ARTICLES

SOCIAL SECURITY IS FAIR TO ALL GENERATIONS: DEMYSTIFYING THE TRUST FUND, SOLVENCY, AND THE PROMISE TO YOUNGER AMERICANS

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The Social Security system has come under attack for having illegitimately transferred wealth from younger generations to the Baby Boom generation. This attack is unfounded, because it fails to understand how the system was altered in order to force the Baby Boomers to finance their own benefits in retirement. Any challenges that Social Security now faces are not caused by the pay-as-you-go structure of the system but by Baby Boomers' other policy errors, especially the emergence of extreme economic inequality since 1980. Attempting to fix the wrong problem all but guarantees a solution that will make matters worse. Generational justice and distributive justice go hand in hand.

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INTRODUCTION

I am a member of the Baby Boom generation,[1] and we certainly have a lot of explaining to do.

We have failed to enact meaningful environmental policies, even though we have long been aware that the failure to do so is dooming future generations to poorer health and is making catastrophic climate change all but inevitable.[2]

We have also tolerated an increase in inequality that would make a robber baron blush.[3] This has happened even as the engines of opportunity, our schools and universities, have been underfunded and allowed to decay, leaving students undereducated and our most talented students often deeply in debt.

Our infrastructure has been decaying for decades, yet nothing has been done to fix it—even as Baby Boomers' policy failures caused the Great Recession and thus inadvertently provided an opportunity to rebuild our country with plentiful labor, and even though money was available to borrow at low interest rates.[4]

Notwithstanding the improvements provided by the Affordable Care Act (which some Baby Boomers and others might soon succeed in repealing), we have been content to allow the health care system to replicate and intensify the inequality that we see in the larger society, delivering poor results at high cost.[5]

And these are only the most obvious failures of the generation that has dominated American society for the last few decades. To put it

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[1] The Baby Boom describes the rapid increase in the number of births following World War II and includes people born between 1946 and 1964, inclusive. *See* SANDRA L. COLBY & JENNIFER M. ORTMAN, U.S. CENSUS BUREAU, THE BABY BOOM COHORT IN THE UNITED STATES: 2012 TO 2060 2 (2014); Richard Fry, *This Year, Millenials Will Overtake Baby Boomers*, PEW RES. CTR. (Jan. 16, 2015), http://www.pewresearch.org/fact-tank/2015/01/16/this-year-millennials-will-overtake-baby-boomers/.

[2] *See Fact Sheet: What Climate Change Means for Your Health and Family*, THE WHITE HOUSE (Apr. 4, 2016), https://obamawhitehouse.archives.gov/the-press-office/2016/04/04/fact-sheet-what-climate-change-means-your-health-and-family; Damian Tago & Alban Thomas, *Failure to Address Global Warming Will Cost Many Lives*, THE ECONOMIST (Dec. 10, 2015), http://www.economist.com/blogs/freeexchange/2015/12/climate-change.

[3] *See* Richard Fry & Rakesh Kochhar, *America's Wealth Gap Between Middle-Income and Upper-Income Families is Widest On Record*, PEW RES. CTR. (Dec. 17, 2014), http://www.pewresearch.org/fact-tank/2014/12/17/wealth-gap-upper-middle-income/; Raj Chetty et al., *The Fading American Dream: Trends in Absolute Income Mobility Since 1940* 3 (Nat'l Bureau of Econ. Research, Working Paper No. 22910, 2016), http://www.nber.org/papers/w22910.

[4] *See, e.g.*, Lawrence Summers, *Building the Case for Greater Infrastructure Investment*, FIN. TIMES (Sept. 11, 2016), https://www.ft.com/content/b2c914dc-751c-11e6-bf48-b372cdb1043a.

[5] *See* Chris Canipe, *The High Cost of Health in America*, WALL STREET J. (Mar. 15, 2017), http://www.wsj.com/graphics/american-health-care-costs/.

mildly, no member of the Baby Boom generation can point with pride to our track record on public policy.

Therefore, this Article is most definitely not a defense of the Baby Boomers as shepherds of the nation's future. Instead, the goal here is to show that the one area of public policy that has become the symbol of the Baby Boomers' failure to safeguard the future, the Social Security system, is in fact the one area in which this generation can honestly plead its innocence. It is indeed ironic that the one thing that the Baby Boomers did not ruin is now widely viewed as the most potent symbol of our failure.

Moreover, even though I provide herein a brief defense of the Social Security program itself, and even though I do enthusiastically support the continuation and expansion of Social Security, my core purpose here is descriptive rather than prescriptive: properly analyzed, it turns out that the Social Security system was not used by Baby Boomers to the detriment of their children and grandchildren.[6]

Even this much more limited claim, moreover, amounts at best to a passive defense of the Baby Boomers. The plan to fund the Baby Boomers' retirements was put in place by their parents and grandparents. It is to the Baby Boomers' eternal credit that they did not undo that mechanism once they came to power, yet that is several steps short of crafting a sound policy in the first place.

The technical question addressed in this Article is whether the Social Security system has altered the balance of economic benefits between the Baby Boomers and the generations that will follow. I show that the Baby Boomers allowed themselves to be overtaxed, relative to what would have been necessary to fund the Social Security system, for more than three decades. That extra money reduced the amount of borrowing that the government otherwise would have been forced to undertake. Even by the most uncontroversial economic theory available, this allowed the economy to be more prosperous than otherwise.

The Baby Boomers, therefore, financed their own retirement in the only way that is possible, by building up the productive capacity of the economy—that is, the ability of workers to produce goods and services for themselves and for retirees. Moreover, there is no evidence that this buildup was undermined indirectly through other policies. As the Baby Boom moves through retirement and toward its ultimate extinction, the economy that it leaves behind will not be worse because of the Social Security system.

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6 In upcoming work, I will show that the proposals to fully or partially privatize Social Security would create an inordinate burden on the Baby Boomers' children and grandchildren, not on the Baby Boomers themselves.

Again, the economy that future generations are inheriting will in fact be much less prosperous than it should have been—but not because of any problems with Social Security. Inadequate public investments combined with the rise in inequality have made future financing of retirement more difficult than it needed to be. They are manifestations of our (many) failings in other areas of policy.

After describing the mechanics (and overall financial health) of the Social Security system, I will confront the argument most often invoked to justify changes to Social Security's finances: justice to future generations. Notwithstanding the popular belief in the selfishness of the Baby Boomers, the fact is that the Baby Boom generation and its parents sacrificed significantly in order to make it possible for the generations that follow to be able to afford to support the Baby Boomers in their retirement. The "generational contract" that Social Security represents, therefore, justifies continuing to guarantee promised levels of benefits to retirees through the next several decades, rather than being an excuse to undermine the system now in an effort to prevent future generations from supposedly being cheated.

Younger generations will be trying to clean up the messes that they are inheriting for decades to come. Understanding that the Social Security system is not the cause of any of those problems will have two beneficial effects on future policy. First, it will prevent post-Baby Boomers from undermining Social Security in a way that would damage their own future prospects. Second, it will allow them not to waste time on a political fight to undermine or privative Social Security, and instead to put all of their energies into fixing the very real and important problems that will define their lives for decades to come.

I. SOCIAL SECURITY AND THE FORTUNES OF FUTURE GENERATIONS

Are older generations of Americans using Social Security to enrich themselves at the expense of their children and grandchildren? To listen to the public debate in the United States, one could be forgiven for thinking so. Derogatory labels for older people, such as "greedy geezers,"[7] have become common in the American political debate, with news commentators, politicians, and even the popular culture chiming in with claims that older Americans are the cause of otherwise-solvable budget problems, and more generally that they are a cohort of selfish retirees and near-retirees who refuse to give up their excessive government-pro-

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[7] *See* Henry Fairlie, *Greedy Geezers: Talkin' 'Bout My Generation*, THE NEW REPUBLIC, Mar. 28, 1988, at 19. *But see* Robert Kuttner, *Greedy Geezers, Reconsidered*, THE AM. PROSPECT (Dec. 3, 2012), http://prospect.org/article/greedy-geezers-reconsidered; Amitai Etzioni, *Greedy Geezers? That's a Myth*, CNN (Aug. 22, 2012), http://www.cnn.com/2012/08/22/opinion/etzioni-myth-of-greedy-geezers/.

vided benefits, which will inevitably lead to disastrous outcomes for the generations to follow.[8]

This narrative is completely false. The central argument in this Article is that the Social Security system is fair to all generations—neither overly generous to the Baby Boomers, who have agreed to sacrifice more during their lifetimes than would have been necessary if they were not looking out for younger generations of Americans, nor harmful to the generations that followed the baby boom, because the system will continue to exist and to pay benefits in retirement that will exceed those paid to Baby Boomers.[9]

The facts are simple. The Baby Boom generation paid more than two and a half trillion dollars in excess taxes into the Social Security system over the last three-plus decades, beyond what was necessary to pay the required benefits.[10] Those excess payments will now be drawn down, until the Baby Boomers have received the full credit for the sacrifices that they made during their working lives, leaving the generations to follow in the same situation that they would have been in had there never been a baby boom. The Baby Boomers, in short, paid for their own retirements in advance.

Given that the Social Security system's underlying health is in fact quite robust, and given that it is not necessary (or even possible) to take from current generations to prevent harm to future generations, the question becomes one of politics. Too many members of the public—especially people under the age of fifty—have come to believe that Social Security is a scam, doomed to failure long before anyone can expect to receive the money that they are currently contributing to the system.[11] That belief, of course, has been carefully cultivated by those who have long opposed Social Security on ideological grounds.

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[8] Name-calling can go both ways, of course. One author who wrote about the squeeze that spending on elders might cause on other spending was accused of being "in favor of genocide of seniors." *See* Ezra Klein, *Have Seniors Really Paid for Social Security and Medicare?*, WASH. POST (Feb. 18, 2015), https://www.washingtonpost.com/news/wonk/wp/2013/02/18/have-seniors-really-paid-for-medicare-and-social-security/?utm_term=.7a15de98fc6c.

[9] In a forthcoming companion article, I will explain that even if the analysis here is incorrect, and therefore that the Baby Boomers are guilty of having harmed their progeny through the Social Security system, all of the proposed changes to the nation's retirement system are as bad or worse, from the standpoint of post-Baby Boom Americans. Moving forward, the only relevant question is how to allocate burdens and benefits within future generations.

[10] *See OASI Trust Fund, A Social Security Fund*, SOC. SECURITY ADMIN., https://www.ssa.gov/oact/STATS/table4a1.html (last visited Oct. 9, 2017) (showing cumulative overpayment of $2.729 trillion by 2014).

[11] Frank Newport, *Many Americans Doubt They Will Get Social Security Benefits*, GALLUP (Aug. 13, 2015), http://news.gallup.com/poll/184580/americans-doubt-social-security-benefits.aspx (stating that roughly 60% of people under the age of 50 believe that Social Security will not pay them a benefit).

In 2005, President George W. Bush famously claimed that the Social Security trust fund is merely pieces of paper sitting in a file cabinet in West Virginia, in an attempt to convince people to begin a transition out of the Social Security system into a system of private bank accounts.[12] More egregiously, two-time unsuccessful presidential candidate Rick Perry[13] (joined by many other politicians) repeatedly made the patently incorrect claim that the Social Security system is a Ponzi scheme.[14] Even people who are not deliberately attacking the system generally do not appear to know what Social Security's trust fund really represents, which means that even well-meaning people do not know that the Baby Boomers actually sacrificed in order to provide for themselves in retirement.

Franklin Delano Roosevelt's famous warning, "The only thing we have to fear, is fear itself," thus aptly captures the underlying truth about Social Security as well.[15] The only thing that will prevent Social Security from being there for future generations is if people come to believe that it will not be there for them, leading them to destroy it in a classic self-fulfilling prophecy. So long as there is political will to support the Social Security system, it will continue to serve all Americans, the old and the (temporarily) young alike.

The challenge facing responsible policymakers, therefore, is not how to fix a system now that does not need fixing, or to address that supposed problem with solutions that would not even address those imaginary harms, but instead how to convince the public to regain confidence in a system that can and should continue to support everyone in their retirements, for generations and generations to come.

A. *Beyond Social Security: The Increasing Wealth of Future Generations*

The Social Security Trustees' own forecasts—the same forecasts on which the doomsayers rely, and even the least pessimistic of which is

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12 *Bush: Social Security Trust Fund 'Just IOUs'*, NBC NEWS (Apr. 5, 2005), http://www.nbcnews.com/id/7393649/ns/politics/t/bush-social-security-trust-fund-just-ious ("President Bush . . . used a four-drawer filing cabinet stuffed with paper representing government IOUs that he said symbolized the Social Security trust fund's bleak outlook for meeting American's future retirement needs.").

13 Perry, a former governor of Texas, is now the U.S. Secretary of Energy. *See* Maggie Penman, *Rick Perry Sworn in as Energy Secretary*, NPR (Mar. 2, 2017), http://www.npr.org/sections/thetwo-way/2017/03/02/518235070/rick-perry-sworn-in-as-energy-secretary.

14 The claim that Social Security is a Ponzi scheme is so baseless that I will not spend any time in this Article addressing it. *See, e.g.*, Neil H. Buchanan, *The Unending Task of Debunking Social Security Fear-Mongering*, JUSTIA'S VERDICT (Aug. 11, 2015), https://verdict.justia.com/2015/08/11/the-unending-task-of-debunking-social-security-fear-mongering.

15 Franklin Delano Roosevelt, President of the United States, Inaugural Address of the President (Mar. 4, 1933), http://www.archives.gov/education/lessons/fdr-inaugural/.

hardly a "rosy scenario"—show that the incomes of future generations will be substantially higher than the incomes of current generations, and those higher incomes will easily support higher living standards for future workers and retirees alike. Therefore, even if it were to turn out that the existence of the Social Security system will have reduced the incomes of future generations below where they otherwise could have been—an exceedingly unlikely possibility—the simple fact is that the average member of every subsequent generation is still likely to be significantly better off than their parents and grandparents were.[16] If Baby Boomers were trying to be unfair to their children and grandchildren, therefore, they did a rather poor job of it.

If there is a case for cutting Social Security benefits for the Baby Boomers, it would have to be based on the belief that current workers and current retirees are going to impose an unacceptably large burden on future generations. Such a belief would in turn be based on some notion of justice between generations. Because a choice between immediate interests and future interests implies a tradeoff, any theory of intergenerational justice must provide a basis on which to impose some minimal expectation on each generation as to how amply it must endow subsequent generations to allow them to pursue happy and prosperous lives (and, presumably, to endow the generations that will follow them in turn).

Determining the nature of the financial obligations of one generation to the next is complicated and contentious, and an extended discussion of the moral philosophy behind intergenerational justice is beyond the scope of this Article. In fact, philosophers have reached only limited consensus even on the proposition that existing generations have any obligations at all to those that follow, as a general matter.[17] Moreover, even those theories that would seem to establish some basis for intergenerational obligations have come up far short in determining *how much* of an obligation is owed from one generation to the next.

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[16] Note that the discussion in this Article necessarily focuses on aggregate figures and per-capita averages. There are essential—indeed, almost existential—concerns about inequality that should be part of the overall economic debate in this country (and elsewhere). However, those distributional concerns are not relevant to the question of whether one generation in the aggregate could cheat another entire generation through a supposedly too-generous retirement system. The concern with averages here, in other words, does not absolve older generations of well-deserved blame for those other problems, but focuses only on the analysis of Social Security's finances on the appropriate aggregate measures that can capture intergenerational effects.

[17] Neil H. Buchanan, *What Do We Owe Future Generations?*, 77 GEO. WASH. L. REV. 1237, 1256–58 (2009) (noting that "[s]ome philosophers acknowledge that the question [of how much current generations owe to future generations] is fundamental but also simply acknowledge that there is little or nothing more that is currently available to support a particular theory of how to balance current and future generations' respective interests").

As I discussed in an article several years ago,[18] many people seem to rely on the visceral argument that future generations should be made *better off* than current generations.[19] This idea is captured in such common statements as: "I just want my kids to do better than I did," or "I owe my kids a better life."[20] Although such a formulation of intergenerational obligations is still quite vague, it at least offers one basic test of whether one generation is being unfair to future generations: if future generations will experience a standard of living that is lower than that of current generations, then the current generation has failed, at least as measured against this standard of justice.

B. *Are Future Living Standards Likely to be Higher or Lower Than Today's?*

The most pertinent question, therefore, is whether the expected path of the economy, based on current trends and predictable changes in relevant variables, will leave future generations richer, poorer, or the same as current generations. Perhaps more to the point, the question is whether anything that we are doing is likely to change the outcomes for future generations such that they will be worse off than we are.

Before answering that question, however, it is important to make clear that the issue is not whether there are choices that we could make that would make future Americans richer than they would otherwise be. The answer to that question is almost certainly yes.[21] It is always, therefore, possible to attack any policy or program because it allows current citizens to enjoy a higher living than they would otherwise enjoy—and hence causes future citizens to settle for a lower standard of living than they would otherwise inherit.

Therefore, the only appropriate question is: "Will the policies and actions of today's generation, when taken as a whole, leave future generations with a higher standard of living *than today's generations are ex-*

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[18] *See id.*

[19] *See id.*

[20] *See, e.g.*, Bob Herbert, *The Fading Dream*, N.Y. TIMES, Nov. 13, 2006, at A25 ("For perhaps the first time in history, there is a large swath of Americans who are worried that over the long haul their children will not fare as well as they have.").

[21] I say "almost" because there is a theoretical possibility that the economy is at the "Golden Rule" level of steady-state equilibrium. *See* N. GREGORY MANKIW, MACROECONOMICS 89–97 (Jane Tufts et al. eds., 4th ed. 2000). In such a situation, the sustainable level of consumption per capita is maximized, and attempts to save more capital to raise future living standards are doomed to fail, because the cost of maintaining additional capital is greater than the consumption that is produced by the additional capital. In such a case, attempts to save for the future are harmful both to current and future generations. *See id.* There is no evidence supporting the conclusion that we have achieved that level of theoretical state of being; so the analysis here will proceed from the assumption that there is a tradeoff between current and future consumption.

periencing?"[22] If the answer to that question is yes, then current generations are at least fulfilling their perceived duty to future generations, in the totality of the circumstances.

How would we know whether current generations are fulfilling their desire to leave their children and grandchildren better off? As it happens, the annual Social Security Trustees' report provides sufficient information to answer that question. Although the written commentary in the annual reports has become increasingly dire in their predictions of the Social Security system's long-term solvency, the information provided within the reports provides the basis for the Trustees' projections of systemic solvency, using what it calls High-Cost, Intermediate, and Low-Cost assumptions.[23]

Projecting average living standards from the Trustees' data and assumptions is a relatively straightforward matter—even though the Trustees themselves do not perform the calculations discussed here. To calculate future living standards, one can use the Trustees' projections (for each of their three scenarios) of the growth in GDP for the next seventy-five years and divide that by the projected population levels for the same time period.[24]

1. The Very Good News: Future Generations Will Be Much Richer Than We Are

Each year's annual report of the Social Security trustees provides a wealth of data and 75-year forecasts, on which the widely reported depletion date of the retirement trust fund is based. Although the trustees do not provide the projected changes in real GDP per capita that are implied

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[22] Of course, even if the answer to that question is yes, it is still possible to argue that some decisions that benefit current generations fail a cost/benefit test. For example, suppose that Current Generation has a real living standard of $100/person, and Future Generation will have a real living standard of $500/person. If Current Generation enacts a policy that increases its average living standard to $101/person, and that policy will reduce the average living standard of Future Generation to $200/person, this could well seem an unacceptable policy choice. Even so, at least as a starting point, if we know that future generations will be richer than current generations, there is less reason to worry about intergenerational injustice from the standpoint of those who "just want my kids to do better than me."

