, House, Committee on Ways and Means, *Social Security: Hearings*, 76th Cong., 1st sess., 1939, 3 vols., I: 3–7.

[99]Franklin D. Roosevelt, *The Public Papers and Addresses of Franklin D. Roosevelt*, vol. 8 (1939): *War—and Neutrality* (New York: Macmillan, 1941), pp. 77–79.

[100]Altmeyer, *The Formative Years of Social Security*, pp. 99–113.

[101]U.S., Congress, House, Committee on Ways and Means, *Social Security Act Amendments of 1939*, House Report 728 to accompany H.R. 6635, 76th Cong., 1st sess., 1939, pp. 81, 84–85, 57, 96–100.

[102]John H. Magee, *General Insurance*, 3rd ed. (Chicago: Richard D. Irwin, 1950), pp. 32–33.

sum equivalent to all the taxes "received under the Federal Insurance Contributions Act" by the Treasury "is hereby appropriated" to the Trust Fund for the fiscal year ending June 30, 1941, "and for each fiscal year thereafter"—i.e., automatically. The only other new features were a board of trustees to manage the Trust Fund and periodically report to Congress, consisting of the secretary of the treasury, secretary of labor, and chairman of the Social Security Board; replacement of the old 3 percent interest with the average rate borne by all interest-bearing U.S. government public debt; and a provision for paying money from the Trust Fund into the Treasury to defray OASI's administrative expenses.[103]

For the rest, the Trust Fund operated just like the old Reserve Account. Indeed, it was the Reserve Account; its initial assets were the assets of the Reserve Account as of January 1, 1940, transferred into the Trust Fund. Since the Reserve Account was "an account in the Treasury" and the Trust Fund was "on the books of the Treasury," the transfer was a formality. It was as if a shoebox full of bonds labeled "Reserve Account" was relabeled "Trust Fund."[104] Social Security's "trust fund," then, is a Treasury account, nothing more.

Why was this done? The reserve fund controversy was raging. The reserve's critics bandied about words like "embezzlement" and charged that the reserve was just IOUs, and that Americans would be taxed twice, once to put money into the fund to buy IOUs with, and again later to retire the IOUs and actually pay future benefits. Defenders retorted that no embezzlement was going on, there wouldn't be any double taxation, and the much-maligned IOUs were the safest investment there was—government bonds. They argued that there was no choice but to invest the fund in Treasuries; holding the surplus as cash was fatuous, so where else could the money go?[105] Going on for years, the controversy had become a serious running sore on Social Security's all-important prestige.

As testimony before Congress makes clear, the trust fund was created expressly to end this controversy. Secretary Morgenthau said the reserve fund administration method should be changed "so that it will be made clearer to everyone that it is a trust fund established for the benefit of the insured who have contributed to it."[106] Testifying before the Senate Finance Committee, Altmeyer made the public-relations motive even clearer. Asked what the purpose of the trust fund was, Altmeyer replied, "Well, to allay the unwarranted fears of some people who thought Uncle Sam was embezzling the money."[107]

So the trust fund, like the payroll tax, was driven by the need to shape a climate of belief.

---

[103]Author's comparison of texts of Title II, Section 201 of Social Security Act of 1935, in Social Security Administration, *Social Security Act of 1935*, vol. 2, at VI, "Public—No. 271—74th Congress," text of Social Security Act of 1935, pp. 3–4, and Title II, Section 201 of 1939 Amendments (H.R. 6635), in *Laws Relating to Social Security and Unemployment Compensation*, comp. Gilman G. Udell (Washington, D.C.: U.S. Government Printing Office, 1958), pp. 34–35.

[104]Ibid.

[105]For discussions in Congress of the "embezzlement" charge and the IOU controversy in general, see, e.g., U.S., Congress, House, 76th Cong., 1st sess., February 27, 1939, *Congressional Record* 84:1954–61; U.S., Congress, House, Social Security amendments debate, 76th Cong., 1st sess., June 8 and 9, 1939, *Congressional Record* 84:6854–56, 6862, 6890–93. For a defense of the reserve being invested in Treasuries as the only feasible option, see, for example, U.S., Congress, House, Congressman McCormack speaking on Social Security amendments, 76th Cong., 1st sess., June 8, 1939, *Congressional Record* 84:6855.

[106]*Social Security: Hearings*, III:2113.

[107]U.S., Congress, Senate, Committee on Finance, *Social Security Act Amendments: Hearings before the Senate Finance Committee on H.R. 6635*, 76th Cong., 1st sess., 1939, p. 81.

Whether or not it accurately depicted reality was another matter. A trust fund is money, investments, or other property held in trust, a trust being an arrangement whereby one person, called a trustee, holds legal title to property, and typically invests it or manages it, for the benefit of somebody else, who holds the equitable title to that property, that is, a claim that could be sustained in a court of equity—a property right. The formal, legal definition of a trust is:

> A fiduciary relationship with respect to property, subjecting the person by whom the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it.

To be valid, all trusts must have a creator, or "settlor," who sets up the trust and puts property into it; a trustee, who has the legal title to the property in the trust; a "beneficiary," who holds equitable title to the property; property; and terms of trust, spelling out the purpose of the trust, the duties and powers of the trustee(s), and the beneficiary's rights.[108] The Social Security Trust Fund does not meet these criteria.

Is Congress the settlor? A settlor puts *his own* property into a trust. Congress did not own the Treasuries which were the "trust fund's" initial assets, and does not own the bonds in it now.

As for the board of trustees, nothing in Section 201 of the 1939 Act gave the board a legal title to anything.

And do the purported beneficiaries—the people for whose sake the trust is being managed, the people who will collect benefits—actually have property in the trust fund to which they have an enforceable property right, as do beneficiaries of a true trust? Under intense questioning by Ways and Means Committee member John McCormack (D-Mass.), Altmeyer revealed that "There never was a crediting of the contribution to the individual's account"; that the link between one's contributions and benefits is "not in the nature of a savings account where his contributions are put in a separate pocket"; that Social Security had individual accounts, "but not individual funds"; and that each individual's contributions and rights are not kept separate.[109]

The individual accounts, then, by Altmeyer's admission, are mere recordkeeping entities: file folders, not piggy banks. There is no property in the trust fund belonging to specific individuals.

And in its *Helvering v. Davis* brief the administration contrasted Social Security benefits with War Risk Insurance benefits, which were property and created vested rights, with the clearly intended implication that Social Security benefits aren't property and don't create such rights. In the oral argument, it explicitly denied that any legal right to benefits exists. They can't be one's property if one has no right to them. The person who will receive benefits, then, has no property in the "trust fund." Another feature of a trust vanishes.

All of this confirms the observations by Suffolk University Law School Professor Charles Rounds, an expert on trusts and a Fellow of the American College of Trust and Estate Counsel, about Social Security's "trust fund":

> Despite the term "trust," the Social Security system contains nothing that remotely resembles the common law trust. There is no segregation of assets, no equitable property rights, no private right of enforcement (all characteristics of the common law trust). It is merely a system of taxation and appropriation sprinkled with trust terms to hide its true nature.[110]

The Social Security Trust Fund, then, is bogus.

Apparently the administration hoped to dispose of the vexing reserve fund controversy by adopting the reassuring terminology of a trust fund, capitalizing on its favorable psychological effect, while changing policy to get rid of the projected large reserve. It succeeded; the reserve fund controversy faded away.

Morgenthau proposed another public-relations move:

> To improve public understanding of the purpose for which the funds are collected, I recommend that the taxes under title VIII be

---

[108]Charles E. Rounds, Jr. and Eric Hayes, *Loring: A Trustee's Handbook*, 8th (centennial) ed. (New York: Aspen Publishers, 1998), pp. 1–2, 5, 79; Gilbert Thomas Stephenson, *Estates and Trusts*, 4th ed. (New York: Appleton-Century-Crofts, 1965), pp. 63–66.

[109]*Social Security: Hearings*, III: 2205–06.

[110]Professor Charles E. Rounds, Jr., "Will the Institution of the Trust Survive the Clinton Presidency?" *The Advocate* 25 (Spring 1995): 31.

> termed "contributions" levied under the government's taxing power.[111]

Here again, we see terminology being selected not for how accurately it describes reality, but for how it will affect its intended audience. The taxes did get designated contributions in the law. Another piece of semantic legerdemain went through, to play its part in shaping the climate of opinion, and to cast long shadows later.

The 1939 Amendments: Weakening Substance

Writing insurance language into the law strengthened the *appearance* of Social Security's resemblance to insurance, while the amendments greatly weakened its *substance*.

Social Security was liberalized to add survivors' benefits ("Survivors' Insurance") to dependent wives, children, widows, and parents. Moreover, benefit payment was moved up to January 1, 1940, the initial benefit was increased, and the benefit formula revised to base benefits on average wage rather than total wages since 1936. Finally, the retiree's monthly "primary insurance benefit" was augmented by an increment of one percent of the benefit computed by the benefit formula, multiplied by the number of years in which the individual was paid at least $200 in wages.[112]

However, to keep the total cost down, some old-age benefits were cut. The lump-sum death benefit paid to the estate of persons under 65, of 3.5 percent of total wages since 1936, was scrapped, replaced by a much smaller lump-sum death benefit paid to the survivor, of six times the monthly benefit. And the lump-sum payment to individuals who had turned 65 and paid taxes but did not qualify for benefits, of 3.5 percent of total wages since 1936 was dropped, effective the day the amendments passed, except for persons who died before January 1, 1940. So was the lump-sum payment to the estate of a worker who died after starting to receive benefits, to bring his benefit total to at least 3.5 percent of wages since end-1936.[113] The money-back guarantee had been removed.

[111]*Social Security: Hearings*, III: 2113.

[112]Text of Title II of H.R. 6635, in *Laws Relating to Social Security and Unemployment Compensation*, pp. 35–38.

[113]Ibid., Section 202(g), p. 39; Section 902(g), p. 76.

Departing from individual equity, these changes greatly weakened Social Security's resemblance to private insurance—*at the very same time Social Security was encouraging the public to think of it as resembling private insurance!*

These changes, of course, injured single beneficiaries, in some cases substantially. Under the old law, a man who had worked for 40 years at an average monthly wage of $250 would have had a lump-sum payment of $4,200 going to his estate. His new lump-sum death benefit would be just a few hundred dollars.[114]

Social Security was only four years old, and the government was already cutting some people's future benefits—the benefits they had supposedly earned and would receive "as a matter of right."

Yes, It's Insurance—I've Told You a Thousand Times!

The very first sentence of the September 1939 pamphlet *Changes in the Social Security Act: Old-Age Insurance*, explaining the amendments, read: "Changes have been made in the Social Security Act, especially in the part which provides old-age insurance for wage and salary workers."[115] After discoursing on "your Social Security account," the pamphlet addressed "Your Old-Age Insurance Tax":

> With all the changes, however, the old-age insurance part of the Social Security Act remains much the same principle as before. *It is an insurance plan*. You pay a tax, and so does your employer, to help pay the cost of the benefits you will receive. In other words, you pay a sort of premium on what might be called an insurance policy which will begin to pay benefits to you when you are 65 or over, or to your family when you die.[116]

Note the slippery language: "*a sort of* premium on *what might be called* an insurance policy"—a transparent attempt to call a tail a leg. If Social Security really were insurance, this would have

[114]*Social Security Act Amendments of 1939*, House Report 728 to accompany H.R. 6635, p. 119.

[115]Social Security Board, *Changes in the Social Security Act: Old-Age Insurance*, I.S.C. no. 35, temporary edition, September 1939, p. 1.

[116]Ibid., p. 3; emphasis in original.

been unnecessary. Note, too, the explicit analogy to an individual policy.

Two paragraphs later it stated: "Nowhere can you buy the same amount of old-age insurance and the same protection for your family for what you pay for your benefits under the Social Security Act."[117] It was clearly meant to leave the impression that in paying payroll taxes one was buying insurance benefits. And:

> All the old-age insurance tax money goes into a fund in the U.S. Treasury, which is called the "Federal Old-Age and Survivors Insurance Trust Fund." Old-age insurance benefits will be paid out of this fund.[118]

The 1943 *Old-Age and Survivors Insurance for Workers and their Families* conveyed an even stronger impression that one is buying insurance which will pay benefits as a right. Sharing of costs by workers and employers, it wrote,

> makes it possible to provide *much more insurance protection* for the worker and his family *than he could buy for what he pays toward this Government plan. And because the worker has helped to pay for his benefits, they come to him and his family as a matter of right.*[119]

None of these publications referred to the fact that Congress had "the right to alter, amend, or repeal any provision of this Act."

Again the press uncritically echoed the government. *The United States News* referred to beneficiaries as "policyholders" and wrote of the new Act, "In effect, it writes insurance policies guaranteeing to pay monthly benefits" to eligible retired workers and their dependent wives, widows, children, and parents.[120] Note the explicit analogy to individual policies. In a telling index of the complaisance of the American press, an article in *Newsweek* on the imminent commencement of monthly old-age and survivors benefits lifted material verbatim from Social Security's pamphlet *Changes in the Social Security Act: Old-Age Insurance*:

> No matter how it operates, the old-age pension law is not charity; it is similar to other insurance plans and the worker *pays a premium on what might be called an insurance policy*. And it has no strings attached. It goes outright to the pensioner, whether he or she receives a state or local pension, has private policy annuities, or possesses a savings account.[121]

Similarly, the *United States News* described the newly-begun monthly benefit payments "available as a matter of right."[122] When in October 1941 Roosevelt proposed a huge liberalization of Social Security, *Newsweek* reported that "At present old-age and survivors insurance . . . covers 47,000,000 persons, for whose insurance $2,740,602,058 in premiums had been paid up to a month ago."[123]

From every quarter, then, Americans were being told that Social Security was insurance, paying benefits as a right, and so on. Press reporting was becoming all but indistinguishable from Social Security's own publications. The only frame of reference available to shape their understanding and beliefs about Social Security was the one the government had carefully crafted for the express purpose of gaining their support. Alternatives to provide a basis for disputing this account simply did not exist.

Social Security Triumphant

As far as the public could tell, the official version *was* reality. Benefits began flowing out in 1940, just as Social Security's literature said they would. The 1939 Amendments had frozen the tax rate at one percent of taxable payroll each for workers and employers through 1942; subsequent legislation extended the freeze; not until 1950 did the rate rise. Everything was going smoothly. In 1946 President Harry Truman replaced the Social Security Board with the Social Security Administration (SSA),

---

[117]Ibid.

[118]Ibid.

[119]Social Security Board, *Old-Age and Survivors Insurance for Workers and their Families*, I.S.C. no. 35, January 1943, p. 3; emphasis added.

[120]"The New Social Security System: Questions, Answers for Workers, Employers," *United States News*, August 14, 1939, p. 3.

[121]"U.S. Social Security Payoff Starts in New Year for 912,000," *Newsweek*, December 25, 1939, p. 10; emphasis added.

[122]"Billions for the Old Folks," *United States News*, January 5, 1940, p. 18.

