

Summer 2008

## The Future of Social Security: Principles to Guide Reform, 41 J. Marshall L. Rev. 1061 (2008)

Kathryn L. Moore

Follow this and additional works at: <https://repository.law.uic.edu/lawreview>



Part of the [Administrative Law Commons](#), [Business Organizations Law Commons](#), [Consumer Protection Law Commons](#), [Insurance Law Commons](#), [Labor and Employment Law Commons](#), [Law and Economics Commons](#), [Law and Society Commons](#), [Legal History Commons](#), [Public Law and Legal Theory Commons](#), [Retirement Security Law Commons](#), [Social Welfare Law Commons](#), and the [Tax Law Commons](#)

---

### Recommended Citation

Kathryn L. Moore, The Future of Social Security: Principles to Guide Reform, 41 J. Marshall L. Rev. 1061 (2008)

<https://repository.law.uic.edu/lawreview/vol41/iss4/8>

This Symposium is brought to you for free and open access by UIC Law Open Access Repository. It has been accepted for inclusion in UIC Law Review by an authorized administrator of UIC Law Open Access Repository. For more information, please contact [repository@jmls.edu](mailto:repository@jmls.edu).

# THE FUTURE OF SOCIAL SECURITY: PRINCIPLES TO GUIDE REFORM

KATHRYN L. MOORE\*

## INTRODUCTION

On February 12, 2008, the nation's first Baby Boomer, Kathleen Casey-Kirschling, was the first of her generation to receive a Social Security retirement benefit.<sup>1</sup> Born one second after midnight on January 1, 1946,<sup>2</sup> Ms. Casey-Kirschling was born just eleven years after the Social Security system was originally enacted,<sup>3</sup> nine years after the first Social Security payroll taxes were collected,<sup>4</sup> and six years after the system first began to pay monthly retirement benefits.<sup>5</sup>

"As the nation's first Baby Boomer, Ms. Casey-Kirschling is leading what is often referred to as America's silver tsunami.<sup>6</sup> Over the next two decades, nearly eighty million Americans will become eligible for Social Security retirement benefits, more than 10,000 per day on average."<sup>7</sup>

---

\* Everett H. Metcalf, Jr. Professor of Law, University of Kentucky College of Law. I would like to thank Nancy J. Altman for her comments on an earlier draft of this Article.

1. Soc. Sec. Admin. Press Release, Nation's First Baby Boomer Receives Her First Soc. Sec. Retirement Benefit, Feb. 12, 2008, <http://www.ssa.gov/pressoffice/pr/babyboomer-firstcheck-pr.htm> [hereinafter SSA Press Release] (last visited Jul. 13, 2008).

2. *Id.*

3. Social Security Act, Pub. L. No. 74-271 (1935) [hereinafter 1935 Social Security Act].

4. See 1935 Social Security Act §§ 801, 804 (levying tax on employees and employers beginning in 1937).

5. Under the original Social Security Act, the payment of retirement benefits was scheduled to commence in 1942. 1935 Social Security Act § 202(a). The 1939 Amendments accelerated the commencement date to 1940. Social Security Act Amendments of 1939, Pub. L. 76-379, § 202(a) (1939). On January 31, 1940, Ida Mae Fuller, the first beneficiary of monthly Social Security benefits, received her first check of \$22.54. The First Social Security Beneficiary, History Page: Brief History, <http://www.ssa.gov/history/imf.html> (last checked Jul. 13, 2008). Living until age 100, Miss Fuller received over \$20,000 in Social Security retirement benefits. PRESIDENT'S COMMISSION TO STRENGTHEN SOCIAL SECURITY, STRENGTHENING SOCIAL SECURITY AND CREATING PERSONAL WEALTH FOR ALL AMERICANS 5 (Dec. 21, 2001) [hereinafter 2001 PRESIDENT'S COMM'N REPORT].

6. SSA Press Release, *supra* note 1.

7. *Id.*

Due to the arrival of this silver tsunami, the Social Security system's costs are rapidly accelerating.<sup>8</sup> In addition, the Social Security system faces a long-term deficit.<sup>9</sup> Accordingly, lawmakers and commentators have offered a multitude of proposals to reform the Social Security system. The proposals range from those that would fundamentally restructure the system by directing some Social Security contributions to individual accounts, to those that would retain the system's current structure but make incremental changes, such as increasing the taxable wage base and/or increasing the normal retirement age.

Just as the proposals for reform vary widely, their impact on the structure of the Social Security system as well as on individual beneficiaries vary widely. This Article discusses the principles that should guide reform of the Social Security system. Part II describes the fundamental principles that underlie the current system. Part III then turns to the principles that should guide reform.

## II. PRINCIPLES UNDERLYING THE CURRENT SOCIAL SECURITY SYSTEM

Enacted at the height of the Great Depression,<sup>10</sup> Social Security is arguably the most successful program of the modern welfare state.<sup>11</sup> In signing the Social Security Act on August 14,

---

8. Although the arrival of the silver tsunami will cause Social Security's costs to rapidly increase, it has almost nothing to do with why the Social Security system currently faces a long-term deficit. Instead, the current deficit results "from an accumulation of relatively small annual changes in the actuarial assumptions and in the method of making the estimates." REPORT OF THE 1994-1996 ADVISORY COUNCIL ON SOCIAL SECURITY, VOL. I: FINDING AND RECOMMENDATIONS, Appendix I, at 163, available at <http://www.ssa.gov/history/reports/adccouncil/report/toc.htm> [hereinafter ADVISORY COUNCIL REPORT]. See also PETER A. DIAMOND & PETER R. ORSZAG, SAVING SOCIAL SECURITY 58 (2004) (isolating three important factors underlying Social Security's deficit: (1) increasing life expectancy; (2) increases in earnings inequality; and (3) the fact that Social Security, like most social insurance systems, paid the first generation of retirees far more than their contributions to the system could finance).

9. See *infra* Section IIB (describing Social Security's long-term deficit and advocating reform that addresses that deficit).

10. PHILIP BOOTH, SOCIAL SECURITY IN AMERICA 7 (1973). Scholars believe that:

"There is little doubt that the act would not have been adopted in 1935 except for acute public awareness of widespread deprivation, dependency, and hopelessness during the Great Depression that convinced the people and their representatives in Congress that government action was essential to relieve the human distress caused by unemployment, old-age dependency, insecurity, and widespread poverty."

*Id.*

11. See Kenneth S. Apfel, Strengthening Social Security for the New

1935, President Franklin Roosevelt declared:

We can never insure one hundred percent of the population against one hundred percent of the hazards and vicissitudes of life, but we have tried to frame a law which will give some measure of protection to the average citizen and to his family against the loss of a job and against poverty-ridden old age.<sup>12</sup>

When the Social Security system was originally enacted, it provided for two general types of benefits: (1) monthly old-age benefits for retirees<sup>13</sup> and (2) lump-sum death benefits for workers.<sup>14</sup> Four years later, Congress fundamentally transformed the system by replacing the lump-sum death benefits for workers with two new categories of benefits: (1) benefits for the wife and minor children of retired workers,<sup>15</sup> and (2) benefits for widows, surviving dependent children, and surviving dependent parents.<sup>16</sup> The Social Security system has evolved considerably in the years since 1939, but its basic structure has remained intact.

#### A. *Robert Ball's Nine Guiding Principles*

Just as there is not universal agreement on the way in which Social Security should be reformed, there is not universal agreement on the exact principles which underlie the current system either. For example, a 1991 article published in the *Social Security Bulletin* identified five principles that "have been adhered to throughout the development of the [Social Security] program:" (1) work related; (2) no means test; (3) contributory; (4) universal compulsory coverage; and (5) rights defined in the law.<sup>17</sup>

---

Millennium, Presented at the Berlin Conference on Pension Reform and Labor Markets 9 (May 21, 2001) ("It is not hyperbole to say that in the United States the Social Security system is the most successful and widely supported domestic program in the nation's history."); *see also* Jeffrey R. Brown, et al., *Top Ten Myths of Social Security Reform*, 13 *ELDER L.J.* 309, 310 (2006) ("The U.S. Social Security system has been one of the most successful public policy programs in our nation's history"); LARRY E. DEWITTE, DANIEL BELAND, AND EDWARD D. BERKOWITZ, *SOCIAL SECURITY: A DOCUMENTARY HISTORY 1* (2008) ("In size and scope, the Social Security program is the most expansive and important social welfare program in the United States.").

12. President Franklin D. Roosevelt, *Presidential Statement Signing the Social Security Act*, August 14, 1935, in 50TH ANNIVERSARY EDITION OF THE REPORT OF THE COMMITTEE ON ECONOMIC SECURITY OF 1935 AND OTHER BASIC DOCUMENTS RELATING TO THE DEVELOPMENT OF THE SOCIAL SECURITY ACT 145 (1985) [hereinafter 50TH ANNIVERSARY ED.].

13. 1935 Social Security Act § 202.

14. 1935 Social Security Act § 203.

15. Social Security Amendments of 1939, Pub. L. 76-379, §§ 202(b)-(c).

16. Social Security Amendments of 1939, § 202(c), (d), (e), (f).

17. David Schwartz et al., *Social Security Programs in the United States*, 54 *SOCIAL SECURITY BULLETIN*, Sept. 1991, 9, 9-10. The Social Security Reform Center offers a similar list of four basic principles underlying the current Social Security system: (1) the system is work related; (2) benefits are not

A book published in 1973 identified three similar, but obviously not identical, basic principles on which the Social Security system was founded: (1) a national (not state-by-state) system; (2) compulsory for those in covered employment; and (3) providing benefits as a matter of right (without regard to individual means or needs).<sup>18</sup>

This Section will discuss the “nine guiding principles of the Social Security system” identified by the late Robert Ball, Commissioner of Social Security under Presidents Kennedy, Johnson, and Nixon, and a staunch supporter of the current Social Security system.<sup>19</sup> Of course, this list is not free from criticism. For example, one might argue that some of the principles overlap too much to constitute separate principles. In addition, one might argue that because some of the principles, such as wage indexing and inflation protection, were not part of the original Social Security Act,<sup>20</sup> they are not fundamental guiding principles.<sup>21</sup> Nevertheless, this section will discuss these “nine guiding principles” because they fairly represent the principles underlying the current system and help provide a clear understanding of the current system.

