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THE “CRISIS” IN RETIREMENT SECURITY: SOCIAL SECURITY IS THE ANSWER, NOT THE PROBLEM

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I. INTRODUCTION

This country, similar to other maturing societies, is facing a serious crisis in retirement security. Contrary to conventional wisdom, however, the predicted shortfall in Social Security is not the cause of that crisis. That shortfall is relatively easy to address. The issues raised in the long run by an aging population are more important—and more difficult—to address. It is particularly important—yet perhaps impossible—that decision-makers face this problem free from ideologically driven pre-determined positions or apocalyptic warnings about how this burgeoning population will break the nation’s bank.

If this nation wants to sustain the commitment made in 1935 – that later life should not be a time of economic peril – then demographic change requires attention. To do so fairly means setting aside recurring themes like spending on the old deprives the young, or that achieving retirement security requires radical solutions like privatization or sharply cutting Social Security benefits if not means-testing them. Emerging from an ideologically-driven and socially constructed crisis mentality, remedies of this type undermine the core values that have supported the Social Security program from its inception. They do not recognize that in practice the public-private split in sources of retirement income exacerbate already existing inequalities and efface differences based on gender and class. Most importantly, however, because the problems of an aging society affect virtually

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all of us, proposing solutions without first clarifying the problem and identifying the values this nation seeks to honor does a disservice to older Americans and their families.

In public life today, the focus is on entitlement reform, as if that is the key to budgetary salvation and, indirectly, to the future sustainability of Social Security and Medicare. As a drumbeat, such a goal does not require justification. It is simply something everyone believes must be done. Furthermore, almost everyone in the political/punditry arena contends they know exactly what they can do to “save” Social Security. In response to such beliefs and goals, however, one primary purpose of this article is to challenge that conventional wisdom, particularly the idea of “saving” Social Security. In contrast, an assessment of the “facts”—who benefits and who loses from today’s system—leads to the conclusion that a strong public commitment to retirement security is essential.

Meeting that commitment should not rely on benefit cuts, privatization, or means-testing. Instead, a commitment to retirement security calls for remedies that address the deepening inequalities that infuse this country’s retirement system as they mark society more generally. It must attend to both intra-generational and inter-generational aspects of any reforms to the social security system. In particular, proposed remedies must consider the consequences that result when two of the three legs of the retirement security stool – savings and pensions—are adequate only for the more affluent members of society.

First, this article considers how this socially constructed crisis gives license to problematic solutions that ignore the broader issues raised by an aging society. It does not encourage a systematic examination of how to assure retirement security, an ever-elusive goal in today’s vastly unequal society. Because all policy choices ultimately rest on values, there are core values that should be a basis for assessing policies in order to address the issues of an aging society and the goal of retirement security. An acceptable moral foundation will support broad risk-sharing that involves both the public and the private sector and will accept no changes that harm the least well off.

This article will then address the current threats to retirement security and the very limited, albeit harmful, responses now gaining policy attention. Using women as a focal point, as they are most likely to be harmed by these changes, this article will explore how retirement concerns are deeply embedded in every person’s personal history and in structural and cultural factors over which individuals have little control. The sociological term “cumulative disadvantage” is useful in this analysis.³ Finally,

3. See generally Dale Dannefer, *Cumulative Advantage/Disadvantage and the Life Course: Cross-fertilizing Age and Social Science Theory*, 58 B J.

this article will conclude with recommendations for sustaining Social Security in ways that are least harmful to the already disadvantaged, an ever-expanding group, and touch briefly on strategies to address the broader problem of an aging society and retirement security.

II. DECONSTRUCTING THE "CRISIS"

A crisis mentality, and in this case, a socially constructed crisis, is often generated to impose pre-existing solutions that rest on ideology rather than on analyses that facilitate compromise. In this case, the crisis mentality seizes on several important issues like the aging population, the future sustainability of Social Security, the need for investment in youth, the unwarranted gift to "greedy geezers," and the deficit as justification for "reforming" Social Security by modifying its benefit structure. Yet, the changes often proposed like delaying the retirement age and changing how the Cost of Living Adjustment (COLA) is calculated, are unlikely to contribute to those ends although they are aimed at both future sustainability and deficit reduction. They cannot solve the sustainability problem without additional revenue and will not contribute to deficit reduction since the phase-in period for these changes is too gradual to make a major impact on the deficit. Further, none of these proposals proposes ways to use of savings generated to create programs for children, an ostensible justification for cuts. Apart from the changes noted above, it is unclear what reform might mean.

Of all its causes, Social Security seems to be a non-offender or the least possible source of budgetary problems. Although it is part of the unified federal budget, by law Social Security cannot pay benefits without the income and assets derived from the payroll tax to cover those costs. It cannot spend money it does not have and, as such, cannot contribute to the deficit. Despite this requirement,, the assumption that "entitlement reform" is essential to getting spending under control has become the conventional wisdom outside of progressive journals, blogs, and news media.

One idea put forth is that the trust fund – that the accumulated contributions over time that exceeds current payouts—is a myth. This claim assumes that unlike other obligations to make good on the debt that the United States government assumes, the trust fund, held in T-bills, is different. If this idea gains public credibility, its implications are enormous. By

GERONTOLOGY: SOC. SCI. S327 (2003) (providing a summary of cumulative advantage/disadvantage theory), *available at* <http://www.case.edu/artsci/soci/Dannefer/documents/CumulativeAdvantageandtheLifeCourse-CrossFertilizing.pdf>.

law, the Social Security system can spend only what it has on benefits. If the trust fund is a myth, the Social Security system can only pay out what comes in annually through the payroll tax. Right now, that allows it to cover all its costs. However, in years to come, when that tax is no longer sufficient, it will need the money now invested in T-bills, that is, the trust. If the idea that the trust fund is a myth gains traction, the surplus invested in T-bills would lose its direct connection to the payroll tax and instead would be treated as general revenue. In that case, sharply reducing benefits would reduce the debit side of the federal budget.

The relegation of the trust fund to mythological status in terms of its availability to pay benefits to future retirees violates the intent of the 1983 reforms to Social Security and, in practical terms, makes the program almost unrecognizable. Money collected from the deeply regressive payroll taxes would remain on the asset side of the budget while payments to beneficiaries would be on the debit side. When payouts can no longer be met by current income from the payroll tax, they would drain the federal treasury, thus justifying sharp cuts. This would expose Social Security to political maneuvering in ways never seen before.

If Congress sustains the historic understanding that the money invested in T-bills (the trust fund) are resources available to fund retiree benefits as needed (obtained by cashing in T-bills) it is hard to see how Social Security is related to deficit reduction. As liberal economists Dean Baker⁴ and Paul Krugman⁵ point out, it is logically impossible to see the Social Security trust fund both as a myth and as the source of the retirement crisis. It makes no sense to hold that Social Security is in crisis because the trust fund will run out of money and also hold that the trust fund is just a fiction. The actual changes proposed today will have little effect on the deficit but will matter very much to those most reliant on Social Security. Yet, the real issue of how to assure some degree of retirement security gets no attention. Is the United States prepared to abandon its commitment made in 1935 that in old age people ought to be able to sustain a living standard that at least approximates what they had prior to retirement and that all the Western democracies support?⁶ If Congress does nothing to

4. Dean Baker, *Washington Post Discard All Journalistic Standards in Attack on Social Security*, CTR. FOR ECON. & POLY RES. (Oct. 29, 2011, 9:53 AM), <http://www.cepr.net/index.php/blogs/beat-the-press/washington-post-discards-all-journalistic-standards-in-attack-on-social-security>.

5. Paul Krugman, Op-Ed, *About the Social Security Trust Fund*, N.Y. TIMES, (Mar. 28, 2008, 4:57 PM), <http://krugman.blogs.nytimes.com/2008/03/28/about-the-social-security-trust-fund/>.

6. See generally GOSTA ESPING-ANDERSEN ET AL., *WHY WE NEED A NEW WELFARE STATE* (Oxford Univ. Press, pub., 2002) (providing a collection of articles on the topic of overhauling the world's welfare state).

strengthen Social Security and the other two legs of the retirement trio, the United States will de facto abandon its commitment. This country's vast and growing inequality suggests that it may indeed be willing to renege on that promise.