[123]"Social Security Plan: Five-Front Extension of Act Would Add 27 Million to Rolls," *Newsweek*, October 13, 1941, p. 17.

headed by a commissioner for Social Security, to which post Arthur Altmeyer was appointed.[124]

The Board proposed to expand Social Security further, to cover all gainfully employed persons and their dependents; to cover sickness and disability; and to include health insurance.[125]

In 1950, Social Security was extended to most non-agricultural self-employed; regularly employed farm and domestic workers; and others. Eligibility was much liberalized; all those aged 62 or over could qualify for benefits with only six quarters of coverage. On the average, benefits were increased about 77 percent, slightly more than inflation since 1937. Employer and employee taxes were raised to 1.5 percent of taxable payroll each, and a self-employment tax was introduced for the self-employed brought into the program.[126]

This liberalization weakened the tie between "contributions" and benefits, further undermining the individual equity principle, hence any plausible resemblance to private insurance. Yet Social Security kept promoting itself as insurance. A 1947 Social Security pamphlet stated that Social Security "works on the same principle as private insurance, on the principle of spreading the financial risk." It repeatedly called the tax a "premium": "Under our social insurance programs, workers and their employers pay premiums that meet part of the loss of family income." The money for benefits "comes out of a trust fund that is built by special premiums paid by employers and employees." "The worker's premium (or tax) at present is 1 percent of the wages he receives."[127]

A leaflet described OASI as "a government insurance program" financed by one's "contribution" (or tax), and paying benefits "as a matter of right." Unlike public assistance, "Old-age and survivors insurance and unemployment insurance are *insurance*. They are paid for like private insurance, and when the time comes the workers draw their benefits according to insurance rules."[128] Other mass-consumption SSA documents of the 1940s and 1950s told the reader to "Treat your [Social Security] card like an insurance policy" and that "Your card is the symbol of your insurance policy under the Federal social security law."[129]

The reservation of power clause went unmentioned. The press remained overwhelmingly positive. Descriptive articles routinely used insurance language.[130] One described Social Security as "a form of government insurance" paid for by money taken from one's pay and "placed in a trust fund for you." Could some future Congress kill Social Security or suspend benefits? "Yes, but it's inconceivable that any Congress . . . would commit political suicide by doing so," because more and more

[124]Altmeyer, *The Formative Years of Social Security*, pp. 278–80, 71–72, 159, 280.

[125]Altmeyer, "Ten Years of Social Security," *Survey Graphic*, September 1945, p. 384.

[126]Wilbur J. Cohen and Robert J. Myers, "Social Security Act Amendments of 1950: A Summary and Legislative History," *Social Security Bulletin* 13, no. 10 (October 1950): 3–14; Altmeyer, *The Formative Years of Social Security*, pp. 185, 251; Martha Derthick, *Policymaking for Social Security* (Washington, D.C.: Brookings Institution, 1979), p. 430.

[127]Social Security Administration, *Questions and Answers on Social Security*, I.S.C. no. 60, December 1947, pp. 5, 1, 13–14.

[128]Social Security Administration, *Federal Old-Age and Survivors Insurance: A Brief Explanation*, I.S.C. 64, June 1948; emphasis in original.

[129]*Analysis of the Social Security System: Hearings*, pp. 907–12.

[130]See, for example, Alexander Griffin, "What Social Security Does for You," *Saturday Evening Post*, July 18, 1942, pp. 28, 51–52; Jerome Beatty, "Will You Get Your Share of Social Security?" *American Magazine*, February 1944, pp. 43, 105–06, 109; Charles Stevenson, "Does the Government Owe You Money?" *Reader's Digest*, November 1949, pp. 108–10; "Social Security: What You Get," *U.S. News and World Report*, September 15, 1950, pp. 24–25.

voters have "an important stake in Social Security."[131] This was one of the very few recognitions by the press that the reservation of power even existed.

When the self-employed came under Social Security, the press acted almost as an SSA auxiliary publicity office. *U.S. News and World Report* showed how Social Security was a bargain for the self-employed, especially if aged 60 or over.[132] *Business Week's* explanation of the self-employment tax could have been written by the SSA:

> This maximum $81 payment isn't really a tax; it's an insurance premium. It gives you what amounts to a life insurance policy and an annuity contract, both underwritten by the U.S. government. It gives you this coverage at much less than any insurance company can offer, and the return is taxfree.[133]

With no alternative account of reality to draw their opinions from, thinking about Social Security in the government's language, Americans naturally came to believe that Social Security was what the government said it was: insurance, bought and paid for by their taxes, guaranteed to come to them as an earned right.

Public approval of Social Security increased steadily. A September 1936 survey found that 68 percent of its respondents supported old-age insurance; the figure was 77 percent in January 1937—and 96 percent in August 1944![134]

The struggle for popular acceptance and support had been won.

The Curtis Hearings and the Insurance Controversy

The Curtis Hearings

The first real challenge to Social Security came in 1953, when Representative Carl T. Curtis (R-Neb.), a staunch conservative foe of the New Deal, decided to pursue the matter. The Republicans had a majority in the House, and Curtis, a member of the Ways and Means Committee, persuaded the chairman that the House should investigate Social Security. He was appointed chairman of the Ways and Means Investigative Subcommittee on Social Security.[135] For the first time, Social Security would receive sustained critical scrutiny.

Opening in July 1953, the Curtis hearings addressed many topics. The most important part for our purposes came on November 27, 1953, when former Commissioner for Social Security Altmeyer testified on the legal status of OASI benefits.

Curtis's chief counsel, Robert Winn, told Altmeyer that the committee wanted to investigate "whether the arrangements provided in Title II of the Social Security Act are, in fact, insurance." Winn and Curtis had him read out excerpts from press releases, Social Security publications, and other documents in which Social Security was described as "insurance." This brought out that the original Act did not describe the benefits as insurance, and that the administration's *Helvering v. Davis* brief denied that Social Security could be called insurance. Altmeyer insisted nonetheless that "Titles II and VIII together constitute an insurance program."[136]

He admitted, however, that "This insurance is established as a matter of statutory right. There is no individual contract between the beneficiary and the government."[137] Curtis probed further:

> Chairman Curtis: The individual who perhaps was 21 years of age in 1937 and who has been in covered employment since then . . . and will have to continue to pay these taxes until he is 65, has no contract?
>
> Mr. Altmeyer: That is right.
>
> Chairman Curtis: And he has no insurance contract?
>
> Mr. Altmeyer: That is right.

---

[131] Clarence Woodbury, "Social Security Pays Off," *American Magazine* 143, vacation issue, 1947, p. 14.

[132] "Bargains in Pensions," *U.S. News and World Report*, October 26, 1951, pp. 52, 54, 56–57.

[133] "More Security," *Business Week*, February 23, 1952, p. 150.

[134] Michael E. Schiltz, *Public Attitudes Toward Social Security 1935–1965*, Social Security Administration, Office of Research and Statistics, Research Report no. 33 (Washington, D.C.: U.S. Government Printing Office, 1970), pp. 35–36.

[135] Carl T. Curtis and Regis Courtemanche, *Forty Years Against the Tide: Congress and the Welfare State* (Lake Bluff, Ill.: Regnery Gateway, 1986), p. 334.

[136] *Analysis of the Social Security System: Hearings*, pp. 881–909.

[137] Ibid., p. 918.

Chairman Curtis: It is a statutory right?

Mr. Altmeyer: It is a statutory right enforceable by law.

Chairman Curtis: Now, could the Congress change that statutory right?

Mr. Altmeyer: Yes; and it has done so to improve and liberalize the benefits time and again, and it will do so in the future, I am sure.

Chairman Curtis: And it has taken benefits away; has it not?[138]

Specifically, Curtis asked about the changes in 1939. Altmeyer replied that "There was more of a savings bank element and less of the insurance element prior to 1939."[139]

Curtis pointed out the misleading nature of official descriptions of Social Security as "insurance" and the Social Security card as an "insurance policy," noting that "a 'policy' to the minds of most people, in the generally accepted meaning of the term, means a contract that cannot be changed by either party."[140] He was right, of course. In telling people they had policies, and thereby implying that they had contracts, the SSA was giving a false impression.

Curtis and Winn returned repeatedly to Social Security's lack of a contract. Altmeyer raised group insurance, in which the insured individual does not have a contract with the insurer. There is still a contract, Curtis retorted, between the insurer and the employer.[141]

Altmeyer defined a "right" as "a claim against another person or agency or government which is enforceable in the courts of the land." Curtis and Winn pointed out that under the 1939 amendments, single persons with no dependents would no longer have a 3.5 percent of income lump-sum benefit paid to their estates.

Mr. Winn: [D]id they have a right, according to your reasoning, Mr. Altmeyer?

Mr. Altmeyer: Certainly they did.

Mr. Winn: What happened to it in 1939?

Mr. Altmeyer: It was amended to give them a better right.

Mr. Winn: I see; these rights can be swapped around as you think they should be?[142]

Winn cited several letters by beneficiaries, many of them self-employed persons over 65, complaining about benefit terminations. With self-employment covered under the 1950 amendments, retirees who had started small businesses or other self-employment arrangements so as to earn additional income while drawing Social Security lost their benefits if they earned more than $75 a month, and were required to return benefits already paid and to resume paying Social Security taxes. For example:

My position is that Congress has violated the sanctity of a contract, to which I am a party, . . . and it is a well-established principle of law that no valid contract can be altered or amended without the consent of both contracting parties. . . .

Since the inception of the plan I have paid my premiums by payroll deductions until April 1947, when it became necessary for me to retire . . . from that time until January 1951 I received the benefits to which I was entitled. I engaged in business promptly thereafter as a self-employed person . . . as self-employed persons were not covered by the then existing statute. I continued to receive my social-security benefits until the new act.[143]

The people who get social security paid for it. It is their money, they invested it during all the years to the social-security fund. The social security is not a charity. It is a form of insurance. How has the Government the right to take the money away or to say how much these people can or cannot earn?[144]

These letters reveal that many Americans believed, as they were intended to, that they were "entitled" to their benefits "by right"—as Curtis observed, "the people have relied upon the statement that this is insurance, as they understand

[138]Ibid., pp. 918–19.

[139]Ibid., p. 919.

[140]Ibid., p. 920.

[141]Ibid., pp. 997–98.

[142]Ibid., p. 980.

[143]Ibid., pp. 982–83.

[144]Ibid., p. 1003.

it"[145]—and that their "rights" were hardly as secure as they had been led to believe.

Winn stressed the reservation of the power clause (Section 1104). When asked if he thought that the consistent reference to benefit payments as a matter of right might have been misleading given Section 1104, Altmeyer denied it.[146] As for informing the public,

> Mr. Winn: Apparently you did not think that it was necessary in discussing the difference between social insurance and private insurance [in Social Security publications for the general public] to point out that there is no contractual arrangement between the Government and the workers in social insurance; is that correct?
>
> Mr. Altmeyer: That is right.
>
> Mr. Winn: Apparently you never thought it necessary to point out Section 1104 of the Act and explain its implications.
>
> Mr. Altmeyer: That is right.[147]

So while it was necessary to tell Americans that Social Security is "insurance" paying benefits "as a matter of right," it wasn't necessary to tell them that their "insurance policy" could be unilaterally rewritten or even torn up by Congress.

After more sparring, Curtis ended the hearings. Since there was no contract, he said, Social Security wasn't insurance, and saying it was didn't make it so. Young people paying into Social Security, he added, "only have a statutory right" that a future Congress might remove, and "we should not tell them that it is insurance, because in the minds of the average American that is . . . an enforcible policy."[148]

Curtis had exposed how Social Security had been sold as insurance; gotten Altmeyer to admit that the taxpayer had no contract with the government giving him a contractual right to benefits; brought out the shakiness of statutory rights; established that one's true security in Social Security was political; exposed the cynical one-sidedness of Social Security's self-promotion; and gotten on the record Altmeyer's lack of concern about informing the people of the reservation of power clause.

The Aftermath: Steaming as Before

Yet the hearings had no impact. Indeed, the Eisenhower administration proposed to expand Social Security.[149] The resulting 1954 amendments massively liberalized it. OASI was extended to self-employed farmers; farm and domestic employees not already covered; some self-employed professionals (such as architects); and miscellaneous other workers. Others were brought in on an elective basis, mostly state and local employees. Coverage was thus now extended to almost everyone but federal workers and various professionals. Benefits were increased 13 percent for about 6.6 million current beneficiaries. Payroll tax rates for the 1970s were raised to cover anticipated higher costs.[150]

In 1956, Social Security was expanded again, adding disability insurance, which paid monthly disability benefits to workers aged 50–64 and totally or partially disabled. The Disability Insurance Trust Fund was created to pay benefits. To defray costs, the tax rates rose slightly, these revenues going into the new "trust fund."[151]

Congress approved these expansions by lopsided votes. For the 1954 amendments, for example, the House vote was 355–8.[152]

As if Curtis's hearings had never happened, prominent officials kept the insurance and trust fund analogies before the public. Undersecretary of Labor Larson's 1955 book *Know Your Social Security* asserted that Social Security "is based on the same principle as private insurance"; though there are differences, "the general idea is the same." You and your employer make contributions, "in return for which you get certain insured rights" such as death benefits and pensions. Social Security involves "the

[145] Ibid., p. 991.

[146] Ibid., p. 980.

[147] Ibid., p. 995.

[148] Ibid., p. 1014.

[149] Altmeyer, *The Formative Years of Social Security*, pp. 235–43; Derthick, *Policymaking for Social Security*, pp. 154–56.

[150] Wilbur J. Cohen, Robert M. Ball, and Robert J. Myers, "Social Security Amendments of 1954: A Summary and Legislative History," *Social Security Bulletin* 17, no. 9 (September 1954): 3–13; Derthick, *Policymaking for Social Security*, p. 431.

[151] Charles I. Schottland, "Social Security Amendments of 1956: A Summary and Legislative History," *Social Security Bulletin* 19, no. 9 (September 1956): 3.

[152] Cohen, Ball, and Myers, "Social Security Amendments of 1954," p. 16.

simple insurance principle" of making small payments while working and getting back a larger sum when needed to face an emergency like death or retirement.[153]

There were just three main differences between Social Security and private insurance, he added: the system is government-operated; some people, for social-welfare reasons, get more than others relative to contributions; and while a private insurance beneficiary "has an absolute right to collect the proceeds of the policy," Social Security has restrictions, for example, one must be over 65 and retired. Otherwise, Social Security resembled private insurance, and "What you get, moreover, is yours as of right, like any other insurance." "The benefits," he added, "are yours—bought and paid for."[154]

Larson made a crucial revelation about the trust fund. Having the trust fund helps prevent pressure to cut benefits, partly because its interest helps defray costs, and partly because of

> *the public's conception of its vested right in a certain level of benefits*. If you are now contributing to a trust fund, *you have the definite sense* that it is *your* [italics in original] money that is going into that fund and *staying there to back up your benefits* when the time comes to pay them. You feel, and *you are intended to feel*, that the money you contribute is, at least in part, being paid to support your own ultimate benefits. Therefore, if some future Congress began to toy with the idea of cutting social security benefits, *you and all the other people who had contributed would regard this as a breach of faith*. You would insist that the money you had paid in had been contributed on an advance understanding that the benefits would at least not be less than the law called for when you contributed. In these circumstances, it seems unlikely that any future Congress would dare to lower . . . benefits.[155]

This was a confession that manipulation of public belief figured highly in how Social Security was operated. It was also an uncannily accurate prophecy. When the Reagan administration proposed some benefit cuts to keep OASDI solvent, the psychology of the payroll tax and trust fund worked just as Larson predicted it would.

[153]Arthur Larson, *Know Your Social Security*, pp. xv, 3–4.

[154]Ibid., pp. 4–7, 19.

[155]Ibid., pp. 40–41; emphasis added.

That same year, Health, Education, and Welfare Secretary Oveta Culp Hobby published an article describing Social Security as "a form of insurance to which [beneficiaries] had contributed." She added that "The monthly [benefit] payments come from the Old-Age and Survivors Insurance Trust Fund," which "belongs to the people eligible for social-security benefits. The government acts as trustee of the fund."[156] The statement about ownership, of course, is not true.

Only one serious criticism emerged in the mainstream media, by Dillard Stokes in *Commentary*. Drawing on the Curtis hearings, he argued that Social Security was not insurance as Americans understood it, that they had no real right to benefits, that Congress had already broken its word and might do so again, that benefits were means-tested relief, and that the reserve fund was a sham.[157]

Stokes expanded his piece into a book, *Social Security—Fact and Fancy*, which appeared in 1956. Repeatedly, he cited the reservation of power clause and the tenuousness of benefit rights. He also indicated the staggering scale of Social Security's publicity effort. In 1953 alone, Social Security issued 7,000,000 booklets, put up 535,000 posters

[156]Oveta Culp Hobby, "Are You Getting Your Share of Social Security?" *American Magazine*, April 1955, pp. 109, 21.