---

means tested; (3) universal compulsory coverage; and (4) benefits are defined by law. Social Security Reform Center, *The System Today*, <http://www.socialsecurityreform.org/history/today.cfm>. See also MARTHA DERTHICK, *POLICYMAKING FOR SOCIAL SECURITY* 21 (1979) (identifying the Social Security program’s “first principles” as follows: “It should be contributory: people must qualify for benefits by making contributions (paying taxes). Having paid their contributions, they or their dependents should get benefits as a matter of right. There must be no means test, which is to say no need to prove need, Benefits should be related to wages. The program should be national in scope and should be run by the federal government. It should be universal and compulsory.”)

18. BOOTH, *supra* note 10, at 10.

19. ROBERT M. BALL, *INSURING THE ESSENTIALS: BOB BALL ON SOCIAL SECURITY: A SELECTION OF ARTICLES AND ESSAYS FROM 1942 THROUGH 2000*, 5-10 (Thomas N. Bethell ed. 2000) [hereinafter *INSURING THE ESSENTIALS*].

20. The indexing provisions were added in 1972. Pub. L. No. 92-336, 86 Stat. 406, § 202 (1972).

21. Prior to the institution of the indexing provisions in 1972, Congress did, however, periodically increase benefits and the taxable wage base. See 2008 ANNUAL REPORT OF THE BOARD OF TRUSTEES OF THE FEDERAL OLD-AGE AND SURVIVORS INSURANCE AND FEDERAL DISABILITY INSURANCE TRUST 132 tbl.VI.A1. (showing that taxable wage base was increased six times between 1937 and 1972) [hereinafter 2008 BD. OF TRUSTEES’ REPORT].

### 1. *Universal, or Nearly Universal, Coverage*

President Roosevelt's Committee on Economic Security, which was charged with drafting the original Social Security bill, recommended that the Social Security system "include, on a compulsory basis, all manual workers and nonmanual workers earning less than \$250 per month,<sup>22</sup> except those of governmental units and those covered by the United States Railroad Retirement Act."<sup>23</sup> Coverage under the original Social Security Act was more limited<sup>24</sup> in that it only covered employees in nonagricultural industry and commerce, or about fifty-six percent of the country's labor force.<sup>25</sup> Over the years, however, coverage has expanded so as to achieve the Committee on Economic Security's original vision of nearly universal coverage.<sup>26</sup> Indeed, the Social Security system today covers about ninety-six percent of the American workforce,<sup>27</sup> with an estimated 163 million people contributing payroll taxes in 2007.<sup>28</sup> In addition, almost fifty million people were receiving Social Security benefits at the end of 2007,<sup>29</sup> including more than

---

22. Presumably, the Committee excluded workers earning more than \$250 per month, high wage workers at the time, because the Committee was focused on alleviating poverty and was not concerned about high wage workers. Debra Whitman, *Social Security: Raising or Eliminating the Taxable Earnings Base*, 2005 Congressional Research Service 1.

23. REPORT OF THE COMMITTEE ON ECONOMIC SECURITY 29, in 50TH ANNIVERSARY ED., *supra* note 12, at 49.

24. It was also more expansive in that rather than excluding highly paid workers, it covered the wages of the highly paid up to a maximum taxable wage base of \$3,000 (or \$250 per month). Social Security Act, ch. 531, Sec. 811(a), 49 Stat. 620, 639 (1935). Debra Whitman of the Congressional Research Service has speculated that the high wage exemption was replaced with a taxable wage base to promote administrative ease and tax equity. Whitman, *supra* note 22, at 2.

25. Schwartz et al., *supra* note 17, at 5.

26. Indeed, the coverage under the current system exceeds the vision of the Committee on Economic Security because it covers the self-employed as well as the wages of the highly paid up to a maximum taxable wage base. *Cf.* REPORT OF THE COMMITTEE ON ECONOMIC SECURITY 29, in 50TH ANNIVERSARY ED., *supra* note 12, at 49 (recommending coverage for employees earning up to \$250 per week; no mention of coverage for the self-employed).

27. The excluded workers fall into five categories: (1) civilian federal workers who were hired before January 1, 1984; (2) railroad workers who are covered under the railroad retirement system; (3) certain state and local governmental employees; (4) domestic and farm workers whose earnings are below a minimum amount; and (5) individuals with very low net earnings from self-employment. SOCIAL SECURITY ADMINISTRATION, ANNUAL STATISTICAL SUPPLEMENT TO THE SOCIAL SECURITY BULLETIN, 2007, 12 [hereinafter 2007 SSA STAT. SUPP.].

28. *Id.*

29. The beneficiaries consisted of thirty-four million retired workers and their dependents, six million survivors of deceased workers, and nine million disabled workers and their dependents. 2008 BD. OF TRUSTEES' REPORT,

ninety percent of the population age sixty-five and older.<sup>30</sup>

## 2. *Earned Right*

Robert Ball described the second principle, “earned right,” as follows:

Social Security is more than a statutory right; it is an *earned right*, with eligibility for benefits and the benefit rate based on an individual’s past earnings. This principle sharply distinguishes Social Security from welfare and links the program, appropriately, to other earned rights such as wages, fringe benefits, and private pensions.<sup>31</sup>

Social Security’s characterization as an earned right arises from the fact that it is financed principally through payroll taxes. In recommending that Social Security be financed through payroll taxes, the Committee on Economic Security explained, “[c]ontributory annuities are unquestionably preferable to noncontributory pensions. They come to the workers as a right, whereas the noncontributory pensions [that is, welfare] must be conditioned upon a ‘means’ test.”<sup>32</sup>

## 3. *Wage Related*

The current Social Security system is a defined benefit program in which benefits are based on past wages. Specifically, retirement benefits for everyone born after 1928 and retiring in 1991 or later are based on thirty-five years of earnings, which are indexed to increases in the average national wage.<sup>33</sup> Average adjusted earnings, or “average indexed monthly earnings” (“AIME”), are then calculated by taking the best thirty-five years of earnings and dividing by 420 (the number of months in thirty-five years).<sup>34</sup> Average adjusted earnings are then plugged into a progressive benefit formula to determine the “primary insurance amount” (PIA), or how much of earnings should be replaced.<sup>35</sup> For those reaching sixty-two in 2008, the formula replaces ninety percent of the first \$711 of AIME, plus thirty-two percent of AIME between \$711 and \$4,288, plus fifteen percent of AIME above \$4,288.<sup>36</sup>

---

*supra* note 21, at 2.

30. 2007 SSA STAT. SUPP., *supra* note 27, at 3.18 tbl.3.E6 (based on 2005 data).

31. INSURING THE ESSENTIALS, *supra* note 19, at 6.

32. REPORT OF THE COMMITTEE ON ECONOMIC SECURITY 25, *in* 50TH ANNIVERSARY ED., *supra* note 12, at 45.

33. 42 U.S.C. § 415(b)(3) (2006).

34. 42 U.S.C. § 415(b)(1) (2006).

35. 42 U.S.C. § 415(a) (2006).

36. 2008 BD. OF TRUSTEES’ REPORT, *supra* note 21, at 104 fig.V.C1.

The fact that benefits are related to wages reinforces the concept that benefits are an earned right and recognizes “that there is a relationship between one’s standard of living while working and the benefit level needed to achieve income security in retirement.”<sup>37</sup> Moreover, basing benefits on past wages promotes “individual equity,” one of the fundamental goals of Social Security.<sup>38</sup>

#### 4. *Contributory and Self-Financed*

The current Social Security system is financed principally through dedicated payroll taxes.<sup>39</sup> In 2007, net payroll taxes accounted for eight-four percent of the Social Security Trust Fund’s income.<sup>40</sup> Interest on the Trust Fund’s surplus accounted for fourteen percent of the Trust Fund’s income, and revenue from the federal income tax imposed on certain Social Security benefits accounted for two percent of the Trust Fund’s income.<sup>41</sup>

Financing Social Security principally through payroll taxes reinforces the concept of benefits as an earned right<sup>42</sup> and “gives contributors a moral claim on future benefits above and beyond statutory obligations.”<sup>43</sup> As President Roosevelt explained:

Those taxes were never a problem of economics. They are 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

---

37. INSURING THE ESSENTIALS, *supra* note 19, at 7.

38. See U.S. GOVERNMENT ACCOUNTABILITY OFFICE, GAO-05-193SP, SOCIAL SECURITY REFORM: ANSWERS TO KEY QUESTIONS, 3 (May 2005) [hereinafter GAO ANSWERS] (“[A]nother goal of the program is to ensure that benefits bear some relationship to contributions. This goal is known as individual equity.”).

39. See 26 U.S.C. §§ 1401(a), 3101(a), 3111(a) (2008). This Article uses the term payroll taxes, rather than contributions under the Federal Insurance Contributions Act, because it is the term that is commonly used. Nancy Altman contends that the term “payroll taxes” is a misnomer in two respects. First, workers do not have payrolls; only employers do. More importantly, the deductions are better understood as mandatory premiums or contributions, rather than mere taxes. Altman believes that it is instructive to note that the acronym for the Social Security payment is “FICA,” which stands for “Federal Insurance Contributions Act,” enacted in 1939, well before the days of paid public relations consultants and spin doctors. Nancy J. Altman, *Social Security and the Low Income Worker*, 56 AM. U. L. REV. 1139, 1146 (2007). *Id.*

40. 2008 BD. OF TRUSTEES’ REPORT, *supra* note 21, at 4.

41. *Id.*

42. See CONGRESSIONAL BUDGET OFFICE, SOCIAL SECURITY: A PRIMER 14 (Sept. 2001) (“One purpose of using payroll taxes rather than income taxes or other sources of revenue was so that elderly beneficiaries would feel they had earned their benefits, whether or not they had really done so.”).