In sum then, Social Security is not in crisis; modest reforms can sustain the program into the indefinite future. It will be there for future generations unless Congress changes the legal requirement that all monies paid to beneficiaries must come from dedicated funding derived from both annual payroll taxes and the trust fund. If Congress' commitment to Social Security disappears, then the future of retirement will be increasingly uncertain. Congress could, of course, strengthen the system by spending more general revenue on retirement or mandating private pensions or automatic IRA savings. While important options, the details of which are beyond the scope of this article, such options are also unlikely in the current political atmosphere.

III. SITUATING SOCIAL SECURITY

The federal Old-Age, Survivors, and Disability insurance (OASDI) program, or Social Security, provides benefits to about 55 million people.⁷ The Old-Age and Survivors Insurance (OASI) trust fund covers 38 million retired workers or dependents of retired workers, and 6 million survivors of deceased workers.⁸ In the short-term, the OASI trust fund will be financially adequate and will remain above 100% of annual costs.⁹ However, beginning in 2021, OASI annual costs will begin to exceed total income.¹⁰ Because the baby boom generation will be retiring in large numbers by 2035, the number of beneficiaries will grow faster than the number of workers paying into the system.

OASI is financed through two income streams: (1) payroll taxes earmarked for Social Security that are then invested in United States Treasury Bills ("T-bills"); (2) the interest earned from such investments.¹¹ The Social Security system has used these investments to fund other programs and services as it would any investments in T-bills. Therefore, the Social Security program,

7. OFFICE OF RET. & DISABILITY POL'Y, U.S. SOC. SECURITY ADMIN., *Social Security (Old-Age, Survivors, and Disability Insurance) Program Description and Legislative History*, SSA.GOV, <http://www.ssa.gov/policy/docs/statcomps/supplement/2012/oasdi.html> (last visited Mar. 30, 2013).

8. BD. OF TRS., *supra* note 10, at 2.

9. Henry J. Aaron, *Social Security Reconsidered*, 64 NAT. TAX J. 385, 385 (2011), available at http://www.brookings.edu/~media/research/files/articles/2011/6/social%20security%20aaron/06_social_security_aaron.pdf.

10. Blahaus III & Reischauer, *supra* note 7.

11. Aaron, *supra* note 40, at 386.

by law, represents a negligible share of increased federal spending.¹² The program is designed as a pay-as-you-go system, and until recently, benefits paid were covered by earmarked taxes. The concern is when taxes, income, and interest payments will be unable to pay one hundred percent of promised benefits unless some changes are made to the retirement system.

The 2012 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds Trustees' Report buttresses the argument that Social Security is not in crisis.¹³ According to the Trustees, Social Security will be able to pay full benefits until 2035, generally considered a conservative estimate.¹⁴ By 2035, the Old Age Survivors Insurance (OASI) trust fund will be exhausted, but the system will still be able to cover 75% of retirement benefits by incoming payroll taxes. In 2086, income will be sufficient to pay 73% of retirement benefits¹⁵ subject to the unlikely possibility that there will be no changes to the system. Thus, to keep paying full benefits after 2035 will require some modest adjustments to the program. The fact that the program requires minor adjustments to ensure sustainability does not signal a crisis or require benefit cuts. Instead, for example, additional revenue can be generated by raising the FICA tax by 1-2%¹⁶ and by raising the cap on taxable earnings. From 2035-2050 the cost of OASI will decline as the already retired baby boom generation ages. After 2050, the OASI costs will increase, although more slowly than prior to 2035, ¹⁷ due to increase in life expectancy.

The Trustee's annual reports have never given any reasons to label Social Security as "in crisis," and thus there is no reason to call for drastic reforms to "save" it. In fact in 2012, the Trustees

12. See Aaron, *supra* note 40, at 389. (explaining that Social Security actuaries estimate that Social Security spending as a share of GDP will increase 1.2% but will fall by .2% as baby boomers begin to die and "total compensation subject to tax is projected to fall," and that the CBO predicts at 1.8% increase from 2010-20130, falling back to 1.5% from 2030-2050).

13. Bd. of Treasury., The 2012 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds 4 (2012), available at <http://www.socialsecurity.gov/oact/TR/2012/tr2012.pdf>.

14. Charles P. Blahous III & Robert D. Reischauer, *A Summary of the 2012 Annual Reports*, SOCIAL SECURITY, <http://www.ssa.gov/oact/trsum/index.html> (last visited April 3, 2013).

15. *Id.* Social Security trust-fund exhaustion refers to the time when the program does not take in enough revenues—through taxes or interested earned—to cover outlays. It is predicted that the OASI trust-fund will be exhausted in 2035. *Id.* If that were the case, for revenues to at least equal, if not exceed, pay-outs, there would need to be a 25% benefit cut.

16. Lower income workers can be protected by using a progressive formula in adjusting the tax.

17. *Id.*

Annual Report concluded that legislators should act "in a timely way in order to phase in necessary changes and give workers and beneficiaries time to adjust to them."¹⁸ The Trustees concluded that the program will play a critical role in the lives of the millions of Americans it serves and that through "informed discussion, creative thinking, and timely legislative action, Social Security can continue to protect future generations."¹⁹

IV. THE REAL CRISIS

The real crisis is the future of retirement for the majority of older people who are not affluent, which most often includes women and people of color. While the causes of this crisis are multiple, this article highlights two in particular: (1) increasing reliance on private solutions to the risks associated with aging, especially the economic ones; and (2) the widening gap between the rich and everyone else that deepens in retirement.

Specifically, lower wages or no wages at all have led to reduced or non-existent savings while the shift from defined benefit pension plans to defined contribution plans has effectively marginalized the less affluent who have limited resources to contribute and less ability to withstand bad times. Professionally managed defined benefit pension plans, which are plans where employers assume the risk in times of market downturns, have given way to 401(k) plans and IRAs, yet participation is highly stratified by income, educational levels, and race. Thus, the growing inequality in retirement income that these changes helped to create has mirrored the inequalities that pervade society.

The lingering recession has worsened these problems significantly. In fact, "between 1996 and 2004, participation rates for those without a high school degree fell from 3.8% to 2.7%."²⁰ Low-wage workers do not do well with individual accounts since it is more difficult to "manage risk with limited resources."²¹ Further, it is hard to save for retirement when current needs trump future ones. If one has a graduate degree, participation increases; for example, rates rose from 38% to 43% during the same period.²²

18. BD. OF TREASURY., THE 2012 ANNUAL REPORT OF THE BOARD OF TRUSTEES OF THE FEDERAL OLD-AGE AND SURVIVORS INSURANCE AND FEDERAL DISABILITY INSURANCE TRUST FUNDS 4 (2012), available at <http://www.socialsecurity.gov/oact/TR/2012/tr2012.pdf>.

19. *Id.* at 4-5.

20. Pamela Herd, *The Two-Legged Stool: The reconfiguration of Risk in Retirement Income Security*, 33 GENERATIONS 12, 14 (2009).

21. *Id.* at 13.

22. *Id.* at 14.

Hence, the more affluent, who are aided by favorable tax treatment, can accumulate more wealth for retirement than lower wage workers. Tax breaks for the affluent are worth approximately \$100 billion a year; they lower an individual's tax liability, and reduce general revenue without necessarily stimulating additional savings.²³ Hence, as in the case of tax expenditures more generally, tax breaks benefit the more affluent.²⁴ Approximately 80% of these retirement-savings benefits go to households with incomes above \$100,000.²⁵ Both pensions and savings are now contingent on the strength of the market, one's investment choices, one's financial literacy, and the amount that one can actually put into such retirement savings. All these conditions favor the more affluent.

The recent economic recession offered a telling lesson about the risks associated with private forms of retirement savings. The losses meant that for individuals with modest savings their anticipation of a moderately comfortable retirement became far less likely. Cash assets dropped by as much as 40%.²⁶ "In 2009, some 50 million workers lost a total of at least \$1 trillion in 401(k) plans."²⁷ Assets in terms of housing, where many middle-income families had most of their wealth, plummeted by \$2.7 trillion.²⁸ These changes exacerbated already existing inequalities. It is easier to weather a 40% loss when one's assets are a million dollars or more than it is when one's assets are under \$100,000, which actually exceeds the assets that most American have. These basic facts reflect a fundamental problem in intra-generational equity, an unsurprising continuity of what was true in retirees' working years.