[157]Dillard Stokes, "Does Our Social Security System Make Sense? Insurance, Relief, or What?" *Commentary*, June 1954, pp. 566–74.

and 1,300 displays, aired 1,700 TV and 39,000 radio programs, supplied 7,700 radio scripts, gave 16,500 lectures, presented 14,500 motion picture shows, published 2,207 magazine articles, and issued 14,500 news releases. Between 1950 and March 1, 1955, the Social Security Administration issued 86,655,000 copies of booklets and leaflets, in large editions addressed to the general public and to specific audiences, for example, the self-employed.[158] Clearly, Social Security attached great importance to immersing America in the idea that it is insurance financed with a trust fund.

Stokes's efforts, like Curtis's, availed nothing.

Is It Insurance or Isn't It? The Academic Controversy

Meanwhile, insurance scholars were engaged in an intense controversy as to whether social insurance, and Social Security in particular, was insurance.

Insurance is a means of coping with risk, which insurance textbooks usually define as a condition of uncertainty about a loss.[159] Insurance combines the risk management tools of *risk pooling and risk transfer*. In risk pooling, a large number of persons, each facing an uncertain large loss (for example, death), essentially agree to share the loss through charging each member of the group a small premium, thus creating a fund to compensate those members who do incur that loss in a given time period. The individual's premium is his share of the likely loss to the group and of the insurer's administrative costs and profit. Instead of facing a large uncertain loss, the individual pays a small certain cost (premium). Moreover, by having very large numbers of persons in very similar situations facing the same risk ("homogeneous exposure units") participate in risk pooling, the insurer can use the law of large numbers: the larger the sample group being observed for a phenomenon, the closer the observed frequency of that phenomenon is to its frequency in the total population. This enables the insurer to predict how likely a given loss is to occur, and to charge premiums sufficient to cover that loss, meet expenses and furnish a profit. By buying insurance, the insured transfers the risk to the insurer. Without insurance, he would have to meet the cost of the possible loss himself. With insurance, the financial loss from the risk's eventuating is borne by the insurer instead, as a "speculative risk," so called because whether the insurer incurs a loss will depend on how well it calculated probabilities. If it was accurate, its premiums will generate enough money to pay off its claims; if it erred, it may lose money, even fail.[160] Risk is *shared* by the *insured* and *transferred* to the *insurer*.

I.M. Rubinow defined social insurance as society's endeavor "to furnish that protection to one part of the population, which some other part may need less, or, if needing, is able to purchase voluntarily through private insurance."[161] Another social insurance pioneer, Abraham Epstein, elaborated that "spreading the risk" over the working population would maximize the gain from risk pooling; making insurance compulsory would cut overhead; and spreading costs among workers, employers and the community would bring individual cost within a worker's reach. Hence social insurance could be described as "a relatively inexpensive form of insurance, devised by the state" which sought to establish a minimum floor of sustenance during unemployment, old age, sickness and disability, "rather than an actuarially perfect system of insurance."[162]

Epstein admitted that social insurance is "based largely on financial expediency and social wisdom rather than on strict insurance principles." Whether the persons bearing the risk pay the premiums themselves "matters little." What's important is that those with the greatest need receive the most protection. Social insurance tries to accomplish a social goal, not stay in business like an insurance company, and premiums are "dictated by social

[158]Dillard Stokes, *Social Security—Fact and Fancy* (Chicago: Henry Regnery, 1956), pp. 175–77.

[159]Emmett J. Vaughan, *Fundamentals of Risk and Insurance*, 3rd ed. (New York: John Wiley and Sons, 1982), p. 4; Robert I. Mehr and Emerson Cammack, *Principles of Insurance*, 7th ed. (Homewood, Ill.: Richard D. Irwin, 1980), p. 18; Herbert S. Deneberg, Robert D. Eilers, Joseph J. Melone, and Robert A. Zelten, *Risk and Insurance*, 2nd ed. (Englewood Cliffs, N.J.: Prentice-Hall, 1974), p. 4.

[160]Vaughan, *Fundamentals of Risk and Insurance*, pp. 21–22; Mehr and Cammack, *Principles of Insurance*, pp. 28–31.

[161]Rubinow, *Social Insurance*, p. 3.

[162]Abraham Epstein, "Social Insurance," *New Frontiers*, March 1937, p. 10, quoted in William Haber, *Social Insurance Course Outline* (Ann Arbor, Mich.: planographed Edwards Brothers, 1937), p. 30.

policy, not by the actuary."[163] That being so, social insurance looks suspiciously like welfare rather than insurance.

Nevertheless, advocates insisted, the basic insurance elements exist. Altmeyer argued that Social Security has the same purpose as private insurance: "mutual protection against widespread risks"—and used the same method: risk pooling and "common contributions."[164] Others elaborated, arguing that social insurance shares with private insurance risk pooling over many individuals, and transfer of risk to the insurer. Moreover, like private insurance, it is self-supporting; beneficiaries finance their benefits with premiums. Benefits are linked both to specific risks and to contributions, but do not require demonstration of need.[165]

Advocates conceded that social insurance differs from private insurance, but affirmed that it is insurance nevertheless because of these common characteristics. Economics professor Domenico Gagliardo insisted that the differences "should not be permitted to obscure the fundamental fact that social and private insurance have much in common." Social insurance operates on "the same fundamental principle of distributing among the many the losses of the few," and doing it by some form of insurance carrier.[166]

Critics retorted that the differences outnumber and outweigh the similarities. Unlike private insurance, social insurance is compulsory. While in private insurance the principle of individual equity dominates, social insurance stresses social adequacy. Individuals may pay the entire cost in private insurance, but the employer usually contributes as much as the employee in social insurance. Unlike private insurance, social insurance contains no contract giving beneficiaries contractual rights or property rights to benefits; legislatures may change both the taxes and the benefits. This and other imponderables make costs extremely difficult for actuaries to predict, whereas costs in private insurance are more predictable. Finally, private insurance must operate on a full reserve basis: an insurance company must have enough financial resources to meet all commitments to policyholders even if revenue inflow from premiums ceased. Social insurance need not, because it can extract more resources through taxes.[167]

Some deemed social insurance a misuse of insurance language. Equitable Life Assurance Society's Vice President and Associate Actuary Ray Peterson complained that the use of insurance and trust fund language in the legislation, Social Security publications, and the media was creating a "semantic facade" that hindered public understanding of how Social Security's financing really worked.[168]

Also, loose use of insurance terminology made understanding between the industry and the public difficult and complicated the controversy. In 1958 the American Association of University Teachers of Insurance established a Commission on Insurance Terminology to rectify matters.[169] In 1965, the commission reported its definition of insurance as: "Pooling of risks of fortuitous losses by transfer of such risks to insurers who agree to indemnify insureds for such losses, to provide other pecuniary benefits on their occurrence, or to render services connected with the risks."[170]

The Commission formed a separate committee on Social Insurance Terminology, including professors in insurance; Wilbur Cohen; Social Security's Chief Actuary, Robert Myers; Ray Peterson; and others.[171] It defined "social insurance" as

[163]Ibid.

[164]"Grand Rapids Host to Mutual Convention," *Journal of American Insurance* 14, no. 10 (October 1937): 14–15; "Operation of Social Security Act Explained by Dr. Altmeyer," *Journal of American Insurance* 14, no. 10 (October 1937): 19.

[165]Robert M. Clark, *Economic Security for the Aged in the United States and Canada*, 2 vols. (Ottawa: n.p., 1959), vol. 1, pp. 30–32.

[166]Domenico Gagliardo, *American Social Insurance*, rev. ed. (New York: Harper and Brothers, 1955), pp. 14–21.

[167]Clark, *Economic Security for the Aged in the United States and Canada*, vol. 1, pp. 33–53.

[168]Ray M. Peterson, "Misconceptions and Missing Perceptions of our Social Security System (Actuarial Anesthesia)," *Transactions of the Society of Actuaries* 11 (November 1959): 826–27.

[169]Ralph H. Blanchard, "Words," *Journal of Insurance* 27, no. 3 (September 1960): 73–76; "The Commission on Insurance Terminology," *Journal of Insurance* 27, no. 3 (September 1960): 71.

[170]*Bulletin of the Commission on Insurance Terminology of the American Risk and Insurance Association* 1, no. 4 (October 1965): 1, quoted in George E. Rejda, *Social Insurance and Economic Security*, 2nd ed. (Englewood Cliffs, N.J.: Prentice-Hall, 1984), p. 36.

[171]"The Commission on Insurance Terminology," *Journal of Insurance* 27, no. 3 (September 1960): 119.

> A device for the pooling of risks by their transfer to an organization, usually governmental, that is required by law to provide pecuniary or service benefits to or on behalf of covered persons upon the occurrence of certain pre-designated losses

under these conditions: Coverage is compulsory; benefit eligibility is derived from contributions by the beneficiary or the person on whom the beneficiary is a dependent; the individual need not demonstrate inadequate resources, but may have to establish dependency; cost is paid mostly by contributions by covered persons, employers, or both; the method for determining benefits is prescribed by law; benefits usually aren't directly tied to contributions, but instead redistribute income; the financing system is designed to be adequate for the long run; the plan is government-administered or -supervised.[172]

The Reality: Welfare, Not Insurance

Nonetheless, Social Security is not insurance. Curtis cited the absence of a contract. The argument that Social Security is not insurance is much stronger, however, if it can be shown that the *defining characteristics* of insurance—risk pooling and risk transfer to an insurer—do not exist under Social Security.

For one thing, with benefit levels determined mainly, often wholly, by politics—for example, the 13 percent benefit increase in 1968, which sprang from President Lyndon Johnson's personal generosity to the elderly[173]—the notion of Social Security as "insurance" providing protection for "risk" becomes vacuous.

The political and social-welfare considerations driving benefit levels also void the notion of Social Security taxes as "premiums." In theory, Social Security insures one against income loss through retirement or disability, and one's survivors against one's death. Under true insurance, one's premium reflects *one's own* risk of income loss, and the cost to the insurer of assuming that risk, and buys one protection against *one's own* loss. But when one's OASDI taxes are increased following a legislated increase in benefits for current beneficiaries—due, say, to politics—one's "premium" is being driven not by one's own "risk," nor by the cost of protecting against it, but by politicians' decisions to be generous *toward others bringing political pressure to bear*. To call this redistributive tax an "insurance premium" is nonsense.

This also makes risk pooling under Social Security dubious. First, people in their twenties and people just shy of retirement at 65 can hardly be called *homogeneous*; their situations are radically different relative to the "risk"—income loss due to retirement—being "insured against." So radical a heterogeneity makes the concept of "homogeneous exposure units" untenable. Second, benefit levels are determined largely by politics, and then the tax rate is set to pay for them; risk, one's probability of incurring it, and risk pooling, have nothing to do with it.

Moreover, risk is not transferred to the insurer. Under true insurance, the policyholders' premiums essentially *buy claims on the insurer,* which is commited by contract to make good those claims out of its assets. When one qualifies for Social Security benefits, one does not obtain a claim on Social Security. One acquires claims on *other taxpayers*. Social Security experiences no true financial exposure, putting its *own* assets at risk. An insurance company may end up bankrupt if costs exceed predicted levels. Social Security assumes no speculative risk whatsoever, hence has no status analogous to that of a private insurer. Should Social Security's costs exceed resources, it will merely extract fresh resources through taxes and/or borrowing. *Risk is being transferred not to the so-called "insurer," but to the taxpayers. No risk sticks to the "insurer"; it is all passed through to other taxpayers*.

But if neither risk pooling nor risk transfer to the insurer operates, Social Security's claim to be insurance collapses. Social Security is welfare labeled insurance for public relations purposes. Resources are coercively extracted from members of one group and transferred to members of another group, with the rate of extraction (tax rate) and the rate of transfer (benefit amount) set by politics and ideology. That is income redistribution, not insurance.

"Public Immorality" and Playing with Fire

Social Security, then, is not insurance as academic experts define it. What matters, though, is the

[172]"Social Insurance Definitions Are Offered by Terminology Committee," *National Underwriter* (Life Insurance edition), May 22, 1965, pp. 6, 18.

[173]Derthick, *Policymaking for Social Security,* p. 342.

perception of the benefits and overall understanding that the general voting public has about Social Security.

As the evidence makes clear, Social Security's partisans sought to create a strong impression that Social Security is just like an individual private insurance policy, entailing a binding commitment under a contract, in which one has a legal, contractual right to receive the benefits—that is, insurance as the man in the street understands it. After Americans had been saturated with such propaganda for almost thirty years, E.J. Faulkner, president of Woodmen Accident and Life Company and a trustee of the American College of Life Underwriters, observed that

> As insurance salesmen discover daily, many Americans err by thinking of social security in terms of private insurance. They believe that the social security taxes they pay are a premium to provide a pension for their own old age.[174]

Yet Curtis's hearings showed that Social Security is not insurance as generally understood, nor is it the sort of insurance its advertising led Americans to believe.

In its insurance talk, Social Security was playing with fire. In a future fiscal crisis requiring benefit cuts, means testing, or a later retirement age, it will be bootless to tell the public that Social Security is *social* insurance. The nuances of "social insurance" will cut no ice with angry taxpayers and frightened beneficiaries. Any resultant political crisis will be the child of Social Security's own propaganda. Ray Peterson asked if it was "consistent with public morality" to depict Social Security as "greatly similar" to private insurance; to "fail to explain to 'the man in the street' that current taxes are largely required to pay current benefits"; to fail to make clear to him that "social security benefits are not a contractual vested right? . . . I submit that such actions and inactions all savor of public immorality."[175]

As the 1950s waned, Congress teemed with proposals to expand Social Security further, especially in health care. In June 1958, the Ways and Means Committee held hearings on these proposals. Senator William Proxmire (D-Wisc.), author of one such bill, testified that:

> The fact is that this is an insurance system. This is a premium that he is paying. His employer is paying a part of the premium. It is entirely different from income tax. It is a benefit that comes back to him. He is buying something for himself.[176]

The struggle against Social Security's false advertising was lost. The insurance and trust fund myths were now fixed in the public mind—and in the minds of politicians. This would affect, decisively, how they reacted when Social Security got in trouble later.

Flemming v. Nestor and the Amish

Wollenberg's Warning: Social Security Gives No Vested Rights—and Can't

In 1958, Elmer Wollenberg of the Oregon State Bar carefully examined the issue of vested rights under OASDI. Since it is the foundation of most people's retirement planning, Social Security must provide predictable benefits under predictable circumstances. But it entails enormous, and growing, financial commitments. Hence, he argued, the government must avoid locking itself into "an overextension of fixed commitments that will endanger the nation's finances" should retrenchment ever become necessary. He spotted the tension, and potential for danger, at Social Security's core: Social Security must accommodate

> these somewhat conflicting interests: the interest of the individual citizen in certainty of retirement income for himself and his family unit and the interest of the Federal government in a future free of too-heavy fixed fiscal obligations.[177]

Wollenberg stressed that one's "rights" under Social Security are "flexible," due to the reservation

[174]E.J. Faulkner, "Social Security and Insurance—Some Relationships in Perspective," *Journal of Insurance* 30, no. 2 (June 1963): 204.

[175]Ray M. Peterson, "Misconceptions and Missing Perceptions of our Social Security System (Actuarial Anesthesia)," Discussion, pp. 914–15.

[176]U.S., Congress, House, Committee on Ways and Means, *Social Security Legislation: Hearings before the House Committee on Ways and Means*, 85th Cong., 2nd sess., 1958, pp. 163–64.

[177]Elmer F. Wollenberg, "Vested Rights in Social-Security Benefits," *Oregon Law Review* 37, no. 4 (June 1958): 299–300.

of power clause, and that one has "little legal certainty." [One's rights]

> are statutory rights and nothing more. There is no express contract of insurance, within the traditional legal meaning of insurance, between the Federal government and the individual payer of a social-security tax. [One's benefit] must, therefore, be considered a gratuity.