[23] *See infra* Part II; *see also* Buchanan, *supra* note 17, at 1270–71.

[24] Note that this method sidesteps the question of dependency ratios, which has generated much of the misunderstanding surrounding the Baby Boomers' effect on future workers. Because there will be fewer workers per retiree as the Baby Boomers retire, it is possible that there will be too few workers to support retirees at current living standards without decreasing future workers' living standards (by raising Social Security taxes). On the other hand, it is virtually certain that future workers will have much higher productivity rates, because of the physical and human capital that they will receive from the retired generations. This would suggest that future living standards could be projected by dividing productivity rates (output per worker) by dependency ratios (population per worker) to determine output per person, or GDP per capita. Because the Trustees project total GDP in the future and total population in the future, the computation just described is implicit in the Trustees' numbers.

by their underlying assumptions, it is possible to compute those changes from the data in the reports.[25] The most important point to note is that, even in the most pessimistic scenario, in which Social Security's trust fund runs out in 2029, GDP per capita is projected to be more than *double* current levels after seventy-five years.[26] Based on the 2009 forecasts, for example, the High-Cost scenario shows GDP per capita 135% greater than in 2005, marginally higher than the 131-132% estimates in previous years.[27]

Moreover, in the Intermediate scenario, which is considered the baseline reference point for most policy discussion, income is more than *triple* current levels after seventy-five years.[28] The 2009 forecasts, for example, show GDP per capita 219% higher in 2080 than in 2005.[29] Again, this is so even though the trust fund is currently projected under that scenario to be depleted in 2034. Under the Low-Cost scenario, not only does the Trust Fund never reach zero, but the average living standard seventy-five years from now is more than *quadruple* current levels, or 332% higher, based on the 2009 forecasts.[30]

It is also noteworthy that these projected future living standards have been essentially unchanged even after the Great Recession.[31] The forecasts for the Low-Cost and Intermediate scenarios have been revised downward by less than ten percentage points, while the High-Cost (most pessimistic) scenario has actually been revised upward a bit.

We are not, in short, looking at a situation in which current generations seem to be cheating their progeny out of a higher standard of living. These forecasts indicate that people alive sixty-two years from now, in 2080, will have average living standards that are multiples beyond what current Americans enjoy. If Social Security really is capable of reducing future living standards, then it is apparently failing to overwhelm other factors that are pushing overwhelmingly in the other direction. There is no case to be made, based on these forecasts, that current generations are cheating future generations. Quite the contrary.

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25 Prior to 2007, the forecast period extended through 2080. Starting in the 2007 Trustees' Report, forecasts were extended to 2085. Compare SOC. SEC. ADMIN., 2007 OASDI TRUSTEES REPORT 18 (2007) with SOC. SEC. ADMIN., 2006 OASDI TRUSTEES REPORT 16 (2006). Currently, the forecast window runs through 2090. *See* SOC. SEC. ADMIN., 2015 OASDI TRUSTEES REPORT 110–112 (2015) [hereinafter 2015 Trustees Report].

26 *See* SOC. SEC. ADMIN., 2010 OASDI TRUSTEES REPORT 52 fig. IV.BI (2010).

27 *See* SOC. SEC. ADMIN., 2009 OASDI TRUSTEES REPORT 97 tbl. V.BI (2009).

28 *See id.* at 181.

29 *See id.* at 187 tbl. VI.F4.

30 *See id.*

31 *See id.*

2. How Seriously Should We Take Those Forecasts?

Any forecast, of course, can turn out to be wrong, and any very long-range forecast can turn out to be very far off the mark. Even so, these forecasts are based on the Social Security Trustees' own reports—reports that are continually used by those who attack Social Security to prove that the system is in crisis.[32] Either those forecasts are a reliable guide for setting policy today, or they are not. If we cannot feel confident that future living standards will be much higher than today's, based on these forecasts, then we cannot be confident that Social Security will become insolvent in 2029, 2034, or any other date.

Moreover, the Social Security Trustees are notorious for using pessimistic economic forecasts for all three of their scenarios.[33] Referring loosely to the Low-Cost scenario, therefore, as the "optimistic" or "rosy" scenario is highly misleading.[34] The forecasts that underlie the Low-Cost scenario, in fact, are roughly consistent with the actual economic performance of the U.S. economy for the fifty years prior to the Great Recession—performance that includes eight recessions, stagflation, oil crises, wars, and natural disasters.[35] Past performance, as they say, is no guide to future returns. Even so, the most pessimistic forecasts still show per capita incomes more than doubling from 2005 to 2080.[36]

The predicted changes are, moreover, sufficiently large that there is no reason to worry about a few percentage points of variation here or there. For example, the 75-year change under the High-Cost scenario varies between 131% and 135% for the ten years of forecasts.[37] This difference is so small that it is best to view those numbers as effectively unchanged. Even a ten or twenty percentage point change might be an artifact of small differences in the assumed paths of underlying variables. Predicted increases under the three scenarios of 130%, or 220%, or 330%, however, are rather difficult to explain away.[38]

It is also possible that something big will happen in the next seventy-five years that will make all economic forecasts obsolete. Positive

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32 *See* David C. John, *2009 Social Security Trustees Report Continues to Show the Urgency of Reform*, THE HERITAGE FOUND. (May 13, 2009), http://www.heritage.org/social-security/report/2009-social-security-trustees-report-continues-show-the-urgency-reform (discussing Social Security's "impending financial crisis").

33 *See* Roger Lowenstein, *A Question of Numbers*, N.Y. TIMES, Jan. 16, 2005, at 40 (discussing various ways in which the Social Security Trustee's projections are overly pessimistic).

34 *See infra* notes 169–175 and accompanying text.

35 *See* David Langer, *Social Security Finances are in Fine Shape*, CONTINGENCIES, May/June 1999, at 60, 65 (showing that the historical average GDP most closely follows the 75-year average of optimistic GDP).

36 *See* 2015 Trustees Report, *supra* note 25, at 57 & fig. IV.B1.

37 *See id.*

38 *See id.*

surprises could include a breakthrough in renewable energy production, cures for various diseases, a solution to climate change, and a sustained reduction in military conflict. Negative surprises could include nuclear meltdowns, the emergence of widespread drug-resistant diseases, weather disasters including flooded coastlines due to melting polar ice caps, and a significant increase in terrorism in the United States and similar countries.

All such surprises, especially the negative ones, could result in a completely different economic future than the one implied in the Social Security Trustees' annual reports. By hypothesis, however, these would be surprises—possibilities the likelihood of which cannot be predicted with even minimal confidence. If any of these possibilities were to happen and changed the world radically, then all bets would be off. Even so, the possibility of epoch-making changes is no reason to reject the conclusions drawn above. Again, if we cannot trust the forecasts on which critics of Social Security base their gloom-and-doom predictions, then we cannot trust them for *any* purpose.

The bottom line, therefore, is that forecasts based on data provided by the Social Security Trustees themselves seriously undermine assertions that current generations are being unfair to future generations. Attacking Baby Boomers' intergenerational ethics now, in the face of such forecasts, is difficult to justify. Not only will our grandchildren be "better off than we are," but it will not even be close. Justice between generations will be served.

II. SOCIAL SECURITY: HISTORY, PURPOSE, AND STRUCTURE

Social Security is one of the largest government programs in the United States. Because of its size and its impact on nearly every worker and family in the country, it is a focus of constant political commentary. Formerly known as "the third rail of American politics"[39]—so called because of its supposedly untouchable status ("touch it and die")—in recent decades it has nonetheless become a program that nearly everyone has described as "broken," "facing a crisis," or "doomed."[40] Confronting such a scary prognosis, it is hardly surprising that potential reforms would be offered from across the political spectrum.

The universal reach of Social Security does not, unfortunately, translate into universal comprehension of how Social Security actually

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39 *See, e.g.*, Michael D. Tanner, Opinion, *Turning off the 'Third Rail'*, N.Y. POST, Nov. 6, 2004, at 17.

40 *See, e.g.*, Laurence Kotlikoff, *Hey Candidates: Social Security is Broken*, USA TODAY (Aug. 8, 2015), https://www.usatoday.com/story/money/personal finance/2015/08/05/cnbc-social-security/30271595/; *Is Social Security doomed?*, THE WEEK (Mar. 29, 2010), http://theweek.com/article/index/201297/is-social-security-doomed.

works. If anything, it too often seems that there is a negative correlation: nearly everyone has an opinion about Social Security, but very few people seem to know even the most basic facts about how the system is structured or how it actually functions. This section, therefore, discusses how Social Security is designed and how it operates. Perhaps most importantly, this discussion will debunk some common myths and misunderstandings about the system's inner workings. People who do not know how a system works, after all, are in no position to understand whether it is broken or, if it is, how to fix it.

A. *Structure and Purpose*

Social Security includes a tax system that is separate from the federal government's other tax systems (income taxes, excise taxes, user fees, and so on), paired with a benefit structure that sets up criteria by which people become eligible to receive various levels of benefits after retirement.[41] Beyond this core program to support retired workers, moreover, Social Security also provides survivors' benefits and disability benefits to non-retired workers; but those programs are dwarfed in size by the Old-Age component of the system.[42] For purposes of this Article, therefore, the focus will be on Social Security's basic mission of income support for the elderly.[43]

1. Why the Social Security System is Needed

Discussion of Social Security typically focuses on the system's finances and long-term solvency.[44] That focus, while understandable, tends to shift the discussion away from the question of why we have a Social Security system at all, focusing concern instead on technical matters such as internal rates of return and the comparison of certain payment streams. This is unfortunate, because Social Security continues to

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41 Romina Boccia, *How Social Security Works in 2014*, THE HERITAGE FOUND. (Apr. 28, 2014), http://www.heritage.org/social-security/report/how-social-security-works-2014.

42 *See id.*

43 The reader should thus understand references to "Social Security" herein as meaning the Old-Age component of the larger Social Security program.

44 *See, e.g.*, Office of the Chief Actuary, *Proposals Addressing Trust Fund Solvency*, SOC. SECURITY ADMIN., https://www.ssa.gov/OACT/solvency/index.html (last visited Sept. 12, 2017) ("If no legislative change is enacted, scheduled tax revenues will be sufficient to pay only about three fourths of the scheduled benefits after trust fund depletion. . . . Many of these proposals and options have the intent of addressing the long-range solvency problem."); Chris Farrell, *When Can You Expect Social Security Reform?*, FORBES (Aug. 29, 2017), https://www.forbes.com/sites/nextavenue/2017/08/29/when-can-you-expect-social-security-reform/#27c07cfe32d6; Martin Wolk, *Social Security, Solvency and Political Spin: How Credible Are President Bush's Dire Predictions?*, NBC (Jan. 14, 2005), http://www.nbcnews.com/id/6827519/#.Wbg7Iq2ZOYU.

serve an essential role in creating financial stability for millions of American families.

The Social Security Act was enacted in 1935, in the midst of the Great Depression.[45] The life savings of millions of Americans had been destroyed by the financial collapse that had befallen the country (and much of the rest of the world), leaving elderly Americans without financial assets to support even a basic standard of living in their retirement.

Without any money in the bank, retirees could only survive by looking for work (if they were even still capable of working) or by living with their children or other relatives or friends. With an official unemployment rate as high as 25%,[46] however, the prospects for finding a job were bleak not only for the elderly but for everyone to whom they might turn for support.

For far too many of the elderly, this confluence of events spelled disaster. The poverty rate among the elderly was in the range of 30% when the Social Security Act was passed, and the desperation of people

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[45] Boccia, *supra* note 41, at 2.

[46] *See* Joseph A. Swanson & Samuel H. Williamson, *Estimates of National Product and Income for the United States Economy, 1919-1941*, 10 EXPLORATIONS IN ECON. HIST. 53, 53–73 (1972). The official unemployment rate counts only people who are actively looking for jobs as "unemployed" in a given month. *See* Bureau of Labor Statistics, *How the Government Measured Unemployment*, U.S. DEPT. OF LABOR, http://www.bls.gov/cps/cps_htgm.htm#unemployed (last updated Oct. 8, 2015) ("Persons are classified as unemployed if they do not have a job, have actively looked for work in the prior 4 weeks, and are currently available for work."). When there are no jobs to be found, however, people see little point in engaging in the empty exercise of looking for jobs that do not exist. Those who give up looking for work are dropped from the unemployment statistics. *See id.* Therefore, when the unemployment rate topped out at 25% in 1934, this record-setting statistic seriously understated the extend of joblessness in the country. Swanson, *supra* note 46, at 53–73. One way to measure the extent of the downturn is to compare the output of goods and services generated by American workers before the Great Depression began to the economy's output when things were at their worst. Annual output, as measured by Gross Domestic Product, fell by 40% from 1929 to 1934, which provides a rough measure of the extent of job losses in the Depression. *See National Data*, BUREAU OF ECON. ANALYSIS, https://www.bea.gov/iTable/iTable.cfm?ReqID=9&step=1#reqid=9&step=3&isuri=1&904=1929&903=5&906=q&905=1934&910=x&911=0 (last visited Oct. 9, 2017) (select "Section 1 – Domestic Product and Income"; then follow "Table 1.1.5. Gross Domestic Product" hyperlink; select "modify"; then select "Annual" for series field, "1929-A" for first year, and "1934-A" for last year; then click "Refresh Table"). Note that changes in the productivity of workers who kept their jobs could have changed in either direction, either because employers humanely kept on more workers than necessary to produce the lower output in the 1930s or because the remaining workers worked harder to retain their jobs and to keep their companies in business. *See* Lee E. Ohanian, *Why Did Productivity Fall So Much during the Great Depression?*, FED. RES. BANK OF MINNEAPOLIS (Mar. 2001), https://www.minneapolisfed.org/research/sr/sr285.pdf. The evidence suggests that the latter affect dominated the former. *Id.* For example, one estimate shows that the unemployment rate would have been 50% if all workers had been included in the measured rate. In any case, this period undoubtedly represented one of the most desperate periods for workers in the country's history—certainly a worse period than any time since, including the severe downturn that began in late 2007 and continues as of this writing.

who could no longer provide for themselves was a major impetus behind the Act's passage.[47]

As a result of the passage of Social Security, the incidence of poverty has fallen dramatically,[48] with only about 9% of the elderly today living in poverty.[49] This is the lowest poverty rate for any age group in the country, which suggests that Social Security has succeeded in its goal of reducing poverty among retirees. Perversely, however, this very success has become a source of political vulnerability, because the higher poverty rates among other age groups can be viewed as evidence that too many resources are being lavished on the elderly. Nevertheless, there is no doubt that Social Security has achieved the goal that motivated its creators: providing financial support in retirement to those who have worked and are now retired.[50]

Finally, the Social Security system provides an additional kind of safety net: protection against running out of money before death. Under the Social Security system, each retiree is guaranteed benefits until they die, no matter how long they live.[51] If a person were entirely responsible for preparing for her own retirement, she would face the unknowable question of how long she will live.[52] While there are private financial instruments that can mimic this aspect of Social Security, it is of course necessary that people buy those instruments in advance in order to be protected by them. If anyone failed to do so, she would be left impoverished—again left either to beg for help from family or friends (if any

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[47] As mentioned above, the Social Security system includes more than a program to support retired workers, with survivors' disability benefits being important components for the system. For purposes of this Article, however, the focus will remain on Social Security's core mission of income support for the elderly.

[48] *See Social Security and Elderly Poverty*, NAT'L BUREAU OF ECON. RES., http://www.nber.org/aginghealth/summer04/w10466.html (last visited Sept. 12, 2017) ("Social Security is often mentioned as a likely contributor to the decline in elderly poverty. . . . In fact, there is a striking association between the rise in Social Security expenditures per capita and the decline in elderly poverty . . . .").

[49] SOC. SEC. ADMIN., 2009 ANNUAL STATISTICAL SUPPLEMENT TO THE SOCIAL SECURITY BULLETIN 8 (2010); *see also* Carmen DeNavas-Walt et al., *Income, Poverty, and Health Insurance Coverage in the United States: 2008*, U.S. CENSUS BUREAU (Sept. 2009), https://www.census.gov/prod/2009pubs/p60-236.pdf.

[50] As I will discuss in a forthcoming paper, the Social Security system provides another benefit as well; a benefit that is enjoyed by the children of the elderly as much as (if not more than) the retirees themselves. Because of Social Security, it is no longer necessary for elderly parents to live with their adult children. This allows the elderly to maintain an important measure of dignity, living independently from their children and grandchildren without having to beg or negotiate for support. In turn, the children and grandchildren of current retirees are relieved of the burdens—financial and emotional—that would come with providing their parents a place to live. The Social Security system, in other words, provides freedom to retirees that is also extremely valuable to non-retirees.

[51] Social Security Act, 42 U.S.C. § 402(a)(3) (2012).

[52] *Id.*

exist), from private charities, or from other any government safety net programs that might exist.

Social Security, therefore, also provides protection for the rest of society from those who would fail—due to excess optimism, myopia, or any other reason—to protect themselves with adequate income for their entire lives. Even those who are willing and able to save for their retirements can fail to protect themselves adequately; and when their plans—or their failure to plan—puts them in difficult financial straits, it is the rest of society that will pay.[53]

2. The Tax and Benefit Structure of Social Security

The simplest aspect of the Social Security system is the payroll tax, which is paid beginning with the first dollar of labor income.[54] (It is not, however, levied against any unearned income, such as income from rents, interest, dividends, and so on).[55] The payroll tax rate is constant rather than graduated[56]—currently 12.4%, with 6.2% collected from the gross wages or salary of the worker and 6.2% collected from the worker's employer.[57] The rate drops to zero for all labor income in excess of a set amount that is adjusted annually for inflation ($118,500 in both 2015 and 2016).[58] This means that a person with $1,118,500 in labor income pays exactly the same amount in Social Security taxes that someone earning $118,500 pays.[59]

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53 This discussion omits the alternative of simply letting people die. It is surely possible to imagine a legal regime that says: "Fend for yourselves; because we will not bail you out." It is difficult to imagine that the United States would adopt that attitude, and it is still more difficult to imagine Americans carrying through on that threat when faced with destitute elderly citizens dying on the streets. While a complete analysis of retirement systems might well include a systematic analysis of such a legal regime, I do not engage with it here. It is too unlikely (and, frankly, too repugnant) to merit further discussion.

54 Kyle Pomerleau, *A Comparison of the Tax Burden on Labor in the OECD*, TAX FOUND. 3 (June 2014), https://files.taxfoundation.org/legacy/docs/FF434.pdf.

55 *See id.*

56 The evidence is not definitive as to who ultimately bears the tax, but most economists who have studied the issue have concluded that employers typically reduce workers' gross pay by the amount of half the employer's half of the required tax payment. *See* Harold Averkamp, *Payroll Withholdings: Taxes and Benefits paid by Employees*, ACCT. COACH, https://www.accountingcoach.com/payroll-accounting/explanation/3 (last visited Sept. 12, 2017). If true, that means that a worker with, say, $10,000 in stated income has a gross income of $10,620, from which $1,240 is deducted to pay Social Security taxes. This pushes the average Social Security tax rate on workers to 11.7%.

57 Pomerleau, *supra* note 54, at 3.

58 *Contribution and Benefit Base*, SOC. SECURITY ADMIN., https://www.ssa.gov/oact/cola/cbb.html (last visited Oct. 9, 2017).