Given these problems with savings and pensions, Social Security's importance escalates. Social Security is the only leg of the three-legged stool—pensions, savings, and social security—that is not "subject to investment risk or financial market fluctuations."²⁹ Social Security is the only existing retirement program that beneficiaries cannot outlive. and is also the only leg

23. Lowrey, *supra* note 5.

24. CHUCK MARR, CHYE-CHING HUANG, & JOEL FRIEDMAN, CTR. ON BUDGET & POL'Y PRIORITIES, TAX EXPENDITURES REFORM: AN ESSENTIAL INGREDIENT OF NEEDED DEFICIT REDUCTION 100 (Feb. 27, 2013), available at <http://www.cbpp.org/files/2-27-13tax.pdf>.

25. Lowrey, *supra* note 5.

26. Rawls, *supra* note 27.

27. ROBERT REICH, AFTER-SHOCK: THE NEXT ECONOMY AND AMERICA'S FUTURE 67 (Alfred A. Knopf, pub., 2011).

28. Herd, *supra* note 12, at 15.

29. CTR. ON BUDGET & POL'Y PRIORITIES, POLICY BASICS: TOP TEN FACTS ABOUT SOCIAL SECURITY 2 (Nov. 6, 2012), available at http://www.cbpp.org/files/PolicyBasics_SocSec-TopTen.pdf.

currently subject to public action. The contemporary resistance to actively intervening in the private sector by such actions as mandating pensions or attaching social goals to preferential tax treatment for privatized savings and pension plans leads to this conclusion.. This limited public role on the private side contrasts with other countries that may, for example, mandate private pension coverage.³⁰ Where this happens, the public and private sectors collaborate in assuring that certain target replacement rates are met.

For many Americans, these changes mean that they must work for as long as possible, a necessity that is particularly problematic for lower income workers who most need the earnings. For them, job opportunities are more limited and often more physically demanding than their health and age can manage. While beyond the scope of this article, an extended work life for the old has potential consequences that have yet to be studied. For example, as older people try to work longer, this may crowd out jobs and promotional opportunities for younger workers, which may fuel an unemployment spiral.

Despite various factors that contribute to the crisis in retirement security, this problems remains unaddressed. It calls for a general re-assessment of society's obligations for its aging population, a task that appears to be outside the realm of public action. Yet, when the "problem" turns on costs and how these costs must be managed if the deficit is to be reduced, not much will be done about the gradual erosion of retirement security for so many Americans. Rather than solve or even notice the real crisis, many politicians, pundits, and interest groups focus on a non-existent crisis and propose reforms that would make retirement a more elusive goal for everyone except the more affluent.

V. WHY RETIREMENT SECURITY IS A MORAL NECESSITY

A. POLICY AS A MORAL ENDEAVOR

In *Politics*, Aristotle reminds us that "every state is a community of some kind, and every community is established with a view to some good."³¹ In this context, "good" usually refers to the chance to be a moral agent, to live in ways that we value, and to flourish as human beings. "Goodness" matters without regard to our age. Values are the "goals and obligations that public policy aims to promote as desirable in their own right, rather than as

30. John Myles, *A new social contract for the elderly?*, in GOSTA ESPING-ANDERSEN ET AL., *WHY WE NEED A NEW WELFARE STATE* 130, () (Oxford Univ. Press, pub., 2002).

31. ARISTOTLE, *POLITICS* 1 (Benjamin Jowett, trans., 2000).

some clear means to some other specific objective.”³²

Yet, in this country, moral values, or the notion of the “good” rarely enter public debate with the exception of “family values,” the “sanctity of life,” or autonomy. Perhaps it is because they are too controversial *How can one know what is right or good? How does one deal with disagreements? Isn't morality relative and so impossible to see how it might relate to public policy or other choices that transcend individuals?* Without some moral foundation for choices made, there are no grounds for assessing alternatives and making recommendations that support identified ends.

In “ethics and public life, issues of philosophical principle press on us whether we like it or not.”³³ The need to offer rational foundations for the actions people take or the commitments and opinions they have compels them to ask questions about what may otherwise be taken for granted—why do I believe what I do? Rationality also urges people to understand and defend why they support one position over another. To that end, this article offers a critique of the contemporary situation, the proposals for change, and support for alternative policies.

B. MORAL QUESTIONS AND SOCIAL SECURITY

In considering retirement security, key questions recur: *Who is responsible? Is retirement security an individual or a collective responsibility?* For all of the Western democracies, the answer is collective responsibility with a strong role for individual effort, and accepting diversity in terms of income. *Yet, how much diversity is fair?*

In 1935, this nation decided that retirement was a universal good and that it should not be a time of impoverishment and economic risk. It recognized the diversity of rewards from the capitalist market place, then in deep trouble. At that time, and even more so nowadays, it is clear that individuals reap different rewards from work in a market economy.³⁴ Social Security’s design took these differences into account and sought to balance individual effort and collective responsibility. Social insurance was a shared responsibility against the social disharmony that

32. Martin Rein, *Reframing Problematic Policies*, in THE OXFORD HANDBOOK OF PUBLIC POLICY 389, 390 (Michael Moran, Martin Rein, & Robert Goodin, eds., 2008).

33. MICHAEL ROSEN, DIGNITY: ITS HISTORY AND MEANING (Harvard Univ. Press, pub., 2012).

34. Jerry Mashaw, *Social Insurance and the American Social Contract*, in IN SEARCH OF RETIREMENT SECURITY: THE CHANGING MIX OF SOCIAL INSURANCE, EMPLOYEE BENEFITS, AND INDIVIDUAL RESPONSIBILITY 95, 95-102 (T. Ghilarducci, A.D. Ooms, J. Plamer, & C Hill., eds., 2005).

inequality provokes, whereas pensions and savings, the other "legs" of the stool, focused on individual effort.

C. WHY COLLECTIVE RESPONSIBILITY IS ESSENTIAL

Today, accumulated research demonstrates what was not clear in 1935--socio-economic-political factors, generally outside of an individual's control, directly shape his or her retirement experience. Individual possibilities in retirement are directly affected his or her individual life histories, gender, race, and class, but also by the actions of the private sector and government. Equal opportunity is a dream, a goal, but not an actuality. Equal outcomes are not even a dream. Two legs of the stool are now collapsing, especially for the less well off.

The fact remains, all people want, or need, to stop working at some point. This calls our attention to justice and fair play. Today's situation also suggests that many people no longer see long-accepted diversity of income as fair; it is far more extreme than at any time in history since the gilded age. *What values are needed to keep the dream of retirement security alive and to restore a sense of fair play and justice in a system where those values are tattered?*

D. RETIREMENT AND FAIRNESS

Some people might agree that it is important to ask how to address retirement security fairly in a society that is confronting major demographic shifts, like the aging of the population. Some people may also agree that it is important to look at injustices within, rather than across age groups. Reinforced by structural changes and the ideological commitment to market solutions, income inequalities are powerfully reinforced and often exacerbated in retirement. These changes are largely beyond individual control making it even more important for society to ask, *what does fairness require?* It generally means that each individual should have equal opportunity to make his or her way in the world and to live their own version of the good life.³⁵ Is this notion of fairness an *individual or a collective responsibility?*

This article proposes that the Rawlsian concept of justice makes the most sense. This concept recommends that any changes in the status quo must work to benefit the least advantaged so that they can sustain dignity, continue to be moral agents, and flourish.³⁶ Economic insecurity makes all of these

35. In this moral sense, "goods" do not refer to an abundance of costly consumer goods.

36. See generally JOHN RAWLS, A THEORY OF JUSTICE (Harvard Univ. Press, pub., 1999) (providing a philosophical argument on how justice ought to

valued attributes unlikely. This claim is fundamental, and the question becomes: *how can this claim be realized in today's society?*

Based on this conception of justice, policy choices related to social security must support dignity, human flourishing, and social solidarity. These “goods” are essential to living a decent life. Yet economic insecurity, social marginalization, and societal inequality that so many experience in retirement undermine them. Because these factors are usually beyond individual control, their remedy is a public and private responsibility.

Furthermore, these particular goods have deep salience for women, people who are old, and other less-privileged individuals who have not been served well by the market. They should also have salience for Americans who continue to believe that people have obligations to one another as members of a community. As such, they challenge the hyper-individualism, and often the elitism that has dominated society, which has contributed to the nation's deepening inequality and, arguably, the moral failings that helped to create this inequality.³⁷

E. Other Moral Values

There are additional moral values that call for attention. For Avishi Margalit, an Israeli philosopher, dignity is “the feeling of respect people feel toward themselves as human beings.”³⁸ American philosopher John Rawls argues that most people “would wish to avoid at almost any cost the social conditions that undermine their self-respect,”³⁹ which is “perhaps the most important of all the primary goods.”⁴⁰ Dignity demands a minimum standard of decent treatment for every individual “not to be sacrificed for any less weighty considerations,” observes Australian philosopher Robert Goodin.⁴¹ Dignity is particularly important for older Americans when a sense of “otherness,” that is, being set apart because of one's differences from the dominant group in society, can overcome the belief that one is a person worthy of respect.⁴²

be characterized).

