A COMMUNITARIAN WORKING PAPER

THE INTERGENERATIONAL COVENANT: Rights and Responsibilities

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COMMENTS ARE WELCOME
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THE COVENANT: CONTRACTS MUST BE OBSERVED

The Communitarian movement was born in 1990 out of the recognition that too many of our fellow citizens were all too keen to have their rights respected but unwilling to shoulder the personal and social responsibilities that are corollaries of these rights. Young Americans were found to feel strongly about the right to be tried before a jury of their peers if charged with having committed a crime—but when called to serve on a jury, often sought to evade serving.\(^1\) Most Americans still favor less government and lower taxes but also demand more of every government service to be had. Generally, the language of rights abounds and is indeed beyond reproach, the cornerstone of our free society, but responsibilities are considered onerous if not oppressive. The Communitarian movement argues that rights cannot be sustained without responsibilities because each right lays a claim on some one, and if that person does not honor the claim (that person’s responsibilities), there will be no regimes of rights.\(^2\) In short, rights presume responsibilities and the Communitarian movement calls for shoring up the neglected personal and social responsibilities. Many others have picked up this theme—from President Clinton and Vice President Gore to Jack Kemp and Lamar Alexander.

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We turn today to examine the other side of the same equation: it follows from the same basic communitarian moral thesis that if people have lived up to their personal and social responsibilities, if they have kept their part of the social covenant, that they are entitled to collect whatever the society explicitly and implicitly promised them; that is now their right. Thus, if people did work all their lives, raised their children the best they could, paid taxes, saved, voted regularly, and did volunteer service—the society owes them the assurance that they will not be destitute in old age, abandoned when they are infirm, unprotected from those who prey on the frail and failing.

There is room for debate about the precise levels and nature of the obligations that society has incurred, the other side of the intergenerational communitarian covenant, but not about their basic nature. Violating this covenant endangers and offends not merely our elders; when a society violates its promises to its senior citizens, no member of society will be able to expect that he or she could at some future date retire with dignity and basic economic and social security.

In fact, they would have no reason to believe that the society will honor its commitments to anyone else. Such retreats from the promise thus endanger not merely the old, but the whole social fabric. The frequent attacks on entitlements for the old and the attempts to turn "entitlements" into a dirty word, may be one reason younger members of society increasingly emphasize their rights as citizens while ignoring the duties and responsibilities that go along with them.3

The American covenant (or social contract) is not only between senior citizens and the government, but between all Americans and their grandparents, aunts and uncles, and all other

elders. It encompasses the commitment implied in the Social Security Act (which includes Medicare); in explicit and implicit contracts corporations (and also not-for-profit and government employers) have made to their employees in terms of their post-retirement life (often including pension benefits and health insurance and sometimes much more), much vaguer commitments built into communities’ cultures (e.g., to respect elders), and the implied contract between children and their parents (e.g., not to abandon them in their old age). We clearly have a moral obligation not to leave elderly people vulnerable to criminals or fraudulent insurance schemes, homeless and without food, and bereft of compassion and love.

Our basic argument is that these commitments ought to be honored, because it is the ethically appropriate thing to do, because if one violates such commitments the social and moral order of a society is diminished.

The contract between America and its elders—and all those who are to be elders—is not a real-time contract but one in which carrying out one’s duties precedes collecting one’s entitlements (in the memorable words of one of our senators, eating the spinach before you get your dessert). It differs in this respect from most contracts in which both the assumption of responsibilities and acquisition of rights occur simultaneously. By and large, elder Americans have first worked all their lives, paid their taxes and so on—and are promised some support after retirement. To deny or significantly dilute these commitments evokes the same sense of unfairness and injustice we experience when we hear that an insurance company cancels its policies when people get sick or retroactively changes the terms of the policy.