Federal courts had ruled that individuals acquire no vested rights to Federal gratuity-type benefits. He cited the government's brief and arguments in *Helvering v. Davis*, the Court's opinion, and Altmeyer's testimony in the Curtis hearings.[178]

He also meticulously reviewed the Social Security amendments in which individuals' rights to benefits were trimmed or even abolished, and concluded that it was doubtful that there was any point, from employment in a covered occupation to after receipt of benefits, "at which OASDI benefits vest in the recipient."[179]

Wollenberg argued that Social Security was probably the best such program under the circumstances, meeting both the government's need to be free to deal with the future, and the individual's need for "*adequate* (as distinguished from *assured*) income" to offset income loss due to death, old age or disability. The uncertainty of one's rights, he noted, was "inherent in the program." Far from faulting Social Security for not being contractual, he held that contractual social insurance would lock unborn generations into vast binding commitments.[180]

In short, not only does Social Security have no vested rights for individuals, in Wollenberg's view it *can't*, and probably *shouldn't*. Wollenberg had divined the fatal contradiction in Social Security. For political reasons, it had to give the public an impression that it would guarantee security for their retirement. Hence the campaign to link Social Security in the public mind with insurance and trusts, to capitalize on the assurance they conveyed. Yet to control costs, the government had to be able to modify the program as needed. On the one hand, a manufactured *impression* of certainty which created, and was meant to create, a *perception* of certainty. On the other, a need for flexibility—and a capacity for it (Section 1104) never conveyed to the public. This tension has the makings of a terrible dilemma: If Social Security ever faced financial crisis, would it live up to its advertising, and wreck the economy—or break its benefit promises, and precipitate a political crisis? Just a year later, a Social Security case reached the Supreme Court.

The Case: That's My Property, and My Earned Right!

The 1954 Social Security amendments included a provision that old-age benefits were not to be paid to anyone deported after August 1954 for illegal entry, conviction of a crime, or subversive activity.[181] On July 7, 1956, Ephram Nestor, a Bulgarian-born alien who had been a Communist in 1933–1939, was deported. Nestor had become eligible for monthly Social Security benefits in November 1955 due to turning 65. On December 2, 1955, he applied for benefits and began receiving them as of November. The attorney general notified Social Security's Bureau of Old-Age and Survivors Insurance in August 1956 that he had been deported,

[178]Ibid., pp. 300–07.

[179]Ibid., pp. 308–58.

[180]Ibid., pp. 301, 351–52, 359; emphasis in original.

[181]Cohen, Ball, and Myers, "Social Security Act Amendments of 1954: A Summary and Legislative History," p. 10.

and effective September 1956, his benefits were suspended.[182]

Nestor appointed his wife and an attorney to represent him, and on May 5, 1958, initiated a suit in the U.S. District Court for the District of Columbia, alleging that the benefit suspension was illegal and unconstitutional.[183] He argued that "throughout the history of the Social Security Act, old-age insurance benefits have been referred to as a right of the recipient which he has earned and paid for." He cited the 1949 Report of the House Ways and Means Committee on Social Security legislation, President Eisenhower's January 14, 1954 message on Social Security, and remarks by Senators Eugene Millikin and Walter George, "all of which," the government's appeal noted, "in effect, state that Social Security benefits are not charity or a 'hand-out,' but rather are paid to the recipient as an earned right" and linked in part to his earnings. Nestor also reasoned that the payments he claimed "were, in fact, earned through his work and are assured as a matter of statutory right."[184] That is, he was *appealing to the government's own public-relations depiction of Social Security*. Nestor was asking Social Security to stand by its advertising. He was in for an unpleasant surprise.

The District Court held that his benefit termination was repugnant to the Fifth Amendment's Due Process clause, because it had deprived Nestor of a "property right" which had "fully accrued" to him.[185] Secretary of Health, Education, and Welfare Arthur Flemming appealed to the Supreme Court, and in September 1959 the Justice Department filed a brief on Flemming's behalf—meaning, of course, on the Social Security Administration's behalf.

The Government's Brief: Insurance? Premium? Trust? Where'd You Get That Idea?

One of the issues, the brief acknowledged, was whether an alien who had begun to receive monthly benefits

> has a vested or "property" right to the continued receipt of such benefits, of such a nature that their suspension pursuant to statutory direction, following his deportation, deprives him of property without due process of law.[186]

Naturally, the government denied it—and in so doing, exploded the insurance myth foisted on the public since 1935.

The brief described Social Security and its financing. For this it drew extensively on the efforts of Curtis, citing both the Altmeyer testimony in his hearings and the subsequent report by his staff, *Social Security After 18 Years*.[187] Based on this, the government *denied* what it had so long asserted:

> The OASI [Old-Age and Survivors Insurance] program *is in no sense a federally-administered "insurance program" under which each worker pays premiums over the years and acquires at retirement an indefeasible right to receive for life a fixed monthly benefit*, irrespective of the conditions which Congress has chosen to impose from time to time. While the Act uses the term "insurance," the true nature of the program is to be determined from its actual incidents.[188]

As for the payroll tax, which the Social Security Administration's pamphlets had described as "a sort of premium on what might be called an insurance policy," the brief said:

> The "contribution" exacted under the social security plan from an employee . . . is a true *tax*. It is not comparable to a premium under a policy of insurance promising the payment of an annuity commencing at a designated age.[189]

And the Trust Fund? It's simply "a contingency fund," to cover revenue shortfalls. *"The beneficiary or prospective beneficiary of the OASI program acquires no interest in the fund itself."*[190] "Interest" means a right, share or title—which implies property. That is, the beneficiary has no property in the "trust fund." This is an official admission that it is not a true trust.

When the Justice officials drew up this brief on the Social Security Administration's behalf, they

[182]U.S. Supreme Court, *Records and Briefs*, October Term, 1959, No. 54, *Flemming v. Nestor*, Brief for the Appellant [hereafter *Flemming v. Nestor*, Brief for the Appellant], pp. 3–4.

[183]Ibid.

[184]U.S. Supreme Court, *Records and Briefs*, October term, 1959, No. 54, *Flemming v. Nestor*, Appeal from the United States District Court for the District of Columbia, pp. 25–26.

[185]*Flemming v. Nestor*, Brief for the Appellant, pp. 4–5.

[186]Ibid., p. 2.

[187]Ibid., pp. 28–40.

[188]Ibid., p. 10; emphasis added.

[189]Ibid., p. 41; emphasis in original.

[190]Ibid., pp. 10–11.

were presumably saying what the Social Security Administration wanted said. Presumably too they consulted with the Social Security Administration's experts so as to ensure accurate depiction of Social Security. This necessarily means that when they wrote that OASDI is "in no sense" federally-administered insurance giving an indefeasible right to benefits in exchange for premiums, that the "contribution" was a tax and not a premium, and that a beneficiary has no property in the so-called "trust fund," *they were describing Social Security as it really is*.

Nestor had appealed explicitly to the government's own depiction of Social Security. In arguing that his understanding of Social Security was wrong, the government was necessarily arguing that *its own depiction of Social Security for public-relations purposes was wrong*.

Property Rights? What Property Rights?

Since the core issue was whether Nestor had been denied due process by being shorn of a "fully accrued property right"—that is, "the right to the continued receipt of social security benefits once they have been awarded"—the government understandably devoted considerable effort to arguing that "this view that such benefits are 'fully accrued property rights' is wholly erroneous."[191]

For one thing, the Supreme Court had frequently distinguished between insurance and annuity programs, which create property rights, and pensions, which, being gratuities, do not. The granting of pension benefits by Congress, it had ruled, didn't create vested rights; Congress could, if it chose, withdraw benefits conferred by gratuities. It had also ruled that pensions were gifts, not vested rights. Citing these precedents, the brief maintained that "the right to federal social security benefits is a statutory, conditional right, which the possessor enjoys subject to all the conditions which Congress has attached and may attach."[192]

Moreover, numerous Social Security features make clear the "nonvested and noncontractual character" of benefits. Benefit amounts are based on average earnings in covered employment, not one's tax payments, and any link between wages, taxes, and benefits "is subject to change at any time by Congress." The noncorrelation between taxes and benefits is shown by, for example, the "work test" whereby retirees who earn over a certain amount lose benefits.[193]

As for Section 1104, the brief pointed out, "No contractual obligation on the part of the Government and no contractual right of a beneficiary could coexist with this reservation of power."[194]

If Social Security indeed isn't insurance and involves no vested rights—and given the program's history, the brief's arguments seem irrefutable—Nestor's position was untenable. So is all the insurance and trust fund propaganda disseminated for so long. The administration summed up:

> social security must be viewed as a welfare instrument to which legal concepts of "insurance," "property," "vested rights," "annuities," etc., *can be applied only at the risk of a serious distortion of language*. . . . An understanding of the difficult and changing problems of public policy arising out of attempts to eliminate individual or family insecurity . . . *will be obscured by Procrustean efforts to force the social security program into the mold of inappropriate analogies*.[195]

Yet just such *distortion of language* and application of *inappropriate analogies* was what Social Security itself had been doing for decades.

[191]Ibid., p. 53.

[192]Ibid, pp. 54–56, 59.

[193]Ibid., pp. 59-60.

[194]Ibid., p. 14.

[195]Ibid., p. 68; emphasis added.

If one has a right to benefits, the brief added, it is "subject to amendment or repeal as Congress in its wisdom feels will best promote the general welfare." One has "a statutory 'right' . . . subject to the expressly reserved power of Congress to amend or repeal any provision of the law." The only restraint on Congress was that such amendment not be "arbitrary or unduly discriminatory."[196]

The Decision: No Accrued Property Rights to Benefits

On June 20, 1960, by 5–4, the Supreme Court decided *Flemming v. Nestor* in the government's favor. Justice John Harlan wrote the opinion. On Nestor's purported property right, Harlan came straight to the point: the District Court erred in ruling that paragraph 202(n) of the Social Security Act, pertaining to deportation, deprived him of an "accrued property right." "Appellee's right to Social Security benefits cannot properly be considered to have been of that order."[197]

"Of special importance in this case," he noted, is the fact that eligibility and benefit amounts "do not in any true sense depend on contribution to the program through the payment of taxes, but rather on the earnings record of the primary beneficiary."[198] (This is correct.) He cut to the heart of the matter:

> The Social Security system *may be accurately described as a form of social insurance*, enacted pursuant to Congress' power to "spend money in aid of the 'general welfare'," *Helvering v. Davis*, *supra*, at 640. . . . Plainly the expectation is that many members of the present productive work force will in turn become beneficiaries rather than supporters of the program. *But each worker's benefits, though flowing from the contributions he made to the national economy while actively employed, are not dependent on the degree to which he was called upon to support the system by taxation. It is apparent that the noncontractual interest of an employee covered by the Act cannot be soundly analogized to that of the holder of an annuity, whose right to benefits is bottomed on his contractual premium payments.*[199]

Harlan was right. Social Security was social insurance—but controversy was then raging among insurance scholars on whether social insurance is insurance. And benefits had always been based on wages, not taxes. The termination of the money-back guarantee by the 1939 amendments, the windfalls enjoyed by the first generation of beneficiaries, other windfalls given since, and the repeated increases in benefits already voted by Congress, had already made any link between taxes and benefits a joke. And Altmeyer himself had admitted to the lack of a contract and to Congress' prerogative to modify benefits and rights.

Meant to exist "into the indefinite future," Social Security's provisions "rest on predictions as to expected economic conditions which must inevitably prove less than wholly accurate," Harlan noted, as well as on decisions about resource allocation which will be modified due to changing conditions.[200] Therefore, he concluded,

> *To engraft upon the Social Security system a concept of "accrued property rights" would deprive it of the flexibility and boldness in adjustment to ever-changing conditions which it demands.* It was doubtless out of an awareness of the need for such flexibility that Congress included in the original Act, and has since retained, a clause expressly reserving to it "[t]he right to alter, amend, or repeal any provision" of the Act. . . . It was pursuant to that provision that §202(n) was enacted.
>
> We must conclude that *a person covered by the Act has not such a right in benefit payments as would make every defeasance of "accrued" interests violative of the Due Process Clause of the Fifth Amendment*.[201]

This doesn't mean Congress can act capriciously. One's interest does give "the protection from arbitrary governmental action afforded by the Due Process Clause." But this merely said that the government couldn't act *arbitrarily*. As long as Congress had an intelligible reason that was enough:

> *Particularly when we deal with a withholding of a noncontractual benefit under a social welfare program such as this*, we must recognize that the Due Process Clause can be thought to interpose a bar only if the statute manifests *a patently arbitrary classification, utterly lacking in rational justification*.[202]

[196]Ibid., pp. 69–70.

[197]*Flemming v. Nestor,* 363 U.S. 603, at 608.

[198]Ibid., at 609.

[199]Ibid., at 609–10; emphasis added.

[200]Ibid., at 610.

[201]Ibid., at 610–11; emphasis added.

[202]Ibid., at 611; emphasis added.

The Supreme Court had settled it: Social Security *has no* accrued, vested property right to benefits—and *can't*, therefore *shouldn't*. It can't tie its hands with true property rights. There *is no* sound analogy between Social Security and insurance or annuities.

The Amish: It's Insurance? Count Us Out!

The same 1954 amendments which created so much grief for Nestor led to a grotesque confrontation between the IRS and the Amish farmers. The amendments extended Social Security coverage to self-employed farmers. But the Amish refuse to participate in insurance on religious grounds. Their faith teaches that the community is to take care of its own through charity and mutual assistance. So they sought exemption from Social Security. In June 1958, during Ways and Means Committee hearings on Social Security, Amish Bishop Henry Z. Miller testified that "Our churches do not tolerate other insurances," that the Amish had always taken care of their own in obedience to Scripture and Christ's teaching, and that "we feel the present OASI is an infringement on our responsibilities." Bishop Miller asked that the Amish be exempted from Social Security. When asked if they were willing to pay the tax but not accept the benefits, or if they wanted to be exempted from taxes and benefits both, he replied: "The tax, if it could be paid as a tax, would be one thing. We always pay our taxes if it is a tax. But the insurance is what we object to."[203]

The Amish were taking Social Security's self-promotion at its word—that OASDI is insurance. But if OASDI was insurance, they wanted absolutely no part of it.

In the fall of 1956, the IRS District Director in Cleveland, Ohio met with Amish church officials and farmers to try to secure voluntary compliance. These meetings, IRS Commissioner Mortimer Caplin wrote, stressed that "the social security levy was a tax rather than an insurance premium," and that the Internal Revenue Service was responsible for enforcement. Most of the Amish went along.[204]

So to get people to pay the Social Security levy, tell them it's an insurance premium. But if some have religious scruples about participating in insurance and don't want to pay it because it's an insurance premium, tell them it's a tax.

Bishop Miller told the committee that the Amish had paid the tax so far in hopes of being exempted. However, he added, "some didn't feel they could pay it. That is where our problems were."[205] Indeed. In 1959–1961 the IRS enforced payment in roughly 130 cases by making levies on bank accounts and on the proceeds from sales of farm produce.[206]

Farmer Valentine Byler of New Wilmington, Pennsylvania, was one of the holdouts. In late 1959 the IRS estimated that he owed $214.43, and requested payment. Byler replied that "We Amish pay our taxes because the Bible says, 'Render unto Caesar the things that are Caesar's.' But our religion forbids insurance." To the argument that the OASDI levy is really a tax, Byler retorted, "Doesn't the title say 'Old Age, Survivors and Disability *Insurance*'?" By April 15, 1961, he owed $308.96 in OASDI self-employment taxes. He was notified that some of his property would be seized for tax delinquency. While he was plowing a few days later, IRS agents came, unhitched his horses, and led them away. The IRS sold them at auction.[207]

The seizure caused an uproar in the press and Congress. However, it was over religious freedom; the implications regarding Social Security's dishonesty went unnoticed. Commissioner Caplin announced a moratorium on further seizures of horses, and that he would seek a tax moratorium for the Amish until Congress or the courts could decide the matter. Byler filed for a refund, the Amish went to court, and numerous attempts were made in Congress to exempt the Amish, which was finally done by the 1965 amendments of the Social Security Act.[208]

---

[203]U.S. Congress, House, Committee on Ways and Means, *Social Security Legislation: Hearings before the House Committee on Ways and Means*, 85th Cong., 2nd sess., 1958, pp. 500–02.

