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Social Security at 75 **A Celebration and a Caution**

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When CLEARINGHOUSE REVIEW invited me to write a reflection essay about the seventy-fifth anniversary of the Social Security Act, I pondered what to say. In almost forty years of legal practice, my main adversary has been the Social Security Administration. Many advocates, like me, have done battle with the agency on a daily basis to keep the administration fair and honest. But I think all of us would agree that, no matter what the day-to-day frustrations with the administration, we share more than a fundamental respect for the Social Security Act. Were we to have the time to think about it, we share amongst ourselves and with most Americans an absolute belief that the Social Security Act is an institution on which we all rely and, at certain points, depend. We assume, rightly or wrongly, that it will continue in perpetuity the insurance benefits that it has been providing for almost seventy-five years.¹ Practically anyone who is retired, disabled, or blind and unable to work or who has a parent, grandparent, or dependent child recognizes that the benefits of the Social Security Act not only support them and their loved ones but take an immediate financial burden off the shoulders of their children, who might otherwise be required to support them.

So much has been said and written over the years, from all sides of the political spectrum, about social security. This is not an essay about politics (although politics looms large in the social security arena) or about economics. Rather, and very briefly, it is about the fundamentals: where the Social Security Act came from, what social security has meant to this nation, including the cynics, and why, on its seventy-fifth anniversary, we, as a people, should be glad *and* proud that the system came into being

¹The first social security benefit was not actually paid until 1940 (Social Security Administration, Social Security Online, Historical Background and Development of Social Security (last reviewed Oct. 6, 2010), <http://bit.ly/diBech> ("Major Provisions of the Act")).

and continues to exist. This essay comes, as well, with a caution that this greatest social program our country has ever enacted must be safeguarded for future generations.

We can easily forget how all encompassing the original Social Security Act was—it covered not only old-age benefits for retired workers, and eventually their spouses and other dependents, and of course, later on, the disabled, but also unemployment insurance for those who could not find work and public assistance benefits for needy aged, needy blind, and needy dependent children.² The key was not that the benefits initially paid were so generous but rather that the vision behind the legislation was extraordinarily comprehensive and cohesive. For the first time in American history, economic and social problems were not dealt with by a patchwork response to a sudden or ongoing crisis or by reference to private charity but rather were subject to a plan on which then-living citizens could eventually rely and their children (and children's children) could depend.

America was by no means the first nation to enact social insurance. In fact, compared with Western Europe, we were latecomers. The honor of “first” went to Germany, which, at the moment our social security system was being created, was, ironically, engaged in tearing to pieces the social fabric of a whole civilization.³ But the times were hard for everyone: As we know, the 1930s saw the Great Depression, with 25 percent of all American workers without jobs, and most of the rest just scraping by.⁴ Banks failed, and from top to bottom businesses closed. Bread lines and soup kitchens formed in every city, and often the old went hungry to save the young. The Great

Plains turned into a dust bowl, suffering extremes of weather—droughts, floods, blizzards, and dirt storms—because grasslands that should never have been plowed had been planted with crops year after year, destroying thin top soil over millions of acres, which took decades to restore. People were on the move, and social unrest was palpable. And over the course of the 1930s we came to realize that war was looming in Europe. This was not a time for the weak of stomach or of heart.

The concept of a social contract, uniting all members of society no matter how individually different they might be, to achieve a worthwhile social goal has deep roots in Western culture going as far back as Socrates. But in more modern times the concept is associated with John Locke (1632–1704) and Jean-Jacques Rousseau (1712–1778), who focused on the economic relationship between individuals and society. They undoubtedly influenced Thomas Paine to say in 1795, “[W]ere a workman to receive an increase in wages daily he would not save it against old age Make, then, society the treasurer to guard it for him in a common fund,” and John Quincy Adams to tell Congress in 1825,

The great object of the institution of civil government is the improvement of the condition of those who are parties to the social compact, and no government, in whatever form constituted, can accomplish the lawful end of its institution but in proportion as it improves the condition of those over whom it is established.... But moral, political, intellectual improvement are [sic] duties assigned