43. INSURING THE ESSENTIALS, *supra* note 19, at 7.



program.<sup>44</sup>

In addition, this method of financing has a couple of other advantages. First, it protects the program from having to compete against other programs in the annual general federal budget.<sup>45</sup> Second, it imposes fiscal discipline that protects the program from excessive liberalization because participants (and employers) know that any changes to the program depend on the contributions they make.<sup>46</sup>

### 5. *Redistributive*<sup>47</sup>

Social Security's progressive benefit formula is redistributive in that it replaces a higher percentage of the earnings of lower-wage workers than that of higher-wage workers. Specifically, for workers retiring at age sixty-five in 2008, Social Security replaces 52.6% of the earnings of a low-income worker, 39.0% of the earnings of an average wage earner, and 32.4% of the earnings of a high-wage worker.<sup>48</sup> The progressive nature of the formula is designed to further another one of Social Security's fundamental goals, ensuring adequate retirement income,<sup>49</sup> often referred to as

---

44. ARTHUR M. SCHLESINGER, JR., THE COMING OF THE NEW DEAL 308-09 (1958).

45. INSURING THE ESSENTIALS, *supra* note 19, at 7. Cf. ADVISORY COUNCIL REPORT, *supra* note 8, at 18 ("The method of financing Social Security entirely by dedicated taxes has given the system considerable protection from having to compete against other programs in the general budget.").

46. INSURING THE ESSENTIALS, *supra* note 19, at 7-8. See also Schwartz et al., *supra* note 17, at 9 ("The contributory nature of the program encourages a responsible attitude toward it. Workers have a "vested interest in the soundness of the program," because they know financing of the system depends on the taxes they pay.) See also ADVISORY COUNCIL REPORT, *supra* note 8, at 18 ("The fiscal discipline in Social Security arises from the need to ensure that income earmarked for Social Security is sufficient to meet the entire cost of the program, both in the short run and long run, rather than from competition with other programs in the general budget.").

47. Not all elements of the Social Security system are progressive. For example, Social Security imposes a flat tax on earnings up to the maximum taxable wage base and no payroll tax on earnings above the taxable wage base. Kathryn L. Moore, *Redistribution Under the Current Social Security System*, 61 U. PITT. L. REV. 955, 983-84 (2000). Critics of the current system point to the regressive nature of the tax and contend that it does not effectively redistribute income to the lower paid. See *generally id.* (discussing in detail the ways in which Social Security redistributes income).

48. 2008 BD. OF TRUSTEES' REPORT, *supra* note 21, at 193 tbl.VI.F10. Because the normal retirement age is scheduled to gradually increase to age sixty-seven by 2022, replacement rates will continue to fall for workers who elect to retire at age sixty-five rather than the higher normal retirement age. *Id.* at 191-93.

49. INSURING THE ESSENTIALS, *supra* note 19, at 8. See also GAO ANSWERS, *supra* note 38, at 3 ("Helping ensure adequate retirement income is a fundamental goal of Social Security. While Social Security was never intended to guarantee an adequate income by itself, it provides an income upon which

“social adequacy.”

## 6. *Not means tested*

Social Security benefits are not subject to a means test. This feature distinguishes Social Security, a social insurance program, from welfare.<sup>50</sup> Welfare, by definition, provides benefits based on need.<sup>51</sup> Social Security, in contrast, is an earned right; “benefits . . . are paid regardless of income from savings, pensions, private insurance, and other forms of nonwork income.”<sup>52</sup>

The absence of a means test helps Social Security fulfill its role of providing “a floor of protection on which private-sector economic security measures can be built.”<sup>53</sup> Social Security alone was never meant to guarantee an adequate income.<sup>54</sup> Rather, our national retirement income security system is frequently referred to as a “three-legged stool,”<sup>55</sup> with Social Security representing one of the legs and employer-sponsored pension plans and individual savings representing the other two legs.<sup>56</sup> Unlike welfare, Social

---

to build. . . . The benefit formula seeks to ensure adequacy by providing somewhat higher benefits, relative to wages, for lower-income workers than higher-income workers.”)

50. INSURING THE ESSENTIALS, *supra* note 19, at 8. See also CONGRESSIONAL BUDGET OFFICE, *supra* note 42, at 14 (Social Security’s developers “were eager that Social Security not been seen as a welfare program but rather as a ‘self-respecting method through which workers make their own provision for old age.’”).

51. See NANCY J. ALTMAN, *THE BATTLE FOR SOCIAL SECURITY* 32 (John Wiley & Sons, Inc. 2005) (“Welfare, by definition, provides a benefit based on need”).

52. Schwartz et al., *supra* note 17, at 9.

53. ROBERT J. MYERS, *SOCIAL SECURITY* 231 (4th ed. 1993).

54. GAO ANSWERS, *supra* note 38, at 3. See also DIAMOND & ORSZAG, *supra* note 8, at 15 (“Social Security benefits were never intended to be sufficient to provide a comfortable retirement by themselves. Rather, they are meant to be a safe income foundation after retirement or disability.”).

55. See Nancy J. Altman, *Protecting Social Security’s Beneficiaries: Achieving Balance Without Benefit Cuts*, 2007 Economic Policy Institute Briefing Paper No. 206, at 13 (crediting Reinhard A. Hohaas, vice president and chief actuary of the Metropolitan Life Insurance Company, with the first use of the three-legged stool analogy). Sometimes analysts include Supplement Security Income in the mix and refer to our retirement income system as a four tiered program. See ADVISORY COUNCIL REPORT, *supra* note 8, at 15 (“The Social Security system is part of a four-tier system of retirement income arrangements in which each tier is important and complementary to the others: Social Security; (2) employer-sponsored pensions; (3) individual savings; and (4) a safety net program, called Supplemental Security Income (SSI”).

56. Christopher Bone, *An Actuarial Perspective on How Social Security Reform Could Influence Employer-Sponsored Pensions*, in PROSPECTS FOR SOCIAL SECURITY REFORM 333, 333 (Olivia S. Mitchell et al., eds., 1999) (“The U.S. retirement income system has often been described as a three-legged stool, with the three supports being social security, employer-sponsored retirement plans, and individual savings.”).

Security encourages savings by providing workers with a base upon which to build additional income protection.<sup>57</sup>

### 7. *Wage Indexed*

Social Security is wage indexed. Specifically, when benefits are initially calculated, workers' earnings are indexed by multiplying each year's wages by an indexing factor equal to the ratio of the average national wage in the year the worker turns sixty<sup>58</sup> to the average national wage in the year to be indexed.<sup>59</sup> In addition, the dollar amounts, or "bend points" to which the progressive benefit formula is applied, are increased by the rate of the growth of the national average wage.<sup>60</sup> This method of calculating initial benefits ensures that benefits for each generation of workers grow at the same rate as their wages grow, and the replacement rate, that is, initial benefits as a percentage of workers' career-average earnings, remains constant.<sup>61</sup> "[W]ithout this principle, Social Security would soon provide benefits that did not reflect previously attained living standards."<sup>62</sup>

### 8. *Inflation Protected*

Once initial benefits are calculated, they are adjusted for increases in the consumer price index.<sup>63</sup> Price indexing ensures that initial benefits do not decline in value as prices increase over time and that retirees' buying power remains the same.<sup>64</sup> This inflation protection distinguishes Social Security from private and

57. ADVISORY COUNCIL REPORT, *supra* note 8, at 18. According to Nancy Altman:

Prior to the enactment of Social Security, most people saw retirement on an adequate income as an impossible goal. With the promise of Social Security, it became a realistic goal. At the same time, most people saw that the promised benefits were inadequate, if they wanted to maintain their standards of living in retirement. Consequently, they began to think about methods to supplement the promise.

ALTMAN, *supra* note 51, at 96.

58. For administrative ease, wages earned at age sixty or later are left at their nominal value in the indexing process. See Memorandum from Patrick Purcell, Specialist in Soc. Legislation, Cong. Research Serv., to Senate Finance Comm., "Progressive Price Indexing" of Soc. Sec. Benefits CRS-2 n.4 (Apr. 22, 2005), [http://www.tcf.org/Publications/RetirementSecurity/CRS\\_Price\\_Indexing\\_04-22-05.pdf](http://www.tcf.org/Publications/RetirementSecurity/CRS_Price_Indexing_04-22-05.pdf) (last visited Jul. 13, 2008).

59. 42 U.S.C. § 415(b)(3) (2006); Purcell, *supra* note 58, at CRS-2.

60. 42 U.S.C. § 415(a)(1)(A) (2006); Purcell, *supra* note 58, at CRS-3.

61. Purcell, *supra* note 58, at CRS-4-5.

62. INSURING THE ESSENTIALS, *supra* note 19, at 8-9.

63. 42 U.S.C. § 415(i) (2006); INSURING THE ESSENTIALS, *supra* note 19, at 9.

64. INSURING THE ESSENTIALS, *supra* note 19, at 9.

state and local government pension plans.<sup>65</sup>

### 9. *Compulsory*

Participation in the Social Security system is not voluntary. Rather, all covered workers are required to contribute to the system.<sup>66</sup> The compulsory nature of the program eliminates the risk of adverse selection, that is, the problem of “individuals deciding when and to what extent they want to participate, depending on whether their individual circumstances seem favorable.”<sup>67</sup> In addition, the compulsory, nearly universal nature of the system helps stabilize the cost of the system and “assures virtually everyone in society a base of economic security.”<sup>68</sup>

#### *B. Final Thoughts on the Principles Underlying the Current Social Security System*

As noted above, there is considerable overlap among some of Social Security’s “nine guiding principles.” For example, the earned right characterization of Social Security benefits arises from the fact that it is financed principally through payroll taxes and is reinforced by the absence of a means test and the fact that benefits are related to past wages.

In addition, a couple of the principles may be viewed as fundamentally contradictory. Specifically, the redistributive element, which promotes social adequacy, may be seen as contradicting the wage-related element, which promotes individual equity. Indeed, critics of the current system contend that this “inherent conflict” makes the system unworkable.<sup>69</sup>

---

65. *Id.* See also ADVISORY COUNCIL REPORT, *supra* note 8, at 17 (“Most state and local plans offer only partial protection against inflation, and private pension plans usually do not offer automatic adjustments, although they may provide ad hoc benefit increases to recipients from time to time”).