[204]U.S., Congress, House, Congressman Herman T. Schneebeli, "Persuasion of the Amish (To Join Social Security)," Extension of Remarks, 87th Cong., 1st sess., May 23, 1961, *Congressional Record*, Appendix, 107:A3367.

[205]*Social Security Legislation: Hearings*, p. 503.

[206]Congressman Schneebeli, "Persuasion of the Amish (To Join Social Security)," A3367; Clarence W. Hall, "Revolt of the 'Plain People'," *Reader's Digest*, November 1962, pp. 75–76.

[207]Congressman Schneebeli, "Persuasion of the Amish (To Join Social Security)," A3367; Hall, "Revolt of the 'Plain People'," p. 76; "U.S. Sells 3 Mares For Amish Tax Debt," *New York Times*, May 2, 1961, p. 34; "The Amish and Taxes," *New York Times*, May 22, 1961, p. 45.

[208]See, e.g., Congressman Schneebeli, "Persuasion of the Amish (To Join Social Security)," A3367–68; "Embattled

The Amish farmers who suffered levies or property seizures were punished for believing Social Security's insurance myth—and not doing what its confectioners wanted them to do. This vividly confirms our thesis that Social Security's self-depiction as insurance was and is meant to manipulate public opinion and belief so as to foster support for the program, not accurately describe reality.

ONGOING MENDACITY

As if *Flemming v. Nestor* had never happened, Social Security assiduously kept promoting the insurance and other myths in the decades that followed. Social Security critic Warren Shore reported in 1975 that in 61 publications the Social Security Administration referred to its payroll taxes as either "contributions" or "premiums."[209]

Some of Social Security's architects and administrators left government and entered private life, and continued to promote the program. The insurance analogy figured prominently in their advocacy. For example, former Social Security Commissioner Robert Ball, who retired in 1973, published a popular-level book on Social Security in 1978. Ball took Social Security's status as insurance so seriously that he spent an entire chapter on it. OASDI is insurance, he insisted, because "The essence of insurance is risk sharing," and under Social Security, this occurs. As with private insurance, one makes a small certain payment to the insurer, who agrees to make specified payments in the event of defined large uncertain loss.[210]

Ball deemed it "important that people view the social security institution as an insurer, with the obligations of the insurer toward the contributor who has paid his premium in anticipation of protection against the specified risks" spelled out in the law. "It is the nature of the program as insurance that gives it much of its stability." For high government officials to regard social security as just another tax-funded government program "is a threat to the security of the whole benefit system." He concluded tellingly that "we need to promote such a perception if the system is to give true security; we need more emphasis on the fact that social security is insurance."[211] All this is a confession that the program rests on perceptions and beliefs, on public acceptance of a certain image of Social Security, hence that *fact* must receive *more emphasis*; and that the program has no inherent *true security*, but rather such security must be fabricated through misleading language.

The long advocacy had its intended effect. A 1973 *New York Times* national survey found that most Americans believed that they "owned" the money deducted from their earnings through the payroll tax.[212]

Amish Farmers," *Commonweal*, June 2, 1961, pp. 244–45; "Government Seizes Amish Property," *Christian Century*, June 7, 1961, p. 701; U.S., Congress, House, Congressman James Bromwell, "Of Costly Pearls and Old-Age Survivors Insurance," Extension of Remarks, 87th Cong., 1st sess., September 11, 1961, *Congressional Record*, Appendix, 107:A7122; "Another Round in Amish Fight Against Social Security Tax," *U.S. News and World Report*, September 25, 1961, p. 123; Hall, "Revolt of the 'Plain People'," pp. 76–78; Wilbur J. Cohen and Robert M. Ball, "Social Security Amendments of 1965: Summary and Legislative History," *Social Security Bulletin* 28, no. 9 (September 1965): 17.

[209]Warren Shore, *Social Security: The Fraud in Your Future* (New York: Macmillan, 1975), p. 19.

[210]Robert M. Ball, *Social Security Today and Tomorrow* (New York: Columbia University Press, 1978), p. 289.

[211]Ibid., p. 307.

[212]Shore, *Social Security: The Fraud in Your Future*, p. 6.

Group Insurance: Another Sham Analogy

Another recourse of Social Security's defenders was to draw a parallel, expressly or implicitly, between Social Security and private *group* insurance. Former Commissioner Ball, for example, described OASDI as "a form of group insurance operated by the government" and "a very large-scale group insurance and retirement system." Social insurance and private group insurance have much in common, he elaborated. Both social insurance and many private group plans charge all participants the same premium. Both are less concerned with individual equity than with providing a certain amount of protection for all group members.[213]

However, OASDI does not genuinely transfer risk to the insurer; risk is transferred instead to other taxpayers. Since Social Security is therefore not insurance, it necessarily cannot be group insurance.

Besides which, the marketing of Social Security had used analogies to *individual insurance policies*: "you pay a sort of premium on what might be called *an insurance policy*," "*your insurance policy* with the government," "*your* premiums" which buy "*your* benefits." How is it that the selfsame program which was so tightly analogized for so long to *individual policies* suddenly became *group* insurance? Had its nature changed? Since it had not, the new analogy was merely a relabeling for marketing purposes.

New Myths for Old: The "Compact Between Generations"

Some honest mainstream economists repudiated the insurance analogy. In a Brookings study of Social Security, Joseph Pechman, Henry Aaron, and Michael Taussig pointed out that despite a superficial resemblance to insurance and despite the reiteration of the insurance analogy by Cohen and others, "the insurance analogy is no longer applicable to the system as it has developed." Social Security's taxes are levied on the current earnings of current workers and benefit payments are based on past earnings of insured workers. The link between an individual's "contributions" and his benefits is "extremely tenuous," since benefits and taxes vary greatly for people within any age group. Beneficiaries of 1968 were getting benefits far greater than those they would have been entitled to based on their own tax payments.[214]

Pechman et al. argued that the program's analogy to private group insurance is "nearly as tenuous as the more general analogy between individual insurance and social security." Private group insurance lapses if a firm or industry fails to make premium payments for the plan, whereas OASDI's workers have portable coverage even if their employers go out of business. More importantly, the distinction between private insurance and Social Security turns on whether the current worker is paying for the benefits of current retirees and survivors or for the benefits of himself and his family in the future. Under private insurance, an individual's premiums are tied to his or his family's future benefits. Under Social Security, one's taxes pay for those of current beneficiaries. One's own benefits will be paid by future taxpayers. Also, under private insurance, one pays higher premiums if one wants better coverage or benefits. Social Security, by contrast, raises one's payroll taxes to pay higher benefits *for others*; there's no link between one's taxes and the size of one's *own* benefits.[215]

Pechman, Aaron, and Taussig attempted to legitimize OASDI another way. We should, they argued, see it as "an institutionalized compact between the working and nonworking generations, a compact that is continually renewed and strengthened by every amendment to the Social Security Act."[216]

The "compact between generations" view of Social Security has gained, as we shall see, enormous credence. Hence subjecting it to critical scrutiny is imperative.

The words "contract" and "compact" are powerful legal terms which, when used other than in a legal or business context, give—and are intended to give—an overwhelming impression of a solemn and binding agreement which cannot be broken, with overtones of enforceability and inviolability on pain of penalties. However, these words *also* mean that the said agreement was entered into voluntarily, deliberately, and knowingly by all parties.

---

[213]Ball, *Social Security Today and Tomorrow*, pp. 4, 289, 303.

[214]Joseph A. Pechman, Henry J. Aaron, and Michael K. Taussig, *Social Security: Perspectives for Reform* (Washington, D.C.: The Brookings Institution, 1968), pp. 68–69.

[215]Ibid., pp. 69–71.

[216]Ibid., p. 75.

Social Security is a coerced intergenerational income transfer, whereby each generation is supported by the following generation, which in turn anticipates like support from the generation following. But no compact, express or implied, exists. The American people were never consulted about such a "compact," were never asked to make one, and never did make one. A contract or compact which only one party (one generation, or more specifically, that generation's Congress) creates and forces on the other (young present and future taxpayers and unborn future taxpayers), while reserving to itself the sole power to rewrite it, and under which generations yet unborn are bound without being consulted, much less consenting, hardly lives up to the term. Succeeding generations confronted not a "compact" but a deliberately misrepresented *fait accompli*.

Far from renewing and strengthening the "compact," amendments to the Social Security Act such as the 1939 liquidation of the money-back guarantee and the original lump-sum death benefits make the "contract" claim untenable. The contract has repeatedly been broken unilaterally by Congress, with the other "parties" compelled to accept the result without recourse, which is not true in real contracts.

The Defenders: The Empire of the Elderly

Meanwhile, a very large and powerful interest group was rising in America: the elderly lobby. It played a decisive role in the history of Social Security beginning with the 1960s.[217]

Founded in 1958, the American Association of Retired Persons (AARP) was the first senior advocacy group. It lobbied Congress in favor of Social Security and Medicare and their expansion. In 1961, the National Council of Senior Citizens (NCSC) followed. The NCSC was a federation of elderly groups which had developed from union locals, and labor provided the financial support for its creation. Nelson Cruikshank was elected to the NCSC's presidency after retiring from the AFL–CIO. It too supported Social Security and Medicare. At first the groups were small; in 1968 the AARP had 800,000 members, the NCSC but 2,000.[218]

The Gray Panthers followed in 1971. By the mid-1970s the elderly lobby's numbers were formidable. In 1975 the AARP had 5,000,000 members, the NCSC a network of 3,000 autonomous clubs, councils and other groups with a total of 3,000,000 members.[219]

Additional groups emerged dedicated specifically to serving Social Security recipients and lobbying in favor of Social Security and Medicare. In 1979, prompted by Carter administration proposals to trim some benefits, Save Our Security (SOS) was created, with Wilbur Cohen as chairman. A coalition of organizations such as the AFL–CIO, Gray Panthers, and United Auto Workers, it sought to protect Social Security and Medicare from cuts and expand coverage. The National Committee to Preserve Social Security and Medicare followed in 1982, and had 847,000 members by 1986 and 5,000,000 by 1990.[220]

By 1986 the Gray Panthers had 100 local groups under its umbrella, the NCSC had 4,000,000 members, and the AARP had a staggering 16,000,000.[221] Just four years later, AARP's membership had topped 28,000,000; it stood at 32,000,000 in 1995.[222]

By the time Social Security's finances got into serious trouble in the 1970s and 1980s, the gray legions were a mighty force. As events would prove, a momentous symbiosis had developed: Social Security would serve its constituency, and the constituency would protect Social Security. Moreover, which was decisive, the gray legions' ranks were filled with people who had been steeped in Social Security's insurance propaganda

[217]Wilbur J. Cohen, "Social Security 40 Years Later," *AFL–CIO American Federationist*, December 1975, pp. 9, 10.

[218]*Encyclopedia of Associations*, 5th ed. (Detroit, Mich.: Gale Research, 1968), vol. 1, pp. 532, 565; Derthick, *Policymaking for Social Security*, pp. 197–98.

[219]*Encyclopedia of Associations*, 9th ed. (Detroit, Mich.: Gale Research, 1975), vol. 1, pp. 613, 663.

[220]*Encyclopedia of Associations*, 20th ed. (Detroit, Mich.: Gale Research, 1986), vol. 1, pt. 2, p. 1364; Berkowitz, *Mr. Social Security: The Life of Wilbur J. Cohen*, pp. 300–02; *Encyclopedia of Associations*, 24th ed. (Detroit, Mich.: Gale Research, 1990), vol. 1, pt. 2, p. 1752.

[221]*Encyclopedia of Associations*, 20th ed., vol. 1, pt. 2, pp. 891, 893, 993.

[222]*Encyclopedia of Associations*, 24th ed., vol. 1, pt. 2, p. 1234; *Encyclopedia of Associations*, 29th ed. (Detroit, Mich.: Gale Research, 1995), vol. 1, pt. 2, pp. 1511–12.

and other myths since 1935—in many cases, for most of their adult lives. And in the everyday experience of many, Social Security *seemed* to live up to its advertising. Not surprisingly, a false consciousness about Social Security was widespread among the elderly and dominated their thinking about the program. That false consciousness decisively shaped the nation's response to Social Security's difficulties in the 1970s and 1980s—and trapped the program and the country.

Drift, Evasion, Denial, Paralysis

Meanwhile, Social Security benefits were repeatedly increased, by 13 percent in 1968, 15 percent in 1969, 10 percent in 1971, and a staggering 20 percent in 1972, for a total benefit surge in 1967–1972 of 71.5 percent. Automatic cost-of-living adjustments (COLAs), insulating benefits from inflation, began in 1975. By 1975, this benefit expansion and an economy whose ability to pay for it had been undermined by inflationary stagnation, had gotten OASDI into serious trouble, requiring action by Congress to avert bankruptcy.[223]

Since Social Security involves taxes and transfers occurring in both present and future, a rescue can raise taxes on current taxpayers; raise taxes on future taxpayers; cut benefits for current beneficiaries; cut benefits for future beneficiaries; or a combination thereof. The first and third are the riskiest, because of possible political forfeits in the near future; the third is riskiest of all, given the elderly's power, numbers, and passionate interest in Social Security. The taxpayers are hardly as well-organized and engaged. The least dangerous is to push the pain into the future, by raising future taxes and cutting future benefits. Having the least power, the young are the least dangerous to afflict.

These calculations dictated the nature of the rescue attempts of the 1970s and 1980s. The false consciousness generated by Social Security's promotion decisively shaped the outcomes.

The 1977 Rescue

One factor driving Social Security toward ruin was "double indexing," an error in adjustment of benefits for inflation legislated in 1972. Until COLAs were adopted that year, Congress had made periodic *ad hoc* benefit increases to offset inflation. These were applied to both present and future benefits, but inflation was modest, and many taxpaying workers supported each beneficiary, so this "coupling" of current and future benefit adjustments did not strain the program's finances. But in the 1970s, exploding inflation drove up wages themselves. Hence current workers' Average Monthly Earnings (AME), the basis for calculating one's basic Social Security benefit, the Primary Insurance Amount (PIA), were reflecting rising inflation. OASDI's COLAs then adjusted benefits for inflation. Benefits were thus being indexed for inflation twice. Eventually most retirees' benefits would replace most of their work incomes, and some would get benefits exceeding them.[224]

This would become unaffordable quickly, and OASDI's outlook collapsed; the projected seventy-five-year actuarial balance under intermediate assumptions, as a percentage of taxable payroll, was -5.32 in 1975, and -8.20 in 1977.[225] Something had to be done—soon.

On May 9, 1977, President Jimmy Carter proposed decoupling the benefit formula so as to stabilize benefits as a share of work income; gradually increasing, and ultimately removing, the ceiling on earnings subject to the employer tax; raising the maximum taxable income by $600 a year in 1979, 1981, 1983, and 1985; and covering any shortfall in payroll tax revenue in 1975–1978 with general revenue if unemployment exceeded 6 percent.[226]

Ways and Means Committee Chairman Al Ullman (D-Ore.) rejected the general-revenue idea. One reason was psychological: Social Security recipients

> don't want to feel that they're taking funds from a welfare program. They like to feel

[223]Peter G. Peterson and Neil Howe, *On Borrowed Time: How the Growth in Entitlement Spending Threatens America's Future* (New York: Simon and Schuster, Touchstone Books edition, 1990), pp. 278–85.