We would also note that compared to other developed societies, senior citizens’ benefits in the United States are far from lavish. Many developing nations show much more respect to their elders than we do. And all developed nations provide much more extensive benefits to their elders than we do.
The often repeated phrase “elders should give something back to society” seems curious when examined in the given communitarian context. It implies that our elders receive all these societal benefits, like foreign aid if not charity, and while the poor souls cannot repay for all the good they are awarded, they should at least give “something” back. (The word “something” clearly implies that they are unable to give a full measure.) This view treats the period after retirement as if it were a separate balance sheet of rights and responsibilities from the rest of life, to be balanced on its own; it disregards that elders already gave all their life. All this is not to say that elders, to the extent that they are well and able, which many are not, might not contribute more to the community’s well being. (They already donate to good causes and younger generations more than any other age cohort.) But this should be viewed as the icing on the cake; much appreciated but not the basic foundation of the contract.

Moreover, the breakdown of the intergenerational communitarian covenant sets groups of people—or generations—against each other without any clear and principled criteria as to what to expect and what behavior is predatory and what is morally called for. This is the way intergroup divisiveness and mass conflicts are born; our society is already overburdened with intergroup conflicts and hardly needs more. Extremely unfortunate comments are often made about senior citizens, such as that elderly recipients of Medicare benefits are “greedy geezers,” disregarding that nearly 80% of all Medicare benefits go to households (not individuals!) whose annual income is below $25,000. Leaders of an young people’s organization for deficit reduction have stated that elder Americans are “destroying” the country. The argument has also been made that older Americans contribute to the dissolution of the bonds between the generations by living longer. But the problem goes both ways; suggestions that young people these days are “slackers” are not helping matters either.

Deliberate attempts have been made to draw intergenerational fault lines, to set the
generations off one against the other. One of the authors of this paper has been approached by
a senator to join a group to mobilize the young, who are said to suffer discrimination because
the old hog so many of the society's resources and because political hay can be made by posi-
tioning one's self as a champion of the young. Daniel Callahan, a social philosopher and ethicist, has often spoken about the typical American town in which there is a shiny hospital but a
dilapidated school.

This approach represents a false dichotomy. The society is not divided into two camps
(children and the elderly), if only because the plurality of Americans are in the in-between
generation, say aged 30 to 64. Second, practically all those who are now not senior citizens will
live to become seniors; we all have a deep personal stake in the well being of older Americans.
Also often disregarded is that for every dollar that is transferred from the young to the old in the
public sphere, at least two are transferred the other way.\footnote{Karl Kronebusch and Mark Schlesinger, “Intergenerational Transfers,” in *Intergenerational Linkages: Hidden Connections in American Society*, (New York: Springer Publishing Company, 1994) 148.}

Our discussion turns next to examine specifically how, when, and where the covenant is
threatened or violated. Note that much of what must be done is to enforce laws that are already
on the books and to protect existing systems from grievous violations. Very little of what is
called for involves new public expenditures, or new regulations, or new unfunded mandates.
Pension Underfunding: Endangering Promised Retirement Benefits

One major threat to American retirement security is the underfunding of pension plans by corporations. American employees naively assume that if they have a contract with an employer, according to which they are obligated to pay them in part by contributing to their retirement fund, that they will be able to draw on these funds when they retire. However, for millions of employees, the corporations are failing to make the contributions that are necessary to keep the retirement plans properly funded. Furthermore, shirking of obligations by corporations threatens the federal insurance plan set up to protect employees when corporations go into bankruptcy, and in turn to stick taxpayers with giant bills. Legislation was passed in 1994 addressing some of the problems in our private pension system; however, we believe that increased vigilance is warranted, until pension promises for all Americans are truly protected.

There are currently about 8,000,000 American workers covered by private pension plans that are underfunded. Plan underfunding and its causes should be the concern of all the 41 million people covered by pension plans, as well as the taxpayers who may be called upon to finance a bailout of failed plans. The contracts corporations have with their workers regarding retirement are all too often not observed and society has not lived up to its obligation to enforce them.
THE STATE OF PRIVATE PENSIONS AND THEIR REGULATION

There are two basic types of pension or retirement plans: defined benefit (DB) and defined contribution (DC). DB plans provide a specified amount of retirement income, usually based on years of service with an employer and the salary or wage level at the time of retirement. On the other hand, income from a DC plan depends solely on the amounts contributed by the employee and employer as well as any investment returns. Defined contribution plans are always, by definition, fully funded. If a DB plan does not possess adequate assets to cover its liabilities, it is considered to be underfunded.