66. INSURING THE ESSENTIALS, *supra* note 19, at 9.

67. *Id.*

68. Schwartz et al., *supra* note 17, at 9.

69. See June E. O’Neill, *Why Social Security Needs Fundamental Reform*, 65 OHIO ST. L.J. 79, 90 (2004) (“Thus, from its early days, Social Security had a muddled mission.”); STAFF OF HOUSE COMMITTEE ON WAYS AND MEANS, 105TH CONGRESS, 1998 GREENBOOK: BACKGROUND MATERIAL AND DATA ON PROGRAMS WITHIN THE JURISDICTION OF THE COMMITTEE ON WAYS AND MEANS 97-98 (Comm. Print 1998) (“Critics of Social Security argue that by combining the goals of social adequacy, which is welfare-related, with individual equity, which loosely ties benefits to taxes paid, the program has become a mishmash that accomplishes neither goal well and creates inequities”); see also Lewis B. Solomon & Geoffrey A. Barrow, *Privatization of Social Security: A Legal and Policy Analysis*, 5-FALL KAN. J.L. & PUB. POL’Y 9, 13 (1995) (“The system attempts to provide two fundamentally different services--social insurance and welfare--and succeeds at neither”); see also PETER J. FERRARA, SOCIAL SECURITY: THE INHERENT CONTRADICTION 3-7 (1980) (arguing that the inherent conflict in adequacy and equity is the source

Proponents of the current system, on the other hand, laud the balancing of individual equity and social adequacy as one of the system's fundamental strengths.<sup>70</sup>

In any event, these nine guiding principles illustrate the complexity of the current Social Security system. In addition, they show that, at its core, the current system is a system of social insurance whose essential purpose "is to prevent hardship, poverty, or dependence that might be caused by the contingencies covered wherever and whenever these might occur among workers able to join their employers and the government in a national program."<sup>71</sup> Solidarity, rather than individual responsibility, lies at the heart of the current Social Security system.

### III. PRINCIPLES TO GUIDE REFORM

Not surprisingly, there is not universal agreement on the principles that should guide reform of the Social Security system. Indeed, there is almost as much diversity in the principles as there is in the types of reforms proposed.

For example, President Bush charged his 2001 Commission to Strengthen Social Security with making recommendations to reform Social Security using six guiding principles: (1) modernization must not change Social Security benefits for retirees or near-retirees; (2) the entire Social Security surplus must be dedicated only to Social Security; (3) Social Security payroll taxes must not be increased; (4) the government must not invest Social Security funds in the stock market; (5) modernization must preserve Social Security's disability and survivors insurance programs; and (6) modernization must include individually controlled, voluntary personal retirement accounts which will augment Social Security.<sup>72</sup> Congressman Earl Pomeroy, in contrast, offered the following four principles to guide reform: (1) preserve Social Security's guaranteed benefit; (2) work to fix Social Security, not overhaul it; (3) strengthen Social Security without massive borrowing; and (4) save Social Security for future generations.<sup>73</sup>

---

of all of the program's major defects).

70. See, e.g., Theodore R. Marmor and Jerry L. Mashaw, *Understanding Social Insurance: Fairness, Affordability, And The 'Modernization' Of Social Security And Medicare*, 15 ELDER L.J. 123, 130 (2007) (contending that Social Security successfully blends "these two different visions of fairness"); see also WILBUR J. COHEN & MILTON FRIEDMAN, *SOCIAL SECURITY: UNIVERSAL OR SELECTIVE?* 68 (1972) (Cohen asserts that the balancing of individual equity and social adequacy is the art that has made the system acceptable).

71. J. DOUGLAS BROWN, *ESSAYS ON SOCIAL SECURITY* 57-58 (1977).

72. 2001 PRESIDENT'S COMM'N REPORT, *supra* note 5, at 13.

73. Congressman Earl Pomeroy, *Strengthening Social Security* [http://www.pomeroy.house.gov/index.asp?Type=B\\_BASIC&SEC={54645522-3763-43DB-B93E-60B001F4CE07}&DE={3AE5FEDC-DAEE-4B61-8D5A-](http://www.pomeroy.house.gov/index.asp?Type=B_BASIC&SEC={54645522-3763-43DB-B93E-60B001F4CE07}&DE={3AE5FEDC-DAEE-4B61-8D5A-)

In this Section, I discuss the principles that I believe should guide reform of the Social Security system.

*A. Choice Must Be Made Between Collective Versus Individual Responsibility*

The most controversial question raised in the current Social Security debate is whether the system's current structure should be retained or fundamentally restructured to divert some payroll taxes to individual accounts. This debate, in turn, raises the fundamental question of the values that should undergird the Social Security system: collective responsibility or individual responsibility.

Under the collective responsibility, or collectivist, view, Social Security is primarily a system of social insurance whose principal goal is to pool risks, such as the risk of disability, leaving behind dependents, and outliving one's assets.<sup>74</sup> Under this approach society works together to enhance security; we share "a common social protection against the vicissitudes of life."<sup>75</sup>

Individual responsibility, in contrast, focuses on individual freedom and "places the highest priority on individual freedom of choice and control over one's own personal affairs."<sup>76</sup> Central to

---

5E476B001DC7} (last visited Jul. 15, 2008). Democratic Senator Kent Conrad and Republican Senator Lindsey Graham identified the following four principles to guide legislative deliberations on the future of Social Security: (1) Social Security must be preserved; (2) Social Security must be strengthened; (3) Strengthening Social Security will require tough choices, and if done in a responsible manner, can greatly improve our nation's fiscal outlook; and (4) the costs of changing Social Security must be open and transparent. Kent Conrad & Lindsey Graham, Editorial, *How Social Security Reform Can Become a Reality*, USA TODAY, Dec. 21, 2004, at 21A, available at [http://www.usatoday.com/news/opinion/editorials/2004-12-21-socialsecurity\\_x.htm](http://www.usatoday.com/news/opinion/editorials/2004-12-21-socialsecurity_x.htm). Peter Diamond and Peter Orszag offered yet another set of goals to guide Social Security reform: (1) restoring Social Security to a sound financial footing; (2) reducing the future burden from Social Security on the rest of the federal budget; (3) sharing the ongoing costs of the program's past generosity in a fair manner; (4) preserving and strengthening the program's social insurance functions; and (5) ensuring that, on balance, the changes enhance the overall performance of the economy. DIAMOND & ORSZAG, *supra* note 8, at 27.

74. See Julia Lynn Coronado and Paul A. Smith, *Social Security At 70: Principles, Issues and Alternatives*, 58 NATIONAL TAX JOURNAL 505, 505 (Sept. 2005).

75. Hugh Hecl, *A Political Science Perspective on Social Security Reform*, in FRAMING THE SOCIAL SECURITY DEBATE: VALUES, POLITICS, AND ECONOMICS 73 (1998) (R. Douglas Arnold et. al. eds.). See also Marmor & Mashaw, *supra* note 70, at 126 ("Social insurance rests on the widespread acceptance of the desirability of protecting workers and their families from dramatic losses of economic status brought on by a common set of risks to labor-market participation").

76. Hecl, *supra* note 75, at 73.

the individualist approach is each individual's right to do what he or she wishes with his or her resources unimpeded by governmental intervention.<sup>77</sup>

Collectivist principles point toward retaining the current structure of the Social Security system. Individualist principles, in contrast, argue for the fundamental restructuring of the system to include individual accounts.

The role academics should play in influencing this choice is subject to debate. According to one academic, "[a]cademics and other experts have no special authority for telling other people what choice should be made."<sup>78</sup> On the other hand, many academics and experts have forcefully argued for each of these positions.<sup>79</sup>

In the past, I have offered my support for the collectivist approach.<sup>80</sup> I will not repeat my arguments here. I will, however, note that the Federal Reserve Bank's recent bailout<sup>81</sup> of

---

77. See Haeworth Robertson, *Social Security Reform Using Voluntary Personal Accounts: Two former Social Security chief actuaries debate the underlying principles behind partial privatization of the Social Security program*, CONTINGENCIES, May/June 2005, at 22, 24 (identifying individualist principles).

78. Hecl, *supra* note 75, at 76.

79. For arguments in favor of personal accounts, see, e.g., Robertson, *supra* note 77, at 24 (presenting individualist principles to argue in favor of individual accounts); see also Jonathan Barry Forman, *Making Social Security Work*, 65 OHIO ST. L.J. 145, 145 (2004) (arguing in favor of restructuring Social Security to include individual accounts to increase work incentives and reduce work disincentives); see also Solomon & Barrow, *supra* note 69, at 17 (offering a number of arguments in favor of privatization of Social Security). For arguments in favor of the current structure, see Marmor & Mashaw, *supra* note 70, at 131 ("To some degree, the clash between individualistic and collective visions of fairness frames the debate about risk bearing in the right terms. And we believe that the social, political, and economic arguments that have accounted for the durability of social insurance remain persuasive"); see also DIAMOND & ORSZAG, *supra* note 8, at 133 (arguing that individual accounts "are simply inappropriate for a social insurance system intended to provide for the basic tier of income during retirement, disability, and other times of need"); see also HENRY J. AARON & ROBERT D. REISCHAUER, COUNTDOWN TO REFORM: THE GREAT SOCIAL SECURITY DEBATE 52 (1998) ("The argument that individuals should bear risk carries little weight in the case of the basic pensions program. Rather than exposing workers individually to these risks, it would be far better, we believe to spread them among active and future workers and current beneficiaries.").

80. See, e.g., Kathryn L. Moore, *President Bush's Personal Retirement Accounts: Saving or Dismantling Social Security*, in NEW YORK UNIVERSITY REVIEW OF EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION ch.5, 5-23 to 5-24 (Alvin D. Lurie ed., 2005) (reflecting that collective action and solidarity "lie at the heart of social insurance"); see generally Kathryn L. Moore, *Privatization of Social Security: Misguided Reform*, 71 TEMP. L. REV. 131 (1998) (analyzing privatization proposals and their pitfalls).