[224]Ibid., pp. 244–45; John Snee and Mary Ross, "Social Security Amendments of 1977: Legislative History and Summary of Provisions," *Social Security Bulletin* 41, no. 3 (March 1978): 12–13, especially Table 1, Replacement Rates Under Old and New Law; A. Haeworth Robertson, "Financial Status of Social Security Program After the Social Security Amendments of 1977," *Social Security Bulletin* 41, no. 3 (March 1978): 22.

[225]*1975 OASDI Annual Report*, p. 37; *1977 OASDI Annual Report*, p. 2.

[226]Snee and Ross, "Social Security Amendments of 1977," p. 6.

> they're taking funds from a system to which they have contributed and paid their fair share, and that they're accepting it as a matter of right . . . a right they've earned.[227]

The general-revenue proposal died.

When Commerce Secretary Juanita Kreps suggested that delaying benefits until age 68 would greatly help OASDI's finances, the elderly lobbies demanded—and got—a public statement by her that the administration was proposing no such thing.[228]

The only option left was raising taxes. While the rescue legislation, passed in December, did undo the overadjustment for inflation, its other main provision was a staggering payroll tax increase. Previously the maximum taxable income was $18,900 in 1879, $20,400 in 1980, and $21,900 in 1981; the 1977 amendments made the corresponding figures $22,900, $25,900, and $29,700, with automatic increases after 1981 to keep up with wage increases. Also, the tax *rate* was sharply increased. The old law kept the employer–employee rate at 4.95 percent of taxable payroll through 2010; the new law raised it to 5.70 by 1985 and 6.20 by 1990.[229] The two provisions interacted to enormously increase the tax burden on middle-class Americans—and their discontent about Social Security.

When the higher taxes went into effect, angry mail began streaming to Congress.[230] Polls revealed waning confidence in Social Security.[231] Taxpayers railed about the tax "ripoff" and vented doubts that Social Security would be able to pay their benefits.[232]

Reagan's 1981 Attempt: Victory for the Myths

The tax increase failed to solve Social Security's problems. The long-term actuarial deficit fell, but to a still-serious -1.46 percent of taxable payroll.[233] And in 1980, the board of trustees reported that by 1982 at the latest, OASI would be unable to pay benefits when due, and that its trust fund would be gone by calendar 1985.[234]

Ronald Reagan grasped the nettle. On May 12, 1981, the administration sent Congress its Social Security reform proposals. Among the most important were: in 1982–1987, increase the PIA benefit formula's "dollar bend points" (dollar amounts breaking up one's Average Indexed Monthly Wage into intervals to which percentages are applied for calculating the PIA) by 50 percent of the rise in the average annual wage, not 100

[227]"How to Pay for Social Security?" *U.S. News and World Report*, July 4, 1977, p. 37.

[228]Joseph A. Califano, Jr., *Governing America: An Insider's Report from the White House and the Cabinet* (New York: Simon and Schuster, 1981), pp. 376–77.

[229]Snee and Ross, "Social Security Amendments of 1977," pp. 12–14, Table 3, Contribution and Benefit Base Under Old and New Law, and Table 4, Tax Rate Schedule Under Old and New Law; Califano, *Governing America*, p. 382.

[230]"Dear Lawmaker: 'It's a Lousy Deal'," *U.S. News and World Report*, March 13, 1978, p. 73.

[231]"A Growing Disillusion with Social Security," *Business Week*, March 12, 1979, p. 26; "Poll Shows Americans Losing Faith In Future of Social Security System," *New York Times*, July 17, 1981, A12.

[232]See, e.g., "Letters to the Editor," *U.S. News and World Report*, March 27, 1978, p. 5; "Letters to the Editor," *U.S. News and World Report*, January 22, 1979, p. 3; "Letters to the Editor," *U.S. News and World Report*, March 12, 1979, p. 5; "Letters to the Editor," *U.S. News and World Report*, May 14, 1979, p. 5.

[233]Robertson, "Financial Status of Social Security Program After the Social Security Amendments of 1977," p. 27.

[234]*1980 OASDI Annual Report*, pp. 2–3, 57–58.

percent; and cut the benefit for persons retiring at 62 from 80 percent of PIA to 55 percent.[235]

For the first time, current and near-future beneficiaries were asked to make major sacrifices to shore up OASDI. But the administration failed to secure public and congressional support. It also didn't grasp that 64 percent of persons eligible for Social Security were retiring early, which necessarily meant massive opposition.[236] Nor did it realize that OASDI was America's most well-promoted program, guarded by a constituency steeped in myths.

The response proved that Social Security's propaganda had an iron grip on the American mind.

"I do not believe that Congress can break its promise to the American worker who has contributed to this program throughout a working lifetime," declared Congressman Jim Wright (D-Tex.); several colleagues likewise denounced the "broken promise." Congressman Jonathan Bingham (D-N.Y.) asserted that "social security represents a compact between a worker, his employer, and the Federal Government. The Reagan proposals, if enacted, would tear that compact asunder. Benefits are a right—an earned right." If the early-retirement benefit cuts went through, Senator Daniel Patrick Moynihan (D-N.Y.) said, "we have broken a contract with" early retirees. "These are contracts we have made with our people, with ourselves—a social contract."[237]

The AARP and the National Retired Teachers Association alerted 14,000 volunteer leaders, telling them to contact lawmakers and get other group members to do likewise. National Council of Senior Citizens President Jacob Clayman denounced Reagan's proposal as "the biggest frontal attack on Social Security ever launched." Besides their intensity, the elderly's other strength was their numbers. As of 1980, over 47 million Americans were over 55, and in 1980 seniors had made up 29 percent of the voting-age population and cast over a third of the ballots for president. No elected politician could afford to affront them, and everybody knew it.[238]

Congressmen and Senators were deluged with calls and letters. In newspapers and magazines, reader letters showed that many Americans were in the toils of Social Security's false consciousness. From *The Detroit Free Press* of May 24:

> Where do you get the nerve to insinuate that Social Security recipients are "supported" by workers?
>
> Social Security is an insurance program, generously contributed to by workers and employers. . . .
>
> The establishment of the Social Security system embodies much that can be found in contract law, an agreement between two or more parties for the doing or not doing of something specified. . . .
>
> I would suggest that any changes in the Social Security system that must now be made should recognize the original implied contract and the continuing viable support of that contract.[239]

A Senate resolution opposing cutting benefits "precipitously and unfairly" passed 96–0. It was Reagan's first defeat in Congress.[240]

In July, Congress actually voted to eliminate Social Security's $122 minimum monthly benefit for all new retirees beginning in December 1981 and current retirees after February 1982.[241] Another uproar followed, featuring still more angry mail:

> Columnists should stop writing about Social Security as if it were social welfare for senior citizens. Where this notion got started we don't know, but it should be laid to rest once and for all.

[235]John A. Svahn, "Omnibus Reconciliation Act of 1981: Legislative History and Summary of OASDI and Medicare Provisions," *Social Security Bulletin*, vol. 44, no. 10 (October 1981): 6–7; *Congressional Quarterly Almanac 1981* (Washington, D.C.: Congressional Quarterly, 1982), p. 118.

[236]William Greider, "The Education of David Stockman," *Atlantic Monthly*, December 1981, pp. 43-44.

[237]U.S., Congress, House, 97th Cong., 1st sess., May 13, 1981, *Congressional Record*, 127:9638–40, 9676–77; U.S., Congress, House, 97th Cong., 1st sess., June 4, 1981, *Congressional Record*, 127:11622; U.S., Congress, Senate, 97th Cong., 1st sess., May 20, 1981, *Congressional Record*, 127:10391–94.

[238]"Senior Citizens Put On the War Paint," *U.S. News and World Report*, July 27, 1981, pp. 33–34; "Coalition Plans Drive Against Move to Trim Social Security Benefits," *New York Times*, May 14, 1981, B15.

[239]"From our readers: Don't pull the rug out from under the elderly," *Detroit Free Press*, May 24, 1981, 2B.

[240] "The Gipper Loses One," *Newsweek*, June 1, 1981, p. 22.

[241]*Congressional Quarterly Almanac 1981*, p. 120.

> Social Security is an insurance program establishing a trust fund separate from general revenue, even if several administrations have "robbed" the fund for their adventures. . . .[242]
>
> The Social Security system is an insurance system whereby our payroll deductions are the premiums we pay. It is a continually revolving fund. The pension received from it is incidentally *not taxed*.[243]

Clearly, these attacks are fruits of the "insurance," "earned right," "contract," and "compact between generations" myths. And the fury at the proposals proves that most Americans had never heard of Section 1104, which empowers Congress to change OASDI at will. They had never heard of it, because Social Security and its advocates had chosen not to tell them.

Reagan called for a bipartisan commission to craft a rescue for Social Security. Appointed in December, it was given a December 31, 1982, deadline for reporting. To buy time until Reagan and Congress could agree on what to do, Congress authorized the Old-Age and Survivors Insurance Trust Fund to borrow from the Disability Insurance and Hospital Insurance funds until the end of 1982.[244]

The administration had made matters disastrously worse. It was this fiasco that spawned the saying, and belief, that Social Security is the "third rail" of American politics—touch it and you die. Paralysis over Social Security has prevailed ever since.

The 1983 Rescue: Spare the Old and Scourge the Young

On January 15, 1983, the bipartisan National Commission on Social Security Reform, chaired by economist Alan Greenspan, reported, and proposed cutting benefits and raising taxes.[245]

Time was running out; OASI's trust fund was projected to run out in July, meaning checks would not go out on time.[246] Reagan and Congress moved quickly. On January 26 the proposals were introduced in Congress; Reagan signed the final bill April 20.[247]

Current retirees had the July 1983 COLA delayed until January 1984. Thereafter, COLAs would be payable in January. Moreover, for some workers first eligible after 1985 for both Social Security and a pension from noncovered employment, their Social Security would be gradually cut by no more than half the pension amount.[248]

For the first time, benefits would be taxed. Beginning in 1984, up to 50 percent of benefits would be included in taxable income for persons whose sum of adjusted gross income, taxable interest income, and one-half of Social Security benefits

[242]"Voice of the People," *Chicago Tribune*, August 24, 1981, I:20.

[243]"Letters to The Times," *Los Angeles Times*, September 2, 1981, II:6; emphasis in original.

[244]*Congressional Quarterly Almanac 1981*, pp. 117–18.

[245]*Congressional Quarterly Almanac 1983* (Washington, D.C.: Congressional Quarterly, 1984), pp. 221–22.

[246]Paul Light, *Artful Work: The Politics of Social Security Reform* (New York: Random House, 1985), pp. 137–38.

[247]John A. Svahn and Mary Ross, "Social Security Amendments of 1983: Legislative History and Summary of Provisions," *Social Security Bulletin* 46, no. 7 (July 1983): 8, 24.

[248]Ibid., p. 25.

exceeded $25,000 for single beneficiaries and $32,000 for married beneficiaries.[249] This hit better-off current retirees, but its burden would in fact fall mostly on future beneficiaries, because its income thresholds were not indexed for inflation. Thus as the years pass, inflation will push ever more beneficiaries over these thresholds, just as the "inflation tax" once pushed Americans into higher tax brackets.

Federal employees hired on or after January 1, 1984, were brought into Social Security, as were the president, vice president, members of Congress, other current federal employees, and present and future employees of tax-exempt nonprofit organizations. State and local government workers could no longer leave the program.[250] This increased current and future revenues.

Taxes rose substantially. The payroll tax rate increase scheduled for 1985 under the 1977 legislation was advanced to 1984; part of the 1990 increase was advanced to 1988. And whereas the 1977 law would have increased the tax rate on the self-employed to 75 percent of the sum of the employee and employer tax rates, the new law raised it to 100 percent.[251]

Most of the benefit reduction was inflicted on future retirees. The retirement age was gradually increased, to reach 66 in 2009 and 67 in 2027. Early retirement benefits would still be available at age 62, but would be gradually cut from 80 percent of full benefits in 1983, to 70 percent in 2027.[252]

All the sacrifices seemed to be shared among current beneficiaries, current taxpayers, future beneficiaries, and future taxpayers. In fact, the burden fell least on current beneficiaries, more heavily on the three other groups, and most heavily on future generations.

Even in the short run of 1983–1989, more sacrifices were exacted from taxpayers than from current beneficiaries. The Office of the Actuary estimated that it would bring in an additional $39.4 billion from the higher FICA tax rates, another $18.5 billion from the higher taxes on the self-employed, and $21.8 billion from extending coverage to the additional employees and officials, for a total of $79.7 billion from current (including newly created) taxpayers during that period. Benefit taxation, which affected only a minority of current beneficiaries, would raise about $26.6 billion. The only major sacrifice by *all* current beneficiaries, the six-months' delay in COLAs, would reduce benefits an estimated $39.4 billion, for total current beneficiary sacrifices of $66.0 billion.[253]

Examination of the actuaries' 1983 estimates of the effect of the amendments on the long-range actuarial deficit, an estimated 2.09 percent of taxable payroll, reveals how much the new law relied on pushing the pain into the future and onto taxpayers. The measure making the largest single contribution to closing that deficit—the increase in the retirement age—disposed of over a third of it and fell wholly on future beneficiaries. The provision making the second largest, benefit taxation, fell mostly on them, too. These two removed almost two-thirds of the long-term deficit. The tax and new coverage provisions dispatched most of the rest.[254]

So, the one serious effort in the past twenty years to improve Social Security's finances relied mostly on exacting sacrifice from every group *except* the one politically most dangerous to approach: current beneficiaries. The lesson of 1981 had been learned.

1980s–1990s: Chronicles of Wasted Time

For fear of political reprisals from well-organized and militant current beneficiaries, nothing was done in the years that followed to obtain real sacrifices from them, either to help with deficit reduction, or to reform OASDI so as to avoid a long-term financial crisis. Politicians shrank from confrontation with Social Security's powerful constituency, which was quick to invoke the myths—"insurance," "contract between generations," and so on—to defeat changes that would inflict pain on current retirees. Nearly two decades of chances to address Social Security were lost.

[249]Ibid., p. 26.

[250]Ibid., pp. 24–25.

[251]Ibid., pp. 27–28.

[252]Ibid., p. 30.

[253]Ibid., p. 42, Table 1, Estimated Changes in OASDI Tax Income, General Fund Transfers, and Benefit Payments Resulting From Provisions in Public Law 98-21, under 1983 Alternative II-B Assumptions, Calendar years 1983–1989.

[254]Ibid., p. 44, Table 4, Estimated Long-range OASDI Cost Effect of the Social Security Amendments of 1983.

During the deficit-ridden 1980s and 1990s, numerous deficit-reducing measures were advanced, and some enacted. But all exempted Social Security.