²Even national health insurance became part of the mix. In 1939 Pres. Franklin D. Roosevelt, attempting to enact a national health plan, told Congress: “The health of the people is a public concern; ill health is a major cause of suffering, economic loss, and dependency; good health is essential to the security and progress of the Nation (Franklin D. Roosevelt, Message to Congress on the National Health Program (Jan. 23, 1939), <http://bit.ly/9HpsT8>; see also JONATHAN ALTER, *THE DEFINING MOMENT: FDR’S HUNDRED DAYS AND THE TRIUMPH OF HOPE* 166 (2007) (“[Roosevelt] favored what he called ‘cradle to grave’ coverage, including national health insurance. But he knew that trying to insulate average Americans from the ravages of the market was a long-term process. So, in public, he borrowed a term from the private sector and spoke vaguely of ‘social insurance’”). Of course, even with the passage of the Affordable Care Act in March 2010, universal health care coverage is still a dream unfulfilled.

³German social insurance policy developed soon after the unification of Germany in 1871 (DEBORAH A. STONE, *THE DISABLED STATE* 56–68 (1984)).

⁴ROBERT H. FRANK & BEN. S. BERNANKE, *PRINCIPLES OF MACROECONOMICS* 98 (3d ed. 2007).

by the Author of Our existence to social no less than to individual man. For the fulfillment of those duties governments are invested with power, and, to the attainment of that end—the progressive improvement of the condition of the governed....⁵

Concerns for the well-being of the common man in the form of a social insurance plan were expressed in this country well before the upheavals of the 1930s and even before the dislocations of the First World War.⁶ Henry R. Seager, economist and teacher, observed in 1910:

The proper method of safeguarding old age is clearly through some plan of insurance.... [F]or every wage earner to attempt to save enough by himself to provide for his old age is needlessly costly. The intelligent course is for him to combine with other wage-earners to accumulate a common fund out of which old-age annuities may be paid to those who live long enough to need them.⁷

And in 1912, after the end of his last presidency, Theodore Roosevelt—a life-long progressive—said: “We pledge our-

selves to work unceasingly in State and Nation for ... [t]he protection of home life against the hazards of sickness, irregular employment and old age through the adoption of a system of social insurance adapted to American use.”⁸

The tension between the recognition that ordinary citizens had no control over the larger economic forces to which they were subject and the fear that providing assistance would destroy individual “initiative, thrift and enterprise” has been a continuing theme throughout the history of our country and clearly continues among conservatives today.⁹ In the 1930s being poor and elderly and winding up in the poorhouse was still a realistic concern.¹⁰ The other side of the coin reflecting those generally in power in the early twentieth century, as well as many groups and individuals with or seeking political power now, makes the following statement all too familiar:

The adoption of a utopian philosophy as social policy has produced a society where greed is no longer widely condemned, where the condition of the less fortunate is taken as a moral failing on their part, and where the willingness to contribute to

⁵Thomas Paine, *Agrarian Justice* (1795), reprinted in Social Security Administration, Social Security Online, Social Security History (n.d.), <http://bit.ly/cXbiAs>; John Quincy Adams, First Annual Message [to Congress] (Dec. 6, 1825), reprinted in John T. Woolley & Gerhard Peters, *The American Presidency Project* (n.d.), <http://bit.ly/bNP7yZ>.

⁶There were, of course, many other economic upheavals and significant periods of depression in this country throughout the nineteenth and twentieth centuries.

⁷HENRY R. SEAGER, *SOCIAL INSURANCE: A PROGRAM OF SOCIAL REFORM* 118–19 (1910), <http://bit.ly/9aErjh>. Seager was an economist and teacher whose central theme was to better the working conditions and the general welfare of the working man within a framework of *laissez-faire*, the doctrine that government should not interfere with the economy except to maintain law and order (see Kheel Center for Labor-Management Documentation and Archives, Cornell University Library, Collection No. 5249, Guide to the Henry R. Seager Research Notes and Monographs, 1890–1923 [Bulk 1902–1923] (1968), <http://bit.ly/bVA5Re> (“Biographical Note”).