59 People with incomes above one million dollars, of course, typically would not see most of their incomes subject to Social Security taxes at all, because high incomes tend to be derived from interest, dividends, and capital gains. *See, e.g.*, Robert Frank, *Where the rich make their income*, CNBC (Apr. 9, 2015), https://www.cnbc.com/2015/04/09/where-the-rich-

3. Macroeconomic Impact

The Social Security system has become an essential part of people's long-term financial planning. Beyond the personal impact that it has had on millions of lives, however, it is important to note that there is an important macroeconomic impact of having a nearly universal, government-run retirement system. Social Security benefits are now a bulwark supporting the consumption expenditures that prop up the U.S. economy.[60] When the stock market declines, there is no sudden need for retirees to cut their spending in the face of a loss of wealth. Social Security benefits, therefore, act as a brake on the economy when it weakens, preventing a downward spiral of declining income, declining spending, and declining personal security.

This aspect of Social Security is, furthermore, enhanced by the system's inherent progressivity. As discussed below, retirees who earned relatively low amounts of income during their lives receive a boost to their benefits that they would not have received under a proportional system, while higher-income earners receive somewhat lower benefits than they would have received under a proportional system. Lower-income workers still receive less money in retirement than those who earned higher incomes, but the difference is compressed so that retirees who were lower-income workers receive an effective transfer from retirees who were higher-income workers.[61]

This system of progressive redistribution supports a higher level of aggregate consumption than would otherwise be possible.[62] Because higher-income workers are much more likely to have other sources of income in their retirements, they are typically in the range where their consumption is not reduced by the progressive implicit tax that the Social Security system imposes.[63] Their poorer compatriots, by contrast, are

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make-their-income.html. As noted above, unearned income is excluded from the Social Security tax base. *See* Pomerleau, *supra* note 54, at 3.

60 Paul N. Van de Water, *Understanding the Social Security Trust Funds*, CTR. ON BUDGET AND POL'Y PRIORITIES 3–4 (Aug. 18, 2014), https://www.cbpp.org/sites/default/files/atoms/files/10-5-10socsec.pdf.

61 *See infra* note 95 and accompanying text (explaining how benefits are computed); *see also* SOC. SEC. ADMIN., *supra* note 49, at 2.19 tbl. 2.A11 (setting forth the formula by which Social Security benefits are paid out); *Is Social Security Progressive*?, CONG. BUDGET OFF. 1 (Dec. 15, 2016), https://www.cbo.gov/sites/default/files/109th-congress-2005-2006/reports/12-15-progressivity-ss.pdf ("The Social Security benefit formula is designed to provide beneficiaries who had lower lifetime earnings with monthly benefits that are higher, as a percentage of their lifetime average earnings, than those received by higher-earning beneficiaries.").

62 Fang Yang, *Social Security Reform with Impure Intergenerational Altruism*, 37 J. ECON. DYNAMICS & CONTROL 52, 53–55 (2013).

63 *See id.*

likely to use all of their Social Security benefits to enjoy a higher standard of living than they would otherwise be able to support.[64]

Therefore, this feature of Social Security not only supports a more egalitarian distribution of living standards among retirees, it also supports the system's role as a macroeconomic stabilizer.[65] Wealthier retirees have financial assets that allow them to supplement their lifestyle beyond what Social Security would support; and these are the only people who would suffer a loss if economic reversals cause financial assets to lose value. Because they are not living from benefit check to benefit check, they would be unlikely to reduce their consumption in the face of such reversals. Progressive redistribution, therefore, not only increases aggregate living standards among all retirees in normal times, it also helps to make sure that the only people who would be harmed by turns in the financial markets will be those who can best weather bad times without feeding a downward economic spiral.

The Social Security system, in short, achieved its initial purpose of reducing poverty among the elderly, and it continues to allow the elderly to live out their years in dignity and without having to rely on family members or friends for support. It also fulfills an important role in stabilizing the overall economy. While the political debate focuses on the system's financial challenges, it is important not to overlook its important social and economic roles. Without bearing those in mind, it is all too easy to think of attempts to shrink or eliminate Social Security as an exercise in fiscal accounting rather than an attempt to fundamentally change a system on which millions of people rely for well-earned support.

B. Social Security Finances, Savings Accounts, and Reality

Any social policy that directly confronts intergenerational issues will inevitably confront the complicated realities of generational interdependence, conflict, and complicated parent/child emotional connections. The transition from childhood into adulthood, and from adulthood into an old age that necessarily limits people's independence, is fraught not only with individuals' difficulty in navigating their own life courses and confronting their own mortality, but also with the tensions and resentments that come when one person who has exercised control over another person's life no longer is willing or able to do so. Even in the best of circumstances, when both parent and child understand that such control was exercised in the best interests of the child, the inevitable end of the dependency relationship carries with it the fuel for future genera-

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64 *See id.*

65 Teresa Ghilarducci et al., *The Automatic Stabilizing Effects of Social Security and 401(k) Plans* 3–4 (Schwartz Ctr. for Econ. Policy Analysis, Working Paper No. 2011-2, 2011).

tional conflict. The timeless conflicts reflected in terms like "the generation gap" are reflected in literature throughout the ages as well as in popular culture.[66]

The transitions into and out of work are an especially fertile area for generational conflict. As one generation moves through its working years, and their children enter the work force, a nearly inevitable set of moments will arise in which the older generation is not yet ready to step aside, yet the younger generation is tired of waiting for their turn. Tenured professors hold onto their chairs while younger, ambitious professors wait for them to accept emeritus status and thus open up career-advancing opportunities. Corporate executives hold off challenges from the next generation of go-getters. More generally, younger workers want the jobs that their parents currently hold.

This transition then creates three basic choices for how to deal with the cohort of people who are nearer the end of their lives. First, they can continue to work but demote themselves in the name of allowing younger, more energetic and engaged talent to replace them. This would allow the older workers to continue to provide for themselves, without becoming dependent on anyone else (at least for a few more years). On the other hand, it seems safe to say that there are no historical examples of such equanimity on the part of any aging cohort (or even any sizable subset thereof). As plausible as it may seem in the abstract, at least Western industrial societies have not yet seen a situation in which older workers have freely stepped aside yet remained on the job.[67]

Moreover, if there are simply not enough jobs available for both young and old workers, it would not help the younger generation even if the older generations were willing to reduce their job status in order to help their children establish their careers. Either some young people would still be left out of the labor force, or some older people (possibly including those who were willing to accept demotions) would be forced out of their jobs entirely. If the older people who are left on the outside looking in, this would amount to *de facto* forced retirement.

The second possibility, therefore, is to handle the transition between working and retirement on a more voluntary basis, finding a way to make the older generation agree to step out of the work force entirely to make room for the next generation of leaders and workers. In other words, an aging generation can be induced to choose retirement. Doing so, however, requires that the younger workers understand that their newly

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[66] *See, e.g.*, BYE-BYE BIRDIE (Columbia Pictures 1963) ("Why can't they be like we were, perfect in every way? What's the matter with kids today?").

[67] *See* Geraldine Bedell, *When Are You Too Old to Keep Working?*, THE GUARDIAN (Feb. 12, 2013), https://www.theguardian.com/society/2013/feb/12/pope-resigns-too-old-keep-working.

opened economic opportunities come with a commitment to support the retirees who have stepped aside. As discussed below, it does not matter whether that commitment comes in the form of socially guaranteed savings accounts, private pensions, or government-provided support payments. What does matter is that retiring workers know that their decision to exit the labor force (which is, for most workers, essentially irreversible) will not result in privation. If lack of support in retirement is a serious risk, fewer people will be willing to stop working.

Sometimes, even in a society with a well-established retirement system like the United States, the mechanisms that allow aging generations to retire temporarily misfire, causing a backlog of workers. For example, the Great Recession of 2008-2009 resulted in the eradication of roughly 40% of net wealth and roughly 20% of retirement savings, delaying retirement plans for millions of older workers.[68] Perversely, this resulted in even fewer job openings in an economy that was already shedding millions of jobs in the face of millions of additional job seekers.

Every younger generation, therefore, is faced with two costly choices: waiting for their parents to step aside at their own pace, or paying their parents to step aside. Neither choice is an appealing one. The third option, therefore, is for the older generation—which is, in a very stark sense, an economic burden—simply to disappear. Only then will they be neither a source of competition in the work force nor an economic obligation to their children. In a society that does not require people to walk onto the proverbial tundra to die, however, this choice is off the table.[69]

1. The Unique Generational Conflict Caused by the Baby Boom

The life cycle of the Baby Boom presents an additional challenge to this ever-present generational conflict. Because of their sheer size, and because the Baby Boom coincided with the perfection of modern mass marketing, the Baby Boomers have dominated the economy as well as

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[68] *See* Signe-Mary McKernan et al., *Impact of the Great Recession and Beyond: Disparities in Wealth Building by Generation and Race*, URB. INST. 13 (Apr. 21, 2014), https://www.urban.org/research/publication/impact-great-recession-and-beyond ("Retirement assets fell by 18.9 percent . . . ."); *see also* Ylan Q. Mui, *Americans Saw Wealth Plummet 40 Percent from 2007 to 2010, Federal Reserve Says*, WASH. POST (June 11, 2012), https://www.washingtonpost.com/business/economy/fed-americans-wealth-dropped-40-percent/2012/06/11/gJQAlIsCVV_story.html?utm_term=.5bd83cbf99fe ("The Federal Reserve said the median net worth of families plunged by 39 percent in just three years, from $126,400 in 2007 to $77,300 in 2010.").

[69] In contrast, science fiction stories often involve ritual deaths of elderly citizens. *See, e.g.*, WILLIAM F. NOLAN & GEORGE CLAYTON JOHNSON, LOGAN'S RUN (Corgi ed., 1976) (defining "elderly" as age 21).

social discourse at every stage of their lives.[70] The cataclysmic social changes in the 1960s, featuring intense conflicts over hairstyles, rock-n-roll music, and so forth, were the first reflection of the Boomers outsized importance in shaping society.[71] Older Americans (that is, those who were the object of the admonition: "Don't trust anyone over 30!"[72]) were forced to adapt or become irrelevant. As the Boomers have aged, the popular culture has followed them, with the development of Classic Rock stations, the invention and mass marketing of Viagra, and so on.[73]

In this context, it is easy to understand how some non-Boomers could feel marginalized or worse.[74] When the social narrative never seems to be about anyone but the Boomers, everyone else could easily begin to wonder when their time will come. The Boomers' children, in particular, are likely to be vulnerable to such a reaction, because the current situation implicates not just marginalization of post-Boomers but marginalization by the Boomers' parents' generation as well. This resentment can be seen in commentary that, for example, complains bitterly about the Boomers' influence on politics and on how political issues are framed in terms that resonate with the Baby Boom.[75]

Although it is probably impossible to measure resentment in a meaningful way, there are nevertheless strong indicators that post-Boomers do indeed feel that they are being cheated by the Baby Boom generation. Given the never-ending news coverage of Social Security's supposed crisis, which was especially pronounced during former Presi-

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70 *See* DON TAPSCOTT, GROWING UP DIGITAL: THE RISE OF THE NET GENERATION 17 (1998) (explaining how Baby Boomers gained influence over media, business, and government policy); *see also* Anne Thompson, *Baby Boomers Create New Marketing Frontier*, NBC NEWS (Mar. 17, 2005), http://www.nbcnews.com/id/7211153/ns/nbc_nightly_news_with_brian_williams/t/baby-boomers-create-new-marketing-frontier/#.WbdCBdGQyCg (explaining how Baby Boomers were America's first mass-market generation).

71 Kenneth T. Walsh, *The 1960s: Polarization, Cynicism, and the Youth Rebellion*, U.S. NEWS (Mar. 12, 2010), https://www.usnews.com/news/articles/2010/03/12/the-1960s-polarization-cynicism-and-the-youth-rebellionredirect ("[T]he Sixties were marked by the worst of baby boomer self-indulgence . . . .").

72 *Don't Trust Anyone Over 30, Unless It's Jack Weinberg*, BERKELEY DAILY PLANET (Apr. 6, 2000), http://www.berkeleydailyplanet.com/issue/2000-04-06/article/759.

73 *See* Amy Henderson, *When It Comes to the Baby Boomers, It Is Still All About "Me"*, SMITHSONIAN (Oct. 15, 2014), http://www.smithsonianmag.com/smithsonian-institution/when-comes-baby-boomers-still-all-about-me-180953030/.

74 Notwithstanding the historic "bulge" in birth rates now known as the baby boom, the Baby Boomers were recently surpassed as the largest generation in the United States by the Millennial generation (those born between 1982 and 2000). *See Millennials Outnumber Baby Boomers and Are Far More Diverse*, U.S. CENSUS BUREAU (June 25, 2015), https://www.census.gov/newsroom/press-releases/2015/cb15-113.html.

75 *See, e.g.*, Matt Bai, *2010's Debates Still Trapped in the 1960s*, N.Y. TIMES (May 25, 2010), http://www.nytimes.com/2010/05/26/us/politics/26bai.html?mcubz=3 (unconvincingly connecting two political controversies, one over civil rights, and one over a candidate's lies about military service, as proof that "the Sixties" dominate the political discourse because the Baby Boomers cannot get past the issues from their formative years).

dent George W. Bush's failed attempt in 2005 to partially privatize the system,[76] it is perhaps unsurprising that younger Americans have become cynical about the future of the system. Public opinion polls for at least a decade have shown that post-Boomers overwhelmingly believe that they are being cheated by Social Security, pouring their payroll taxes into a system from which they will never collect benefits (because the system will supposedly have disappeared long before their retirements).[77]

In part, this lack of confidence on the part of the post-Boomers is the result of understandable public confusion over the difference between terms like *insolvency* (which could happen to Social Security, reducing its payouts but not shutting the system down) and *bankruptcy* (a non-synonym that is sometimes used to invoke *liquidation* of the system).[78] In part, it is the result of direct manipulation of such misunderstandings, along with appeals to younger generations not to allow their parents' bad decisions to harm their future.[79] Neither of these explanations would have nearly so receptive an audience, however, if there were not already a willingness among post-Boomers to believe that the Baby Boomers are harming generations who will follow.

The social context in which intergenerational resentments play out is important to understand, because Social Security is ultimately a matter of social policy that often inaccurately appears to be merely a series of technical questions. As discussed below, for example, the Social Security Trust Fund and the interest rate that it earns are accounting conventions that mask the underlying intergenerational and quasi-contractual commitments implicit in the Social Security system's structure.[80] Parental guilt, furthermore, fuels calls to reform Social Security to prevent harm to future generations; but the basis of that guilt lies in the popularized ac-

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76 *See* Brad Plumer, *Ryan Supported Social Security Privatization in 2005. What Was That Again?*, WASH. POST (Oct. 12, 2012), https://www.washingtonpost.com/news/wonk/wp/2012/10/12/ryan-supported-social-security-privatization-in-2005-what-was-that-again/?utm_term=.94b7614f39c6 (explaining how George W. Bush attempted to privatize Social Security).

77 Newport, *supra* note 11 (explaining that roughly 60% of Americans under the age of fifty believe that Social Security will not pay them a benefit when they retire).

78 *See Difference Between Insolvency and Bankruptcy*, GREENWAY BANKR., https://www.greenwaybankruptcy.com/articles/the-difference-between-insolvency-and-bankruptcy/ (last visited Oct. 19, 2017); *see also* John T. Harvey, *Social Security Cannot Go Bankrupt*, FORBES (Aug. 14, 2014), https://www.forbes.com/sites/johntharvey/2014/08/14/social-security-cannot-go-bankrupt/#370873ef7145.

79 One way to spread such a message is to send spokesmen to appear on television shows with young adult audiences. *See, e.g.*, Interview by Stephen Colbert with David Walker, Government Accountability Office, in New York City, N.Y. (Apr. 25, 2007), http://www.cc.com/video-clips/877wu4/the-colbert-report-david-walker (arguing that Social Security, Medicare, and Medicaid must be "reformed" because we have "over-promised," and suggesting that "young people get engaged and involved, because they're gonna pay the price and they're gonna bear the burden if they don't").

80 *See infra* Part IV, Section C.

counting indicators (Trust Fund insolvency, Social Security's contribution to the fiscal deficit, and so on) that are said to prove that one generation is cheating another.[81]

The broader question, however, remains the same. If some people will be allowed to (or required to) retire, then the people who are still working will have to make a commitment to support their fellow citizens' retirements. Social Security is one of the most successful methods yet devised to honor that commitment.

2. Workers and Non-Workers

The support of retirees is a subset of the more general issue of providing support for non-workers. At any given moment, a population will have some people who are producing goods and services and others who are not.[82] The latter category includes those who are too young, too sick, or who are otherwise incapable of participating in economically productive work.[83] It also includes retirees, many of whom are actually still capable of working productively.[84] Having a retirement system, therefore, involves a social decision to allow people to stop working at some point in their lives before they become too weak or ill to continue.[85]

All non-workers, however, must consume goods and services in order to survive. The decision of how much to provide non-workers—a survival ration or something more comfortable than that—is also a social

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[81] *See* Julia La Roche, *Hedge Funder Stan Druckenmiller Wants Every Young Person in America to See These Charts About How They're Getting Screwed*, BUS. INSIDER (Sep. 20, 2013), http://www.businessinsider.com/stan-druckenmiller-on-generational-theft-2013-9.

[82] *See* ADAM SMITH, THE WEALTH OF NATIONS 57 (Edwin Cannan ed., Random House 1937) (1776) ("Among civilized and thriving nations, . . . though a great number of people do not labour at all, many of whom consume the produce of ten times, frequently of a hundred times more labour than the greater part of those who work . . . .").

[83] Not all of these categories of people are allowed to be unproductive in all countries. The most economically significant of these groups is, of course, children. It is a relatively recent historical change to allow children past a very young age to continue to be non-workers, and that change is hardly universal even in the 21st century. At least since the U.S. passed child labor laws in the late 19th century, however, Americans have allowed children to be economically dependent until late adolescence. During their pre-adult years, they are provided with the education and socialization that will be necessary to provide for themselves and to provide goods for their parents and grandparents in retirement.

[84] *See* Paul A. Samuelson, *An Exact Consumption-Loan Model of Interest With or Without the Social Contrivance of Money*, 66 J. POL. ECON. 467, 468 (1958). Retirees can, for instance, produce valuable services inside the home, just as an adult who does not work for pay outside the home can produce in-home health care services, cleaning services, food preparation services, and home maintenance services.

[85] *See* Wilma Donahue et al., *Retirement: The Emerging Social Pattern*, *in* HANDBOOK OF SOCIAL GERONTOLOGY 330, 331 (Clark Tibbitts ed., 1960) ("Retirement is the creation of an economically non-productive role in modern societies which are capable of supporting large numbers of persons whose labor is not essential to the functioning of the economic order.").

decision.[86] It is the mark of most advanced societies that they not only allow people to retire while still relatively young and relatively healthy, but they allow those retirees to enjoy living standards at least roughly comparable to the living standards that they enjoyed while they were in the paid workforce.[87] It is worth noting, however, that neither of these two aspects of modern retirement—the ability to retire and the ability to consume above a subsistence level—is guaranteed. Society must organize itself in a way that it is possible to provide these rather modern innovations on a society-wide scale. In particular, each such society must set up a system by which retirees are given the ability to obtain goods and services. Such a system must, in turn, have a financing mechanism to allow it to continue across generations.