If a company terminates an underfunded plan, and cannot cover the shortfall with other assets, the Pension Benefit Guaranty Corporation then becomes the trustee of the plan, covers the shortfall, and pays out benefits to current and future retirees. The PBGC is a self-funded agency that insures DB plans; all employers pay a base premium of $19 per covered employee per year, and underfunded plans pay additional premiums based on the relative health of the plan.

The PBGC guarantees only “basic benefits” to retirees: those beginning at 65 years of age and some early retirement, disability, and survivor’s benefits. Each year the PBGC sets a ceiling on the maximum pension benefit, making adjustments for wage growth in the general economy. In 1995, the maximum monthly benefit is approximately $2600, or $31,200 a year. Higher-income workers who expect to maintain the standard of living to which they are accustomed based on the commitments made by their employers must realize that currently they are unprotected.
THE UNDERFUNDING CRISIS IN SINGLE-EMPLOYER DEFINED BENEFIT PLANS

The bulk of pension underfunding is in single-employer plans; in 1993, it totalled $71 billion, up from $53 billion in 1992. Most of the companies with underfunded plans are in the steel, automobile, tire, and aviation industries. About one-quarter are in dangerously poor financial health and are unable to support their liabilities. Other sponsors may be relatively healthy, and may currently possess sufficient assets outside the pension funds to cover liabilities. However, unanticipated negative changes in interest rates or mortality rates for the retiree population of the plan could affect the health of these plans.

Some of the causes of plan underfunding include:

- **Postponing or circumventing contributions requirements.** Companies experiencing financial difficulties can request that the requirement to contribute to their DB plans be waived. The IRS reviews these requests and has the authority to grant waivers. During the 1980s, when Pan Am was struggling to stay alive, the company received six waivers. When the airline finally folded in 1991, the PBGC had to take over its pension plan and was saddled with over $900 million in liabilities and very few assets to cover them.

- **Facile promising of new benefits.** Because pension benefits will be covered by the PBGC even if the plan goes bust, there is an incentive for employers to promise ever more generous benefits, even if it can’t afford to do so. When negotiating new contracts, increasing pension benefits is an attractive option for employers, since it’s cheap in the short term (unlike increasing wages or health benefits). That previous increases don’t have to be fully funded before new promises are made exacerbates the problem.

What can be done to strengthen plans that are currently underfunded and protect current and future retirees from loss of benefits?

- **Place a moratorium on new promises.** Employers with underfunded plans should not be permitted to pledge additional pension benefits to employees. *We see this as a moral and ethical issue in addition to a financial one.* Pledging to provide new benefits knowing that the PBGC will pick up the tab if the plan has to be terminated is irresponsible, not to mention enormously cynical; relying on healthier firms to make good on empty promises isn’t right.

- **Strengthen enforcement of minimum funding contributions.** Bankruptcy courts have differed widely on issues such as whether the minimum funding contributions required by the PBGC represent pre-petition debt. The nebulous bankruptcy status of the PBGC has directly led to underfunding problems. In some cases, courts have ruled that companies are not required to continue making contributions to plans while under bankruptcy protection, as they are required to continue to pay wages. The PBGC has argued that the funding requirements should continue to be met, and that pension benefits represent compensation as surely as wages. At the very least, we agree that these obligations must continue to be met. But we would also support strengthening the PBGC’s claim on the assets of companies terminating underfunded plans (see below).

It should also be noted that the underfunding problem extends beyond the private sector. The federal civil service and military retirement plans, as well as state and local government plans, are also woefully underfunded—to the tune of $1.24 trillion. Because the DB plans for the public sector are financed through general revenues, taxes must be raised or programs
and benefits cut in order to make up the funding shortfalls. This will require some very tough choices, and involves federal budget policy to an extent that this issue is best left for another study.