⁸Progressive Party Platform of 1912 (Nov. 5, 1912), <http://bit.ly/cZDVhZ>.

⁹As Arthur J. Altmeyer, commissioner of social security, 1946–1953, said, “[t]here are some who believe that providing a minimum basic security for the people of this country will merely encourage them to rely upon the Government instead of upon themselves. I submit that such fears arise out of a basic lack of confidence in democracy and the common man. I believe that assuring people a minimum of subsistence will encourage them to strive for something still better for themselves and their families. I do not believe that we can expect the helpless and the hopeless to practice the prized virtues of independence” (Arthur J. Altmeyer, *Needed Changes and Expansion of Social Security* (address at National Conference of Social Work, March 12, 1943), reprinted in Social Security Administration, Social Security Online, Special Collections: Social Security Pioneers (n.d.), <http://bit.ly/dCbTK3>). And note further the words in 1914 of Harry Hopkins, close adviser to Pres. Franklin D. Roosevelt: “There is always the danger that in our dread of making people dependent we shall cease doing good for fear of doing harm” (Social Security Administration, Social Security Online, History Page: Additional Quotations (n.d.), <http://bit.ly/ckKu8>).

¹⁰As Justice Benjamin N. Cardozo wrote in the U.S. Supreme Court case deciding the constitutionality of the Social Security Act, “[t]he hope behind this statute is to save men and women from the rigors of the poor house as well as the haunting fear that such a lot awaits them when journey’s end is near” (*Helvering v. Davis*, 301 U.S. 619, 641 (1937)).

broad public projects is replaced by: “It’s your money, the government shouldn’t tell you what to do with it.”¹¹

The political, social, and economic complexities of the early twentieth century cannot be gainsaid and, no matter how interesting, cannot be the subject of this short essay. The important point is that, while millions of Americans were suffering the impact of economic dislocation and the resultant insecurities, Pres. Franklin D. Roosevelt—applying all his political acumen and rhetorical genius and using his fireside chats and messages to Congress and coopting every interested party to ally some strange bedfellows—managed the passage of the Social Security Act on August 14, 1935.¹² A significant part of what he accomplished was to build a firewall between social insurance and public assistance, making clear that wage contributions of the individual created a risk pool of rich and poor, of educated and uneducated, of those who would at some point become sick and inevitably elderly if they lived long enough, and of people who would never get sick or would not ever reach old age.¹³ In the end “a social security system spreads these costs more evenly among groups of people and over periods of time, thereby making bearable costs and losses which otherwise are unbearable and lead to destitution and want.”¹⁴ In

sum, universal social insurance is one of those precious ties that have bound, and continue to bind, our society together, as an American economist and Princeton University professor aptly put it.¹⁵

The Social Security Act brought sanity out of chaos. It gave the American people in the 1930s hope when things seemed at their bleakest. It is a foundational document, the keystone of the social contract that continues, despite perennial urging to the contrary, to protect a majority of Americans from the potential for unbearable want and destitution. Over the years it has prevented a high percentage of elderly beneficiaries, especially women, from joining the ranks of the poor. As Margaret Heckler, secretary of health and human services, said in 1985 in observation of the fiftieth anniversary of the Social Security Act,

[w]hen historians write a retrospective of the 20th century, Social Security ... will undoubtedly be identified as the most significant piece of legislation enacted during that 100-year period. Born in adversity and tempered by crisis, Social Security—amended on numerous occasions over the years—has done more to lift and keep Americans out of poverty than any other governmental initiative.¹⁶

¹¹Robert D. Feinman, *Ayn Rand’s Social Policy* (2004), <http://bit.ly/colDer>. Feinman, who died in 2009, was a political philosopher, public policy maven, independent economist, and blogger; his essays are in <http://robertdfeinman.com/society/> and www.economicpopulist.org.

¹²Social Security Act, Pub. L. No. 74-271, 49 Stat. 620 (1935) (codified as amended at 42 U.S.C. §§ 400 *et seq.*).