3. Social Security is Not a Deposit Scheme, Notwithstanding the Rhetorical Framing

Formally, the Social Security system was set up as a pay-as-you-go system, with retirees in the early years of the system receiving benefits even though they had not paid into the system.[88] (Many of these retirees had, however, saved for their retirements, only to see those savings wiped out by the series of financial crises during the Great Depression)[89] The system, notwithstanding some features described below, continues to be structured such that Social Security "contributions" are put into a general fund, from which benefits are paid.[90]

There is, therefore, no vault into which Social Security taxes are placed; more to the point, there is no system of private savings accounts into which workers deposit money, nor do the workers' contributions

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86 *See, e.g.*, Patricia E. Dilley, *The Evolution of Entitlement: Retirement Income and the Problem of Integrating Private Pensions and Social Security*, 30 LOYOLA L.A. L. REV. 1063, 1085–90 (1997) (discussing the rarity of retirement and old age prior to the modern era); *see also Exploring the Economics of Retirement: Hearing Before the Special Committee On Aging*, 109th Cong. 11 (2005) ("At the most rudimentary level, one could envision households actually storing goods purchased during their working years for use during retirement."); *cf.* Donahue, *supra* note 85.

87 *See* Donahue, *supra* note 8585.

88 *See, e.g.*, NANCY J. ALTMAN, THE BATTLE FOR SOCIAL SECURITY: FROM FDR'S VISION TO BUSH'S GAMBLE 82–83 (2005).

89 *Impact of the Great Depression on the Elderly*, ENCYCLOPEDIA, http://www.encyclopedia.com/economics/encyclopedias-almanacs-transcripts-and-maps/elderly-impact-great-depression (last visited Oct. 19, 2017) ("As the economic crisis worsened, many employers were reluctant to rehire or keep on older workers. Widespread bank failures often wiped out savings accumulated over a lifetime of labor.").

90 *See* ALTMAN, *supra* note 88, at 82; *see generally* Social Security Act, 42 U.S.C. § 401 (2012).

formally earn interest.[91] Each worker's income is taxed, and the system keeps track of the amount that each person has paid into the system.[92]

When it is time to withdraw money from the system, moreover, the workers do not draw down a balance from an individual account.[93] Instead, the system indirectly refers to each worker's contributions to determine her ultimate entitlement to receive retirement benefits—an entitlement that, as discussed above, continues until the beneficiary's death.[94] The determination of each recipient's monthly benefit payment is based on a formula that takes into account the number of years that a worker has paid into the system as well as the worker's earnings.[95] Workers can then choose among different benefit schemes at three different age cut-offs, with monthly benefits rising for workers who delay their retirement dates.[96]

Even though this system does not actually separate the contributions of workers into separate accounts, however, the system is often talked about as if people deposit money into accounts with their own names and Social Security numbers attached.[97] This public misperception is no accident. When President Roosevelt's advisors were designing the system in

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[91] *See* Neil H. Buchanan, *Social Security and Government Deficits: When Should We Worry*, 92 CORNELL L. REV. 257, 270 (2007) ("[N]o individual accounts exist for workers to monitor and determine ongoing funding levels. Instead, they simply earn the right to future benefits under the rules of the system."); *see generally* Social Security Act 42 U.S.C. § 401 (2012). And it would be foolish to create a system in which there were individual accounts. The idea of money in a 'vault' is a folk tale that unfortunately skews thinking about banking and saving. No modern banking system is set up to take and hold deposits without reinvesting those deposits back into the economy.

[92] *See* ALTMAN, *supra* note 88, at 109–10. Not all income is taxed—only the first $106,000 earnings from labor (wages and salary) are taxed, not income from investments, royalties, and similar unearned income. *See generally* Social Security Act 42 U.S.C. §§ 409, 415 (2012).

[93] *See* Buchanan, *supra* note 91.

[94] *See* Social Security Act 42 U.S.C. § 415 (2012).

[95] *Id.* The benefit formula takes into account the worker's earnings during the thirty-five years in which the worker earned the most. *See Your Retirement Benefit: How is It Figured?*, SOC. SECURITY ADMIN. (Jan. 2017), http://www.ssa.gov/pubs/10070.html ("We adjust or 'index' your actual earnings to account for changes in average wages since the year the earnings were received. Then Social Security calculates your average indexed monthly earnings during the 35 years in which you earned the most.").

[96] *See Retirement Planner: Delayed Retirement Credits*, SOC. SECURITY ADMIN., https://www.ssa.gov/planners/retire/delayret.html (last visited Oct. 14, 2017); *see also* Melissa A.Z. Knoll & Anya Olsen, *Incentivizing Delayed Claiming of Social Security Retirement Benefits Before Reaching the Full Retirement Age*, 74 SOC. SECURITY BULL. 21, 22 (2014).

[97] *See, e.g.*, Arnold H. Nelson, *Social Security Not a Trust Fund*, CHI. TRIB. (July 27, 2011), http://articles.chicagotribune.com/2011-07-27/opinion/chi-110727nelson_briefs_1_social-security-trust-fund-national-sales-tax-federal-income ("No wage earner has ever 'paid' a nickel into Social Security, in the sense of writing a check on their personal bank account for their contribution."); *see also* Kelly Harrington, *I Want My Money Back: The Problem With Social Security*, THE KNIGHT CRIER (Mar. 3, 2015), https://www.knightcrier.org/opinion/2015/03/03/i-want-my-money-back-the-problem-with-social-security/.

the 1930s, the President made the specific choice to talk about the system as if it were setting up financial assets that each worker owned.[98] Roosevelt worried that workers might view retirement benefits as "charity" rather than as something that they owned as a matter of earned entitlement.[99] In order to get the broad public to buy into the system psychologically, therefore, the administration felt that it must describe the system in terms that would feel comfortable and familiar to all workers.[100]

This misleading packaging has had the unfortunate side effect of making it easy to confuse and enrage the public.[101] Demagogues can tell the public that "your money is not being saved," and in a certain sense they are correct. If the public knew that current taxes were not supposed to be saved in the colloquial sense—and that there is no real difference between PAYGO and fully-funded systems—then they might not be taken in by such claims. Although such demagoguery has not yet resulted in sufficient political momentum to support significant changes in the program, it is surely a political liability to supporters of the system that they must explain that—even though workers' Social Security taxes are not being "saved" in the way that many people think they are—the system can still protect their promised benefits so long as the public does not support a political change that would create a self-fulfilling failure of the system.

Whether or not the political packaging—allowing, or even encouraging, people to think that Social Security is a system of private savings accounts—was necessary, however, it is certainly true that workers and retirees have come to treat their promised benefits as something that they own.[102] Their promised benefits are sacrosanct, because each worker pays into the system during her working life, and each worker expects to receive "my money" back during retirement. The good news is that they can receive their promised benefits so long as the system is held intact. The bad news is that the misunderstanding itself might undermine the system's necessary support among the public.

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98 *See* ALTMAN, *supra* note 88, at 33–35 ("Our American aged do not want charity, but rather old age comforts *to which they are rightfully entitled* by their own thrift and foresight in the form of insurance.") (emphasis added) (quoting Franklin Delano Roosevelt, then-Governor of New York, Annual Message to the Legislature (Jan. 7, 1931)).

99 Franklin D. Roosevelt, then-Governor of New York, Annual Message to the Legislature (Jan. 7, 1931).

100 *See* ALTMAN, *supra* note 88, at 33–35.

101 Social Security's packaging is "misleading" rather than "dishonest" because benefits are a legal commitment by the government to retirees; so even though the internal workings of the system are not accurately conveyed, the equivalent outcome is guaranteed.

102 *See, e.g.*, Nelson, *supra* note 97; *see also* Harrington, *supra* note 97.

C. Pay-as-you-go and Fully-funded Systems

Financing a retirement system is typically described as a choice between two fundamentally different approaches: pay-as-you-go (PAYGO) systems, or fully-funded systems.[103] In a PAYGO system, the nation's current retirees receive benefit checks from a government agency, which pays for those benefits by collecting taxes from those who are currently working.[104] By contrast, retirees in a fully-funded system pay for their consumption by withdrawing money from financial assets that they built up during their working lives; and current workers build up their retirement nest eggs by putting money into financial assets and hoping that those assets will have increased in value when the time comes to retire.[105]

Although these two systems appear on the surface to be polar opposites—current workers supporting current retirees on one hand, but every worker supporting herself throughout her life on the other—the difference is actually cosmetic and ultimately meaningless.[106] Consider the effect on aggregate saving, for example, of the two systems.[107] In the PAYGO system, no worker will need to save for retirement (assuming that the Social Security benefit is sufficient to cover an acceptable living standard), so there would be no net retirement saving. In the fully-funded

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[103] *Cf.* LAURENCE S. SEIDMAN, FUNDING SOCIAL SECURITY: A STRATEGIC ALTERNATIVE 19 (2006) (using the terms "PAYGO" and "funded" to describe Social Security funding alternatives). This use of the term PAYGO should not be confused with the budgetary rule of the same name that compelled "direct spending and revenue legislation . . . [to] not add to the deficit." *Glossary of Congressional Terms*, THE CAPITAL, http://www.thecapitol.net/glossary/opq.htm#Pay-As-You-Go (PAYGO) Process: (last visited Oct. 9, 2017).

[104] *See* Rick Santorum, *Wealth Creation in the New Millenium: Transforming Poverty in America*, 16 NOTRE DAME J.L. ETHICS & PUB. POL'Y 383, 388 (2002) (describing the PAYGO system as "an intergenerational income transfer program where current workers contribute FICA/payroll taxes that go directly to fund benefits of current retirees and other beneficiaries").

[105] *See* Robert C. Atchley, *Retirement: Leaving the World of Work*, 464 ANNALS AM. ACAD. POL. & SOC. SCI. 121, 121 (1982) ("Retirement is the withdrawal of an individual from employment, along with entitlement to income that is based on having been employed over a period of years.").

[106] In both systems, the right to consume is at least partially based on a retiree's underconsumption during his or her working life. A PAYGO system does not directly equate market returns with "just desserts," whereas a prefunded system implicitly bases the right to consume in retirement on abstention from consumption while working and on whether a retiree's savings accounts—assuming they still exist—pay relatively high interest rates. *Cf.* Leigh Allyson Wolfe, *Is Your Pension Safe? A Call for Reform of the Pension Benefit Guaranty Corporation and Protection of Pension Benefits*, 24 SW. U. L. REV. 145, 164 (1994) ("Implicit in prefunding pension benefits is that a variety of assumptions must be made . . . includ[ing assumptions about future] . . . interest rate[s] . . . .").

[107] For this simplified discussion, it is useful to assume that all generations are of equal size, that all workers have the same productivity at all points in time, and that all retirees consume all of their available resources before they die. Obviously, these assumptions do not drive the remainder of the analysis; but they are useful to focus the discussion here.

system, however, there would also be no net retirement saving at any given moment. This counterintuitive outcome is the result of retirees taking money out of their bank accounts at the same rate that workers would be depositing money into their retirement accounts, with the banks merely acting as pure financial intermediaries.

Similarly, there is no conceptual difference between the two types of retirement systems in how generations are linked to one another. In a PAYGO system, the link between workers and retirees is obvious, with current workers paying taxes to the government, which then sends those taxes out in the form of benefit checks.[108] In a fully-funded system, however, the generations are still linked, because the banks will not be able to continue to operate unless the working generation is depositing money into the system.[109] The current workers' deposits will be turned into current retirees' withdrawals, just as in a PAYGO system current workers' taxes are turned into current retirees' benefits.[110] We can call workers' contributions "taxes" or "deposits," and we can call retirees' sources of income "benefits" or "withdrawals," but the reality is that current workers will finance the consumption enjoyed by their retired parents and grandparents.

Indeed, it is much easier to see this equivalence if one looks not at the financing of the system but at the real economic activity that a retirement system supports. Retirees consume food, lodging, medical care, entertainment, travel, and so on. Because they are retired, they do not—by definition—contribute to the production of those goods. Current workers, therefore, must produce more goods than they will consume in any given time period, because their output must satisfy both their own desires and that of retirees.[111]

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108 *See* Santorum, *supra* note 104.

109 Recall that the banking system is not a system of vaults. Banks hold very little money in cash. Banks, seeking to earn profits, lend out their depositors' money (subject to minimum requirements). The system depends on banks taking in deposits in at least equal value to the loans that are made; if the current workers in a privatized system failed to put in enough money to finance the withdrawals of current retirees, the banks will raise interest rates on deposits in order to encourage workers to increase their saving. If workers do not respond as needed, banks will become insolvent. If banks could not foreclose on loans that were financed with the retirees' deposits, they would be forced to liquidate. If that were to happen on a large enough scale, the government would be forced to intervene to prevent a run on the banking system. This would, in essence, mean that the government would be making up for the saving that current workers were not providing. In that case, the system is no longer privatized. At that point, in fact, a PAYGO system would have to be created; the government would be forced to tax current workers in the amount that they should have been saving, in order to cover the bank deposits from the retirees who did save. Going forward, the current workers could be given "credits" toward retirement benefits based on their taxes paid during their working lives. If that looks a lot like the current U.S. system, it is.

110 *See* Santorum, *supra* note 104.

111 This discussion simplifies the complexity of modern production by treating all workers as if they produce some type of composite good that represents all food, shelter, and other

Whether current workers reduce their output to pay Social Security taxes or to deposit money in a private savings account, the essential point is that they must not consume their entire output. Inducing them to agree to overproduce involves convincing them that their current overproduction (i.e., their current under-consumption, or saving) will be rewarded at a later date, when they are no longer working. Whether such an agreement is achieved through a democratic process of creating a government retirement plan run on a PAYGO system or a private plan run on financial assets is immaterial to the long-term macroeconomic reality. Nearly everyone will, at some point, stop producing goods and services. When they do, they will either die, or someone will produce goods and services for them. The only way for the generations not to be linked in this way, therefore, is for the very notion of retirement to be eliminated. Short of that, any economy will be faced with the problem of allowing non-workers to eat.

Seen in this way, any retirement system is both a PAYGO system and a fully-funded system. A system must be PAYGO in the sense that it involves taking from current workers and giving to current retirees. It is also fully-funded, however, in the sense that each generation at some point hands off the productive capacity of the economy to the next generation; and if that productive capacity (which is based in large part on the education of the new work force) is large enough, then retirees will be able to retire knowing that their offspring will be able to produce enough goods for all future workers and non-workers.[112] Giving the next generation sufficient productive capacity, in turn, requires that each generation invest in the next generations' education, technology, and the other factors that will allow the economy to prosper into the future. This intergenerational investment is fully funded, therefore, in the sense that current workers "save" for the future by "depositing" resources into in-

goods and services that are produced in a modern economy. While the efforts of law professors, for example, are difficult to connect directly to the production of food or anything else tangible, nothing is lost by acting as if all workers are contributing to the production of all goods and services.

112 *See* Art Rolnick & Rob Grunewald, *Early Childhood Development: Economic Development with a High Public Return*, MINNEAPOLIS FED. RES. BANK 9 tbl. 1B (Dec. 2003), https://www.minneapolisfed.org/~/media/files/publications/studies/earlychild/abc-part2.pdf; *see also* Dale W. Jorgenson & Barbara M. Fraumeni, *Investment in Education and US Economic Growth*, 94 SCANDINAVIAN. J. OF ECON. 51, 52 supp. (1992) (explaining that the public views education as an investment in human capital); Neil H. Buchanan, *Social Security, Generational Justice, and Long-Term Deficits*, 58 TAX L. REV. 275, 323 (2005) (explaining that "[t]he higher living standard that future generations will enjoy arises from productivity gains that are themselves largely the results of technological innovations for which those future generations will not be responsible").

vestments (such as their children's minds) that will pay dividends in the future.[113]

D. Sustainability and the Baby Boom

Even though the rates of return on Social Security contributions, when measured correctly, show that the system is a "good deal" from the standpoint of money paid in versus benefits received,[114] it is still possible that the system is not sustainable in the long run. The system could become too expensive to maintain, or its funding mechanism could ultimately fail. Therefore, it is essential to understand how the system works from both a legal perspective and from a macroeconomic perspective. The legal perspective focuses on how the system exists within the federal government, and how the laws governing Social Security create rights and obligations on the part of workers, businesses, and governments.[115] The macroeconomic perspective reminds us that the Social Security system is merely one way in which a government can move money around within an economy.

1. Social Security as a System Separate from the Rest of the Federal Budget

As noted above, the idea that Social Security is a collection of individual savings accounts is a fiction; but it is essentially a harmless fiction. Setting aside the public's view of how the system works, however, Social Security's fundamental design is to collect revenues each year from payroll taxes, and to use those revenues to pay for the same year's benefits.[116] That is, the Social Security system is one of the very few programs, and one of the two largest such programs,[117] that has a fund-

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[113] Teresa Ghilarducci was the first to identify this characterization of all retirement systems as being both PAYGO and fully funded. *See* TheRealNews, *401(k) and the Financialization of Retirement*, YOUTUBE (Apr. 15, 2013) (holding a live talk with Tera Ghilarducci where she explains that we arrange it "so that Social Security is pay-as-you-go and the other layer is fully funded").

[114] *See* Michael Clingman, Kyle Burkhalter, & Chris Chaplain, *Internal Real Rates of Return Under the OASDI Program for Hypothetical Workers*, SOC. SECURITY ADMIN. (Dec. 2014), https://www.ssa.gov/OACT/NOTES/ran5/an2014-5.pdf.

[115] SOC. SEC. ADMIN., A COMPREHENSIVE SOCIAL SECURITY PROGRAM (1948) ("Information [about Social Security] must flow out in a continuing stream if the taxpayers, the beneficiaries, and the public as a whole are to know the provisions enacted by Congress for their protection and their rights and obligations under the law.").

[116] *Cf.* Joseph F. Quinn & Olivia Mitchell, *Social Security on the Table*, AM. PROSPECT, May-June 1996, at 76 ("Today's retirement benefits are paid mostly by today's workers' contributions, an arrangement that has functioned successfully for 60 years.").

[117] The other large federal program with a separate, dedicated funding source is Medicare. It is set up using a structure that is very similar to Social Security's, although it has different rates and does not have a cutoff level of earned income above which no taxes are levied. Everything said in this discussion about Social Security arbitrarily being measured for solvency, therefore, also applies to Medicare.

ing mechanism tied to the structure of the program itself. If the system had not been set up in this way, another fundamental confusion about how the system interacts with the budget and the economy might not have arisen.

Because of Social Security's dedicated tax stream, it is possible to perform the macroeconomically meaningless financial calculation to determine whether the system is "solvent." We do not think about whether, for example, the Department of Homeland Security is solvent, or whether the Peace Corps and the Navy are solvent. Those programs are financed from general funds, as part of the overall expenditures of the federal government. When the sum of those expenditures exceed aggregate federal revenues, the Treasury must borrow on the financial markets to finance the annual deficit.[118]

Social Security could have been funded in the same manner. Upon its creation, Congress could have increased general tax revenues through higher tax rates or any of a variety of other methods.[119] Without having any revenues called "Social Security taxes," there would have been no way to discern whether Social Security's revenues and expenditures were in balance. Social Security would have simply been another program that the federal government funds on a continuing basis, and calling it solvent or insolvent would have made no more sense than calling the National Park Service or the Department of Justice solvent or insolvent. Therefore, if Social Security had not been set up to make it appear to be "funded" in a way that differs from the usual run of government spending programs, we would never think to describe the system as "sustainable" on a basis separate from the overall budget of the federal government.