The Gramm–Rudman–Hollings Act of 1985 sought a balanced budget by 1991, by setting annual deficit targets for 1986–91, and applying automatic spending cuts ("sequesters") if they were missed. But it exempted Social Security, as did its 1987 revision.[255]

The few attempts to cut Social Security outlays were quickly defeated. In 1985 the Senate voted to eliminate the 1986 COLA for Social Security benefits in an effort to avert large future budget deficits. The elderly lobbies pounced. The National Council of Senior Citizens alone flooded Congress with 800,000 postcards. Angry elderly confronted senators home for Easter recess. Threat of punishment was blatant. "We shall not forget if Congress behaves in an unfriendly fashion to the senior citizens of the United States," said NCSC President Clayman. "We shall remember—and 1986 is just around the corner." The COLA was restored.[256]

After the October 1987 stock market crash, Congress and the administration held a "budget summit" to produce credible deficit reduction to calm the financial markets. A proposal to delay Social Security COLAs for three months brought prompt retaliation. Former HEW Secretary Flemming, of *Flemming v. Nestor,* threatened that "There will be political fallout if this is pursued." House Rules Committee Chairman Claude Pepper used a videotape warning that if a deficit-reduction package included a cut in Social Security COLAs, he would insist on a separate vote on the cut. There was no cut.[257]

The 1990 Budget Enforcement Act put caps on only discretionary spending; Social Security was exempted altogether.[258]

In January 1993, the Clinton administration began floating proposals to reduce the budget deficit. One was a freeze on Social Security COLAs, which could save an estimated $10 billion in 1994. The program's defenders reacted quickly, witnessing for the false consciousness. Senator Moynihan called the proposal "unacceptable." Tinkering with benefits, he said, would undermine the idea that Social Security is insurance. "I would like to see us acknowledge that this is a contributory insurance program," Moynihan added. "These monies are held in trust. . . . That's not an entitlement program, where you get something for nothing. It's paid-up insurance." Representative Newt Gingrich (R-Ga.) called OASDI a "contract," and promised to "keep the Democrats from tampering with it." Clinton reversed himself, and reassured AARP leaders that he believed that Social Security was a special contract with the elderly.[259]

[255]"Budget Plan Highlights," *Congressional Quarterly Almanac 1985* (Washington, D.C.: Congressional Quarterly, 1986), p. 459; "Debt Limit Bill / Gramm–Rudman 'Fix' Clears," *Congressional Quarterly Almanac 1987* (Washington, D.C.: Congressional Quarterly, 1988), p. 605.

[256]"Congress Cuts Budget by More Than $55 Billion," *Congressional Quarterly Almanac 1985*, pp. 441–57; "Graying Armies March to Defend Social Security," *U.S. News and World Report,* April 29, 1985, pp. 25–26.

[257]"Hope Dims for Friday Budget Accord," *Washington Post*, November 17, 1987, A6; "The Narrow Road To Deficit Accord," *Washington Post*, November 22, 1987, A1, A4.

[258]"Budget Reconciliation Act Provisions," *Congressional Quarterly Almanac 1990* (Washington, D.C.: Congressional Quarterly, 1991), pp. 161–62.

[259]"Clinton Considers Curbs on Social Security Cost-of-Living Raises," *Washington Post,* January 29, 1993, A9; "Senators Differ on Deficit Cuts Involving Social Security," *Washington Post*, February 1, 1993, A4; "Clinton's Social Security Test: Selling Sacrifice to the Elderly," *New York Times*, February 7, 1993, 1; "Social Security Won't Be Subject To Freeze, White House Decides," *New York Times*, February 9, 1993, Al.

Congressman John Kasich's Republican alternative to Clinton's deficit-reduction plan exempted Social Security. Kasich wrote that Republicans see in it "a fundamental agreement between the Federal Government and the American people—an agreement that must be preserved." After the 1994 Republican congressional victory, he again pledged not to cut Social Security. In March 1994, Representative Gerald B.H. Solomon (R-N.Y.) proposed a plan to balance the budget in five years, with many painful cuts—but not in Social Security.[260]

A constitutional amendment requiring annual budget balance was a favorite panacea. But when House Majority Leader Richard Gephardt (D-Mo.) endorsed a balanced-budget amendment in 1992, he insisted on excluding Social Security. Senator Dianne Feinstein (D-Calif.) stated in January 1995 that she would not vote for a balanced budget amendment unless Social Security was exempt. Republican proposals to balance the budget by 2002 exempted Social Security.[261] Meanwhile, Social Security's long-term outlook was worsening.

Short-term Patchwork, Continued Paralysis

The 1983 annual report of the board of trustees had projected OASDI to be in long-term actuarial balance under intermediate assumptions. In 1994, just eleven years after the rescue that supposedly had saved Social Security, the long-term actuarial deficit was -2.13 percent—*larger* than the -2.09 percent deficit which had prompted the rescue. Much of the deterioration was due to revisions in actuarial assumptions, which made several more pessimistic.[262] Successive boards of trustees warned Congress yearly that OASDI was not in long-term close actuarial balance, and that Disability Insurance was heading for bankruptcy in the short run, and called for action. Nothing happened but *ad hoc* patching.

In 1985, the board of trustees reported that Disability Insurance faced possible trust fund depletion. Since 1982, a rising share of the workforce was being awarded DI benefits, and since 1970 fewer beneficiaries were having benefits terminating due to death, recovery, or reaching age 65. New disability awards soared from 415,000 in 1988 to over 640,000 in 1992. This badly strained DI's finances, and in 1992 and 1993 the board of trustees asked Congress to strengthen the program. In 1994, the trustees repeated their warning, pointing out that "The DI Trust Fund will be exhausted in 1995 and benefit payments will cease unless Congressional action takes place." They asked for reallocation of tax rates between OASI and DI to strengthen the latter.[263] In October 1994, after nine years of pleading by the trustees, Congress finally did it.[264]

Some efforts were made to confront Social Security's coming problems, but proved ineffectual. The Bipartisan Commission on Entitlement and Tax Reform (Danforth Commission), created by Clinton in 1993 and chaired by Senators Robert Kerrey (D-Neb.) and John Danforth (R-Mo.), brought together 32 senators, representatives, and others to consider how to adjust entitlements and taxes so the federal government could meet its commitments without wrecking its finances. The commission considered many options, but could not agree on what to do. Kerrey and Danforth proposed, for example, gradually raising the age for eligibility for full retirement benefits from 67 to 70, and cutting benefit growth for middle- and upper-wage workers. These ideas met much dissent, driven partly by the false consciousness. Thus Congressman John Dingell (D-Mich.) cited OASDI's nature as "social insurance," entailing contributors' "explicit expectation" of repayment.[265] The proposals went nowhere.

---

[260]John R. Kasich, "On the Cutting Edge: The House GOP Alternative to Clinton's Budget," *Policy Review* (Summer 1993): 24; "House GOP Budget Aide Vows to Devise Seven-Year Plan to Balance U.S. Books," *Wall Street Journal*, November 18, 1994, B4; "A Balanced Budget: What One Looked Like," *New York Times*, November 28, 1994, A1, A10.

[261]George Hager, "Opponents Launch Campaign to Stop Budget Amendment," *Congressional Quarterly Weekly Report* 50, no. 22 (May 30, 1992): 1520; "GOP Is Pressed On How Budget Is to Be Balanced," *Wall Street Journal*, February 1, 1995, B3; "The Zero Option: GOP's Plan to Erase Deficits Would Leave Few in U.S. Unscathed," *Wall Street Journal*, May 10, 1995, A1, A8.

[262]*1994 OASDI Annual Report*, p. 191, Table 3, D1, Long-Range Actuarial Balances for the OASDI Program as Shown for the Intermediate Assumptions in the Trustees Reports Issued in Years 1984–1994.

[263]Ibid., pp. 14–15, 28.

[264]*1995 OASDI Annual Report*, pp. 26, 32.

[265]Bipartisan Commission on Entitlement and Tax Reform, *Final Report to the President* (Washington, D.C.: U.S. Government Printing Office, 1995), pp. ii–v, 16, 22–26, 108.

The 1994–96 federal Advisory Council on Social Security was appointed in March 1994 to advise on preparing OASDI for the future. In its overdue report, released in January 1997, the Council, splintered into three groups, offered three different proposals.[266] No action was taken on any of them. The 1997 budget deal also ignored Social Security.[267]

The Mendacity Endures

All the myths—"insurance," "trust funds," "earned rights," and so on—are still promoted. Social Security still uses the same misleading language—"contributions," "benefits," "insurance." Part 1 of its booklet *Social Security: Understanding the Benefits* is titled, "Your Investment in Social Security,"[268] as if one were buying an annuity. Its *Basic Facts About Social Security* booklet asserts that the value of Social Security survivors' benefits for an average breadwinner leaving a spouse and two children "is equivalent to a $295,000 life insurance policy," and that "Social Security provides a valuable package of disability and survivors insurance to workers."[269]

The same misleading talk persists among scholars and policy advisers. Henry Aaron, director of the Brookings Institution's Economic Studies Program, told the Senate Finance Committee in 1993 that Social Security "is life insurance. It is disability insurance. It is survivor's insurance."[270] In the *Boston Globe*, Boston College professor Alicia Munnell described Social Security benefits as "established rights, promised by law."[271]

Elderly groups too preserved the illusions. A fact sheet produced jointly by the AARP and Save Our Security, talks of "contributions" and "trust funds" and asserts that Americans paying OASDI taxes "are building the earned right" to benefits. "We all pay into Social Security, pooling our risks and earning the right to protection. . . . By contributing to the system we all earn the right to receive benefits."[272] This after *Flemming v. Nestor*!

The AARP's magazine for its members, *Modern Maturity*, is a vehicle for broadcasting Social Security myths, and regularly runs pieces doing so. In 1994, for instance, Senator Moynihan denied that Social Security is an "entitlement." Rather, it is "a social insurance program. . . . The whole idea of contributory insurance is neatly avoided by the word 'entitlement.'"[273] The next year, Robert Ball described OASDI as "a complicated insurance program, biggest in the world . . . family insurance . . . [providing] more life insurance for American families than all private firms combined."[274]

Whenever benefit cuts were proposed, the senior citizens' organizations mobilized their members with strident scare mailings. After the Danforth Commission's Interim Report, the National Committee to Preserve Social Security and Medicare sent out mailings including a letter warning that "this powerful Commission" contained numerous "entitlement cutters" who wanted means testing of OASDI; increasing taxation of benefits; and cutting or abolishing Social Security COLAs.[275] Without the reader's help, the Commission's "scare tactics" could stampede Congress into such cuts, so

> RIGHT NOW IS THE TIME TO PULL TOGETHER AND TURN UP THE HEAT ON CONGRESS. YOUR CONTRIBUTION OF $10 OR $15 WILL HELP US DO IT.

---

[266] 1994–1996 Advisory Council on Social Security, *Report of the 1994–1996 Advisory Council on Social Security*, vol. 1, *Findings and Recommendations* (Washington, D.C.: n.p., 1997), p. 12.

[267] John Attarian, "Cancerous Budget," *National Review*, October 27, 1997, pp. 42–44.

[268] Social Security Administration, *Social Security: Understanding the Benefits, SSA Publication* No. 05-10024, January 1996, p. 4.

[269] Social Security Administration, *Basic Facts About Social Security*, SSA Publication No. 05-10080, August 1995, pp. 2, 16.

[270] U.S., Congress, Senate, Committee on Finance, *"Money's Worth" of Social Security: Hearing before the Senate Finance Committee*, 103rd Cong., 1st sess., 1993, p. 30.

[271] Alicia H. Munnell, "Privatization Plans Hit Women Hardest," *Boston Globe*, November 3, 1998, A17.

[272] American Association of Retired Persons and Save Our Security, "Social Security: Crucial Questions and Straight Answers" (Washington, D.C.: n.d.).

[273] Senator Daniel Patrick Moynihan, "The Case Against Entitlement Cuts," *Modern Maturity*, November–December 1994, p. 13.

[274] Robert M. Ball, "Social Security: The Facts," *Modern Maturity*, July–August 1995, pp. 94–95.

[275] U.S., Congress, House, Committee on Ways and Means, *H.R. 4245, H.R. 4275, and Other Bills to Restore the Long-Term Solvency of Social Security: Hearing before the Social Security Subcommittee, House Ways and Means Committee*, 103rd Cong., 2nd sess., 1994, pp. 97–99.

> Your Social Security and Medicare benefits are called entitlements for a very good reason. You worked for them, you paid for them, you earned them, the government has promised them to you, and now you are **entitled** to them . . .
>
> THESE BENEFITS ARE WORTH THOUSANDS OF DOLLARS TO YOU. PLEASE SEND $10 OR $15 TO HELP US DEFEND THEM.
>
> **Time is of the essence. The Entitlements Commission needs your personal testimony immediately**.[276]

A questionnaire asked if Social Security should keep operating as "insurance" or be means tested "like welfare." The mailing claimed that *"They are coming after Social Security and Medicare*," and exhorted the reader, "don't let the Commission silence you! Speak up! And speak up now!"[277] After such strident propaganda and exhortations, beneficiaries understandably get impossible to reason with about Social Security.

Social Security's myths still dominate politicians, too. In 1993 Senator Donald Riegle (D-Mich.), referred to Social Security as "this National insurance contract that we have with one another . . . a cross-generational set of insurance protections."[278] Senator Rick Santorum (R-Penn.), in 1998, characterized OASDI as "a social insurance program, but just that—an insurance program, not a transfer payment program that is a pay-as-you-go system."[279] Both parties insist that "promises" to current beneficiaries be kept.

As for the public, the 1995–1996 Social Security and Medicare Anniversary Study for the AARP, by DYG, Inc., a Connecticut public-opinion research firm, found that 80 percent of respondents agreed with the statement that "the government made a commitment a long time ago [about Social Security] that cannot be broken."[280]

Trapped by the False Consciousness

Social Security's propaganda campaign succeeded only too well. It, and the false consciousness it has created, are at the very heart of our predicament over Social Security. Social Security must be flexible to meet changing economic and demographic conditions—yet the long mythmaking to win public support has created a climate of opinion making adjustments impossible unless pushed into the future. And this option will not work any longer. The young now know of Social Security's problems, and are beginning to resist.

Social Security's mythmaking has been a disaster. The false consciousness is a major reason why the 1977 and 1983 rescues took the inequitable form they did; why policymakers have been paralyzed over Social Security ever since; why we are likely to be forced into drastic and painful measures and a political crisis that may well destroy Americans' faith in their government.

The time when an adjustment could have been made easily had been squandered. Because of this procrastination, substantial suffering by taxpayers, beneficiaries, or both has become inevitable.

The Social Security mythmaking, and the false consciousness it generated, continue to exert their

---

276 Ibid., pp. 100–01; emphasis in original.

277 Ibid., pp. 103, 104; emphasis in original.

278 *"Money's Worth" of Social Security*, pp. 5–6.

279 Ibid., p. 9.

280 U.S., Congress, Senate, Special Committee on Aging, *Retiring Baby Boomers: Meeting the Challenges: Hearing before the Senate Special Committee on Aging,* 105th Cong., 1st sess., 1997, pp. 86, 111.

pernicious influence. Even now, Americans cling to the notion of Social Security as "insurance." Even now, the elderly lobby insists that benefits are an "earned right." Even now, Social Security's partisans deny that it faces any problems.[281] Even now, decisive majorities of Americans oppose any painful measures to shore it up—increased Social Security taxes, benefit cuts, means testing, or raising the retirement age.[282]

Instead, Americans are seeking a painless deliverance, pinning hope on a perpetual bull market in stocks. Unfortunately, these "reform" plans are yet another flight from reality.

Which Way to Reform?

Proposals for reforming or "privatizing" Social Security seek to earn higher returns on the program's taxes and to avert financial collapse, by diverting some of the existing OASDI tax into individual retirement accounts; increasing the tax and directing the additional portion into such accounts, which may be either publicly or privately held; or investing part of the "trust fund" in the stock market. The three proposals generated by the 1994–1996 Social Security Advisory Council illustrate these approaches and their problems.

Two-tier Plans

These plans split the existing tax into two "tiers." One would pay benefits for current retirees, the other would go into mandatory individual retirement accounts, which would be invested in equities and other instruments, to earn higher returns.

One subgroup of the council called for phasing in such a system, under which Tier I of the Social Security tax would pay a flat benefit for workers, and Tier II, 5 percent of the tax, would go into fully-funded, privately-held individual Personal Security Accounts (PSAs). All workers under age 55 in 1998 would participate, and could start withdrawing funds from their accounts at age 62. Current retirees and workers over 55 would stay under Social Security. Workers under 25 would get benefits only from the new system: a flat benefit paid for by Tier I taxes, and another benefit from the earnings of the PSA. This plan assumes that stocks will continue to earn the historical real return per year of about 7 percent.[283]

Two-tier plans entail dauntingly huge transition costs, because the current generation of taxpayers must simultaneously finance Social Security beneficiaries' retirements and their own. The PSA plan anticipated a supplementary tax increase plus borrowing a total of an estimated $1.9 trillion (1995 dollars) from the public by 2034.[284] There is no escaping the costs of the program. Diverting some of the payroll tax to investment accounts necessarily creates a shortfall in revenue available to pay current benefits. To close it, we must cut benefits to current beneficiaries, impose additional taxes on current taxpayers, increase borrowing, or employ some combination thereof.