¹³Arthur Schlesinger Jr. quoted Franklin D. Roosevelt from a conversation: “We put those payroll contributions there so as to give the contributors a legal, moral and political right to collect their pensions With those taxes in there, no damn politician can ever scrap my social security program” (ARTHUR M. SCHLESINGER JR., *THE AGE OF ROOSEVELT: THE COMING OF THE NEW DEAL* 308–9 (1988), as quoted in Social Security Administration, Social Security Online, In-Depth Research—Early Issues: Constitutionality of Social Security Act (n.d.), <http://bit.ly/9yixgb>).

¹⁴Larry DeWitt, Social Security Administration, Social Security Online, Social Security Pioneers: Arthur J. Altmeyer, Never A Finished Thing: A Brief Biography of Arthur Joseph Altmeyer—the Man FDR Called “Mr. Social Security,” ch. 5 (1997), <http://bit.ly/d1DxHE> (quoting Arthur J. Altmeyer from June 1943). As Altmeyer once paraphrased Winston Churchill from 1944, “[social insurance] brings the magic of averages to the rescue of the millions. Disaster, to which millions are subject, actually strikes only a few of us at any given time. If we collect a small premium from the many who are exposed to the risk, we can build a fund out of which we can pay benefits to those who at any given time are suffering from the impact of the risk” (*id.*).

¹⁵Alan S. Blinder, *Bush Unties the Social Compact*, *NEW YORK TIMES*, May 26, 2000, <http://bit.ly/cVA0ZY> (“Universal social insurance is one of those precious ties that bind our society together. Privatization, whether partial or total, would weaken that tie.”). Blinder has published, among other writings, numerous editorial pieces in the *New York Times*.

¹⁶Social Security Administration, Additional Quotations, *supra* note 9.

The reality described by Heckler twenty-five years ago continues to this day, perhaps for alternative reasons. As the columnist E.J. Dionne pointed out in 1998,

[s]ocial insurance was a wise admission on the part of supporters of competitive economies that citizens would take the risk such economies require only if they were provided with a degree of security, especially against old age, unemployment, the sudden death of a spouse, and the vicissitudes of health.... Social insurance is the basic insurance policy Americans have for social stability, a modicum of social justice, and a society in which risks are taken freely and energetically because there is some protection against catastrophe and social breakdown. Few business people I know would cut their expenses by canceling their fire insurance. Social insurance is the cost of doing business for a society that seeks to remain dynamic and inventive as well as just and fair.¹⁷

Today most middle-aged and elderly people, assuming that benefits will always be available, take social security for granted, while younger people wonder whether they will ever see a benefit when they come of age to receive one.¹⁸ Those political forces that would like to see social security privatized pit the elderly against the young; they speak of the need for drastic changes in the Social Security Act that would significantly raise taxes and reduce benefits to prevent the trust funds from going broke. Every citizen has an obligation to be vigilant against forces of whatever economic or political stripe wishes to alter fundamentally our social security system, a system that has worked well for seventy-five years and that, with a little tweaking, not unlike what has been done when necessary in the past, will continue to work for the long-term future.¹⁹ As Pres. Franklin D. Roosevelt cautioned in a radio broadcast in 1938, “[o]ne word of warning, however. In our efforts to provide security for all of the American people, let us not allow ourselves to be misled by those who advocate short cuts to Utopia or fantastic financial schemes.” We should all be forewarned: those words continue to ring true.

¹⁷E.J. Dionne Jr., *Why Social Insurance?*, in SOCIAL SECURITY BRIEF (National Academy of Social Insurance, Ser. No. 6, Jan. 1999), <http://bit.ly/d4gXo1>.

¹⁸Many beneficiaries were surprised at the beginning of 2010 when, for the first time in social security's history, there was no inflation-related cost-of-living increase to their social security benefits.

¹⁹As social security pioneer Arthur J. Altmeyer said in 1945, “Social Security will always be a goal, never a finished thing, because human aspirations are infinitely expandable, just as human nature is infinitely perfectible” (DeWitt, *supra* note 14, ch. 1 (quoting Altmeyer)).



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