Funding Social Security in the more typical way would, however, have eliminated the politically important sense of people's "ownership" of their scheduled benefits. If Social Security were simply another government spending program—although a large and important one—its political viability could have been much more easily undermined.[120] In that situation, for example, Social Security would simply be another line item on the annual federal budget. Because it is a very large number, and thus

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[118] *See Borrowing and Federal Debt*, NAT'L PRIORITIES, https://www.nationalpriorities.org/budget-basics/federal-budget-101/borrowing-and-federal-debt/ (last visited Oct. 19, 2017) ("To finance the [federal] debt, the U.S. Treasury sells bonds and other types of securities.").

[119] These other methods include expanding the income tax base, or tapping into other tax bases. In a sense, however, the Social Security tax system *did* create a new tax base; so the important difference between what Congress actually did in 1935 and what it could have done is a matter of perception. Congress could have, in other words, created a funding mechanism for Social Security that could not have been traced over time as a "Social Security tax."

[120] *See* ALTMAN, *supra* note 88, at 50 ("President Roosevelt had been very explicit that he wanted the government insurance directly tied to earmarked contributions.").

seems to offer the most potential for large savings from proportionately small cuts, it would be a very tempting target for budget cutting.

Creating Social Security as a separate system, however, is much more than merely a matter of political framing. Congress set up Social Security to collect taxes from existing workers and to spend those funds in concurrent years on retirees' benefits.[121] To lock that system in place, Congress set up a legal mechanism to determine when and how a citizen becomes eligible to receive Social Security benefits.[122] This mechanism has the force of law. Like all laws, of course, it can be changed prospectively; but the law will be enforced so long as it continues to be the law of the land. The political power of Social Security, moreover, reduces the likelihood that its structure will be changed, reinforcing the individual rationality of continuing to rely on Social Security's promises.

The Social Security system is not only a meaningful legal fiction, however. It is also a system that people have grown up with and which they take very seriously—even as they simultaneously fret about repeated pronouncements that it might go away.[123] The resulting social narrative is important both politically and in the way that people form their expectations about future benefits, allowing them to plan their lives around a simple and intelligible view of how their retirements will be financed. At the core of this narrative is the idea that payroll taxes are half of a *quid pro quo*: pay Social Security taxes early in life, and you will receive Social Security retirement benefits later in life. The social expectations surrounding that *quid pro quo* are palpable, as people have come to view their payments into the Social Security system as creating an obligation by the government to come through on its promises.[124]

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121 *See* Harvey, *supra* note 78 (explaining that Social Security is an "immediate transfer from workers today to retirees today").

122 *See* Knoll, *supra* note 96, at 22.

123 *See, e.g.*, Harrington, *supra* note 97.

124 Public attitudes about Social Security's "deal" with American citizens can be seen in expressions of outrage at the suggestion that benefits might be cut. A selection of journalistic sources and comments on internet message boards sampled over the last ten years includes the following: Michael Hiltzik, *Trump's Proposal to Eliminate the Social Security Payroll Tax May Be His Worst Idea Yet*, L.A. TIMES (Apr. 10, 2017), http://www.latimes.com/business/hiltzik/la-fi-hiltzik-social-security-tax-20170410-story.html; Dean Baker, *Cutting Social Security and Not Taxing Wall Street*, HUFFINGTON POST (May 15, 2013), https://www.huffingtonpost.com/dean-baker/-cutting-social-security_b_3281777.html; Klein, *supra* note 8; Alan Colmes, *Harry Reid Opponent Would Privatize Social Security, Medicare, And Department Of Veterans Affairs*, ALAN.COM (June 14, 2010), http://www.alan.com/2010/06/14/harry-reid-opponenet-would-privatize-social-security-medicare-and-departmenet-of-veterans-affairs/ (available at https://web.archive.org/web/20100617003918/http://www.alan.com/2010/06/14/harry-reid-opponenet-would-privatize-social-security-medicare-and-departmenet-of-veterans-affairs) (scroll to "John Galt, June 15th, 2010") ("I respect the desires of the people who have labored all their life and paid INTO the system to want to get THEIR money out."); Jim Borland, *Can I Keep This Benefit Payment?*, SOC. SECURITY ADMIN. (Aug. 17, 2017), https://blog.ssa.gov/can-i-keep-this-benefit-payment/ (select "Show comments;" scroll to "Donna

Even though the public views Social Security as a *quid pro quo*, however, it might not make sense to treat it as such for policy purposes. In one sense, of course, setting up the Social Security system with a dedicated tax stream was indeed a legal fiction, in the sense that all of the money from Social Security payroll taxes and benefits is nothing more than fungible dollars going into and out of the Treasury every year. The dollars might be labeled in suggestive ways, but they are still ultimately interchangeable dollars.

Even though it is a legal fiction, however, a serious analysis of the system can and should take the implications of that legal fiction seriously. National boundaries are legal fictions; patents are legal fictions; and so are corporations. Yet no sane person would claim that there is no practical import to how those legal fictions are defined, or that the rights and responsibilities that arise from the law are somehow unimportant because they are based on ultimately artificial legal designations.

Therefore, it is essential to consider how Social Security works both from its legal, systemic perspective—in which Social Security is analyzed as a self-contained system based on law—and from a macroeconomic perspective—in which Social Security's financial inflows and outflows are cast in the light of the overall fiscal situation of

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Carter, September 21, 2017") ("[I]f the wealthy paid in it is their right to collect it at retirement."); *id.* (scroll to "Joseph Z Anders 3, August 17, 2017") ("HELL YES QUIT SCREWING US ON THE MONEY THAT WE WORKED FOR AND PAID OUT SOCIAL SECURITY YOU MONEY HUNGRY BIGOTS."); Michelle Singletary, *Could You Live Off Social Security Alone?*, WASH. POST., (Aug. 21, 2017), https://www.washingtonpost.com/news/get-there/wp/2017/08/21/could-you-live-off-social-security-alone/?utm_term=.02af1e2cab57 (select "Comments;" scroll to "Donna Gay Strickland Hughes") ("It is an absolute shame that Social Security recipients receive the small amount that they do while Congress and Senate make four to five to ten times more [than] working citizens who paid into Social Security. This is absolutely a disgrace. The billions of dollars that Congress stole from Social Security years ago should be returned to the Social Security fund immediately. Social security has not [received] a raise in 8 years. This shows [that] the government does not care about the people who worked hard for years in order to put food in their mouths and pay taxes as well as Social Security."); DemRapidResponse, *John McCain on Privatizing Social Secuirty*, YOUTUBE (June 12, 2008) http://www.youtube.com/watch?v=FyBwMy27Aoc (scroll to "Bead Stallcup, 7 years ago") ("Washington politicians promised us that if we'd just pay in back then, it would be here now when we wanted to retire. But now they're saying it's an entitlement from the government. No sir! We trusted bums like John McCain to protect our 'retirement' money and what did these two-faced ratsnakes do? Embezzled our social security trust funds and spent it."); *H.R. 235, The Social Security Fairness Act of 2009*, WASH. WATCH, http://www.washingtonwatch.com/bills/show/111_HR_235.html (scroll to "Bobbie R, Jan. 12, 2009") (last visited Oct. 9, 2017) ("This is a time for our elected officials to step forward and give citizens who have paid into social security their fair due."); *id.* (scroll to "We Did Earn It, Feb. 5, 2009") ("I just want what I've earned and paid for."); *id.* (scroll to "Walter Kay, Feb. 6, 2009") ("I just want what I earned and paid into the 'system.'"); *Should Social Security Be Means Tested?*, US NEWS & WORLD REP. (Mar. 2, 2010), http://www.usnews.com/opinion/articles/2010/03/02/should-social-security-be-means-tested.html ("This is not a matter of 'entitlement.' It is an earned right that has been paid for"; "Make sure that all Social Security recipients who qualify for benefits get back every penny paid into the system.").

the government and the economy within which it operates. Viewed from either perspective, Social Security is fair to all generations.

2. Non-workers and Dependency Ratios

As described above, the very concept of a society-wide system of retirement as a right of citizenship is new to human history. Providing such a system requires that some people work harder than they would have to work if they were providing only for their own needs. Having non-workers who depend on workers requires that the average worker produce enough goods and services for themselves and for some other people as well. This is only possible if the workers are producing more than a subsistence-level quantity of goods and services, allowing them to share with others without putting their own health and future productivity at risk.

The "dependency ratio" is a simple arithmetic measure of this relationship between workers and non-workers, dividing the total population by the number of workers.[125] A dependency ratio of 2.0, for example, would mean that each worker is supporting both herself and one other person.[126] Similarly, a dependency ratio of 1.2 would mean that ten people are providing enough for twelve people, including themselves.[127] Even though that is the most logical definition of a dependency ratio, however, it is common to use a variation on the ratio defined above. Rather than dividing non-workers by workers, one includes only workers and retirees in the numerator. A ratio thus defined can then be interpreted as "the number of adults that each worker must support."[128]

Under Social Security's basic structure, there would be no need to collect more in taxes than each year's annual benefits would require. So long as the dependency ratio (broadly defined) remains constant, workers can produce the same amounts of goods and services each year, with no change in anyone's living standards. Thus, even if the population is growing, it is possible to have an unchanging dependency ratio.

Not only would such a system continue to work smoothly even if the population grew steadily, but it would be possible to integrate any increases in workers' productivity over time into a stable retirement system. Such productivity increases could be—but do not have to be—used to finance higher living standards for future retirees as well as future

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[125] *Dependency Ratio*, UNITED NATIONS, http://www.un.org/esa/sustdev/natlinfo/indicators/methodology_sheets/demographics/dependency_ratio.pdf (last visited Sept. 11, 2017).

[126] *Id.*

[127] *Id.*

[128] A third alternative is to exclude workers from the numerator, making the ratio equal to retirees/workers, or "the number of retirees each worker must support." The difference between the second and third definitions is exactly 1. That is, if the adults/worker ratio is 3.0, then the retirees/worker ratio is 2.0.

workers.[129] During the first twenty-five or so years after World War II, in fact, workers' productivity rose significantly and steadily, increasing material living standards to levels unseen in human history.[130] This prosperity was shared with the nation's retirees.

3. The Challenge of the Baby Boom

The Social Security system's basic structure could, therefore, continue to run smoothly even with a growing population and rapid increases in workers' productivity. So long as the system was undisturbed by political forces, economic cataclysms, or major demographic shifts, the pay-as-you-go scheme would allow Social Security to collect taxes and recycle those funds into the hands of retirees, without any significant changes to any major component of the system: tax rates, benefit levels, or retirement ages. If the economy continued to grow, all would share in the bounty. If it shrank, all would feel the pain.

Political forces have so far been unsuccessful in changing the basic structure of Social Security. Even some major economic cataclysms—especially the "stagflation" of the 1970s[131] and the "Great Recession" of 2008-2009 (and its aftermath)[132]—have proved unable to undermine the system's basic foundation. What did turn out to be a major problem, of course, was the historic demographic shift that everyone now knows as the Baby Boom.[133] Demographers mark the official beginning of the Baby Boom in 1946, and the final year in 1964.[134] During those nineteen years, the live birth rate to American women soared from its previous

129 *Cf.* ALTMAN, *supra* note 88, at 59 ("[T]here is a strong argument for paying benefits out of current income. As the nation's productivity increases, the pension obligations become easier to pay."). As an example: if future workers were 10% more productive, they could continue to give retirees exactly the same amount of goods and services that retirees had been receiving, or they could increase retirees' benefits. If an average worker had been earning $50,000 per year and paying $5000 of that toward each year's Social Security benefits, and an average retiree had been earning $20,000 per year, then a $5000 increase in a worker's productivity either could be split proportionally, with the worker paying an extra $500 per year toward Social Security benefits, with her take-home pay rising by 10% from $45,000 to $49,500 and a retiree's benefit increasing by 10% to $22,000. Alternatively, the workers could all keep the entire $5000, decreasing their Social Security tax rate to 9.1% and leaving benefits at $20,000. These two examples, of course, hardly exhaust the range of possibilities.

130 HAROLD G. VATTER & JOHN F. WALKER, HISTORY OF THE U.S. ECONOMY SINCE WORLD WAR II 432–41 (1996).

131 *See* Lewis E. Lehrman, *The Nixon Shock Heard 'Round the World*, WALL STREET J. (Aug. 15, 2011), http://www.wsj.com/articles/SB10001424053111904007304576494073418802358.

132 *See generally* United Nations Dep't of Econ. and Social Affairs et al., *World Economic Situation and Prospects* (2013).

133 *See* COLBY, *supra* note 1, at 2.

134 *Id.* In addition to its official description, the term "Baby Boom" can be used as a shorthand to separate those born before and after the mid-1960s. In that sense, the term roughly separates "the old" from "the young." Throughout this Article, whether the term is to be understood in its technical sense or its descriptive sense will be clear from the context.

high, peaking at two million babies born in 1957;[135] and in the decades following 1964, the birth rate again fell back to levels one half the peak years in the late 1950s.[136]

America was thus flooded with a new generation of previously unseen size. Because of this, the Baby Boom has created policy challenges at every stage of its members' life cycles. In the 1950s and 1960s, it became necessary to engage in a massive expansion of the nation's school system, radically expanding the space available for millions of children to receive a guaranteed basic education.[137] New teachers were trained and hired, along with school nurses, administrators, and other personnel.[138] Obstetric and pediatric medicine expanded to meet the new demand.[139] Every aspect of child rearing became a national issue, simply because the country was unprepared for the sheer numbers of babies and children that it had created.

The cost to the parents and grandparents of the Baby Boomers was, of course, substantial. They were working to provide goods and services to their families (at a time when intensifying consumerist trends were changing what it meant to provide adequately for one's family), and they were a relatively small group of workers supporting this very large group of non-workers. The (broadly-defined) dependency ratio had risen substantially, yet the World War II generation found itself able to support all of those non-workers even while increasing the living standards of adults.[140]

When the Baby Boomers began to enter the work force in the 1970s and 1980s, the situation looked especially bright. The dependency ratio was extremely low,[141] with most of the Baby Boomers' parents still in

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135 U.S. Dept. of Health, Educ., and Welfare, *Vital Statistics of the United States*, CENTER FOR DISEASE CONTROL 221 tbl. 26 (1957), https://www.cdc.gov/nchs/data/vsus/VSUS_1957_1.pdf.

136 There was an "echo boom" in the 1990s, as the Baby Boom generation—many of whom had delayed child bearing—began to have children in relatively large numbers. *See* U.S. Dept. of Health, Educ., and Welfare, *Vital Statistics of the United States*, CENTER FOR DISEASE CONTROL 1 tbl. 1-1, http://www.cdc.gov/nchs/data/statab/t941x01.pdf.

137 As but one example, the author of this Article entered kindergarten in 1964. The local elementary school at that time had one room available for kindergarten, but three classrooms worth of kindergartners were enrolled in the school, necessitating the conversion of the school gymnasium into two classrooms (and canceling all indoor physical education classes). Similar accommodations were necessary around the country. *See* James G. Ward, *The Future of Education Finance In Improving Public Education*, *in* EDUCATIONAL LEADERSHIP: POLICY DIMENSIONS IN THE 21ST CENTURY 141, 142 (Bruce A. Jones ed., 2000); Anne R. Pebley, *Demography*, *in* ENCYCLOPEDIA OF PUBLIC HEALTH, 314, 317 (Lestor Breslow ed., 2001).

138 *See* Ward, *supra* note 137.

139 *See* Pebley, *supra* note 137.

140 *United States—Age Dependency Ratio (% of working-age population)*, TRADING ECONS., http://www.tradingeconomics.com/united-states/age-dependency-ratio-percent-of-working-age-population-wb-data.html (last visited Sept. 23, 2017).

141 *Id.*

the work force for another decade or so, a relatively small cohort of retirees, and a much smaller number of children being born every year.[142] Even with the falloff in productivity growth that set in during the seventies,[143] the sheer volume of new workers—supplemented by women moving into the paid work force in unprecedented numbers[144]—presented Social Security with the enviable problem of what to do about all the good news.

Because the Baby Boom generation is often thought of as a burden on Social Security, it is worthwhile to consider just how good the underlying facts were in the late 1970s and early 1980s. Because of the large number of workers relative to retirees, two choices presented themselves: cutting taxes or increasing benefits (or both). Within the context of a pay-as-you-go plan, those were the only choices. If the system collected a lot of money in Social Security taxes, it had to spend it on current retirees' benefits. If we did not want benefit payments to go up for those current retirees, we would have had to cut taxes. This is, of course, an enviable choice, because it boils down to how we should distribute the wealth being created by numerous and highly productive workers. Everyone could win.

Of course, the flip side of the good news was that down the road, the large Baby Boom generation itself would retire, and the "baby bust" of generations to follow might not be able to support their historically large cohort of parents and grandparents. Because it is more difficult politically to take things away than to give them, the options of cutting taxes or raising benefits *only* during the Baby Boom's working years was not a viable option—or, at least, it would bring with it a guaranteed political fight when the good times stopped rolling.

The only way out of this conundrum was to break out of the pay-as-you-go straitjacket. Social Security could reap the increased revenues that accompanied the growing work force, without raising taxes, while benefits could be held constant. Under such a system, the only question is what to do with the excess funds that would accumulate each year during the Baby Boomers' working years. The answer was the Social Security Trust Fund.[145] Part IV below discusses the implications of building up and drawing down that trust fund.

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142 *See* U.S. Dep't of Health, Educ., and Welfare, *supra* note 136, at 1 tbl. 1-1.

143 *See* William Nordhaus, *Retrospective on the 1970s Productivity Slowdown*, (Nat'l Bureau of Econ. Research, Working Paper No. 10950, 2004), http://www.nber.org/papers/w10950.pdf.

144 *See* Mitra Toossi, *A Century of Change: The U.S. Labor Force*, 125 MONTHLY LAB. R. 15, 15 (May 2002).

145 Social Security actually runs three trust funds: the old-age trust fund, the survivors' trust fund, and the disability income trust fund. The old-age trust fund is by far the largest. Because this Article focuses on the retirement aspect of the Social Security system (and not the

III. THE TRUST FUND, SAVING, AND DEFICITS

The long-term challenge posed by the births, working lives, retirements, and deaths of the Baby Boom generation became a matter of serious concern for policymakers by the early 1980s.[146] In response, President Reagan appointed a special commission, chaired by Alan Greenspan,[147] to study the difficulties that might arise when the Baby Boom generation began to retire.[148] Facing the inexorable aging of the nation's largest birth cohort, it was necessary to determine whether their ultimate retirement would present unique (and possibly insurmountable) challenges to the Social Security system; and if so, whether there would be a way to prepare to meet those challenges.

The solution that the Greenspan Commission recommended, and that Congress and President Reagan ultimately adopted, was to alter the pay-as-you-go structure of Social Security during the life cycle of the Baby Boomers.[149] The new system was based on collecting more in revenues in the early years than would be necessary in a pay-as-you-go system.[150] As an accounting matter, the excess of revenues over savings in those early decades had to go somewhere, and the Trust Fund was deemed the best way to handle the accounting for the annual surpluses.[151] When, in the later decades of the plan, the system would systematically use some general revenues to pay for Social Security benefits, the Trust Fund would represent the amount that Social Security could legally claim from non-Social Security taxes.[152]

In 1983, therefore, even though there was a very large number of workers supporting a relatively small number of retirees, Social Security taxes were increased.[153] As a result, Social Security immediately began to run very large annual surpluses, and the Trust Fund began to accumu-

survivors' and disability functions, *supra* note 47) hereinafter "trust fund" will refer to the old-age trust fund.