**WHO WILL GUARANTY THE GUARANTOR?**

The problem of pension underfunding is troubling, but it's still tempting to think that individual employees need not worry, since these plans are federally insured by the PBGC. Unfortunately, it's not that simple. There are good reasons to be concerned that the agency that protects retirees from insolvent pension plans may have some long-range solvency problems of its own. The agency itself faces a shortfall, which may necessitate a taxpayer bailout in the future.

We believe that pension funds belong to the current and future retirees and ought to be protected, and we submit the following suggestions for reform:

- **Amending bankruptcy law.** In addition to requiring that firms undergoing bankruptcy reorganization continue to make payments to DB plans, the PBGC and underfunded plans should also be given "super-priority" status among a failed firm's creditors. This will help minimize the PBGC's liabilities, and it has been noted that it would have the advantage of not placing additional regulatory burdens on employers.7

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Raising additional revenues. One obvious method of ensuring that the PBGC can meet its obligations is to increase its funding (i.e., raise premiums paid by employers for coverage). The Retirement Protection Act of 1994 included provisions to increase premiums for underfunded plans that will raise $2 billion over the next five years. However, the bill was passed as part of the enabling legislation for the General Agreement on Tariffs and Trade, to offset some of the cost of the trade agreement. Of the $2 billion to be raised by the increase in premiums, half will be used to finance GATT. We believe that given the agency’s long-range solvency problems, funds raised through premium increases should be dedicated solely to the PBGC.

Reducing the guaranteed benefit. It has also been suggested that the guaranteed benefit could be reduced, perhaps by as much as 75 percent. However, when individuals plan for retirement, they rely on pension benefits in addition to social security and savings and investments. If a retiree loses her pension benefits, it is too late to make up for that loss through additional earnings and savings—hence the purpose of guaranteeing pension benefits. It seems to us that decreasing the guaranteed benefit defeats the purpose of the insurance.

TRAPS IN DEFINED CONTRIBUTION PLANS

The discussion has focused so far on DB plans. However, problems also exist with DC plans that should be addressed. We suggest that replacing a DB plan with a DC plan is not an

equal trade, but frequently resembles a bait and switch routine. Also, there are types of DC plans that provide very little future income security.

Companies may terminate a fully funded DB plan and replace it with a DC plan, but they must purchase an annuity or provide a lump-sum distribution of the benefits that have accrued under the DB plan. However, if a company terminates a DB plan and purchases an annuity from a private insurer to replace it, the benefits are no longer federally guaranteed. Furthermore, benefits from DC plans are not insured against poor investment performance; employees bear all the risk and are not guaranteed any minimum benefit.

We recommend expanding coverage under the PBGC to include coverage of annuities purchased from private insurers and when DB plans are terminated, we believe current employees should be “grandfathered”, and coverage under the DC plan should begin with new hires. In addition to best respecting the agreements between employers and employees, this option would prevent erosion of the PBGC’s premium base.

An additional problem is that certain types of DC plans offered by employers, particularly 457 deferred-compensation plans, provide the employee with no security at all. Under law, contributions made to 457 plans are considered the property of the employer until the employee draws upon the funds, usually upon retirement or changing jobs. If the company is forced to declare bankruptcy, plan participants could lose part or all of their balances to other creditors. Employers offering 457 deferred-compensation plans are required to inform employees of the risk involved in contributing. However, we believe that contributions to anything called a deferred-compensation plan, which clearly implies that the compensation will be received in the future, should be protected in a trust that belongs to the employees.
It might be said that, in regard to the future of private pension plans and their regulation, we are too pessimistic. After all, corrective legislation was passed in the last Congress and many of the notorious abuses of the 1980s seem to no longer be an issue. However, there is no disputing that underfunding of private DB pension plans persists. We feel that this simply must be addressed, and would further note that there is very little risk in erring on the side of caution.

SUPPLEMENTAL HEALTH INSURANCE

The danger to senior citizens is not always that implicit or even explicit contracts are not honored; in too many cases, senior citizens are targets for fraud. Elders who fear catastrophic diseases and the exorbitant expenses that go along with them and who fear being a financial burden on their spouses and children are often exploited by unscrupulous insurance agents, salespersons, and companies hawking low-value policies. Unfortunately, it is the most vulnerable seniors who most often fall victim to fraud: the oldest, the poorest, those who are most estranged from their communities.