81. See William Safire, *Moral Hazard*, N.Y. TIMES, Apr. 6, 2008, at 14 (discussing the moral hazard of bailing out Bear Stearns).

investment bank Bear Stearns, a seemingly quintessential free market player, shows that collectivist principles remain as important today as they did when Social Security was founded at the height of the Great Depression.<sup>82</sup> In defending the Federal Reserve's decision to give JPMorgan Chase a \$29 billion line of credit to encourage the purchase and rescue of Bear Stearns,<sup>83</sup> Timothy F. Geithner, the president of the Federal Reserve Bank of New York, said in testimony before Congress that failure to save the investment bank would have led to "a greater probability of widespread insolvencies, severe and protracted damage to the financial system and, ultimately, to the economy as a whole."<sup>84</sup> As this article went to press in September 2008, the federal government again chose collectivist principles over individualist principles by taking over Fannie Mae and Freddie Mac<sup>85</sup> and the American International Group<sup>86</sup> and by asking Congress to enact legislation that would authorize Treasury Secretary Henry Paulson to buy up to \$700 billion in distressed mortgage-related assets in private firms.<sup>87</sup> In pressing for the proposed plan, chairman of the Federal Reserve, Ben S. Bernanke, warned Senators that failure to approve the plan would be "a major drag on the U.S. economy and greatly impede the ability of the economy to recover."<sup>88</sup>

---

82. Arguably, the economy today is in the worst shape it has been since the Great Depression. Cf. Robert J. Shiller, *The Fed Gets a New Job Description*, N.Y. TIMES, Apr. 6, 2008, at 5 ("It has been said that Ben S. Bernanke chose an awful time to become chairman of the Federal Reserve - in February 2006, just as the economy was about to enter its worst financial crisis since the 1930s").

83. *Id.*

84. Stephen Labaton, *Bear Stearns in the Committee Room*, N.Y. TIMES, Apr. 4, 2008, at C1.

85. For a discussion of the Fannie Mae and Freddy Mac takeover, see *In Rescue to Stabilize Lending, U.S. Takes Over Mortgage Finance Titans*, N.Y. TIMES, September 8, 2008, at A1.

86. For a discussion of the bailout of the insurance giant, American International Group, see Edmund L. Andrews, et al., *Fed in an \$85 Billion Rescue of an Insurer Near Failure*, N.Y. Times, Sept. 17, 2008, at A1.

87. For a discussion of the Bush Administration's proposed plan, see David Herszenhorn, *Administration is Seeking \$700 Billion Dollars for Wall Street in Possible Record Bailout*, New York Times, Sept. 21, 2008, at A1.

88. Mark Landler and David M. Herszenhorn, *White House Pushes Plan; Congress Objects: Lawmakers Challenge Lack of Help Aimed at Homemakers*, Sept. 24, 2008, at A1.



### *B. Reform Must Address Social Security's Financing Difficulties*

Currently, the Social Security system collects more in payroll taxes than it pays in benefits. For example, in 2007, the Trust Funds collected \$656.1 billion in payroll taxes and only paid out \$584.9 billion in benefits, resulting in a surplus of \$71.2 billion.<sup>89</sup> Indeed, at the beginning of 2008, the Social Security Trust Funds held \$2.2 trillion in assets, and the assets are expected to grow to \$4.3 trillion by the beginning of 2017.<sup>90</sup>

Nevertheless, Social Security faces a long-term deficit. Due principally to the retirement of the baby boom generation, Social Security's costs are expected to increase more rapidly than its payroll tax revenue between 2010 and 2030.<sup>91</sup> After 2030, increases in life expectancy as well as the fact that the baby boom generation is followed by a much smaller generation are expected to cause costs to increase relative to payroll tax revenue, but more slowly.<sup>92</sup> In light of these demographic changes, the Board of Trustees projects that by 2017, the Social Security system will begin to collect less in contributions than it owes in benefits, and by 2041, the Trust Fund will be exhausted.<sup>93</sup> At that point in time, absent an intervening change in the law, the system will only be able to pay seventy-eight percent of promised benefits, and by 2080, the system will only be able to pay seventy-five percent of promised annual benefits.<sup>94</sup>

Traditionally, the Social Security actuaries have used a seventy-five year horizon for measuring Social Security's long-term balance.<sup>95</sup> The key traditional criterion for evaluating Social

---

89. 2008 BD. OF TRUSTEES' REPORT, *supra* note 21, at 4 tbl.II.B1. In 2007, the Trust Funds collected a total of \$784.9 billion dollars, of which \$656.1 billion dollars was attributable to payroll taxes, \$18.6 billion dollars was attributable to income taxation imposed on benefits received by high income beneficiaries, and \$110.2 billion dollars was income from interest on the Trust Funds' surplus. *Id.* The Trust Funds' total expenditures were \$594.5 billion dollars (\$584.9 billion dollars for benefit payments, 4 billion dollars for the Railroad Retirement financial interchange, and \$5.5 billion dollars for administrative expenses). *Id.* Thus, at the end of the year, there was a total annual surplus of \$190.4 billion dollars. *Id.*

90. These figures refer to the combined assets of the Old-Age and Survivors Insurance (OASI) and Disability Insurance (DI) Trust Funds. 2008 BD. OF TRUSTEES' REPORT, *supra* note 21, at 2. All figures referred to in this section are based on intermediate assumptions.

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.* at 18.

95. DIAMOND & ORSZAG, *supra* note 8, at 32. The Social Security actuaries have used the seventy-five year horizon consistently since 1965. *Id.* Before 1965, the valuation periods ranged from as short as thirty-five years to as long as eighty years. See Altman, *supra* note 55, at 16 n.18.

Security's financing is its seventy-five year actuarial balance,<sup>96</sup> that is, the difference between the program's income and cost expressed as a percentage of taxable payroll over seventy-five years.<sup>97</sup> According to the Board of Trustee's 2008 Report, Social Security's current seventy-five year actuarial balance is -1.70% of taxable payroll.<sup>98</sup> This means that an immediate increase of 1.70 percentage points in payroll tax rates (from the current level of 12.4% for employers and employees combined to 14.1%) would restore solvency to the Social Security system over the seventy-five year horizon.<sup>99</sup> "[R]eporting the imbalance in this way is not meant to recommend that the payroll tax rate be raised by this amount. Rather, it is a way of summarizing the magnitude of the financial difficulties at hand."<sup>100</sup> The Trustees' Report also offers a couple of other ways to illustrate the deficit. For example, the Report identifies the cumulative value of the system's income less cost, in present value, over seventy-five years.<sup>101</sup> Specifically, through the end of 2082, Social Security has a present-value unfunded obligation of \$4.3 trillion, which represents 0.6% of future GDP.<sup>102</sup>

Social Security must be reformed to address this long-term deficit.<sup>103</sup> While that task may appear daunting, it is important to put it in perspective. First, while not insignificant, Social Security's long-term deficit is much more manageable than that of Medicare. Specifically, Social Security's seventy-five year actuarial deficit of 1.70% of taxable payroll is less than half of Medicare's seventy-five year deficit of 3.54% of taxable payroll.<sup>104</sup>

---

96. DIAMOND & ORSZAG, *supra* note 8, at 30.

97. 2008 BD. OF TRUSTEES' REPORT, *supra* note 21, at 10.

98. *Id.* at 11.

99. *Id.* at 18.

100. DIAMOND & ORSZAG, *supra* note 8, at 30. The Trustees' Report also states that solvency over the seventy-five year horizon could be restored by reducing all current and future benefits by 11.5%. 2008 BD. OF TRUSTEES' REPORT, *supra* note 21, at 18. Similarly, this is not a recommendation for a benefit reduction.

101. *Id.* at 11.

102. *Id.*

103. Solving Social Security's seventy-five-year actuarial imbalance would not completely eliminate Social Security's financing difficulties. Over the infinite horizon, Social Security's unfunded liability is projected to be \$13.6 trillion dollars in present value or 3.2% of future taxable payroll or 1.1% of future GDP. 2008 BD. OF TRUSTEES' REPORT, *supra* note 21, at 13. That does not mean, however, that reform efforts must focus on solving the deficit over the infinite horizon. Such projections are necessarily imprecise and can make it easier to employ gimmicks to achieve balance. See DIAMOND & ORSZAG, *supra* note 8, at 32-33 (arguing longer projection horizons are beneficial but should not play a central role in current reform efforts).

104. 2008 ANNUAL REPORT OF THE BOARD OF TRUSTEES OF THE FEDERAL HOSPITAL INSURANCE AND FEDERAL SUPPLEMENTARY MEDICAL INSURANCE TRUST FUNDS 3 (using intermediate assumptions).

Moreover, while Social Security's unfunded obligation of \$4.3 trillion over the seventy-five horizon is hardly trivial, estimates for the long term cost of the Iraq war range from \$1 trillion to more than \$4 trillion,<sup>105</sup> and "the 2001 and 2003 tax cuts, if continued over the next seventy-five years, would reduce revenue by about \$12 trillion in present value, or roughly three times Social Security's actuarial imbalance over the same period."<sup>106</sup>

C. *Effective Reform Requires Increased Revenues, Reduced Benefits, or Some Combination of the Two*

There is no magic rabbit or costless way to resolve Social Security's long-term deficit.<sup>107</sup> Proponents of individual accounts may have other justifications for fundamentally restructuring the system, but solving the system's long-term deficit is not a reason to introduce individual accounts.<sup>108</sup> Restoring Social Security's solvency requires that the system's revenues be increased, benefits reduced, or some combination of increased revenues and reduced benefits.<sup>109</sup>

Revenue increases could take a variety of forms. For example, the taxable wage base could be increased. Under current law, both employers<sup>110</sup> and employees<sup>111</sup> must pay a tax of 6.2% of wages up to a maximum taxable wage base<sup>112</sup> that is indexed for

---

105. David M. Herszenhorn, *Estimates of Iraq War Cost Were Not Close to Ballpark*, N.Y. TIMES, Mar. 19, 2008, at A9 (reporting that estimates of the cost of the Iraq war after five years range from \$600 billion to four trillion).