146 *See* JAMES R. STOREY, OLDER AMERICANS IN THE REGAN ERA: IMPACTS OF FEDERAL POLICY CHANGES 21–22 (1983).

147 Greenspan was at that point a well-known economist and forecaster. Reagan later appointed him to be the Chairman of the Board of Governors of the Federal Reserve System, a post which he held from 1987 through 2006. *See Alan Greenspan*, FED. RES. HISTORY, https://www.federalreservehistory.org/people/alan_greenspan (last visited Oct. 17, 2017).

148 *See* Rob Reueman, *Will Baby Boomers Bankrupt Social Security?*, CNBC (Feb. 8, 2010), http://www.cnbc.com/id/34941334.

149 *Report of the National Commission on Social Security Reform*, SOC. SECURITY ADMIN. (Jan. 1983) (follow "Findings and Recommendations" link), https://www.ssa.gov/history/reports/gspan.html.

150 *Id.*

151 *Id.*

152 *Id.*

153 *Social Security Tax Rates*, SOC. SECURITY ADMIN., https://www.ssa.gov/oact/progdata/oasdiRates.html (last visited Sept. 23, 2017).

late substantial balances.[154] Over time, as Social Security collected all of these excess revenues, the excess funds were "deposited" in the Trust Fund. The trustees of the Social Security system have in turn "invested" those deposits in the safest asset available: U.S. Treasury securities.[155] When the system ultimately needs to withdraw money from the Trust Fund, the Trustees will cash in those securities, which have been earning interest. The Trust Fund is, therefore, essentially the world's largest—and simplest—investment fund.

The larger effect of this strategy, however, was to allow the Social Security system to process the Baby Boom generation in a way that did not create large changes in taxes or benefits over time. The system would predictably run annual surpluses for roughly the first three or four decades of the plan, and it would just as predictably run annual deficits during the next three or four decades of the plan. The transition from annual surplus to annual deficit would be a non-event (as a matter of macroeconomics), however, because the surpluses would shrink predictably until the turning point, at which point the annual deficits would start small and then grow as the Baby Boomers' effect on the retirement system reached its peak. After that point, the annual deficits would shrink once again, until the post-Boom world could return to pay-as-you-go financing.

Creating this glide path involved, of course, substantial guesswork in terms of future benefits and revenues that would be required under the parameters of the new law. The Trustees, therefore, were entrusted with monitoring the system to determine whether the paths of annual revenues and taxes remain sustainable as the economy's moves forward over the years. Unfortunately, the public's perception of Social Security's prospects—in no small part due to the rhetorical choices of the Trustees themselves—have focused incorrectly on the state of the Trust Fund as an indicator of the system's long-term viability.[156] If policymakers react to such an inappropriate framing of the issues, then some workers will be forced to pay higher taxes than they otherwise would have, and some retirees will receive fewer benefits than otherwise. It is, therefore, essential not to misread the evidence or to misdiagnose the implications of each year's Trustees' report.

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154 *See OASI Trust Fund*, *supra* note 10.

155 *The Role of U.S. Treasury Securities in an Investment Portfolio*, INVESTING IN BONDS, http://www.investinginbonds.com/learnmore.asp?catid=9&subcatid=50&id=99 (last visited Sept. 23, 2017).

156 *See* American Academy of Actuaries, *Significance of the Social Security Trust Funds*, ACTUARY (May 2012), https://www.actuary.org/files/SSC_IssueBrief_TrustFund_120501.pdf; Sally R. Sherman, *Public Attitudes Toward Social Security*, 52 SOC. SECURITY BULL. 2, 9–10 (1989).

A. *The Generational "Contract" Represented by the 1983 Reforms*

The 1983 reforms represented a fundamental shift in how the Social Security system would be financed. The reconfigured system has been working for the past several decades, but the plan will not fully play out—if it is allowed to do so, without further policy intervention—until the Baby Boomers no longer collect Social Security benefits. Given that the youngest Boomers were born in 1964, and their average life expectancy is 83, the system will have passed the critical point in the late 2040s.[157]

This six-decade-plus plan is thus structured in a way that assumes the sharing of burdens and benefits in a very specific pattern as time passes. The 1983 reforms, therefore, were important not because they created a Trust Fund but because they set in place a long-term plan: the Baby Boomers allowed themselves to be forced to pay higher payroll taxes than would have been necessary to support their parents' and grandparents' retirement, and they would then receive benefits on a schedule set in advance.

That sharing of burdens and benefits can, in turn, be viewed as an intergenerational contract.[158] Of course, the analogy to contractual reasoning is imprecise and best viewed as a heuristic device. Social contract theory, which posits a much broader notion of consent than is implied in the Social Security compromise of 1983, can be criticized from a number of angles, notably including the question of how one consents to a contract that does not really exist. In an arrangement that will cover many decades and thus that will affect millions of people who will be born into the contract, notions of consent are similarly problematic. Even so, the heuristic can helpfully explicate a number of important issues.

As noted, this contract-like arrangement necessarily affected not just the Baby Boom generation and the politicians who served in office in the early 1980s (nearly all of whom were, of course, not of the Baby Boom generation at all, since even the oldest Boomers were only 37 years old in 1983, and the youngest were 19 years old[159]). The new plan for Social Security also implicated the generations that would follow. Those post-Boom generations would find themselves supporting a large cohort of workers under a system that they were never given the chance to approve.

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157 *See* COLBY, *supra* note 1, at 2; *see also* Kathleen Coxwell, *Baby Boomers Retiring: The Big Difficulties Facing This Generation*, NEW RETIREMENT (Mar. 19, 2015), https://www.newretirement.com/retirement/baby-boomers-retiring-the-big-difficulties-facing-this-generation/.

158 *See* Rosemary Lane, *Intergenerational Relations*, *in* UNITED NATIONS DEPT. OF ECON. AND SOCIAL AFFAIRS, WORLD YOUTH REPORT 397, 397–402 (2003).

159 *See* COLBY, *supra* note 1, at 2 (stating that the Baby Boom includes people born between 1946 and 1964, inclusive).

Of course, the post-Boomers were going to have a large number of retirees to deal with in any event. The only question is whether the Social Security plan in place should continue, or whether there is a better way to support the Boomers (through Social Security or otherwise). If the post-Boomers choose to change the system now or at any point in the future, therefore, they should at least be aware of the implications of the choices and sacrifices that their parents and grandparents made in preparation for the Boomers eventual retirement.

In addition, the post-Boomers should be aware that any decision that they make to harm their parents and grandparents would be noticed by their children and grandchildren. The post-Boomers were not part of the 1983 deal, which means that they have no contractual obligation (even in the broad sense in which contractual obligations are implied here) to continue to honor that deal. They are, however, part of a larger intergenerational understanding in which they promise to repay their parents for all of the support provided during childhood, in the hope that the next generation will honor that commitment as well.[160] As noted above, retirement is a relatively novel concept, and it is possible for any younger generation to cut off their elders after it is too late for the elders to do anything about it. No generation, however, has a self-interested reason to break the long-term commitment to providing dignified retirements to the elderly, because they (if they are lucky) will also be old someday.

B. Did the Baby Boomers Really Sacrifice?

Although the system set in place by the 1983 reforms was not actually a simple savings account, it worked that way in substance. The idea was to have the Baby Boom generation pay for its own retirement in advance, by putting its money aside until it would be needed to provide for its own retirement. Importantly, however, having dollars in the bank in fifty or sixty years does not guarantee that there will be enough goods to go around when those dollars are ultimately withdrawn. The economy must be capable of producing sufficient output to satisfy acceptable living standards for future children, workers, and retirees.

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[160] Those who are especially intrigued by the notion of intergenerational contracts might find it interesting to posit a deal between each pair of consecutive generations: the older generation agrees to support the young during their childhoods, and the younger generation agrees to support their immediate forebears during retirement. While this formulation at least removes the requirement of any multi-generational linking, the younger generation in each such contract cannot be held to the contract under standard contract principles. Not only is each new generation too young to enter into contracts under the "infancy doctrine," but they are also under extreme duress to agree to their parents' terms. Eating, receiving an education, seeing a doctor to be vaccinated and to be treated when ill are hardly terms that the young could (even if competent to engage in contract negotiations) walk away from.

1. Building Up Productive Capital, and Drawing it Down

Because it is not possible to stockpile most goods for consumption several decades hence (due to spoilage, as well as the changes in the types of goods that people consume), and because it is simply impossible to stockpile services, the policy challenge was to set the economy on a course in which it would be equipped with the means to produce enough goods and services during the Boomers' retirements to maintain their living standards without compromising those of the citizens then working and their children. Accomplishing that would require the building up of a larger overall capital stock while the Boomers were still working, which could then be used over the following thirty or forty years as the Baby Boomers proceeded through their retirements.

The important, unappreciated part of the 1983 reforms, therefore, was a commitment to use the planned annual Social Security surpluses in a way that would allow the future economy to support an unprecedented number of retirees.[161] This could be done only by increasing the productivity of future workers; and this, in turn, could be accomplished only by investing in the technology, physical capital, and human intellect and training needed to allow future workers to take on the burden of supporting an unusually large cohort of retired workers.

The 1983 Act was thus designed to create additional investment in the thirty or forty years following 1983, to supplement the investment that otherwise would have occurred.[162] That investment would then be indirectly consumed while the Boomers lived out their natural lives.[163] When it was all over, the Baby Boom would thereby have financed the unusually large consumption demands of its retirement relative to the smaller cohorts that will follow.[164]

The first half of this story, therefore, has the government deliberately building up the country's capital stock to be larger than it would otherwise be. The most direct way to do so, of course, is to have the government build or finance the additional investment itself. It can, for example, build factories, expand schools and universities, make low-in-

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161 *See* Drew Desilver, *5 Facts About Social Security*, PEW RES. CTR. (Aug. 18, 2015), http://www.pewresearch.org/fact-tank/2015/08/18/5-facts-about-social-security/.

162 The word "investment" here should be understood to be "real investment," with the modifier "real" emphasizing that it is not financial investments that ultimately matter to future living standards. Invested money is only a means to an end. To achieve the goal of supporting future consumption, the economy's real resources—labor, capital, land, and technological know-how—must be diverted from the production of consumption items into the creation of additional productive capital, which will ultimately be used by future workers to produce sufficient goods to support both themselves and future retirees.

163 *See generally* Desilver, *supra* note 161; Stephen C. Goss, *The Future Financial Status of the Social Security Program*, 70 SOC. SECURITY BULL. 3 (2010).

164 *See* Desilver, *supra* note 161; Goss, *supra* note 163.

terest loans or give tax incentives for basic research, and so on. The U.S. government typically does all of these things in some measure, but planning for the Boomers' retirements could have involved having the government simply invest the extra money that is being poured into Social Security in real public investments.

The indirect method of increasing the size of the capital stock is to run a more restrictive fiscal policy than it otherwise would,[165] which means simply collecting the excess Social Security taxes and using that money either to reduce annual deficits or (if the rest of the budget is in balance or surplus) to retire accumulated debt. This would, under orthodox economic assumptions, allow private businesses to use the freed up resources to build up the economy's productive capital stock, since the government would not be claiming resources for direct government investment, and the Social Security surpluses would prevent workers from consuming as much as they would otherwise have been able to consume. Baby Boomers would be, in that sense, literally paying to build up the capital stock during their working lives, by forsaking the consumption that they could have afforded had they not imposed the higher taxes on themselves.[166]

When the Baby Boomers begin to retire, the economy will be larger than it would otherwise have been. Even so, it will not be so much larger that it will be able to produce sufficient goods and services without using up some underlying capital. Building up the capital stock by such an amount would in principle have been possible, but doing so would have very directly forced the Boomers not only to finance their own retirements, but also to put in place a much higher standard of living for subsequent generations than is already in the cards. The wisdom or even the necessity of such a strategy will be questioned below, but the point is that the 1983 Act was designed in a way that allowed the economy to "process" the Baby Boom through its life cycle without otherwise affecting the economy that would be left behind.

Therefore, the idea behind the second half of the 1983 reforms was to allow the Baby Boomers to "consume" the capital stock that its earlier

[165] A fiscal policy is comparatively "restrictive" or "contractionary" when taxes are higher, or government spending is lower, or both, because such changes tend to have the short-run effect of reducing the economy's output. For the story here to work, therefore, the rest of the economy must pick up the slack to prevent workers from being laid off. If the economy does not otherwise adjust, the standard approach would be to use monetary policy to offset the restrictive fiscal policy implied by the 1983 Act.

[166] There are two ways to understand the mechanics of this method of increasing productive investment. In one, the "financial story," the government's relatively restrictive fiscal policy makes more funds available for lending to private businesses. In the other, the "real story," the government's policy frees up real resources (workers, machines, etc.) to be used to build up the economy's productive capital stock. For an explicit explanation of the difference between the two stories (as well as how they are equivalent), see Buchanan, *supra* note 91.

efforts and sacrifices had brought into existence. In the terminology of macroeconomics, the latter thirty or forty years of the Baby Boomers' lives would be a matter of planned "crowding out."[167] That is, the government would plan to run deficits (or, more likely, to run larger deficits than it would otherwise) to finance the part of the Baby Boomers' Social Security benefits that could not be covered by concurrent payroll tax revenues.[168]

The larger government deficits in those later decades would work in precisely the opposite way that the government's indirect surpluses had worked during the Baby Boomers' productive decades: larger deficits imply that fewer resources are available for investment, making the capital stock smaller than it would otherwise be.[169] The government's provision of retirement benefits to the Boomers would thus indirectly mean that the capital stock would shrink by the amount that the Boomers were allowed to consume during their retirement years (from the deficit-financed part of their benefits).

The Trust Fund, therefore, simply keeps track of the excess funds that Boomers pay into the system beyond what would have been neces-

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[167] Given that the second half of the story is called "crowding out," it might be tempting to use the term "crowding in" to describe the first half of the story. Macroeconomists, however, use the term crowding in to describe a different (though related) concept: whereas crowding out describes a situation in which increased fiscal deficits reduce the private capital stock by diverting the available investments from private businesses into public coffers (and then to private beneficiaries of government programs), crowding in describes a situation in which increased fiscal deficits—perhaps counter-intuitively—increase the ultimate size of the capital stock. This happens, for example, when the economy is in a recession, when private businesses reduce their investment in new plant and equipment because business has dried up. In that situation, when the government increases its spending, the resulting increase in spending entices businesses to expand their operations. The economic resources that would otherwise have remained idle during the recession are thus put partially toward government provision of benefits and partially toward creating new private factories, machines, software, and so on. *See* Benjamin M. Friedman, *Crowding Out or Crowding In?*, 3 BROOKINGS PAPERS ON ECON. ACTIVITY 593 (1976); Neil H. Buchanan, Debt, Deficits, and Fiscal Policy: Three Essays, Chapter 3 (Aug. 5, 1996) (unpublished doctoral dissertation, Harvard University) (on file with author) (describing empirical estimates demonstrating the crowding in effect, based on post-WWII U.S. data).

[168] Again, note that the bulk of retirement benefits will be financed—even during the peak years of the Baby Boomers' retirements—by concurrent Social Security taxes. Therefore, the crowding out is not measured by the total benefits paid annually but by each years' reduction in the Trust Fund balance, which is exactly the reduction in the economy's productive capacity due to the planned extra consumption.

[169] The crowding out story is not without its detractors. In particular, fiscal deficits do not always reduce private investment but do so only under some conditions. The importance of crowding out as an empirical matter also depends upon various quantitative relationships that are not easy to ascertain. For present purposes, however, it is sufficient simply to accept the crowding out story (in both directions, i.e., both with surpluses leading to a larger capital stock, and deficits leading to a smaller one) in its most basic form. The main issue is not about the debate over crowding out theory but how the 1983 reforms were designed to build up capital investment for decades and then to reduce it for decades thereafter.

sary had they not prepaid for their own retirements. As the Trust Fund builds up, it shows how much the Boomers would be entitled to "withdraw" from the economy later, where withdrawals involve essentially liquidating productive capital and using the proceeds to finance consumption.[170] When the Trust Fund reaches zero, that means that the Baby Boom has used up all of the extra capital that it "set aside" during its working years.[171] Anything that the then-working citizens of the country choose to provide to supplement Social Security benefits is thus a matter of grace, unrelated to the sacrifices of the Baby Boomers during their working lives.

This function of the Trust Fund—keeping track of the day on which the Boomers have used up their virtual savings account—is reflected in the consequences of a zero balance in the Trust Fund. Even though the Social Security Act creates a legal entitlement, by which workers earn the right to be paid a certain retirement benefit, the federal budget laws require that funds be appropriated to allow such benefits to be paid. So long as there is a positive balance in the Trust Fund, all promised benefits can be paid in full; but when the balance hits zero, the benefits must be cut.[172] As the law is currently written, the cut will simply be made across the board (rather than, say, cutting more from larger benefits checks than from smaller ones), so that all benefits in the year that the Trust Fund reaches zero will be cut by the same amount.[173]

2. The Interaction of the Social Security Surplus with the Rest of the Deficit

It is, of course, possible that the existence of the annual Social Security surpluses actually caused the remainder of the budget to be further in the red than it otherwise would have been. Seeing annual Social Security surpluses of tens or hundreds of billions of dollars might have caused successive Congresses to change their spending and taxing decisions in reliance on Social Security as a budget buffer. If that were true, then the apparent "saving" on the part of the Baby Boomers could have been a sham, with overall deficits just as large as they would have been even in the absence of a government-run retirement system. The capital

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[170] *See* David Pattison, *Social Security Trust Fund Cash Flows and Reserves*, 75 SOC. SECURITY BULL. 1 (2015).

[171] *See id.*

[172] National Commission on Fiscal Responsibility and Reform, *The Moment of Truth*, MOMENT OF TRUTH PROJECT 48–55 (Dec. 2010), http://momentoftruthproject.org/sites/default/files/TheMomentofTruth12_1_2010.pdf.

[173] Note, however, that in one of the Social Security Trustees' scenarios, the Trust Fund never reaches a zero balance. In that case, the Baby Boom would never be fully repaid for its sacrifices—a possible outcome that has not elicited cries for reform in the name of generational fairness.

stock to be received by future generations would thus be no larger than it otherwise would have been, and the Baby Boomers would have no contract-like basis on which to object to a reduction in their benefits during retirement.

There is, unfortunately, precious little evidence to tell us whether the Social Security surpluses were truly saved in this sense. One recent economic analysis of Social Security's long-term impact across generations[174] specifically raised the question of whether the surpluses have been saved. The author conceded that the evidence was mixed, but he asserted that a "common-sense" reading of the evidence suggests that the Social Security surpluses have not, in fact, been saved.[175] This conclusion is hard to take seriously for several reasons.

It is difficult to discern what "common-sense" means in this context, but one can at least infer that the author makes no claims to have found a convincing statistical basis for this conclusion. And as it turns out, the available evidence does not add up to such a conclusion. Instead, the broad pattern of changes in the deficit suggests that government spending and taxing decisions have not been meaningfully responsive to new information about the Social Security surpluses.