37. RUSHWORTH M. KIDDER, *THE ETHICS RECESSION: REFLECTIONS ON THE MORAL UNDERPINNINGS OF THE CURRENT CRISES* (Institute for Global Ethics, pub., 2009); DANIEL T. ROGERS, *THE AGE OF FRACTURE* (Harvard University Press, pub., 2011); E.J. DIONNE, *OUR DIVIDED POLITICAL HEART: THE BATTLE FOR THE AMERICAN IDEA IN AN AGE OF DISCONTENT* (Bloomsbury, pub., 2012); CHRISTOPHER HAYES, *TWILIGHT OF THE ELITES: AMERICA AFTER MERITOCRACY* (Crown Publishers, pub. 2012).

38. AVISHAI MARGALIT, *THE DECENT SOCIETY* 51 (Harvard Univ. Press, pub., 1996).

39. Rawls, *supra* note 27.

40. *Id.*

41. ROBERT E. GOODIN, *POLITICAL THEORY & PUBLIC POLICY* 85 (Univ. of Chi. Press, pub., 1982).

42. SIMONE DE BEAUVOIR, *THE COMING OF AGE* 291 (Patrick O'Brien,

According to the great 18th century German philosopher, Immanuel Kant, dignity has an incomparable, unconditional value.⁴³ For Kant, dignity is intimately associated with autonomy or moral agency and the ability to rule oneself.⁴⁴ As a practical matter, autonomy requires that people have meaningful options from which to choose.⁴⁵ To respect one's own dignity requires not having to prove deservingness, but also means being able to claim entitlements by right. That need is especially great when one grows old and other sources of dignity erode. This claim does not offer guidance on how to go about assuring this end, but it reminds individuals to ask certain questions as they assess policy efforts.

Another important end is social solidarity. In an era that focuses almost exclusively on protecting individual autonomy, the need for retirement security calls for a commitment of future, unknown strangers to keep public commitments and to acknowledge that all people live in an interdependent world where successes and failures are "never entirely our own."⁴⁶ As a general proposition, all people owe a debt to past generations and a responsibility toward future generations.

While these ideas do not instruct on how to translate social solidarity into specific policy choices, they do call for an inter-generational approach that sees all people moving through different roles during the course of their lives and so demands that each person be sensitive to each of those roles. The inter-generational approach also pulls each person back from the dominant individualism of current times. As the authors of this Article look ahead to the debates about Social Security, and perhaps one day to retirement security more generally, they will rely on these normative elements to assess how proposals measure up in terms of dignity, social solidarity, justice, and fair play.

VI. SOCIAL SECURITY MATTERS

Surveys suggest that many middle-aged individuals are facing a growing uncertainty about whether they will have enough money to live comfortably in retirement. In 2012, just over 50% of all workers said they are very or somewhat certain that this will be possible; in 1993, that number was nearly 75%.⁴⁷ For people

trans., 1996).

43. ROSEN, *supra* note 25.

44. *Id.*

45. *Id.*

46. Ann Robertson, *Beyond Apocalyptic Demography: Towards a Moral Economy of Interdependency*, 17 CAMBRIDGE UNIVERSITY PRESS 425, 446 (1997).

47. EMP. BENEFIT RES. INST., 2012 RCS FACT SHEET #1: RETIREMENT CONFIDENCE Fig. 1 (2012), available at <http://www.ebri.org/pdf/surveys/rcs/2012/fs-01-rcs-12-fs1-conf.pdf>.

already retired, the comparable numbers are 63% and 72%.⁴⁸ They are most confident about covering basic expenses but less sure about medical expenses and long-term care expenses.⁴⁹ For nearly “two-thirds of elderly beneficiaries, Social Security provides the majority of their cash income.”⁵⁰

As individuals get older, Social Security’s importance escalates, providing nearly all of their income for 45% of beneficiaries.⁵¹ Without Social Security, 43.6% of older people would be living in poverty; with Social Security that number is 8.7%.⁵² For one-third it provides more than 90% of their income and for one-quarter it is the sole source of income.⁵³

A. Retirement and Women

For women, Social Security is particularly important. Nearly 28% of unmarried women are poor—income lower than the federal poverty level—or near poor—income lower than 125% of the federal poverty level—and they constitute a significant proportion of the aging population.⁵⁴ More than 35% of women ages 65 years and older who are unmarried rely on Social Security for 90% or more of their income, compared to less than 22% of their married female counterparts.⁵⁵

These facts, while distressing, are not puzzling. Despite movement towards gender equality over the last several decades, women still enter a gender-segregated workplace where they are paid less than men, and women still provide the bulk of caregiving.⁵⁶ Low lifetime earnings are the result of caregiving and jeopardize women’s income security.⁵⁷ Women find themselves in economically unstable situations as a result of normative social roles, the gendered workplace, and the retrenchment of social and health policies that have served as buffers to the market and the health lottery.⁵⁸ Prime age women ages 26-59 earn 38% of that of

48. *Id.* at Fig. 2.

49. *Id.* at 2.

50. CTR. ON BUDGET & POL’Y PRIORITIES, *supra* note 21, at 5.

51. *Id.*

52. *Id.* at 4.

53. *Id.* at 5.

54. Alicia H. Munnell, *Why are so many older women poor?* 10 JUST THE FACTS 1, 1 (Apr. 2004), http://crr.bc.edu/wp-content/uploads/2004/04/jtf_10.pdf

55. OFFICE OF RET. & DISABILITY POL’Y, U.S. SOC. SECURITY ADMIN., *Importance of Social Security Relative to Total Income*, SSA.GOV Tbl. 9.B3 (2010), http://www.ssa.gov/policy/docs/statcomps/income_pop55/2010/sect09.html.

56. Munnell, *supra* note 52, at 3.

57. *Id.* at 3-5.

58. See STEPHEN J ROSE & HEIDI I. HARTMANN, STILL A MAN’S LABOR MARKET: THE LONG-TERM EARNINGS GAP iii-v (Inst. For Women’s Pol’y Res., pub., Feb. 1, 2004) (summarizing the wage gap between genders), *available at*

prime age men, partly because of part-time employment.⁵⁹ Women who work full-time only make two-thirds of men's earnings.⁶⁰ Without sufficient income, it is impossible for women to save money for retirement as they are spending their money on essentials such as rent, food, health care, and transportation.

Women's domestic responsibilities are often considered as private, not public, and have profound ramifications in terms of income security throughout life, including in retirement. The unpaid private caregiving labor provided by family and friends is valued at \$450 billion annually.⁶¹ Social expectations are so powerful that women have fewer "excuses" than men to not give care.⁶² Furthermore, given the wage discrepancies between men and women, it often makes more economic sense for women to leave the workforce or reduce working hours to engage in caregiving. In fact, women are more likely than men to take time off from work, reduce their working hours, or quit jobs when they have caregiving responsibilities.⁶³ Women also have fewer private pension benefits than men. "In 2002, only 21% of unmarried women aged 65 and older were receiving their own private pensions (either as a retired worker or survivor), compared to 28% of unmarried men. This leaves unmarried, older women more reliant on Social Security."⁶⁴ For women who receive pensions, their average benefits are half that of men⁶⁵ largely because they do not work enough hours.

<http://www.iwpr.org/publications/pubs/still-a-mans-labor-market-the-long-term-earnings-gap> (click "free download" for report).

59. *Id.* at 9.

60. SUNWHA LEE & LOUIS SHAW, GENDER AND ECONOMIC SECURITY IN RETIREMENT iii (Inst. for Women's Pol'y Res., pub., Apr. 1, 2003), available at <http://www.iwpr.org/publications/pubs/gender-and-economic-security-in-retirement> (click "free download" for report).

61. LYNN FEINBERG, SUSAN C. REINHARD, ARI HOUSER & RITA CHOULA, THE GROWING CONTRIBUTIONS AND COSTS OF FAMILY CAREGIVING 1 (2011), available at <http://assets.aarp.org/rgcenter/ppi/ltc/i51-caregiving.pdf>; Janet Finch & Jennifer Mason, *Negotiating Family Responsibilities* (London: Routledge, 1993).