Since 1966, senior citizens have enjoyed the benefit of guaranteed health insurance coverage through the Medicare program. Although Medicare does provide good basic coverage, there are a number of things that Medicare does not cover, and these gaps lead many seniors to look for supplemental insurance.
In 1990, legislation was passed to regulate the market for Medicare supplemental ("Medigap") insurance. However, Congress amended the act at the end of the 103rd Congress and unfortunately, this change has re-opened the door for insurance companies to sell unsuspecting seniors coverage they don't need. In particular, seniors have been burnt by low-value policies that have severely limited benefits. Long-term care insurance products present problems for senior consumers as well, such as lack of inflation protection, that point to a need for establishing higher standards.

EDUCATING CONSUMERS, PREVENTING FRAUD

Buying health insurance, especially for long-term care, can be complicated and confusing. Information comparing policies for value and price exists, but it isn’t always complete and frequently is difficult to find. Furthermore, it seems not to be getting to those who need it most: the lower-income, more isolated seniors who are often targets for abuse and who have the most to lose from buying an over-priced, low-value policy.

Because we believe the best protection against fraud is a well-educated consumer, we suggest the establishment of a panel of trusted, independent, and knowledgeable experts to examine supplemental, long-term care, and other health insurance policies frequently marketed to the elderly and to rate them on a yearly basis. What we envision is an annual report and comprehensive list of policy ratings that is well-publicized, highly visible, simple, and widely distributed. The panel’s members must be independent (without ties to the insurance industry

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or organizations that market insurance); the information must be the most reliable; and the product of the panel’s work must be accessible to all seniors, so that they may make informed and financially sound decisions about buying supplemental insurance.

LIMITED-BENEFIT POLICIES

There are two primary types of limited-benefit policies: *dread disease* (also called specified disease) and *hospital indemnity* policies. Dread disease policies cover expenses only for certain diseases, usually cancer. Hospital indemnity policies will pay only a set dollar amount for each day the beneficiary is in the hospital.

These policies are inexpensive, but they are also of extremely low value, because of strict limitations on benefit payouts. In 1988, the General Accounting Office, the investigative arm of the Congress, reported the following:

Annual premiums for a hospital indemnity policy paying $50 per day for a 65-year-old could cost from about $300 to $500 per year. In 1984, about 1 in 4.6 Medicare beneficiaries were hospitalized. In 1985, the average length of stay for this group was about 9 days. Thus, a policy paying $50 per day would pay the average Medicare hospital patient about $450, but a beneficiary had only about a 22-percent chance of being hospitalized... The value of specified disease insurance depends not only on such factors as whether the person is hospitalized, but also on the chances of contracting the covered disease.11

For individuals with a good comprehensive health policy (one that covers all or most of hospitalization costs and a wide range of risks)—and that group includes Medicare beneficiaries as

well as most people with employer-provided health insurance—these policies constitute duplicative coverage. In addition, shady marketing practices are too common among insurers offering these policies.

What is needed first to protect seniors and others from being swindled is more truth in advertising. Restrictions on benefits should be clearly spelled out. Comparisons of value with other types of insurance might also be appropriate. Consumers should also understand that these policies can duplicate other coverage and make poor substitutes for a comprehensive policy. One suggestion that bears consideration is a “warning label” on advertisements and other marketing materials, such as “Consumer advocates and insurance regulators caution that this insurance product may not represent a good value over the life of the policy.” Another option is to regulate dread disease and hospital indemnity policies in the same way that Medigap policies are regulated. Basic reforms such as minimum loss ratio requirements and limits on preexisting conditions exclusions would make these policies a better value.

Some states have banned the sale of limited-benefit policies. In general, we oppose such paternalistic measures. But we do believe that consumers, particularly vulnerable seniors, deserve to be protected from fraudulent and exploitative insurance pitches. We also believe that an educated consumer just might be all that’s needed to restrain the sale of these insurance “lemons.”