Also, these plans ignore the larger entitlement crisis. As baby boomer retirements swamp Social Security, other federal retirement entitlements—Medicare's Hospital Insurance, its Supplementary Medical Insurance, civil service retirement, military pensions, and Medicaid—will come under like pressure and make heavy budgetary demands of their own. For example, as of 1996, the civil service retirement system had unfunded liabilities of a present (2000) value of $1.1 trillion, and the military retirement system had an unfunded liability with present value of over $713.4 billion.[285] With this and more in the background, how will we finance these huge transition costs?

This is the revenge of the false consciousness. Many two-tier plan advocates want to keep Social Security's promise to current beneficiaries—presupposing that benefits are a right. The only way

[281]See, e.g., Henry J. Aaron, "The Myths of the Social Security Crisis: Behind the Privatization Push," *Washington Post*, July 21, 1996, C1; Henry J. Aaron, "Privatizing Social Security: A Bad Idea Whose Time Will Never Come," *Brookings Review* 15, no. 3 (Summer 1997): 21; Robert M. Ball, "First, the System Is Hardly in Crisis," *New York Times*, January 19, 1997, sec. 3, p. 12; John Judis, "Chicken Little Lamm," *Baltimore Sun*, July 19, 1996, 25A.

[282]"Americans Oppose Cutting Entitlements to Fix Budget," *Washington Post*, March 29, 1997, A4; "Poll: Don't Hike Retirement Age," *USA Today*, July 27, 1998, 1A; "System is Face-to-Face with Change," *USA Today*, July 27, 1998, 7A.

[283]*Report of the 1994–1996 Advisory Council on Social Security*, vol 1, pp. 30–31, 35.

[284]Ibid., pp. 32, 111–12.

[285]Phillip Longman, *The Return of Thrift: How the Collapse of the Middle Class Welfare State Will Reawaken Values in America* (New York: The Free Press, 1997), pp. 10–11.

transition costs can be seriously reduced is to substantially cut current benefits. Because many privatizers are in the toils of the false consciousness, they are doomed to wrestle with transition costs.

Piggybacked Savings Accounts

Another subgroup of the council called for raising the payroll tax 1.6 percentage points, and investing this additional money in publicly-held individual accounts (IAs). The existing payroll tax would pay OASDI benefits. When the individual retires, the IA funds would be converted to annuities containing a guarantee that some share of the annuity's purchase price would be payable in all cases.[286]

However, investment of *small* additional sums cannot possibly generate large individual retirement funds, certainly not by the time baby boomers start retiring. Under this plan, a person with a $10,000 taxable income would have only $160 a year going into this account; someone making $50,000 would have $800. These small annual injections of principal will simply not accumulate much.

Government Investment in the Stock Market

Under the "maintenance of benefits" (MB) plan concocted by the third subgroup of the Advisory Council, investment in stocks would commence in 2000 and reach up to 40 percent of the "trust fund" by 2014. With the majority of the "trust fund" still invested in Treasuries with a projected real return of 2.3 percent, and up to 40 percent invested in equities getting the historical 7 percent, the overall return would be 4.2 percent—a substantial improvement.[287] There are several grave problems here.

Investment of a large chunk of the trust fund would give the government huge holdings of stocks. Under the MB plan, the fund would contain $1 trillion in equities by 2015.[288] Obviously, the government would have a compelling interest in maintaining a bull market in equities to protect its investment. This in turn would impart an inflationary bias to economic policy, and threaten the independence of the Federal Reserve, which would come under pressure to tailor monetary policy so as to support stocks. And, with hundreds of billions of dollars at stake, Congress would very likely meddle with the stock market.

Also, government investment in stocks means partial government ownership of the means of production. Some degree of government control would likely follow. To "neutralize the effect of Social Security holdings on stockholder voting on company policy," the advocates of the MB plan proposed forbidding the voting of Social Security-held stocks by law.[289] However, even if Congress did enact and honor such a safeguard, future Congresses may do otherwise. Departures and reversals in policy do occur. Who can safely predict what another Congress will do twenty years out, as the baby boomers are streaming onto the beneficiary rolls and financial pressure on Social Security explodes? We should not tempt politicians like this.

General Problem: Will the Brighter Tomorrow Really Come?

The high long-term rate of return on equities masks the reality of shorter-term bear markets, which may be deep and protracted. The Dow Jones Industrial Average did not return to 1929's pre-Crash high until November 1954.[290] Given the age of the current bull market, this is very pertinent for the next twenty years—in which baby boomer retirement, and massive strain on Social Security's finances, will commence. Moreover, globalization, with lightning capital mobility, implies greater instability for the stock market.

Invocation of the high historical real rate of return on stocks assumes that we will continue to enjoy it indefinitely. But is the past an infallible predictor of the future? The ultimate, underlying cause of the high return on American equities in 1802–1945 was the most gigantic economic growth and development in history, in which a vast continent rich in resources was transformed into an advanced economy, under conditions of maximum freedom from government interference. Similarly, after World War II America enjoyed another set of

[286] *Report of the 1994-1996 Advisory Council on Social Security*, vol. 1, pp. 28–29.

[287] Ibid., pp. 25–26.

[288] Ibid., p. 100.

[289] Ibid., p. 26.

[290] Jeremy J. Siegel, *Stocks for the Long Run: A Guide to Selecting Markets for Long-Term Growth* (Chicago: Irwin Professional Publishing, 1994), p. 29.

unique favorable circumstances: a huge pent-up demand for consumer goods of all kinds; a huge pool of investible money to finance the economic activity to meet it; a housing boom; insulation from substantial foreign competition due to the slow recovery of our competitors from the war; relatively cheap and unobtrusive government; cheap energy and commodities; a sound currency and low inflation; a high savings rate and low real interest rates.

But nothing remotely like the foregoing combinations of factors exists now or is likely to in the next several decades. Where will the expansion and prosperity which must underpin continuation of high real returns on stocks come from? It is transparently silly to maintain that shuffling information among networked computers—which is all the "new economy" amounts to when the hyperbole is stripped away—will achieve anything like turning a huge undeveloped continent into the world's largest economy.

The circumstances which generated the historical high rate of return on equities which "privatization" and "trust fund investment" are counting on, then, are extremely unlikely to recur—which means that that rate of return will quite possibly not be achieved.

Moreover, globalization will inevitably put downward pressure on real wages. The factor price equalization theorem, well recognized in economic theory,[291] has profound implications for any system of benefits financed by levies on labor incomes. Real wage stagnation will necessarily mean stagnation of the funds supporting such a system. In a context of beneficiary-population growth outstripping labor-force growth, this spells eventual financial ruin. And not one of the reform plans shows any awareness of this possibility.

General Problem: Deeper into Statism and Paternalism

Finally, *not one* of the plans liberates us from Social Security's coercion and paternalism. Indeed, they worsen them. They amount to curing statism's difficulties with still more statism.

Plans to invest part of the trust fund in equities would almost certainly result in partial socialism. Publicly- or privately-held payroll-tax-financed retirement accounts merely impose socialism on individuals rather than companies. The state would tax us to force us to save our own money; decide what form that saving could take; and decide when we can withdraw it, how much, and for what purpose. Whatever the wealth or security such a program might offer, it liquidates a great deal of individual liberty.

All this is an intensification of the "democratic despotism" and smothering paternalism Alexis de Tocqueville warned about: the "immense and tutelary power" which seeks to keep its people in "perpetual childhood" and "provides for their security, foresees and supplies their necessities, facilitates their pleasures, manages their principal concerns, directs their industry, regulates the descent of property, and subdivides their inheritances." Such a government

> compresses, enervates, extinguishes, and stupefies a people, till each nation is reduced to being nothing better than a flock of timid and industrious animals, of which the government is the shepherd.[292]

In short, Social Security "reform" would take us even closer than Social Security now does to the welfare-tyranny of Aldous Huxley's *Brave New World*, with individuals reduced to secure, perhaps even affluent, but powerless, ciphers.

A Modest Proposal

Social Security's history casts grave doubt on the wisdom of having any government retirement program at all. Any such program is subject to pernicious dynamics. There is an inherent asymmetry whereby expansion is politically rewarded, but retrenchment is penalized. There is too an inherent symbiosis whereby the program serves the constituency, and the constituency protects the program. An entitlement mentality disastrously compounds these tendencies. It creates enormous political pressure to make benefit outlays fixed charges on the future, and thereby sharply constrains policymakers' options. In any such program a conflict between a political demand for rigid benefit guarantees and an economic need for flexibility

---

[291] See, e.g., Ludwig von Mises, *Human Action: A Treatise on Economics*, 3rd rev. ed. (Chicago: Henry Regnery, 1966), pp. 159–64.

[292] Alexis de Tocqueville, *Democracy in America*, tr. Henry Reeve, trans., 2 vols., intro. by Erik von Kuehnelt-Leddihn (New Rochelle, N.Y.: Arlington House, 1965), vol. 2, pp. 337–38.

is inescapable. Sound public finance, sound money, small government, individual liberty and personal responsibility are all but predestined to lose out.

The truly wise course, then, is to reverse direction, to abandon government paternalism and put the responsibility for old-age provision on individuals themselves, where it belongs. Individual responsibility is the hallmark of a free society. Coerced transfers are by definition a denial of individual rights and liberty. As the trend in Social Security itself—from the initial paternalism of the New Deal to the far vaster loss of freedom under Social Security "reform" proposals—teaches, freedom, power and responsibility march shoulder to shoulder. The more responsibility for our welfare we shunt onto the government, the more power over us we give it, and the more freedom we necessarily forfeit thereby.

Moreover, Social Security has had a very corrosive and degrading effect on our national character. Instead of fostering fortitude and self-reliance, it has encouraged whiny dependence. It has made Americans first servile and then petulant in their relations with their government: tamely submitting to crushing tax burdens in their productive years under the deliberately-cultivated delusion that they were buying something for themselves, and in their retirement years, railing at any attempt, however innocuous, to trim benefits. Its zero-sum finance, whereby the beneficiary's gain is inescapably the taxpayer's loss, has made the old callous toward the program's burdens on the young, and the young resentful of the old. It is telling that the sour epithet "greedy geezer" was unknown in America until the elderly mobilized in the 1970s and 1980s to protect Social Security.

We must jettison Social Security's pernicious entitlement mentality. Benefits are paid because people apply for them, out of a belief that they are "entitled" to them. It is an inflation of rights beyond all reason and a flouting of justice to say that one is "entitled" to retirement, or anything else, at the expense of coercion of others, and a prior lien on their income.

What should be done about Social Security is fairly clear.

(1) *Repeal the Social Security Act and replace Social Security with a rigorously means-tested benefit, for current and imminent retirees only. Abolish the Social Security tax and finance benefits with general revenues.* This one step would begin the process of treating this program for what it is, not insurance but coercive redistribution. Total benefit termination for current and imminent retirees is politically impossible. However, as should by now be clear, Social Security benefits are not sacrosanct or an earned right. There is neither a legal nor a moral barrier for applying a means test. The payroll tax's true purpose was to create a mentality of entitlement and make the insurance analogy plausible. Abolition of this tax is essential for exploding the false consciousness. Those born after 1945 would lose their Social Security benefits and would have to recognize the OASDI taxes they have already paid for what they are—redistributive transfers. On the other hand, they would be free to make their own arrangements for old age with the money they now pay in Social Security taxes. A less severe option would be to permit people after 1945 to make a free choice between receiving their benefits or receiving *tax lifetime* exemptions equal to or greater than accumulated benefits.

(2) *For those born after 1945, provide a means-tested old-age benefit similar to Supplemental Security Income.* Political realities being what they are, some such federal benefit would probably continue to exist for the near future. We should, however, ultimately

devolve an old-age safety net provision onto churches and families, which is where it properly belongs, and fund it through private resources voluntarily contributed. And to make the need for this backup benefit minimal, and facilitate its ultimate replacement with private measures, we should:

(3) *Facilitate saving for old age*. The $2,000 ceiling on contributions to Individual Retirement Accounts is far too low given both the inflation which has occurred since that ceiling was created and our need to save more. It should be increased to $5,000, and indexed thereafter for inflation. To maximize the incentive to save and invest for old age, and to let the money accumulate undisturbed, taxes on IRAs should be abolished, except for a penalty for early withdrawal. Moreover, there needs to be more flexibility for withdrawing the money before retirement and fewer penalities for doing so. Ultimately, the goal should be to institute a system whereby the tax code is not used to pressure any particular tradeoff between saving and consumption.

(4) *Reform employee pensions*. The question of how businesses and employees should handle pensions should be taken out of the realm of regulation and be governed exclusively by the law of contract. Workers urgently need the freedom to make contracts with their employers whereby they can put together the most mutually advantageous terms. With company consent, it should be possible for pensions to be made portable and vested in the worker.

This approach makes no promises of either taxpayer-funded security or affluent retirement through forced investment in stocks, as do the "reform" plans being advanced. But in dismantling Social Security it would avert a probable fiscal and economic disaster and political crisis as the baby boomers retire; relieve Americans of a huge tax burden; avoid a dangerous government presence in the stock market; reverse the trend toward totalitarian paternalism in America; and greatly increase Americans' liberty and control over their own lives. If these are major American values, then this approach to Social Security reform serves them better.

I am grateful to the Earhart Foundation for the fellowship grant which supported my research, and to Llewellyn H. Rockwell, Jr. and Jeffrey Tucker of the Ludwig von Mises Institute for inviting and publishing this study.

The Ludwig von Mises Institute

OUR MISSION: The Ludwig von Mises Institute champions the economics of liberty in academics and in public life. We seek a radical shift in the intellectual climate to restore the free and enterprising society. In this cause, we defend the market economy, private property, and sound money, and oppose all forms of government intervention.

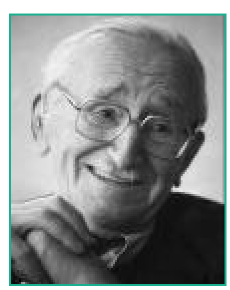
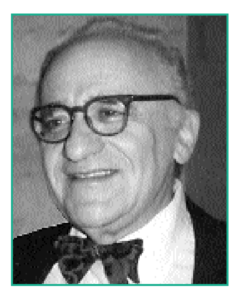
OUR WORK: Working with young people at more than 900 colleges and universities, and with our Members around the world, we offer student fellowships, teaching programs, conferences, books, and academic and popular periodicals. All combine to advance the theory and practice of freedom, the key to prosperity and civilization, and to show that statism causes poverty and social chaos.

OUR HISTORY: Founded in 1982 and named for the economist of the century, the Mises Institute has inspired students, professors, writers, statesmen, and businessmen to commit themselves to the ideas and practice of liberty. As the standard-bearer of the Austrian School of economics, the Institute has enjoyed the support of such luminaries as Murray N. Rothbard, F.A. Hayek, and Henry Hazlitt.

LEADING THE BATTLE FOR ECONOMIC LIBERTY: If you would like more information on the Mises Institute and our programs to advance liberty and promote scholarship, contact us at

Ludwig von Mises Institute
518 West Magnolia Avenue
Auburn, Alabama 36832
334-321-2100; fax 334-321-2119
Email info@mises.org
Web www.mises.org



From left to right: Carl Menger, Henry Hazlitt, Ludwig von Mises, F.A. Hayek, and Murray N. Rothbard

INSTITUTE

518 West Magnolia Avenue
Auburn, Alabama 36832-4528
334-321-2100; fax 334-321-2119
Email info@mises.org
Website www.mises.org