The standard statistical approach to testing this hypothesis would look at whether changes in Social Security's annual (or aggregate future) surpluses are correlated with changes in the deficit for the remainder of the federal budget—a simple application of familiar concepts of statistical inference. Because the 1983 reforms to Social Security were designed precisely to smooth out Social Security's finances over the space of several decades,[176] however, there is virtually no variation in Social Security's finances against which to compare variations in the "on-budget" deficit.[177]

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[174] Randall P. Mariger, *Prefunding Social Security Benefits to Achieve Intergenerational Fairness: Can It Be Done in the Social Security Trust Fund?*, U.S. DEP'T OF TREASURY (Dec. 2008), https://www.treasury.gov/resource-center/economic-policy/Documents/0801.pdf. This article was mostly concerned with the question of generational fairness. The analysis in Part IV below turns to that important subject, and the Mariger paper provides a useful starting point for the analysis.

[175] *Id.* at 25.

[176] *Report of the National Commission on Social Security Reform*, *supra* note 149, at app. C; *see also* Ronald Reagan, President of the United States, Remarks on Signing the Social Security Amendments of 1983 (Apr. 20, 1983) ("[T]his legislation will allow social security to age as gracefully as all of us hope to do ourselves. . . . These amendments reaffirm the commitment of our government to the performance and stability of social security."); ALTMAN, *supra* note 88, at 253 (noting the trustees' 1983 report announcement that Social Security would pay benefits on time for the full 75-year period through 2057).

[177] The on-budget deficit measures the excess of expenditures over revenues for all items except those that Congress designated as *off budget*. *See A Citizen's Guide to the Federal Budget*, GOV'T PUB. OFF. 15 (Feb. 7, 2000), https://www.gpo.gov/fdsys/pkg/BUDGET-2001-CITIZENSGUIDE/pdf/BUDGET-2001-CITIZENSGUIDE.pdf. By far, the largest off-budget

The 1983 reforms themselves, however, were a large, one-time change in Social Security's financial prospects. Because these reforms resulted in forecasts of trillions of dollars in Social Security surpluses for approximately the next thirty years, a Congress that was not committed to saving the surplus would have responded by increasing the on-budget deficit substantially in response to the 1983 reforms. Deficits in the remainder of the 1980s did, in fact, go up substantially, but the major policy changes that led to those deficits were enacted before the 1983 Social Security reforms were in place.[178] The large tax cut at the beginning of President Reagan's first term was enacted in 1981, and the spending changes (especially the military build-up) were also in place well before 1983.[179]

Moreover, if Congresses from 1983 forward were increasing on-budget deficits in the comfortable belief that Social Security would provide a cushion, it is difficult to explain the efforts during the 1990s that led to several years of large annual budget surpluses. While the size of those surpluses was affected by the dot-com bubble, the political culture at that time was very much committed to reducing deficit spending, with the political parties differing only on whether to do so by raising taxes or by cutting spending.[180] Moreover, if Congress was motivated to reduce deficits in the 1990s by the knowledge that the Social Security surpluses would someday end, that would imply that they were actually setting policy without relying on Social Security's surpluses. That is, they were not spending those surpluses, because they did not believe that those surpluses would continue to exist.

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item is Social Security, making the total budget deficit smaller than the on-budget deficit every year until Social Security moves into its planned annual deficit phase. *Id.* ("For all practical purposes, the off-budget surplus is the surplus in the Social Security program. This means that the on-budget surplus is the budget surplus excluding the Social Security surplus.").

178 *See OASI Trust Fund*, *supra* note 10.

179 *See, e.g.*, Economic Recovery Tax Act of 1981, Pub. L. No. 97-34, 95 Stat. 172 (1981) (amend the Internal Revenue Code of 1954 to "encourage economic growth through reductions in individual income tax rates, the expensing of depreciable property, incentives for small businesses, and incentives for savings, and for other purposes"). It is possible that the Congress that passed those bills in 1981 and 1982 anticipated the 1983 changes in Social Security and spent them in advance. Such a justification was, however, never offered by anyone who advocated the pre-1983 fiscal changes. The argument was, instead, that tax rate cuts would generate so much economic activity that tax revenues would rise even in the face of lower tax rates (the so-called Laffer Curve effect). Moreover, there is no evidence that anyone in 1981 even imagined that the 1983 Social Security reforms were on the horizon. The Greenspan Commission was created shortly after Reagan took office, but the ultimate 1983 reforms were the result of a last-minute political deal between Reagan and the Democratic Speaker of the House, Thomas P. (Tip) O'Neill. Anyone in 1981 or 1982 who was making decisions on the basis of the substance of the 1983 Social Security reforms was uncannily prescient.

180 Tim Dickinson, *How the GOP Became the Party of the Rich*, ROLLING STONE (Nov. 9, 2011), http://www.rollingstone.com/politics/news/how-the-gop-became-the-party-of-the-rich-20111109.

The 2001 Bush tax cuts, perhaps the most prominent example of a conscious policy choice to reduce national saving, were frequently justified on the basis that we could "afford" the tax cuts because of large annual surpluses that had been forecast for several years to follow, possibly paying down the entire national debt within a decade.[181] Those forecast annual surpluses did include the Social Security system's surpluses, of course, but Social Security had been running surpluses for almost two decades by that point, with two more decades of surpluses yet to come.[182] It was, instead, the rest of the budget that went from deficit to surplus during the later Clinton years; and it was only then that the political momentum emerged to cut taxes early in the Bush II years.[183]

Similarly, the passage of the unfunded drug benefit for Medicare in 2004 was not in any obvious way tied to the Social Security surpluses (nor to the overall budget situation, which by then had returned solidly to long-term deficits). The other large drivers of national debt—unfinanced spending on two wars, stimulus spending, responses to natural disasters, and so on—were also not related in any apparent way to Social Security's surpluses.

In short, it is difficult—whether on a "common-sense" reading of the evidence or otherwise—to find evidence to support the case that deficits were larger than they would have been in the absence of the Social Security surpluses. This means that, even though deficits were positive throughout most of that period, the Baby Boomers really did sacrifice in a way that allowed them to prepay for their own retirements.

3. Will Social Security's Future Deficits Be Offset?

Even so, we cannot completely rule out the possibility that the Social Security surpluses might simply have caused politicians to see a better fiscal picture than they otherwise would have, and to act accordingly. If so, the extra Social Security taxes being paid by the Boomers might have simply financed concurrent spending rather than building up a larger capital stock for future generations.[184]

In fact, however, it arguably does not matter whether the Baby Boomers "spent" the Trust Fund rather than leaving it to future generations. Even if the Boomers really did offset the trust fund by running up larger-than-otherwise deficits elsewhere, that simply means that they

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[181] *Cf.* Fred Bergsten, *America Cannot Afford Tax Cuts*, PETERSON INST. FOR INT'L ECON. (Jan. 11, 2001), https://piie.com/commentary/op-eds/america-cannot-afford-tax-cuts; Daniel N. Shaviro, *Reckless Disregard: The Bush Administration's Policy of Cutting Taxes in the Face of an Enormous Fiscal Gap*, 45 B.C. L. REV. 1285, 1285 (2004).

[182] *See OASI Trust Fund*, *supra* note 10.

[183] Barry Bluestone & Jonathan Chait, *Clinton's Bequest Reconsidered*, 11 AM. PROSPECT 18, 19 (2000).

[184] *Id.*

chose to finance the government's activities in large part with a regressive tax on workers. If the overall economy that Boomers bequeath to future generations is more productive than the one that Boomers inherited—and it most definitely is, as noted in Part II above—then the overall intergenerational contract is still being honored. Different decisions could have provided an even better overall deal for younger generations, but they are not in the aggregate being harmed.[185]

As an aside, it is also important to note that none of these concerns is truly connected to the pay-as-you-go nature of the Social Security system. That is, if one honestly believes that the Baby Boomers spent the Trust Fund rather than bequeathing it to future generations, they could have done the same thing under a system of fully funded private retirement accounts. If we presume that Baby Boomers were eager to steal from their offspring by running up extra-large deficits, how would they have acted upon creating a large and growing pool of private savings? They could have given themselves tax cuts or increased spending on programs that benefited themselves, simply by financing the resulting deficits by borrowing on the financial markets, which would at that point have been bursting with extra money. Prudent financial managers would have certainly included the resulting Treasury securities in their optimal investment strategies. The resulting capital stock would still have been lower than otherwise, and the heist would have been complete. If one is worried about intergenerational responsibility, therefore, the structure of the retirement system is a matter of form and not substance.

In any case, as discussed above, the evidence does strongly suggest that the Baby Boomers actually did not act in the selfish and damaging way that is presumed by those who complain about intergenerational theft. Yet even knowing whether the decades of Social Security surpluses have been saved in a real sense—that is, turned into a larger capital stock than would otherwise have come to exist in the United States—is, in fact, only half of the story. The generational quasi-contract was, after all, a two-part project: first, the system would run surpluses that would be saved; and second, the system would run deficits that would reduce aggregate national saving.

Congresses looking at large annual Social Security surpluses have the choice of either saving those surpluses by not otherwise changing spending and taxing decisions, or viewing those surpluses as a source of funds to finance current spending. Similarly, future Congresses facing

185 To be clear, this is not a statement that younger generations have nothing to complain about when it comes to the economy (and certainly not when it comes to other issues, such as the environment). Instead, the quite reasonable complaints have to do with the growing inequality that will prevent all but a tiny slice of each generation from sharing in the fruits of its own productive efforts.

the prospect of years of Social Security deficits will have the choice of either not changing their spending and taxing decisions and thus allowing the nation's capital stock to be drawn down by the amount of Social Security's annual deficits, or viewing those deficits as a reason to change other aspects of spending and taxing to offset those deficits. No matter whether the early decades of surpluses were saved or spent, the decisions going forward will determine the intergenerational impact of the Baby Boom's journey through its later working years and its retirement.

C. The Injustice of Benefit Cuts If the Trust Fund is Depleted

Part IV.B above showed that the interaction of the decisions made during the surplus years and the deficit years will determine whether future generations receive an economy that is larger, smaller, or the same as it would have been had there never been a Baby Boom. As we saw in Section II above, this question ultimately can be answered indirectly. Whatever effect the existence of the Social Security surplus might have had on political decisions regarding the rest of the federal budget, it is very clear that current generations will not leave future generations in an impoverished state. If the Baby Boomers really did build up the nation's capital stock by paying higher Social Security taxes than necessary in the short run, then the prosperity of their children and grandchildren will be due in part to that sacrifice. If, on the other hand, the Baby Boomers simply spent their own Social Security surpluses, even then the evidence makes clear that the Boomers still made sufficient sacrifices to leave future generations in a very favorable position.[186]

The most important implication of this discussion of the Trust Fund and its interest rate, however, is simply that the Trust Fund's function is to give the Baby Boomers credit for the additional capital that they created by sacrificing during their working years, as well as the return on that extra capital. This is, therefore, a social policy question masquerading as a question of financial certitude.[187] If the Trust Fund is ever deemed to be empty, it will mean that policy makers at that time will be forced to decide whether to allow the Social Security benefits of the retirees who are already collecting benefits to be reduced automatically, or to raise taxes, or to run larger deficits in the future, (thus imposing the taxes on later generations).

If the decision is to cut then-retirees' benefits, that would mean that future generations are unwilling to give Baby Boomers' credit for anything beyond their sacrifices through Social Security and the interest deemed to have been earned on those sacrifices. Cutting benefits for cur-

[186] *See* Buchanan, *supra* note 112, at 281–83.

[187] *See* John C. Hambor, *Economic Policy, Intergenerational Equity, and the Social Security Trust Fund Buildup*, 50 SOC. SECURITY BULL. 10 (1987).

rent retirees after the Trust Fund reaches zero may or may not be a politically popular decision, but that decision would be driven by an inherently imprecise (and almost certainly inaccurate) measurement of the benefit that the economy received from Baby Boomers' sacrifice, as discussed above.[188]

The decision simply to use the Trust Fund mechanically as the date on which something must change, therefore, diverts attention from the policy choice that is being made. It would elevate the deal implicit in the 1983 reforms into a statement that the only credit the Boomers deserve in their retirement is based on their contributions to productive capacity through the Social Security system itself. It would ignore all of the other ways in which each generation makes its children better off,[189] saying, in effect: "Yes, you bequeathed to us an economy that made us much better off than you ever were, but you did not do so through the accounting mechanism of the Social Security Trust Fund. Because you failed to do that, we will now cut your benefits." At best, this is arbitrary. At worst, it is immoral.

IV. Fairness to All Generations

Even if that analysis is correct, however, one could still object that the Social Security system represents a transfer of wealth from future generations to current generations. Even if the system were never to reach the point where the Trust Fund is depleted, that does not mean that keeping the system going in its current form is fair to younger generations. Because younger generations will see Social Security's annual deficits added to the rest of the federal government's deficits (or subtracted from possible future surpluses), they would unquestionably benefit if their parents and grandparents were to receive smaller retirement benefits today and until they have all died.

The question, therefore, is not whether the existence of retirees is an economic burden on workers. It always is, of course; and when workers provide reduced support to retirees, they can obviously keep more for themselves. No crisis or systemic bankruptcy is required to create this conflict among generations, because the conflict is inherent in any system that allows people to retire. The conflict, in fact, exists even before the Baby Boomers retire. Every vacation, every coffee break, every party, and every other decision that results in the creation of a smaller capital stock than would otherwise have been possible is "harmful" to

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188 *See supra* Part III.B (discussing how the Baby Boomers' contributions to Social Security, which resulted in large surpluses over several years, increased investment and productive capital).

189 *See supra* Part I (discussing how much wealthier future generations will be compared to current generations).

future generations; but it is harmful only if the baseline against which to measure future well-being is the maximum inheritance that would have been possible if current generations were completely self-sacrificing.[190] If, by contrast, the definition of generational justice is anything resembling "making them better off than we are,"[191] as discussed above, then current generations can make decisions that are selfish in the sense that they make themselves better off and reduce what future generations would otherwise receive, yet that still leave future generations much better off than people living today.

Therefore, although the decisions that we make today can negatively affect future generations, it is not at all obvious that decisions by current generations that help themselves are "unfair" to their offspring in any recognizable sense of that word. Deciding whether to change the Social Security system in a way that will reduce the living standard of one generation to benefit other generations, therefore, requires some justification other than "because retirees are a burden." It requires a basis on which to conclude that such a change in the system is morally justifiable.

The future fiscal situation certainly does look worse than it did a few decades ago. Even in the face of such a change, however, future generations will still be much better off than their forebears ever imagined, as I showed above.[192] It is, in other words, unnecessary to harm current generations to benefit future generations.

A. *Is Social Security Fair to Future Generations?*

There are several angles from which to analyze whether the Social Security system is unfair to future generations. Certainly the simplest way is to isolate Social Security from the rest of the government's activities—and from the rest of the economy—and ask whether Social Security is fair as a self-contained system. Here, I will first analyze that claim—that Social Security is a bad deal for future generations, abstracted from the rest of the government's activities—before moving onto arguments that are less constricted in their definitions of intergenerational justice.

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[190] *See* Phyllis Korkki, *Yes, Retirement Still Seems an Impossible Dream*, N.Y. TIMES (Apr. 1, 2007), http://query.nytimes.com/gst/fullpage.html?res=9A05E0DB1130F932A35757C0A9619C8B63.

[191] *See, e.g.*, Bob Herbert, *The Fading Dream*, N.Y. TIMES, Nov. 13, 2006, at A25 ("For perhaps the first time in history, there is a large swath of Americans who are worried that over the long haul their children will not fare as well as they have.").

[192] Buchanan, *supra* note 17, at 1270–73 (finding that material standards of living will more than double by the year 2080).

1. Social Security *is* a Transfer from Future to Current Generations

The Social Security system will, for the next several decades, result in the transfer of wealth from future generations to those who are currently retired, as well as to those who retire during that time. Given the size of the Baby Boom generation, it seems plausible that the Social Security system could be a net benefit to older generations at the expense of younger generations.[193] Even if that turned out to be true, however, it is also important to know how big the net transfer would be.

One analysis of this question was offered by an economist in the U.S. Treasury Department, who looked at how much money each generation will pay in and take out from the Social Security system, net, during their lifetimes.[194] This study concluded that Social Security was "unfair" to future generations because it will transfer money from young to old.[195] The study never explicitly defined generational fairness—a rather stark oversight, considering the focus of the study. Although the author of the study never states explicitly what he means by generational fairness, the implicit definition that emerges from the paper is simply that a system is unfair to future generations if it will reduce the income that future generations would otherwise receive.[196]

I focus on this study not because it is flawed but because it is such a good example of one very widely-held notion of how to assess whether Social Security is generationally fair, and because the author of the study did such a careful job—using state-of-the-art mathematical and econometric techniques—of assessing the generational impacts of the system within that definition of fairness. In short, I am not aware of any other study that so meticulously tests whether the Social Security program is likely to transfer net wealth between generations.

This analysis concluded that the Social Security system will, in fact, transfer money to the Baby Boomers from their children, grandchildren, and generations beyond. Specifically, the study found that over the next several decades, Social Security will effect a net transfer between generations in the range of 0.6% of income.[197] That is, if this analysis turns out to be correct, older Americans will receive more benefits than they

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[193] *See id.*

[194] *See* Mariger, *supra* note 174.

[195] *Id.* at 13–14.

[196] *See generally id.*

[197] *Id.* at 13–14. The estimates in that paper were based on forecasts of U.S. economic growth available in 2007. With the economy having stagnated for several years, and with several more years of high unemployment apparently ahead, the estimates would presumably change in a way that makes the intergenerational cost a bit higher. The analysis, however, spans decades, and the changes in the long-range forecasts due to even a large recession are therefore not likely to be dramatic.

would have received if the Social Security system had been "generationally neutral," and future generations would lose 0.6% of their incomes as a result.[198]

If we take these numerical results as seriously as they deserve to be, the first issue to consider is whether such an intergenerational transfer would be, in some meaningful sense, a "big deal." That is, merely finding an imperfection is not by itself sufficient to justify fixing that imperfection. To be clear, it is not a given that transfers across generations should be thought of as "imperfections." The point here, however, is that *if* net generational transfers are a problem, one must ask whether this is a big enough net generational transfer to worry about. There are many situations in which a system is imperfect to some degree, but the magnitude of the deviation from perfection is too small to merit political intervention.

For example, we know that our system of progressive federal income tax rates, which are set at the national level, create horizontally inequitable results for people with similar incomes who live in different regions of the country.[199] An income of $100,000/year in New York City is simply not the same as the same nominal income in Toledo, Ohio. The system systematically transfers income from New Yorkers to Toledoans.[200] This could be addressed by policy changes designed to take into account local living expenses, which would better reflect ability to pay taxes. Even so, the system has not been changed.

The notion of "rough justice" captures part of what is at work in these cases. Even when it is clear that a system could be changed in a way that would bring it closer to the ideal outcome (on any given definition of "ideal"), we often tolerate some small—but known—amount of injustice.

The point is that we frequently allow identifiable inequities to persist, while we intervene to address other inequities. Is a 0.6% intergenerational transfer big enough to merit a policy intervention? Although such matters are ultimately open to subjective disagreement, it is difficult to see how such a transfer could qualify as a "big deal" in any relevant sense. Certainly, the people on the losing end of a transfer would prefer not to lose that income, and the larger the loss is, the more compelling would be their calls for justice.

But 0.6% of income? While there are far too many Americans living on the edge financially, a change in income of 0.6% for the average American is not the kind of thing that spawns major policy battles in

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198 *Id.* at 2.

199 Michael S. Knoll & Thomas D. Griffith, *Taxing Sunny Days: Adjusting Regional Living Costs and Amenities*, 116 HARV. L. REV. 987, 1004 (2003).