LONG-TERM CARE INSURANCE

Currently, the market for private long-term care insurance is small. However, because of the high costs of such care and the lack of an adequate public program to cover these costs,
more and more private insurance companies are offering long-term care policies. Unfortunately, there are a number of problems in this market that can put senior consumers at risk.

There are three major problems with long-term care insurance products currently offered. Most long-term care policies offer a set dollar amount for each day the beneficiary is in a nursing home. However, a person may purchase such a policy and have no need to file a claim on it for as long as ten to twenty years. When the individual files the first claim, the value of the benefit may have been severely eroded by inflation. Adequate inflation protection is an important feature in a long-term care policy, but it is not one that is consistently available. While requiring that long-term care policies include compound inflation protection may increase the cost of coverage, it will also ensure that the policy will be worth something when the consumer needs it.

Unlike many life insurance policies, most long-term care policies provide no protection of the investment that the beneficiary has made in the policy. If the policy lapses, the beneficiary can lose everything she has spent on it. Requiring that insurers offer a benefit that allows at least a partial return of premiums (less benefits paid, of course) if the policy is cancelled would address this problem. It may also make long-term care insurance more attractive to consumers.


13. It is typical for the home-health benefit to equal half the value of the nursing home benefit. Therefore, if the policy pays $80 per day in a nursing home, it would pay $40 per day of home-health care.

A third problem is that long-term care insurers have very different disability requirements for paying out benefits. Most base eligibility for benefits on capability to perform basic activities like bathing, dressing, eating, toileting, walking, and getting out of bed. Some policies require inability to perform three of these activities to pay benefits, others only two. In combination with the wide variations in coverage for care in various settings (i.e., custodial care facility, skilled nursing facility, home care), it's very hard to compare different policies for relative value. Lack of standardization almost completely precludes the existence of a truly educated consumer.

Unfortunately, it can also leave senior consumers at the mercy of unscrupulous agents. In 1991, the Committees on Aging and Small Business of the House of Representatives released a joint report on abuses in the long-term care insurance market. They discovered sale of duplicative and worthless policies; “churning” (an agent sells a customer a new policy every year, often with higher premiums, instead of renewing the old one, in order to get a higher commission); use of scare tactics; and false claims about benefits. The following is just one example of the cases of fraud and abuse they found.

An 80-year-old Florida woman had recently purchased a nursing home insurance policy. Shortly after buying it, she was called on at her house by the agent who had made the sale. He had since left the company sponsoring her current policy and was now peddling another. This agent told the elderly woman that the policy he had sold her previously was now obsolete, but that he had a new policy which would protect her. The woman wrote a check for $2,342 and took out the new nursing home policy. The new policy was just about the same as the one which was dropped—at an additional cost of about $650 a year—and left her without coverage for 6 months because of its waiting period. The agent’s commission was near 60% [of the first year’s premium].

The National Association of Insurance Commissioners has designed model standards and regulations for long-term care insurance; we believe all state insurance departments should adopt these model standards or exceed them. Alternatively, rather than relying on states, passage of legislation similar to the Medigap legislation passed in 1990 would be advisable to protect consumers and to improve the quality of long-term care insurance available.

Fear of financial devastation from the need for long-term health care services is one of the primary worries of the elderly. Private long-term care insurance could provide peace of mind and security for many seniors, if steps are taken to protect seniors from exploitation by unscrupulous agents and companies and to require reasonable reforms of the market.

**SOCIAL SECURITY: THE MOTHER OF ALL PROMISES**

For many retirees, Social Security is the primary (sometimes only) source of retirement income. Indeed, it keeps many millions of older Americans out of poverty. In 1990, the poverty rate for persons aged 65 years and older was 14.7 percent; without the Social Security

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16. The Social Security program has a number of different components, including a disability insurance program (DI) and hospitalization insurance (HI, or Medicare Part A). While DI and HI have serious problems of their own, and need attention, for the purposes of this paper, we will examine only the retirement income insurance portion of the program, known as Old Age and Survivors Insurance (OASI). This is what most people think of when they think of Social Security—cash benefits for retirees over the age of 62.