62. In the author's opinion, we need to say that this theme infuses the book since I do not town it and have not pages citations in my own writing since they are not required in humanities and social science writing unless it is a direct quote.

63. Martha Holstein, *Long-term Care, Feminism & an Ethics of Solidarity*, in RACHEL PRUCHNO & MICHAEL A. SMYER, CHALLENGES OF AN AGING SOCIETY: ETHICAL DILEMMAS, POLITICAL ISSUES 156, (Johns Hopkins Univ. Press, pub, 2007).

64. MARTHA HOLSTEIN, ECONOMIC SECURITY ACROSS GENERATIONS: BACKGROUND, ANALYSIS, AND POLICY RECOMMENDATIONS 16 (2008), available at http://www.wowonline.org/documents/EconomicSecurityAcrossGenerations_Holstein_2008.pdf.

65. Munnell, *supra* note 52, at 3.

As a result of these factors, women often struggle in retirement to meet their basic needs. For nearly 30% of female beneficiaries over age 65, Social Security covers 90% or more of their total income; this is compared to 23% of men over age 65 rely on Social Security for the majority of their income.⁶⁶ This reliance on Social Security for the majority of income almost doubles from 21% for women ages 65-69 to about 38% for women 80 years and older; for men the increase holds but to a lesser extent, from 17% to 28%.⁶⁷

Furthermore, Social Security kept 38% of older women out of poverty in 2010, as compared to 32% of older men.⁶⁸ Women of all races have to stretch their Social Security income farther than men. On average, the monthly female Social Security retirement benefit is \$1,227.70, or \$14,732.40 per year as compared to the male average monthly benefit of \$1,570.01, or \$18,840.12 per year.⁶⁹

Although Social Security benefits have higher replacement income rates for low-income individuals, women's lower lifetime earnings and longer life expectancies mean that in retirement they strongly rely on public pensions, and as such, are "disproportionally affected by reforms that reduce or restructure public sector benefits."⁷⁰ The gendered nature of the intergenerational contract remains intact.

VII. A DESCRIPTION AND A CRITIQUE TO CURRENT PROPOSALS TO REFORM SOCIAL SECURITY

Social Security experts, researchers, pundits, and politicians have proposed different Social Security reforms. The most frequent proposals would result in reduced lifetime benefits.

One proposed modification is to replace the current method for calculating the Cost of Living Adjustment (COLA) with what is called the chained Consumer Price Index (CPI).⁷¹ The concept

66. OFFICE OF RET. & DISABILITY POL'Y, *supra* note 53, at Tbl. 9.B1.

67. *Id.* at Tbl. 9.B2.

68. AM. ASS'N OF RET. PERSONS, SOCIAL SECURITY: A KEY RESOURCE FOR WOMEN (Mar. 2012), http://www.aarp.org/content/dam/aarp/research/public_policy_institute/econ_sec/2012/Social-Security-Key-Retirement-Resource-for-Women-fs-251-AARP-ppi-econ-sec.pdf.

69. OFFICE OF RET. & DISABILITY POL'Y, U.S. SOC. SECURITY ADMIN., *Old-Age, Survivors, and Disability Insurance*, SSA.GOV Tbl. 5.B3 (2011), <http://www.ssa.gov/policy/docs/statcomps/supplement/2012/5b.html>.

70. Myles, *supra* note 22, at 147.

71. See BUREAU OF LABOR STATS., U.S. DEP'T OF LABOR, *Frequently Asked Questions about the Chained Consumer Price Index for All Urban Consumers (C-CPI-U)*, BLS.GOV, <http://www.bls.gov/cpi/cpisupqa.htm> (last visited Apr. 3, 2013) (providing general information about the Chained CPI). The Bureau of Labor Statistics created the chained CPI as a measure of inflation. BUREAU OF LABOR STATS., U.S. DEP'T OF LABOR, *Overview*, BLS.GOV, <http://www.bls.gov/>

behind the chained CPI is that as costs of certain goods climb, the consumer can replace them with less costly goods. However, this concept does not work when costs are related to medical care, because these costs are non-replaceable by nature and because they are often beyond a consumer's direct control. Retired individuals spend more of their income on medical care than younger individuals spend. On average, a single working individual with health insurance in Illinois spends \$151 each month on healthcare, whereas a single, working Illinoisan without health insurance spends \$354 each month. In comparison, a single, retired Illinoisan in good health spends an average of \$436 a month on health care.⁷² Risks for poor health also increase with age. Therefore, the \$436 a month will continue to climb. Thus, while the chained CPI may work for younger, urban workers who can trade-off consumer goods depending on price, it is not a sound measure for the Social Security retirement program.

Particularly damaging is the accumulated long-term effects of the chained CPI, as it would reduce Social Security benefits for all recipients by approximately 0.3% per year.⁷³ This reduction would compound annually, having a greater effect on individuals who live the longest,⁷⁴ which is a vulnerable population already. Moreover, changing to the chained CPI would have a minor impact

[cpi/cpiovrw.htm](#) (last visited Apr. 3, 2013). It is often cited as a more accurate way to factor in the increased cost of living into programs like Social Security, and also to tax brackets.

72. See generally WIDER OPPORTUNITIES FOR WOMEN, THE BASIC ECONOMIC SECURITY TABLES (2010) (providing the methodology for determining working Illinoisans economic security), available at <http://wowonline.org/documents/USBESTMethodologyReport.pdf>; WIDER OPPORTUNITIES FOR WOMEN, A METHODOLOGY TO DETERMINE ECONOMIC SECURITY FOR ELDERS (2006) (providing the methodology for determining elder economic security), available at <http://wowonline.org/ourprograms/eesi/documents/FinalWOWGINationalMethodology.pdf>.

73. Letter from Stephen C. Goss, Chief Actuary to Rep. Xavier Becerra, Ranking Member, Ways & Means Subcomm. (June 21, 2011), available at http://ssa.gov/oact/solvency/XBecerra_20110621.pdf. See generally STRENGTHEN SOC. SECURITY, STRENGTHEN SOC. SECURITY (2012), http://strengthen-social-security.org/sites/default/files/Chained_CPI_Fact_Sheet_FINAL_Feb-2013_0.pdf (providing a summary of the potential effects of cutting the COLA);

AM. ASS'N OF RET. PERSONS, ADOPTING A CHAINED CPI TARGETS THE OLDEST, POOREST AMERICANS (Dec. 2012), http://www.aarp.org/content/dam/aarp/research/public_policy_institute/econ_sec/2012/chained-cpi-targets-oldest-poorest-americans-AARP-ppi-econ-sec.pdf (providing a summary of the effects of adopting a chained CPI).

74. See STRENGTHEN SOCIAL SECURITY, *supra* note 70 (providing figures and discussions on the effects of implementing the chained CPI). A simple analysis of the effect of implementing the chained CPI, in comparison to utilizing the current CPI measure, show that benefit cuts would be cumulative over time, therefore affecting those who live the longer the most.

on ensuring long-term sustainability of the trust fund when compared to other modifications.⁷⁵ Other modifications to the benefit structure can more effectively ensure the program's future and are discussed in more detail below.

Another common proposal is to raise the full benefit retirement age.⁷⁶ This change would also reduce lifetime benefits. An analysis of the change leads to the conclusion that increasing the retirement age for full benefits by even one year will translate into a monthly benefit reduction of 7%,⁷⁷ regardless of whether the individual files at the early retirement age, the full retirement age, or at age 70.⁷⁸ Although a 7% reduction in lifetime benefits might not seem like very much to a person who also has a pension and savings, it would be devastating for low- and middle-income earners for whom Social Security is critical to making ends meet in retirement.

This proposal lacks sufficient protection for workers who cannot continue working and do not have adequate retirement income from other sources.⁷⁹ Further, there is no good plan for how to protect workers who need to retire early for health reasons but do not qualify for disability benefits under a "hardship exemption."⁸⁰ Any decrease in benefits fails the test of protecting

75. See generally Aaron, *supra* note 40 (presenting 14 different modifications that could be made to the Social Security Program and what their impact would be on the balance of the trust fund for the next 75 years, and in the 75th year).

76. *E.g.*, THE NATIONAL COMMISSION ON FISCAL RESPONSIBILITY AND REFORM, THE MOMENT OF TRUTH 50 (Dec. 2010) (proposing to increase the Social Security early and full retirement ages), available at http://www.fiscalcommission.gov/sites/fiscalcommission.gov/files/documents/TheMomentofTruth12_1_2010.pdf. If this reform were implemented, by 2075 the full retirement age would reach 69.