200 *See id.*

other areas. Note that this is not a change of 0.6% per year, but a total change of only 0.6%. More to the point, changing a major government program is hardly a simple affair. Eliminating the 0.6% transfer would require the U.S. political system to focus on changing the Social Security system, which would necessarily divert political attention from other pressing issues. There is, in other words, a political opportunity cost to "fixing" Social Security, and it is difficult to see how a total intergenerational transfer of significantly less than 1% would justify that cost.

In addition, opening up the Social Security system to "reform" potentially creates an opportunity to change the system in ways that go far beyond fixing the small transfer that this study projects. Responding to a relatively small problem could, therefore, result in unpredictable changes in the system. Expending political resources to fix a small problem correctly might not ultimately be worth it; but when one considers the possibility that it will be fixed incorrectly or even made worse, then the political risk/reward ratio tilts even more steeply against intervention.

2. Analyzing Social Security in Isolation is Ultimately Inappropriate for Determining Generational Fairness

The analysis to this point has accepted an implicit definition of what makes a government program generationally fair. The idea—which is hardly idiosyncratic to the author of the particular study under scrutiny above—is to ask whether the Social Security system is, in isolation from all other aspects of government programs (as well as other known facts about the economy that future generations will inherit), neutral across generations.

Even being able to ask that question about Social Security is, however, an artifact of the unusual decision in 1935 to set up a tax that is separately identified as the sole source of funds for the Social Security system.[201] As noted above, there is no FBI tax, no Pentagon tax, and no Tax Expenditures tax; but there is a Social Security tax.[202] Keeping track of how much people "pay into" Social Security and what they "take out" plays into the myth that Social Security is a large system of savings accounts.[203] That is, however, still a myth.

As discussed above, it is possible to treat the Social Security system as a multi-faceted financial investment. Under such an analysis, "investing your money in Social Security" provides a competitive rate of return with private financial investment opportunities.[204]

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201 Larry DeWitt, *The Social Security Trust Funds and the Federal Budget*, SOC. SECURITY ADMIN. (Mar. 4, 2005), https://www.ssa.gov/history/BudgetTreatment.html.
202 Buchanan, *supra* note 112, at 280–81.
203 *See, e.g.*, Borland, *supra* note 124; Klein, *supra* note 8.
204 *Id.*

Such an analysis, however, misses a larger point. The Social Security system is only one of many things that affects the possible living standards of future generations. Government programs to support basic research, to nurture emerging industries, and to build and maintain the infrastructure of the future (such as the investments in the last few decades in fiber optics), all are designed to improve future living standards. Indeed, even though they are designated as "spending" by current generations, such investments represent a sacrifice by current generations for the benefit of future generations.[205] As we have learned to our sorrow, when we do not maintain this infrastructure, very bad outcomes—bridge collapses, levee failures, etc.—follow.[206]

The most significant investment in future prosperity and happiness is, of course, education.[207] If current generations really did not care about future generations, they would not need to tax themselves to support public schools and universities, and some members of the current generation would not bother sending their offspring to private educational institutions. Current generations could decide that they do not even need to teach their children how to take care of themselves. Indeed, they could decide that there is no need to create future generations at all.

Given the complex mix of decisions that current and past generations have made that will set the foundation on which future living standards will be based, it is odd indeed to ask whether one program, be it Social Security or any other, is fair to future generations. Current generations make some decisions that help themselves, and they make other decisions that force them to make sacrifices for their children and grandchildren.

A one-at-a-time analysis of fairness is thus nonsensical. We do not analyze the fairness of a multi-factor contract (for example, one in which one party gives up various parcels of land in exchange for certain patent rights) on the basis of whether each factor is fair but whether the contract as a whole makes sense. Even if Social Security itself were found to benefit current generations at the expense of future generations, other aspects of the intergenerational contract cut the other way.[208] Assessing

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205 *See* Daniel A. Farber, *From Here to Eternity: Environmental Law and Future Generations*, 2003 U. ILL. L. REV. 289, 299 (2003) (describing the opportunity costs associated with spending to prevent future harms rather than investing).

206 *See, e.g.*, Brian Handwerk, *New Orleans Levees Not Built for Worst Case Events*, NAT'L GEOGRAPHIC (Sept. 2, 2005), http://news.nationalgeographic.com/news/2005/09/0902_050902_katrina_levees.html.

207 *See generally* Jorgenson, *supra* note 112, at 52 supp. (explaining that the public views education as an investment in human capital).

208 *See* Buchanan, *supra* note 112, at 323. ("The higher living standard that future generations will enjoy arises from productivity gains that are themselves largely the results of technological innovations for which those future generations will not be responsible.").

fairness between generations requires an analysis of the entire picture, not arbitrarily focusing on one program's cross-generational impact.

B. *Even if the Boomers Did Sacrifice, Should We Nonetheless Void the Contract?*

As I discussed above, the 1983 changes to the Social Security system represented a fundamental decades-long "contract" between generations.[209] Through this contract, the Baby Boom generation "saved" for its retirement in a very real way.[210] By virtue of having run surpluses within the Social Security system for decades, the Baby Boomers are now able to pass on a larger capital stock (and thus higher productivity per worker) to their children and grandchildren.[211] This, in turn, will allow workers to produce the goods necessary to pay for the Boomers' retirement, while still leaving more for workers and their families than the Boomers enjoyed during their working years.[212] Because of the sacrifices by the Baby Boomers during the early decades of the contract (amounting to $X trillion of otherwise unnecessary tax payments[213]), therefore, the economy is able to support this uniquely large cohort of workers as they live out their last years.[214]

We are about to move into the second phase of that contract. As the next two or three decades pass, Social Security's annual deficits will shrink the capital stock back to the level that it would have been in 2034 (or whatever year Social Security returns to PAYGO financing).[215] While it is true that the Trust Fund is merely an accounting mechanism, it would have served its most important purpose: measuring the amount of dissaving (i.e., using up of productive capital) that can be permitted during the Boomers' retirements with reasonable accuracy and thus stopping the Social Security system from shrinking the nation's capital stock more than would be justified by the earlier build-up.[216]

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209 *See supra* Part I.

210 *See* Neil H. Buchanan, *The Trillion-Dollar Breach of Contract: Social Security and the American Worker*, FINDLAW (Aug. 30, 2001), http://writ.news.findlaw.com/commentary/20010830_buchanan.html (discussing how the Social Security contract was designed and currently operates).

211 *Id.*

212 *Id.*

213 I am using the term "unnecessary" here in the sense that the taxes paid in were higher in the aggregate that the benefits paid out each year. That is, there will have been annual Social Security surpluses.

214 Buchanan, *supra* note 91, at 262–73 (explaining how increases in worker productivity more than make up for the increased ratio of non-workers to workers as the Baby Boom generation retires).

215 *Id.* at 277.

216 *Id.* at 273.

We could, of course, simply choose to designate today as the starting point from which to measure fairness between generations. By ignoring the unnecessarily high taxes that the Baby Boomers paid during their working lifetimes, it would be a simple matter to describe the next several decades as generationally unfair, merely because we would be looking exclusively at the time period in which the Baby Boomers are to receive all of their benefits and will pay no (additional) costs. This is an odd way to assess fairness, however, since it ignores the sacrifices that current generations have already made and looks only at the benefits that they will receive henceforth. If that is an acceptable approach to assessing fairness, any bargain can be attacked as unfair merely by looking only at one party's benefits and ignoring its costs. Because this approach to "fairness" amounts to nothing more than assuming the problem away, however, I will not address it further here. If generational fairness is to be a legitimate inquiry, it must accurately account for all costs and benefits by all generations.

Suppose, however, that the Baby Boomers really did sacrifice during their working lifetimes, paying more in aggregate taxes and receiving less in aggregate benefits than they would have had they not built up the Social Security Trust fund. If that were so, then the Baby Boomers could argue that they have performed their half of the bargain, and they are waiting for their children and grandchildren to perform the second half. Like many contracts, someone had to perform their side of the bargain first; and there is no reason to take advantage of the Boomers now that they are poorly positioned to change their behavior to protect themselves against a breach of contract.

If the argument for generational justice is to be based on applying the contract analogy in so literal a way, however, then the analysis should also include possible defenses against enforcing contracts. After all, even the most rigid systems of contract law recognize circumstances in which a contract will not be enforced.

The most relevant contract defense in this situation is the doctrine of changed circumstances. As regrettable as it might be to tell Baby Boomers that the extra taxes they paid into the system for decades will not be fully reflected in their retirement benefits, the changes in the country's overall fiscal situation since 1983 could well require sacrifices that would have been unnecessary (and even unthinkable) if history had unfolded differently.

Given the marked increase in the nation's aggregate health care costs over the last few decades, with an ever-larger share of national income being devoted to goods and services that did not exist even a few years ago, the overall fiscal situation (mostly through Medicare and

Medicaid) has deteriorated substantially.[217] If it is not possible to find fiscal savings elsewhere, it might be necessary to force Baby Boomers to give up some of their Social Security benefits even as they hold onto Medicare benefits.[218]

C. The Hidden Distributive Justice Issue

Whether or not the political agreement that resulted in the 1983 Social Security reforms is viewed in quasi-contractual terms, there is another aspect of the 1983 plan that implies that there is an exchange between economic classes as well as between generations. Perhaps the least-discussed aspect of the 1983 reforms is the impact on the distribution of income implied by the plan. As discussed earlier, there are clear and deliberate redistributional elements built into the benefits formula for Social Security; but those elements would be in play whether there had ever been a Baby Boom or not. The benefits formula is designed to compress post-retirement incomes in every generation compared to pre-retirement incomes for the same generation. But there is another distributional aspect that is less easy to see.

The distributional element that is implied by the 1983 reforms has to do with the question of who pays Social Security taxes as opposed to who pays federal income taxes. The important difference lies in how the income tax and the Social Security payroll tax are distributed across the income spectrum.

In early 2010, in the annual media scrum leading up to the tax filing deadline on April 15, there was a brief (but intense) debate over the fact that a large number of people had no net federal income tax liability.[219] Although the changes to the tax laws from 2009 that increased the number of non-net-payers were mostly specific tax expenditures that had been enacted as temporary anti-recessionary measures, the core truth is that the federal income tax system is consciously designed to collect no

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[217] *See Economic Outlook and Current Fiscal Issues: Hearing Before the H. Comm. on the Budget*, 108th Cong. 8 (2004) (statement of Alan Greenspan, Chairman, Bd. of Governors of the Fed. Reserve Sys.) ("Tax reductions . . . also contributed to the deterioration of the fiscal balance."); s*ee also Budget of the United States Government: Fiscal Year 2006*, GOV'T PUB. OFF. 24 (Feb. 7, 2005), https://www.gpo.gov/fdsys/pkg/BUDGET-2006-BUD/pdf/BUDGET-2006-BUD-7.pdf ("Medicare's problems are compounded by the rising cost of heath care.").

[218] *See* Chris Farrell, *The Boomers' Role in Social Security and Medicare Coverage*, NEXTAVENUE (Jan. 27, 2017), http://www.nextavenue.org/people-55-social-security-medicare-changes/; Annalyn Kurtz, *Baby Boomers Are Causing A Debt Crisis. Here's How They Can Navigate It*, FORTUNE (Mar. 31, 2017), http://fortune.com/2017/03/31/baby-boomer-debt-crisis-retirement/.

[219] *See, e.g.*, Scott A. Hodge, *Record Numbers of People Paying No Income Tax; Over 50 Million "Nonpayers" Include Families Making over $50,000*, TAX FOUND. (Mar. 10, 2010), https://taxfoundation.org/record-numbers-people-paying-no-income-tax-over-50-million-nonpayers-include-families-making-over/.

revenues from millions of lower-income earners.[220] Indeed, one of the reasons that the system includes exemptions and deductions is to guarantee that some people with low gross incomes will end up paying no federal income taxes.[221] The federal income tax is, therefore, designed with a "zero bracket" that guarantees that lower-income earners will pay no federal income tax. The graduated marginal rate structure further guarantees that those who do have positive, but low, taxable incomes will pay relatively little federal income tax.[222]

As described above, by contrast, the Social Security payroll tax is paid on the first dollar of labor income (but not income from investments). The rate is constant rather than graduated,[223] and the rate drops to zero when labor income exceeds the annual limit, meaning that everyone in 2015 with labor income of $118,500 or more paid the same amount in Social Security payroll taxes.[224] This means that lower-income people pay federal taxes on their earned income, but almost all of their federal tax payments are Social Security taxes rather than federal income taxes. Social Security is, in short, a mass tax; and the federal income tax is a relatively progressive tax that falls mostly on the upper-middle and upper income classes.[225]

Because of this sharp difference between federal income taxes and Social Security taxes, the 1983 changes to Social Security did not merely affect when taxes would be paid; but by which income groups. If there had been no deal in 1983, and if Social Security had continued as an annual pay-as-you-go system, the Social Security tax rate would not have

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220 *See Key Elements of the U.S. Tax System: How Does the Federal Tax System Affect Low-Income Households?*, TAX POL'Y CTR., http://www.taxpolicycenter.org/briefing-book/how-does-federal-tax-system-affect-low-income-households (last visited Oct. 13, 2017); *2009 Tax Law Changes Provide Saving Opportunities for Nearly Everyone*, INTERNAL REVENUE SERV. (Jan. 2010), https://www.irs.gov/newsroom/2009-tax-law-changes-provide-saving-opportunities-for-nearly-everyone.

221 This was highlighted by President George W. Bush when he argued in favor of the 2001 tax cuts. That bill removed nearly eight million lower-income people from the federal income tax rolls—an outcome for which the then-President took credit. *See* Peter Ferrara, *Why America Is Going to Miss the Bush Tax Cuts*, FORBES (Dec. 6, 2012), https://www.forbes.com/sites/peterferrara/2012/12/06/why-america-is-going-to-miss-the-bush-tax-cuts/#75b6d6d9800a.

222 One analysis, for example, showed that a middle class family in 200x would pay about 3% of its gross income in federal income taxes. *But see* David Leonhardt, *Behind the 47% Talking Point*, N.Y TIMES, Apr. 14 2010, at B1 (noting that such a family's total federal tax liability, including excise taxes and payroll taxes, was 14.2%.).

223 The statutory rate, as noted above, is currently 12.4%, with 6.2% collected from the gross wages or salary of the worker, and 6.2% collected from the worker's employer. *See* Pomerleau, *supra* note 54, at 3.

224 *Contribution and Benefit Base Determination*, SOC. SECURITY ADMIN., http://www.ssa.gov/OACT/COLA/cbbdet.html (last visited Oct. 13, 2017).

225 *See generally Is Social Security Progressive?*, *supra* note 61, at 1 (explaining that lower-than-average earners receive proportionately higher benefits than average and higher-than-average earners).

been increased to its current level. In fact, unless all of the economic benefit from the full entry of the Baby Boom into the work force in the 1980s had been directed to higher benefits for the Boomers' parents, the Social Security tax rate would have been reduced significantly for Baby Boomers. The 1983 reforms, therefore, involved an explicit decision to finance Social Security's planned annual surpluses out of the paychecks of lower- and middle-income workers.

Once the system shifted from annual surpluses to annual deficits, the act of drawing down the Trust Fund would by design require that the Social Security benefits then due be paid in part from general revenues, i.e., from higher income taxes or from deficits.[226] For example, in a year in which Social Security would pay out benefits of $500 billion but collect only $400 billion from Social Security taxes, the $100 billion difference would be covered by the Treasury. Whether the Treasury covered that $100 billion from higher income taxes immediately or by increasing the deficit (thus delaying when tax revenues would need to increase[227]), the annual Social Security deficit was supposed to be paid by non-Social Security federal taxes, which are overwhelmingly income taxes.[228]

In other words, the annual Social Security surpluses in the early years would make it possible to increase the economy's productive capacity by making more money available in the financial markets for businesses to invest. Then, when Social Security needed the money in the later years, the system's annual internal deficits would be covered by increases in income taxes (then-current and future). The distributional impact of this choice is that the Baby Boom's lower- and middle-income workers implicitly agreed (or, more accurately, were never told that they would be forced) to pay excess taxes during their working lifetimes, in exchange for a promise that their retirements would be financed in part by upper-middle and upper-income earners through increases in income taxes.

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[226] *See* Robert L. Clark, *Liabilities, Debts, Revenues, and Expenditures: Accounting for the Actuarial Balance of Social Security*, 41 HARV. J. ON LEGIS. 161, 163 (2004) (noting that if the balance in the Trust Fund reaches zero, benefits will either have be paid out of payroll tax revenues or benefits will have to be cut).

[227] Deficits are often depicted as delayed taxes because they impose the requirement that future taxpayers either retire the borrowing that the deficits necessitated, or continue to finance the annual interest payments on the additional federal borrowing as future bondholders collect interest payments from the government. (Even if the debt is literally never paid off, the net present value of the annual interest payments is, under standard assumptions, exactly equal to the amount of the original borrowing.) While there are some objections to that framing of the issues, the analysis here will follow the standard approach and treat continually-refinanced deficits as being the equivalent of a tax increase at some point (or points) in the future.

[228] *See* Robert Eisner, *Cut Social Security? No. Expand It.*, WALL STREET J. (Dec. 10, 1997), http://pages.stern.nyu.edu/~nroubini/articles/SsEisnerWSJ1297.htm ("If we also credited some 1.5% of the taxable income from our income taxes, we could handle all of the pessimistically projected shortfall.").

The net result is that the Baby Boomers quasi-contract included an implicit timing issue with distributive consequences. The non-elite Boomers paid up front during their working years, on the promise that their retirements would be partly financed by taxes on the people whose higher incomes were made possible by the workers' sacrifices. If we were to start to cut Boomers' Social Security benefits rather than to increase income taxes, as part of some sort of transition to a supposedly sustainable long-term solution, middle- and lower-income Baby Boomers would have paid into the system in full but would not receive their full benefits. In short, the intragenerational aspects of the quasi-contract suggest that any supposed fix for Social Security should at least not involve taking benefits away from the vast majority of Baby Boomers, for whom Social Security benefits are an essential part of anything resembling retirement security.

CONCLUSION

The birth of the Baby Boom generation created a profound policy challenge for the Social Security system: should the system continue to be run as a pay-as-you-go system, or should the large new cohort of workers be forced to save for their own future retirements? Although the outward structure of the Social Security system was not changed, the Baby Boomers were, in fact, required to save for their own retirements. They did so by paying higher taxes than would otherwise have been necessary, thus contributing to total national saving in a way that allowed the economy to grow more quickly than it would have otherwise. In turn, Boomers bequeathed to their children the economic wherewithal to support their parents in retirement, even while the post-Boomers will enjoy higher living standards during both their working lives and in their retirements.

It is possible, however, that this supposed generational sacrifice was illusory, that the Baby Boomers were otherwise impoverishing their children and grandchildren, even as they paid extra money into the Social Security system each year. Fortunately, the evidence shows otherwise. Even the most pessimistic economic assessment of Social Security's cost to future generations shows only a trivial effect on the path of increasing national income, and there is no suggestion at all that Social Security's decades of surpluses were the cause of any other changes in fiscal policy that would have had a negative impact on future generations.

Although the Baby Boom generation can rightly be accused of making many mistakes that have harmed their children and grandchildren, the Social Security system is most definitely not one of those mistakes. It is a triumph of political propaganda that the one thing that the Baby Boomers did best is now so badly misunderstood that it has become the symbol of a generation's failure. The Social Security system does not need to be fixed, because it is not broken, and if left alone (or, even better, if it is expanded), it will continue to do its job well.