106. DIAMOND & ORSZAG, *supra* note 8, at 31. Cf. Richard Kogan & Robert Greenstein, *President Portrays Social Security Shortfall as Enormous But His Tax Cuts and Drug Benefit Will Cost at Least Five Times as Much*, 2005 CTR. ON BUDGET AND POLICY PRIORITIES 1 (estimating the cost of making the 2001 and 2003 tax cuts permanent at 1.95% of GDP or \$11.1 trillion dollars).

107. John Laitner, *Soc. Sec. Solvency: A Crisis?*, 2005 UNIV. OF MICH. RET. RESEARCH CTR. POLICY BRIEF No.1, at 3 ("[T]here is no panacea for Social Security's looming solvency problems: we need to find new revenues, reduce benefits, or both.").

108. Virginia P. Reno & Joni Lavery, *Options to Balance Social Security Funds Over the Next 75 Years*, 2005 NAT'L ACAD. OF SOC. INS. No.18, at 3 ("Proposals to set up individual private, or personal, accounts as part of Social Security . . . by themselves, make no independent contribution to the long-term solvency of Social Security.").

109. U.S. DEP'T OF THE TREASURY, SOCIAL SECURITY REFORM: THE NATURE OF THE PROBLEM, ISSUE BRIEF NO. 11 (Sept. 2007) ("Social Security can be made permanently solvent only by reducing the present value of scheduled benefits and/or increasing the present value of tax revenues. Other changes to the program might be desirable, but only these changes can restore solvency permanently."). See also Reno & Lavery, *supra* note 108, at 3 ("To balance Social Security finances over the next 75 years will require either raising revenue, cutting benefits, or a combination of both steps.").

110. 26 U.S.C. § 3111(a) (2006).

111. 26 U.S.C. § 3101(a) (2006).

112. 26 U.S.C. § 3121(a)(1) (2006); 42 U.S.C. § 430(a) (2006).

increases in the national average wage. In 2008, the maximum taxable wage base is \$102,000,<sup>113</sup> and covers about eighty-four percent of total payroll.<sup>114</sup> The maximum taxable wage base could gradually be increased until it reaches eighty-seven percent or ninety percent of taxable payroll as some commentators have suggested.<sup>115</sup> In the alternative, the taxable wage base could simply be increased to a higher amount, such as \$250,000, or totally eliminated and all wages could be subject to the payroll tax.<sup>116</sup>

Another way to increase revenues is to increase the payroll tax rate. The current payroll tax rate is 6.2% for both employers and employees. If the payroll tax rate on both employers and employees were immediately increased by 0.85%, for a total increase of 1.70%, Social Security's seventy-five year deficit would be eliminated.<sup>117</sup> Revenues could also be raised by increasing the payroll tax rate by a lesser amount or by scheduling a tax rate increase to take effect in the future when Social Security is projected to have a cash flow deficit.<sup>118</sup>

Revenues could also be increased by extending coverage to state and local employees. Currently, the Social Security system only covers about seventy-five percent of all state and local employees;<sup>119</sup> about four million state and local government employees are not covered by the Social Security system.<sup>120</sup> A number of analysts and advisory groups have recommended that coverage be extended to include newly hired state and local employees.<sup>121</sup>

---

113. 2008 BD. OF TRUSTEES' REPORT, *supra* note 21, at 133.

114. According to the most recent statistical supplement to the Social Security bulletin, the maximum taxable wage base covered 83.6% of total covered earnings in 2006. 2007 SSA STAT. SUPP., *supra* note 27, at 4.13 tbl.4.B1.

115. *See, e.g.*, ALTMAN, *supra* note 51, at 301-02 (endorsing Robert Ball's proposal to gradually increase taxable wage base until it covers ninety percent of covered earnings); *see also* DIAMOND & ORSZAG, *supra* note 8, at 85-86 (recommending that taxable wage base gradually be increased until it covers eighty-seven percent of covered earnings).

116. For an analysis of the effect of such changes on Social Security's long-term deficit, see CONG. BUDGET OFFICE, PROJECTED EFFECTS OF VARIOUS PROVISIONS ON SOCIAL SECURITY'S FINANCIAL AND DISTRIBUTIONAL OUTCOMES tbl.1 § 5 (May 25, 2005).

117. 2008 BD. OF TRUSTEES' REPORT, *supra* note 21, at 18.

118. For discussion of these proposed changes and their effect on Social Security's solvency, see Reno & Lavery, *supra* note 108 at 8; CONGRESSIONAL BUDGET OFFICE, *supra* note 42, at tbl.1 § 5.1

119. ALTMAN, *supra* note 51, at 306.

120. DIAMOND & ORSZAG, *supra* note 8, at 90.

121. *See, e.g.*, ALTMAN, *supra* note 51, at 306-07; DIAMOND & ORSZAG, *supra* note 8, at 90-92; ADVISORY COUNCIL REPORT, *supra* note 8, at 19-20; U.S. NAT'L COMM. ON RETIREMENT POLICY, THE 21ST CENTURY RETIREMENT SECURITY PLAN: FINAL REPORT OF THE NATIONAL COMMISSION ON

Another way to increase Social Security's revenues is to transfer general revenues to the system or earmark other taxes for Social Security. For example, Robert Ball has proposed earmarking the estate tax for Social Security.<sup>122</sup> Under current law, the estate tax exemption is scheduled to gradually increase from \$1 million in 2002 to \$3.5 million in 2009, be abolished in 2010, and revived at its 2000 level beginning in 2011.<sup>123</sup> Ball has proposed that the estate tax be frozen at its 2009 level and the proceeds be earmarked for Social Security.<sup>124</sup>

Just as revenues may be increased in a variety of ways, there are a multitude of ways to decrease benefits. Perhaps the most straightforward, though not necessarily best, method of reducing benefits would be to impose an across-the-board reduction in benefits. For example, benefits could be reduced by three percent or five percent for all new beneficiaries beginning in 2010.<sup>125</sup>

Benefits could also be reduced by increasing the normal retirement age. Under current law, a retired worker is entitled to receive "full" benefits at her normal retirement age (NRA).<sup>126</sup> The NRA is sixty-five for workers who reached sixty-two before 2000 and is scheduled to increase gradually to sixty-seven by 2022.<sup>127</sup> If a worker retires before the NRA, her benefits are actuarially reduced to reflect the earlier collection of benefits.<sup>128</sup> Thus, increasing the NRA is almost economically identical to an across-the-board reduction in benefits for retirees.<sup>129</sup> In recent years, a number of policymakers and commentators have recommended that the currently scheduled increase in the NRA be accelerated and/or that the NRA be increased further.<sup>130</sup>

---

RETIREMENT POLICY 35 (1999).

122. ROBERT M. BALL, *THE SOCIAL SECURITY PROTECTION PLAN: HOW WE CAN COPE – CALMLY – WITH THE SYSTEM'S LONG-TERM SHORTFALL* 2-3 (Jan. 2006).

123. Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, 115 Stat. 69-72 (2001).

124. BALL, *supra* note 122, at 2-3; *see also* ALTMAN, *supra* note 51, at 299-301 (endorsing Ball's proposal).

125. If a benefit reduction of three percent for newly eligible beneficiaries were introduced in 2005, twenty percent of Social Security's long-term deficit would have been solved. Reno & Lavery, *supra* note 108, at 6. A five percent reduction would have solved thirty-two percent of the long-term deficit. *Id.*

126. 42 U.S.C. § 402(a) (2006).

127. 42 U.S.C. § 416(l) (2006).

128. 42 U.S.C. § 402(q) (2006).

129. Kathryn L. Moore, *Raising the Social Security Retirement Ages: Weighing the Costs and Benefits*, 33 ARIZ. ST. L.J. 543, 562-63 (2001).

130. *See* Kathryn L. Moore, *Social Security Reform: Fundamental Restructuring or Incremental Change*, 11 LEWIS & CLARK L. REV. 341, 380-81, n.273 (2007) (collecting authorities that advocate further increases in the normal retirement age).

Another way to reduce benefits is to change the benefit formula. For workers reaching age sixty-two in 2008, the Social Security benefit formula replaces ninety percent of the first \$711 of AIME, plus thirty-two percent of AIME between \$711 and \$4,288, plus fifteen percent of AIME above \$4,288.<sup>131</sup> Benefits could be reduced by reducing one or more of these factors. For example, all of the factors could be reduced by twenty percent, or the top two factors could be reduced from thirty-two percent to twenty percent and from fifteen percent to ten percent, respectively, or the top factor could be reduced from fifteen to ten percent.<sup>132</sup>

A third method of reducing benefits is to change Social Security's cost of living adjustments. Under current law, once initial Social Security benefits are calculated, they are then adjusted for increases in the cost of living.<sup>133</sup> Benefits could be reduced by reducing the annual cost-of-living increase by some set amount, such as one percentage point or by a half a percentage point.<sup>134</sup> In the alternative, a new cost of living measure could be used. Currently, benefits are indexed to changes in the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers (CPI-W).<sup>135</sup> Some analysts have argued that this measure should be replaced with a new "chained" CPI that takes into account the fact that individuals substitute purchases and change their spending habits as prices rise.<sup>136</sup> Cost-of-living adjustments are expected to be slightly lower under the chained CPI than under the current CPI-W.<sup>137</sup>

Of course, any revenue increase or benefit reduction has its own set of advantages and disadvantages. My purpose here is not to provide an analysis of the costs and benefits of each possible type of reform,<sup>138</sup> or even an exhaustive list of the possible types of

---

131. 2008 BD. OF TRUSTEES' REPORT, *supra* note 21, at 104 fig.V.C1.

132. According to the Congressional Budget Office, all three of these proposed changes would restore the Social Security system to solvency. CONGRESSIONAL BUDGET OFFICE, *supra* note 42, at tbl.1 § 2.

133. 42 U.S.C. § 415(i) (2006).