77. KATHY A. RUFFING & PAUL N. VAN DE WATER, CTR. ON BUDGET & POL'Y PRIORITIES, BOWLES-SIMPSON SOCIAL SECURITY PROPOSAL NOT A GOOD STARTING POINT FOR REFORMS 9-10 (Feb. 17, 2011), available at <http://www.cbpp.org/files/2-17-11socsec.pdf>.

78. Currently, the early-retirement age is 62 years old and the full-retirement age is gradually increasing to age 67. Age 70 is when benefits are given an increase because the individual chose to postpone collection of benefits until after the full-retirement age; this represents the maximum amount an individual can collect from Social Security. See U.S. SOC. SECURITY ADMIN., RETIREMENT BENEFITS (July 2012) (outlining when individuals can officially retire under the Social Security program), available at <http://www.socialsecurity.gov/pubs/media/pdf/EN-05-10035.pdf>.

79. See RUFFING & VAN DE WATER, *supra* note 74, at 11 (explaining that The Center for Budget and Policy Priorities outlines several different ways to address 'exceptions' to the increased Social Security eligibility age, yet, concludes that no 'equitable and administratively practical way' exists to carve out exemptions).

80. While some make the assumption that the Social Security Disability program would step in and address the needs of people who can no longer

the most disadvantaged.

To argue that raising the retirement age is an acceptable modification to Social Security on the grounds that people are living longer and able to work longer is an indefensible claim. To begin, not all Americans are living longer: life expectancy is directly correlated with income, and lower-income earners and less educated individuals are facing stagnation or decline in their life expectancy.⁸¹ New York Times columnist Paul Krugman succinctly summarizes the issue by asking, "Why should janitors work longer because lawyers are living longer?"⁸²

Furthermore, graphic racial disparities in longevity are well documented.⁸³ Any increase in Social Security retirement age would negatively affect minority populations in ways that it would not affect more affluent or non-minority groups. These basic facts call into question issues of fairness. Not only do non-white populations and individuals with lower lifetime earnings have shortened life spans, they are also unlikely to find jobs that they have the physical capacity to perform. Perhaps even more importantly, and turning to the concept of justice as fairness, the non-white population's chance to actually retire and live in ways that are valuable to them⁸⁴ are likely to be attenuated. Racial minorities are not in a position to retire without their Social Security benefits. Fairness suggests that each person gets their

work, there is considerable skepticism that this program will be expanded to meet that need.

81. Hilary Waldron, *Trends in Mortality Differentials and Life Expectancy for Male Social Security-Covered Workers, by Average Relative Earnings*, (Office of Policy, U.S. Soc. Security Admin., ORES Working Paper No. 108, 2007) (explaining that the gap in life expectancies between the top and bottom halves of male income earners has increased for those turning 65 years old from 1.9 years in 1982 to 5.3 years in 2006), *available at* <http://www.ssa.gov/policy/docs/workingpapers/wp108.html>.

82. Paul Krugman, *Class Wars of 2012*, N.Y. TIMES (Nov. 29, 2012), http://www.nytimes.com/2012/11/30/opinion/krugman-class-wars-of-2012.html?_r=3&.

83. *See generally* CTRS. FOR DISEASE CONTROL & PREVENTION, U.S. DEP'T OF HEALTH & HUMAN SERVS., HEALTH, UNITED STATES, 2011 (2011) (providing an exhaustive summary of socioeconomic status as it relates to health in the United States), *available at* <http://www.cdc.gov/nchs/data/atus/atus11.pdf#022>. According to the Centers for Disease Control and Prevention, the average life expectancy of a black male at birth is 71.1 years, as compared to 76.4 years for a white male. *Id.* at 108. If the retirement age is raised to 69 years (from 67 years for individual born in 1960 or later), this would represent, on average, a 50% loss in lifetime Social Security income for African American men, compared to a much less significant, yet still noteworthy loss of 22% of Social Security lifetime income for White men.

84. In philosophy the term live according to one's understanding of the good life is used as the basic defense of autonomy. It cannot be reduced to quality of life or standards of living. It can mean many different things that those specific terms do not capture.

chance to retire. The only difference between a 65 year old African-American man who worked as a laborer all his life and a 65 year white business executive is the fact that one has adequate income to retire without Social Security and the other does not. That difference cannot be morally defended. As such, policies like delaying the retirement age, which lead each group to being treated differently, cannot be considered just.

Neither switching to the chained CPI nor raising the retirement age will address the fundamental problem of closing the projected funding gap. Particularly troubling is that the increased accumulation of lifetime benefits for high income earners has more than offset the reductions in Social Security benefit reforms enacted in 1983;⁸⁵ however, this is not the case for low-income earners.⁸⁶ Increased longevity equates to increased benefits accumulated over time, meaning that higher income earners are experiencing increased longevity and increased accumulation of benefits, while lower income earners are experiencing neither an increase in longevity nor an increased accumulation of benefits.

As the unemployment rate continues to be high, and as older and poorer workers feel the effects of unemployment, the casual conclusion that raising the retirement age means that people will just have to work longer clearly comes from the most privileged. Only healthy, older Americans can work longer. *Where will the jobs for low- and middle-income workers come from?* Statistics clearly show that low-income, older workers fare the worst; individuals ages 55-64 with incomes less than \$15,000 were four times more likely to be unemployed two years later than their peers with incomes greater than \$25,000.⁸⁷

Further, the long-term unemployment rate of older adults coming out of the Great Recession, roughly from 2008 to the present, has risen substantially, and at a greater rate than younger workers.⁸⁸ In fact, “long-term unemployment can put older workers at risk for deferring needed medical care, losing

85. Summary of Public Law 98-21 (HR 1900), Social Security Amendments of 1983, available at <http://www.ssa.gov/history/1983amend.html> (last visited June 21, 2013).

86. Aaron, *supra* note 40, at 406.

87. A. Sum, *The Deteriorating Labor Market Plight of Lower Income Older Adults in the US.: The Case for an Expanded Senior Community Service Employment Program*, SENIOR SERVICE AMERICA, <http://www.seniorserviceamerica.org/site/resource-center/reports-publications-and-analyses/labor-market-plight-of-lower-income-older-adults/> (last visited Apr. 3, 2013).

88. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-12-445, UNEMPLOYED OLDER WORKERS: MANY EXPERIENCE CHALLENGES REGAINING EMPLOYMENT AND FACE REDUCED RETIREMENT SECURITY (Apr. 2012) (support found under “What GAO Found”), available at <http://www.gao.gov/assets/600/590408.pdf>.

their homes, and accumulating debt.”⁸⁹ These are not the only problems. Far too little attention has been directed to the long-term consequences on young and middle-aged workers if the elderly stay in the workplace longer.

Means-testing proposals also exist. Means-testing frames Social Security by converting it from a social insurance program to a welfare program.⁹⁰ While it is easy to understand the impulse to do so, this proposal is problematic on several grounds. For older people, the fact that Social Security is an earned benefit,⁹¹ means that Social Security supports dignity in a way that a means-tested program does not. This can be seen more easily by comparing Social Security to the program, Temporary Aid for Needy Families (TANF), which provides aid based on specific provisions that recipients are expected to meet. By replacing traditional welfare programs with TANF, TANF still carries the historic stigma associated with such programs. Stigma and proving one's deservingness cannot coexist with dignity. *How can a 75 year-old woman trust that her representatives in Congress will not decide that she should have reduced benefits or a lowered COLA because her income is \$40,000 when that same Congress refused to raise taxes on people earning \$400,000? Who will decide at what point reduced benefits are acceptable? How will they decide? How can the majority of members in Congress, the people who make these decision and who already believe that cutting benefits is the way to financial nirvana, be expected to think generously if benefit levels are put into their hands?*

Skepticism is justified, given the rather casual attitude taken toward virtually all social welfare programs. Moreover, means-testing Social Security will undercut its broad swath of support. Although not phrased this way in the policy debate, the morally important distinction between social insurance and supplemental security income turns on a commitment to dignity. Everyone pays into the system and everyone receives its benefits. It is simple, respectful, and easy to manage. No wonder it is one of the most popular in our history.⁹²

In response to the concern that many people will suffer if benefits are reduced, some argue that retirement ought to be primarily a private rather than a public responsibility. Unless Congress is willing to recreate the poor houses that preceded Social Security, it is impossible to defend individual savings as the

89. *Id.*

90. Social Security Reform Options. AARP Perspective 22, June 2012.

91. Earned benefit means that it is theirs by right as long as they meet the very basic criteria.

92. "Make Economic Security in Retirement Personal Responsibility." THE PUBLIC AGENDA ARCHIVES, June 24, 2013.

condition for retirement security. Wages and salaries for many working Americans have stagnated or declined in the past 30 years.⁹³ One does not have to be near poor⁹⁴ to experience threats to overall well-being; instead, even the middle class with limited savings and modest or non-existent pensions experience this threat.

An individual's ability to make ends meet and to weather the vagaries of life in old age are laid down by midlife. This ability is largely societal in origin since individuals have little control over the genderized labor market and normative family expectations. As a result, advantages and disadvantages accumulate over time.⁹⁵ Today's neoliberal ideology with its devotion to the free market, serving some very well but others quite poorly, leaves little room for an expectation that there will be a turn-around and makes escaping societal constraints all the more difficult. Even if there is a turn-around, no industrialized country in the world today assumes that individualized approaches to a secure retirement can work.

Contrary to current proposal, a guaranteed income floor for Social Security does not place older people, people with disabilities, and surviving widows and children in a position of subordination to legislators and bureaucrats. As noted above, claiming their rights is not demeaning because it does not require such subordination to power.⁹⁶ It is also administratively simple. These commitments to assuring a modicum of decency in old age have reduced poverty among older people, one of the great achievements of the past half century. In apt phrasing, Schultz and Binstock warn us that without such strong commitments, the "Golden Years" can easily become "the Tarnished Years."⁹⁷

93. Reich, *supra* note 19.

⁹⁴ To be near poor means one is always at risk for losing one's home or not being able to afford rent in a decent neighborhood, not being unable to afford medical care despite Medicare, or reducing their food budget, and having no resources for any leisure time activities.

95. Stephen Crystal & Dennis Shae, *Cumulative Advantage, Cumulative Disadvantage, and Inequality Among Elderly People*, 30 THE GERONTOLOGIST 437, 443 (1990); Angela M. O'Rand, *The Precious and the Precocious: Understanding Cumulative Disadvantage and Cumulative Advantage Over the Life Course*, 36 THE GERONTOLOGIST 230, 232 (1996); Dannefer, *supra* note 1, at s327.

96. Avishai Margalit, *The Decent Society*, Harvard University Press, (1998).

97. See JAMES H. SCHULZ & ROBERT H. BINSTOCK, *AGING NATION: THE ECONOMICS AND POLITICS OF GROWING OLDER IN AMERICA* 5-6 (Praeger Publishers, pub., 2006) (stating that there are available options which can prevent "the Golden Years" from becoming "the tarnished years").

VIII. MOVING FROM ENTITLEMENT REFORM TO RETIREMENT SECURITY: AN ALTERNATIVE TO CURRENT PROPOSALS TO REFORM SOCIAL SECURITY

This article argues that social insurance cannot fall victim to the excuse that this country "cannot afford" entitlements or that Social Security must be means-tested. In recent years, some got very rich at the expense of others who paid a heavy price, and are being asked to pay even more,⁹⁸ in terms of Social Security reforms that would decrease benefits. *Why should Social Security recipients, most of whom are not affluent, be expected to sacrifice what is at best a modest source of income, especially when other sources of retirement income are minimal? Why should benefit cuts be the primary route to "saving" Social Security while the government provides more affluent people with up to a \$100 billion in tax savings for their retirement accounts?* This article argues that any modifications to Social Security should be largely in the form of increased revenues. The only benefit cuts this Article supports are those for high-income earners. The remainder of this article will defend this approach to modifying the Social Security Program using an ethical lens based on actuarial data. In order for a Social Security reform to be ethically defensible, it must not harm beneficiaries who live on low or modest incomes, and it must preserve the program's near-universality. Before any changes are adopted, they must be ethically defensible and apply universally. Any reform that further harms already vulnerable or disadvantaged populations must be rejected.

First, the authors propose an increase in the percentage of taxable wages gradually to 90% is a financial structure modification to the Social Security Program that has many benefits: (1) it would generate revenue immediately; (2) it would improve the long-term financial solvency of the trust fund; and (3) it would close almost one-third of the funding gap over the next 75 years.⁹⁹

Secondly, the authors propose that the payroll tax base should be broadened to help increase revenue for the Social

98. See David Schmitz, *Why Justice Matters*, 117 ETHICS 433, 440 (April 2007) (explaining that part of society functions to help some people get rich at other people's expense).

99. Aaron, *supra* note 40, at 410; JANEMARIE MULVEY, CONG. RESEARCH SERV., RL32896, SOCIAL SECURITY: RAISING OR ELIMINATING THE TAXABLE EARNINGS BASE 4 (2010), available at <http://www.aging.senate.gov/crs/ss9.pdf>. Currently, all cash earnings of approximately 94% of workers are fully taxed. This has remained somewhat constant since 1983. However, the total wage base of earnings subject to taxes has decreased from 92% in 1937, to 90% in 1982, and most recently to about 83% in 2007.

Security Program and individual benefits. This modification results in a significant increase in revenues, closing the trust fund gap by almost half over the next seventy-five years, and almost one-quarter in the seventy-fifth year.¹⁰⁰ This would address some of the issues discussed above whereby higher-income earners' increased longevity equates to greater accumulated lifetime earnings over lower-wage earners. By decreasing the benefits for higher-income earners, the projected funding gap would narrow and the disparity in lifetime benefits would be offset.¹⁰¹ However, this modification must not make benefit cuts too far down the income ladder so as not to cut benefits for those who are not seeing an increase in longevity.¹⁰² Since 1984, critics have argued that that spending on programs that benefit older people take away from programs that support younger generations as they age. This is known as the problem of intergenerational equity. This article offers a practical and a moral response to that claim: older individuals who paid into the system for their parent's generation will have their children's generation pay for them. If this country cannot maintain our commitments to provide basic economic security for the older generation, who will do it but the next younger generation. While society may have romantic notions of inter-generational family living in the past, historians have demonstrated how family economies are damaging to both the older and younger generations.¹⁰³ Instead, it is essential to be reminded that there are few public expressions of social solidarity and interdependence as represented by Social Security. It permits generations to support one another without imposing undue burdens on any one generation. Hence. Efforts to privatize social security, a favorite of conservative think tanks like the Cato Institute would undermine social solidarity, increase risk and put pressure on interfamilial responsibilities that most would have a hard time bearing. *How would the near poor who have raised two or three children on less than \$50,000 a year be able to save approximately 17% to 25% of their income necessary to assure some*

100. Aaron, *supra* note 40, at 410-11.

101. Jonathan Gruber, *The Tax Exclusion for Employer-Sponsored Health Insurance*, 64 NAT'L TAX J. 511, 511-12 (2011). Currently, employer-financed health insurance is excluded from both payroll and income taxes. The exclusion from payroll taxes is a poor policy because it reduces the price of employer-sponsored health insurance relative to other consumer goods.

102. This proposal must be thoroughly researched prior to any specific recommendations are implemented.

103. See CAROLE HABER & BRIAN GRATTON, OLD AGE AND THE SEARCH FOR SECURITY 11, 25 (Harvey J. Graff, ed., 1994) (stating that some believed that intergenerational living would promote family ties, but the "existence of three generations within the home did not always lead to harmonious kinship relations").

modicum of ease in old age?¹⁰⁴

Bonds of reciprocity are not merely incidental; they are morally honorable and necessary.

Given the changes that have occurred in the financing of retirement over the past 20 years, issues of justice become even sharper than they have been in the past. The economic status of women and other less affluent people is a harsh reminder and indictment of policies that have reduced the standard of living for so many. While the market is recovering from severe losses, unemployment continues and wages and salaries have stagnated or dropped. This occurrence allows the more affluent to recover much of their losses while doing little for those lower down on the income scale.

The focus on intergenerational equity has detracted attention from the intra-generational problem that is rooted in the deepening inequalities that mark our society. While this article has focused on Social Security alone, fairness requires addressing the mixed system of public and private sources of retirement income in the U.S. as a whole. "The favorable tax regime available to occupational plans and to personal retirement accounts clearly warrants that they, too, be charged with social goods."¹⁰⁵ Hence, the disproportionate benefits that the more affluent derive from individualized pension plans like 401(k)s and IRAs, raises problems of justice. *Is it thus fair that pensions and savings, generally understood as private as opposed to public goods, but considered by the founders of Social Security as each necessary for retirement security, exacerbate inequality in retirement?* The public sector has responsibilities to level the playing field between lower income earners and higher income earners so that all continue to have ways to restore the missing legs of the proverbial Social Security "stool."