134. See Reno & Lavery, *supra* note 108, at 7 (comparing the impact of various cost of living changes on Social Security's solvency); see also Congressional Budget Office, *supra* note 42, at tbl.1, § 4 (analyzing the solvency effects of other changes to the cost-of-living adjustment).

135. Reno & Lavery, *supra* note 108, at 7.

136. *Id.*

137. *Id.*

138. For an analysis of the costs and benefits of some of the reform proposals, see Moore, *supra* note 130; Kathryn L. Moore, *Social Security Reform: An Analysis of the Ball/Altman Three-Point Plan*, in NEW YORK UNIVERSITY REVIEW OF EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION ch.22 (Alvin D. Lurie ed., 2007) [hereinafter Moore's Analysis of the Ball/Altman Plan]; Moore, *supra* note 129.

reform.<sup>139</sup> Instead, it is simply to identify some of the myriad ways in which revenues can be increased or benefits reduced.

#### D. Sooner is Better than Later

Although the Social Security system is currently running a surplus, most policymakers and analysts agree that the system's long-term deficit should be addressed sooner rather than later.<sup>140</sup> Acting sooner rather than later provides a number of advantages.

First, it allows for a wider array of possible reforms.<sup>141</sup> As discussed in the preceding section, there are a multitude of reform options currently available. Delay reduces the range of available options. For example, as discussed above, the normal retirement age is currently scheduled to gradually increase to age sixty-seven. Specifically, under current law, beginning in 2017, the normal retirement age is scheduled to increase two months each year until it reaches age sixty-seven for workers who reach sixty-two in 2022 and after.<sup>142</sup> The longer reform is delayed, the less viable the option of accelerating the currently scheduled increase becomes.

Second, the sooner change is implemented, the less severe it needs to be. To illustrate, solvency over the seventy-five year horizon could be restored by immediately increasing payroll taxes from the current level of 12.4% to 14.10%.<sup>143</sup> If no action is taken until the trust funds become exhausted, then the payroll taxes would have to be increased to 15.94% in 2041 and continue rising to 16.60% in 2082.<sup>144</sup> Alternatively, if benefits were immediately

---

139. For additional studies of the range of options, see generally Reno & Lavery, *supra* note 108, at 3-9; CONGRESSIONAL BUDGET OFFICE, *supra* note 42 at tbl.1 ; SOCIAL SECURITY ADVISORY BOARD, SOCIAL SECURITY: WHY ACTION SHOULD BE TAKEN SOON 27-37 (Sept. 2005); Craig Copeland, *Comparing Social Security Reform Options*, 2005 EBRI ISSUE BRIEF No. 281.

140. See SOCIAL SECURITY ADVISORY BOARD, *supra* note 139, at 20 (discussing the advantages of early action to reform Social Security); ADVISORY COUNCIL REPORT, *supra* note 8, at 16 (endorsing early reform action because it allows for more choices); GAO ANSWERS, *supra* note 38, at 31 (explaining that we cannot "wait for a more immediate solvency crisis" to reform Social Security because early action allows for more "budgetary flexibility"); Brown et al., *supra* note 11, at 338 ("While analysts may disagree over the most appropriate method of any reform, there should be little disagreement that the system is in need of reform and that acting soon to address the problem is preferable to doing nothing"). *But see* Neil H. Buchanan, *Social Security and Government Deficits: When Should We Worry*, 92 CORNELL L. REV. 257 (2007) (arguing that there is no need to act now to reform Social Security).

141. See SOCIAL SECURITY ADVISORY BOARD, *supra* note 139, at 20 ("There are more choices available earlier"); ADVISORY COUNCIL REPORT, *supra* note 8, at 16 ("[E]arly action also ensures that the widest possible array of options is available to policymakers.").

142. 42 U.S.C. § 416(l)(3)(B) (2006).

143. 2008 BD. OF TRUSTEES' REPORT, *supra* note 21, at 18.

144. *Id.*

reduced by about 11.5%, solvency would be restored to the system.<sup>145</sup> Delaying reform until exhaustion of the trust funds would require that benefits be reduced by twenty-two percent in 2041 and reductions continue until they reached twenty-five percent in 2082.<sup>146</sup>

Third, the sooner reform is carried out, the more widely the burden can be shared.<sup>147</sup> For example, if the maximum taxable wage base is immediately increased, then all current and future high-wage workers will have to bear the burden of this increased tax. If implementation of the change is delayed, then only future high wage workers will have to bear the burden. Earlier implementation allows the burden of change to be shared more evenly across generations.<sup>148</sup>

Fourth, earlier implementation allows for changes to be phased in more gradually<sup>149</sup> and thus ensure that successive generations are treated relatively equally.<sup>150</sup> The risk of abrupt change can be seen in the “notch baby” problem that arose when Congress modified Social Security’s inflation adjustment formula in the late 1970s. In 1972, Congress passed legislation that provided for the automatic indexation of Social Security beginning in 1975.<sup>151</sup> Unfortunately, the formula did not work in light of the high inflation experienced at the time.<sup>152</sup> Accordingly, Congress amended the formula, but only applied the new formula to individuals who reached retirement age after 1977.<sup>153</sup> The change in formula resulted in individuals reaching retirement age just after 1977 receiving benefits that were, on average, ten percent lower than those of individuals reaching retirement age the

---

145. *Id.*

146. *Id.*

147. *See id.* at 3 (“Making adjustments sooner will allow them to be spread over more generations”).

148. SOCIAL SECURITY ADVISORY BOARD, *supra* note 139, at 20 (“The net effect of delaying action is to reduce or eliminate the burden of repairing Social Security on earlier generations and to place an even heavier burden on later generations.”).

149. 2008 BD. OF TRUSTEES’ REPORT, *supra* note 21, at 3 (“The projected trust deficits should be addressed in a timely way to allow for a gradual phasing in of the necessary changes.”); SOCIAL SECURITY ADVISORY BOARD, *supra* note 139, at 20 (“Changes can be phased in more gradually.”); GAO ANSWERS, *supra* note 38, at 31 (“Acting soon would allow changes to be smaller and to be phased in so the individuals who are most likely to be affected, namely younger and future workers, will have more time to adjust their retirement planning.”).

150. SOCIAL SECURITY ADVISORY BOARD, *supra* note 139, at 20 (“Making gradual changes avoids creation of the large differences in benefit or tax levels between successive generations of retirees and workers that result when modifications are made precipitously.”).

151. AARON & REISCHAUER, *supra* note 79, at 83.

152. *Id.*

153. *Id.*



preceding year.<sup>154</sup> These “notch babies” felt shortchanged by the differential and vehemently protested the change.<sup>155</sup> Members of Congress introduced 113 bills to “correct” the situation, although, Congress ultimately chose not to change the differential treatment.<sup>156</sup>

Finally,<sup>157</sup> earlier and more gradual implementation provides workers with advance notice of impending changes so they are better able to prepare and respond to changes.<sup>158</sup> For example, if benefits are to be reduced, the sooner workers know, the more easily they will be able to make career and investment choices to make up for the loss in Social Security benefits.

### *E. Burden of Reform Should Be Widely Shared*

In theory, Social Security’s entire seventy-five year actuarial deficit could be resolved by immediately eliminating the taxable wage base for purposes of determining earnings subject to payroll taxes but not for purposes of crediting earnings in determining benefits.<sup>159</sup> I would not, however, recommend such a change for a number of reasons.<sup>160</sup> First, it would violate one of the nine principles underlying the current Social Security system, that benefits be related to wages.<sup>161</sup> Second, such an abrupt and significant change would not give affected workers affected ample to time to prepare for such a change. Third, immediately eliminating the taxable wage base could, at least arguably, have

---

154. *Id.*

155. *Id.*

156. *Id.* at 83-84.

157. The Social Security Advisory Board identifies three other reasons for prompt action: (1) confidence in the ability of Social Security to continue to pay benefits to future generations of retirees will be strengthened; (2) there will be less disruption in labor market participation; and (3) there will be less disruption in decisions about consumption and savings. SOCIAL SECURITY ADVISORY BOARD, *supra* note 139, at 20-21.

158. SOCIAL SECURITY ADVISORY BOARD, *supra* note 139, at 20 (“There will be more advance notice for those who will be affected, so they can plan for their retirement.”).

159. Indeed, such a change would result in a positive actuarial balance of 0.25% of taxable payroll. See Memorandum from Alice H. Wade, Deputy Chief Actuary, & Chris Chaplain, Actuary, Soc. Sec. Admin., to Steve C. Goss, Chief Actuary, Soc. Sec. Admin., Estimated Long-Range OASDI Financial Effects of Eliminating the OASDI Contribution and Benefit Base 3 (Oct. 20, 2003) (using the intermediate assumption of the 2003 Social Security Trustees’ Report).

160. I do support gradually increasing the taxable wage base until it reaches eighty-seven percent or ninety percent of covered earnings. Moore, *supra* note 130, at 377-78.

161. See *supra* Part II-A-3 (discussing Ball’s third principal that benefits be tied to wages). See also Reno & Lavery, *supra* note 108, at 3 (“Ever since Social Security began, the level of wages that are taxed has been linked to the level of wages that count toward benefits. This proposal would break that link.”).

an adverse impact on work effort by increasing the marginal tax rate of labor.

Finally, and most importantly, immediately eliminating the taxable wage base for tax but not benefit purposes would impose the entire burden of reform on a single subpopulation, the five or six percent of workers whose wages exceed the taxable wage base.<sup>162</sup> Requiring such a small subpopulation of covered workers to bear the entire brunt of reform is neither fair nor politically wise. Just as Social Security should be amended sooner rather than later, so that the cost of reform may be shared more evenly among generations, I believe that the cost of reform should be shared within generations as well.<sup>163</sup>

This is not to suggest that the burden of reform should be shared exactly equally within generations. I support the current system's progressive benefit structure. Nevertheless, I do not believe that the entire cost of reform should be imposed on a very small segment of Social Security beneficiaries or contributors.