Once again, Rawls is helpful. He argues, "changes to the status quo should be of most advantage to the least advantaged."¹⁰⁶ In our mixed system of retirement income, this article has noted how income inequality, education, and race translate into significant differences in non-public benefits. The problem also arises on the public side since the payroll tax is a flat tax on income only with no exemptions or exceptions, and so consumes a far larger share of the income of those at the lower end

104. Larry Polivka & Charles F. Longino, Jr., *The Emerging Postmodern Culture of Aging and Retirement Security*, in AGING, GLOBALIZATION, AND INEQUALITY: THE NEW CRITICAL GERONTOLOGY 183, (Jan Baars, Chris Pillipson, Dale Dannefer & Alan Walker, eds., 2006).

105. John Myles, *What Justice Requires: Normative Foundations for US Pension Reform*, in THE NEW POLITICS OF OLD AGE 64, 73 (R. Hudson, ed., 2d ed. 2010).

106. *Id.*

of the earnings scale.

The larger, and generally unspoken, crisis is how retirement is becoming a possibility for fewer and fewer people. While this article can only touch upon this broad and important topic, it offers several suggestions for change. The possibility of providing a minimum guarantee above a poverty line indexed to national standards is within reach if we make it a national commitment. This plan serves the requirements of Rawlsian justice since it “establishe[s] a floor beyond which the most disadvantaged pensioners bear *none* of the additional costs of population ageing and so meets at least a minimum requirement of intergenerational justice.”¹⁰⁷

This article argues that the standard be based on the findings of the Elder Economic Security Initiative (“the Elder Index”). The Elder index¹⁰⁸ measures how much income an individual requires in retirement to meet the most basic living expenses *without* public or private assistance. It also takes into account housing, food, transportation, health care, and miscellaneous expenses like cleaning supplies, taxes, and other needs.¹⁰⁹ The index represents a conservative estimate for what a retired person would need in retirement income to make ends meet. Given that the average annual Social Security benefit is \$14,732.40 for women,¹¹⁰ we see that Social Security covers 77% of a woman’s expenses if she is single and owns her home without a mortgage. If she were to rent an apartment, Social Security would cover only 65% of her total living expenses. If she were to own a home and have to pay of a mortgage, Social Security would only cover 51% of her living expenses.

IX. CONCLUSION

The promise of retirement that supported the passage of Social Security in 1935 was more than keeping older people out of

107. Myles, *supra* note 22, at 163.

108. See *generally* GERONTOLOGY INSTITUTE, UNIV. OF MASS. BOS., THE NATIONAL ECONOMIC SECURITY STANDARD INDEX 75 (Dec. 1, 2012) (providing the National Elder Economic Security Standard Index), *available at* http://scholarworks.umb.edu/cgi/viewcontent.cgi?article=1074&context=gerontologyinstitute_pubs.

109. See *generally* LAURA HENZE RUSSELL, ELLEN A. BRUCE, AND JUDITCH CONAHAN, A METHODOLOGY TO DETERMINE ECONOMIC SECURITY FOR ELDERS (Dec. 2006) (providing a full methodological description of the Elder Index), *available at* <http://wowonline.org/ourprograms/eesi/documents/FinalWOWGiNationalMethodology.pdf>. The Elder index is a project of Wider Opportunities for Women in partnership with the Gerontology institute at the University of Massachusetts Boston. *Id.*

110. See OFFICE OF RET. & DISABILITY POL’Y, *supra* note 66 (based upon the average monthly benefit in retirement for women: \$1,227.70).

poverty; it was to give older people the chance to maintain the basic living standards that they had during their working years.¹¹¹ Given the racial and economic disparities in the U.S. today, that goal is even more important than it was in 1935. There seems to be so little political will to mitigate the accumulation of lifetime disadvantages caused by this inequality.

The politics of Social Security and retirement security more generally pose a greater threat to the program than its financial condition. Yet, the politics are harder to address than sustainability because they are buttressed by ideology, inaccurate information, and faulty generalizations (e.g., Americans are living longer rather than *more affluent* Americans are living longer). The ideological foundation for opposition to public retirement benefits rests on neo-liberalism that is explicitly anti-government, individualistic and market-based. In this view, with few exceptions, whatever government can do, the market can do better.¹¹² The politics associated with neoliberalism has been in the ascendancy since the 1980s and while it is not in control¹¹³ of the public agenda it has moved that agenda far to the right in a process that journalist George Packer describes as "the unwinding" in which systematic corner-cutting, rule-bending and self-dealing at the top infiltrate all of American society.¹¹⁴

Social Security is the best example of a successful government program that this country has today. It is one reason that President Bush's efforts to privatize a portion of Social Security failed. Programs like Social Security that were put in place during the New Deal are the antithesis of the anti-government ideological perspective. It is collective rather than individualistic; it represents a tacit compact between generations; and it is mildly redistributive in that lower income individuals get a higher replacement income than higher income individuals. Pensions in the form of 401(k)s and IRAs, with their substantial tax advantages and their individualistic foundation, meet these ideological requirements. They are also less costly for business, which has become a primary measure of what ought to be done, and what ought not to be done. However, they do not create additional savings and primarily benefit the already advantaged.

Social Security is the only remaining leg of the "three-legged retirement stool" that is intact and strong. With the demise of

111. Historical Background and Development of Social Security, SOCIAL SECURITY ADMINISTRATION, *available at* www.ssa.gov/history/briefhistory/3.html (last visited on 6/24/13).

112. Harvey, David. Neoliberalims as Creative Destruction. SWEDISH SOCIETY FOR ANTHROPOLOGY AND GEOGRAPHY, 88B (2): 145-158. 2006.

113. *Id.*

114. *Id.*

defined benefit pensions and the struggle for the average American to put away sufficient savings for retirement, Social Security's social insurance platform must be protected if retirement is an option.

Despite political and media attempts to depict the Social Security retirement program as in "crisis," with modest modifications, it will remain financially solvent over the next 75 years and beyond. There are many proposals that ensure its financial solvency that also support dignity, social solidarity, and fair play. The program's social insurance structure is sound and must be maintained. Its future funding gap is moderate and can be ameliorated with early attention; there is no reason for alarm or crisis. The majority of the funding gap should be closed through increased revenues undertaken in ways that will protect the working population from higher payroll taxes, a problem easily solved through the tax structure.

If the economy recovers, younger workers should have no trouble handling changes in the payroll tax, especially if it is made more progressive. That reform will be easier for them than asking retirees to live on even less.¹¹⁵ A reduction or even closing of the tax expenditures related to privatized retirement savings can also be used to support the program. Such changes would primarily affect the people who would save with or without tax breaks since they have ample disposable income. Further, the myth of the "greedy geezer" must finally be put to rest. Not only is the phrase offensive, but it also distorts the actual situation of older people. For nearly 25% of retirees, Social Security is the only income they have, and "48% of current older Americans would be below the poverty line without their monthly Social Security benefits."¹¹⁶

The current system addresses many needs at once. It supports dignity and financial independence thus protecting both younger and older generations. This universal system "pools risk broadly and thereby protects everyone against financial hardship in old age."¹¹⁷ While individuals can do much on their own, everyone needs the laws, institutions, and infrastructure. With all the changes and varied threats that lie ahead, it is time to

115. Myles, John. What Justice Requires: Normative Foundations for U.S. Pension Reform in *The New Politics of Old Age Policy*, R. Hudson (ed.) 2nd ed., Johns Hopkins University Press, 2010, at 64-86.

116. Richard C. Leone, *Forward*, in *IN SEARCH OF RETIREMENT SECURITY: THE CHANGING MIX OF SOCIAL INSURANCE, EMPLOYEE BENEFITS, AND INDIVIDUAL RESPONSIBILITY* v, vi (T. Ghilarducci, A.D. Ooms, J. Plamer, & C Hill, eds., 2005).

117. Teresa Ghilarducci, Van Doorn Ooms, John L. Palmer & Catherine Hill, *IN SEARCH OF RETIREMENT SECURITY: THE CHANGING MIX OF SOCIAL INSURANCE, EMPLOYEE BENEFITS, AND INDIVIDUAL RESPONSIBILITY* 7 (2005).

revitalize the submerged communal values that motivated this country in the past. Hyper-individualism, and meritocracy sliding into elitism has served a few very well but for most, it has failed. It is time to switch course.