#### *F. Social Security's Safety Net Should Be Retained*

When discussing Social Security reform, policymakers and commentators often discuss the effect particular reform options would have on the federal budget and the economy at large.<sup>164</sup> While these effects are not irrelevant, we must not lose sight of the fact that “[t]he essential objective of government pension policy is to provide a financially secure shelter to older Americans who are no longer working.”<sup>165</sup> Stated another way, the fundamental purpose of Social Security is to provide workers and their dependents with a safety net in the event of old-age, disability, or death.<sup>166</sup>

---

162. Whitman, *supra* note 22, at CRS-3 tbl.1.

163. *Cf.* U.S. DEPT OF THE TREASURY, SOCIAL SECURITY REFORM: A FRAMEWORK FOR ANALYSIS, ISSUE BRIEF NO. 27 (Oct. 2007) (“Once a decision is made as to how the Social Security reform burden should be distributed across reform cohorts, the natural next question is how the burden should be distributed within birth cohorts.”).

164. *See, e.g.*, DIAMOND & ORSZAG, *supra* note 8, at 45 (“A final set of objectives for Social Security reform is to improve overall performance of the American economy.”); GAO ANSWERS, *supra* note 38, at 34 (identifying “the extent to which a proposal achieves sustainable solvency and how it would affect the economy and the federal budget” as one of the three basic criteria that should be used to evaluate Social Security reform options); Edward M. Gramlich, *The Goals of Social Security Reform*, 58 WASH. & LEE L. REV. 1229, 1230 (2001) (contending that one of the two goals for Social Security reform should be to raise national savings). *See also* SOCIAL SECURITY ADVISORY BOARD, *supra* note 136, at 39 (describing the issue of how reform would affect the economy as among the questions that are likely to be raised in discussions about the future of Social Security).

165. Hecla, *supra* note 75, at 70.

166. *See* AARON & REISCHAUER, *supra* note 79, at 51 (describing Social

In December 2006, almost fifty million individuals received Social Security benefits.<sup>167</sup> Sixty-nine percent of the beneficiaries were retired workers and their dependents, thirteen percent were survivors of deceased workers, and eighteen percent were disabled workers and their spouses and dependent children.<sup>168</sup> The benefits were not overly generous,<sup>169</sup> the average monthly benefits were \$1,044 (or \$12,528 per year) for retired workers, \$978 (or \$11,736 annually) for disabled workers, and \$1,008 (or \$12,096 annually) for nondisabled widows and widowers.<sup>170</sup>

Despite their relatively modest size, Social Security benefits played a very important role in providing income security for many beneficiaries. Specifically, for sixty-six percent of beneficiaries, Social Security was the major source of income (providing fifty percent or more of total income).<sup>171</sup> For one-third of beneficiaries, Social Security contributed ninety percent or more of their income, and it was the only source of income for twenty-one percent of beneficiaries.<sup>172</sup> Indeed, Social Security has done an outstanding job of lifting the elderly out of poverty. Currently, about ten percent of the population aged sixty-five or older has an income below the poverty line.<sup>173</sup> Without Social Security, that figure would rise to almost fifty percent.<sup>174</sup>

Social Security's role of providing a minimum level of income protection for retired and disabled workers and their dependents should be retained.

---

Security as a "program that is intended to assure basic income during retirement, disability, and survivorship").

167. 2007 SSA STAT. SUPP., *supra* note 27, at 2.

168. *Id.*

169. The weighted average poverty threshold in 2006 for an individual aged sixty-five or older was \$9,669. *Id.* at 8.

170. *Id.* at 2.

171. *Id.* at 11.

172. *Id.*

173. *Id.* at 8.

174. See Arloc Sherman & Isaac Shapiro, *Social Security Lifts 13 Million Seniors Above the Poverty Line: A State-by-State Analysis*, 2005 CTR. ON BUDGET AND POLICY PRIORITIES 1 available at <http://www.cbpp.org/2-24-05socsec-pr.pdf> ("Leaving aside Social Security income, nearly one of every two elderly people--46.8%--has income below the poverty line.").

### G. Reform Will Require True Bipartisan Effort

The last time Congress significantly amended Social Security was in 1983.<sup>175</sup> At that the time, Social Security faced both a short-term funding crisis as well as a long-term deficit.<sup>176</sup> On December 16, 1981, President Reagan appointed a bipartisan commission, the National Commission on Social Security Reform, to study the short and long-term financial conditions of the system.<sup>177</sup> President Reagan charged the Commission with reporting its findings and recommendations to the President and Congress.<sup>178</sup> On January 20, 1983, the Commission reported its findings and recommendations,<sup>179</sup> and three months later President Reagan signed the Social Security Amendments Act of 1983 into law.<sup>180</sup> That law substantially embodied the recommendations of the Commission.<sup>181</sup> President Reagan praised the law as “a tribute to bipartisan action” and “a monument to the spirit of the compassion and commitment that unites us as a people. . . . Each of us had to . . . give up a little in order to get a lot.”<sup>182</sup>

Comprehensive reform of Social Security will not be achieved again until there is a true joint effort to address Social Security’s long-term deficit. In recent years, there have been so-called bipartisan efforts to reform Social Security. For example, on May 2, 2001, President George W. Bush announced the appointment of a sixteen-member bipartisan “Commission to Strengthen Social Security.”<sup>183</sup> The Commission issued a 135 page report outlining three different models for reforming Social Security in December

---

175. Social Security Amendments of 1983, Pub. L. No. 98-21, 97 Stat. 65 (1983).

176. John A. Svahn & Mary Ross, *Social Security Amendments of 1983: Legislative History and Summary of Provisions*, 46 SOCIAL SECURITY BULLETIN, July 1983, at 3.

177. Exec. Order No. 12,335, 46 Fed. Reg. 61,633 (Dec. 18, 1981).

178. *Id.*

179. GREENSPAN COMM’N, REPORT OF THE NATIONAL COMMISSION ON SOCIAL SECURITY REFORM (1983). For a fascinating insider’s account of the compromises and negotiations involved in reaching the final agreement, see ALTMAN, *supra* note 51, at 237-53.

180. Social Security Amendments of 1983.

181. See Svahn & Ross, *supra* note 176, at 4-5 (describing the provisions of the law as enacted and how they differed from the Commission’s recommendations).

182. See *id.* at 3 (quoting President Reagan).

183. Exec. Order No. 13,210, 66 Fed. Reg. 22,895 (May 2, 2001). See also Remarks on Establishing the President’s Commission To Strengthen Social Security, 1 PUB. PAPERS 477 (May 2, 2001), available at <http://www.socialsecurity.gov/history/reports/pcsss/potus.html> (reporting President Bush’s remarks at the announcement of the commission).

2001.<sup>184</sup> The Commission's report received extensive commentary<sup>185</sup> but did not lead to legislative change. The reason it failed to produce real change is because members of the Commission did not represent a fair cross section of American opinion. Instead, membership was limited to individuals who were committed to the President's principles, which included no increase in Social Security payroll taxes, no government investment of Social Security funds in the stock market, and the inclusion of individually controlled, voluntary personal retirement accounts.<sup>186</sup>

Effective Social Security reform will require a true joint effort. As Democratic Senator Conrad and Republican Senator Lindsey Graham have said, "[a] solution must be bipartisan; presidential leadership will be needed; rigid ideology must give way to workable solutions; and reasonable sacrifice will be required."<sup>187</sup>

#### IV. CONCLUSION

Reform of the Social Security system is inevitable. The only questions are how and when. In this article, I have offered seven principles to guide reform.

The principles call on Congress and the Administration to come together soon to make the hard choices necessary to bring Social Security into actuarial—or at least close actuarial<sup>188</sup>—balance over the next seventy-five years. The principles offer considerable flexibility in the final details of reform. They would retain Social Security's fundamental structure but gradually introduce changes on both the revenue and benefit side so as to distribute the burden of reform widely across generations and within generations.

A reform package based on these principles might include: (1) a gradual increase in the taxable wage base until it reaches

---

184. 2001 PRESIDENT'S COMM'N REPORT, *supra* note 5.

185. See, e.g., U.S. GENERAL ACCOUNTING OFFICE, GAO-03-310, SOCIAL SECURITY REFORM: ANALYSIS OF REFORM MODELS DEVELOPED BY THE PRESIDENT'S COMMISSION TO STRENGTHEN SOCIAL SECURITY (2003) (examining the reforms proposed by the 2001 President's Commission); see also PETER A. DIAMOND & PETER R. ORSZAG, REDUCING BENEFITS AND SUBSIDIZING INDIVIDUAL ACCOUNTS: AN ANALYSIS OF THE PLANS PROPOSED BY THE PRESIDENT'S COMMISSION TO STRENGTHEN SOCIAL SECURITY (2002) (analyzing the three reform models proposed by the 2001 President's Commission).

186. 2001 PRESIDENT'S COMM'N REPORT, *supra* note 5, at 13.

187. Conrad & Graham, *supra* note 73, at 21A.

188. Close actuarial balance requires that income be within plus-or-minus five percent of outgo over the next seventy-five years. The trustees have used this test to determine whether to recommend legislative changes since 1957. ALTMAN, *supra* note 51, at 297.

eighty-seven or ninety percent of taxable payroll;<sup>189</sup> (2) freezing the estate tax at 2009 levels and dedicating it to Social Security;<sup>190</sup> and (3) a gradual increase in the normal retirement age beyond that which is already scheduled under current law.<sup>191</sup> A reform package based on these principles would not include individual accounts or progressive price indexing because such changes would fundamentally restructure the Social Security system and risk dismantling the entire system.<sup>192</sup>

---

189. For an analysis of the costs and benefits of gradually increasing the taxable wage base, see Moore, *supra* note 138, at 22-7 to 22-11.

190. For an analysis of the costs and benefits of freezing the estate tax and dedicating it to Social Security, see Moore, *supra* note 130, at 360-68.

191. For an analysis of the costs and benefits of increasing the normal retirement age, see Moore, *supra* note 129.

192. See Moore, *supra* note 130, at 353-55; see Moore, *supra* note 80, at 5-22 to 5-25.