Another program which is frequently confused with Social Security is the Supplemental Security Income (SSI) program. SSI was established in the Social Security Act, but is financed through general revenues, not the FICA tax revenues. It provides supplemental income for the poor elderly and the disabled. The program has come under fire in recent months because of widespread reports of perverse disincentives for work and school achievement, overly lenient eligibility requirements, waste and fraud. This issue, too, deserves serious attention, but it unfortunately must be left for another study.
program, the poverty rate for the same population would jump to 52.8 percent.\textsuperscript{17} Social Security makes no one rich; in 1995, the average monthly benefit is $698 for all retired workers.\textsuperscript{18}

Above all, most Americans strongly believe that Social Security is a retirement insurance or annuity scheme into which they pay for all their working years and in return pays them a monthly benefit during their retirement. Many economists, policy experts, and those who seek to change the non-means-tested nature of Social Security because they are concerned about the deficit, or for other reasons, argue that Social Security is nothing but a tax on the current young, working generation and an income transfer to the older one, with little connection between what one pays in and what gets out.\textsuperscript{19} These critics frequently remark that the average Social Security beneficiary gets back everything paid into the system in taxes with interest in three to four years of collecting benefits. (However, if the employer’s share of the tax is included, it would take an average earner just over 16 years and a maximum earner over 22 years to break even.\textsuperscript{20}) If, the critics say, Social Security is really just an intergenerational transfer of wealth, means-testing it would make it more efficient and would save significant sums of money besides. The ultimate result, however, of their efforts would be the destruction of the most popular and successful domestic program in American history.

Actually, Social Security is a hybrid—part retirement plan, part government subsidy. But the incontestable fact is that Americans have been allowed, indeed encouraged, for sixty years to believe that Social Security is a retirement insurance program. Indeed, the reason FICA

\begin{footnotes}
\item[18.] Correspondence from the Social Security Administration.
\item[19.] For example, see Milton Friedman, \textit{Social Security: Universal or Selective?}, (Washington: American Enterprise Institute for Public Policy Research, 1972) 24.
\end{footnotes}
taxes are not simply lumped together with other income (and business) taxes is that tax-averse Americans are willing to accept the idea of a “contribution” or “premium”, while they might well object vociferously, if not rebel en masse, to an increase in the federal income tax rate. If one accepts the argument that Social Security is a lie, then politicians and the rest of society have benefited for sixty years from this “lie.”

Our basic thesis is that Social Security should be gradually changed to live up to its promise: to be a wholly independent entity with regard to the federal budget and its governance, and to be a self-sustaining but publicly protected retirement insurance scheme.

Social Security has been suffering from a perception problem, particularly among young people. Many strongly believe that they will be required to pay FICA taxes to finance the program’s overcommitments (because current retirees generally get much more back than they paid in taxes), but that Social Security will be bankrupt when they retire or will have to impose confiscatory tax rates (as high as 40% or more) to make the program able to live up to its promises to them. Indeed, according to a poll sponsored by Third Millennium, an interest group for the baby-bust generation, only 9% of Americans between the ages of 18 and 34 believe that the Social Security system will have adequate funds to provide their retirement benefits. An even more disturbing finding of the poll is that 83% of the respondents believed that the government has made financial promises to young people that it cannot keep.21

Furthermore, young people’s doubts about Social Security and anxiety about federal budget deficits exacerbate existing tensions between the generations. Rob Nelson and Jon Cowan, founders of an organization representing the baby bust generation called “Lead . . . or Leave,”

21. Correspondence from Richard Thau, founder of Third Millennium.
have demonstrated at the national headquarters of the American Association of Retired Persons (AARP), and have even suggested that young people burn their Social Security cards.\textsuperscript{22}

We have already discussed the importance of employers upholding their contractual obligations to their employees. At a time when cynicism and feelings of disenfranchisement are rampant among the young and the public at large, \textit{it is even more important for the government to uphold its promises to citizens}. Key promises to keep should be preservation and protection of the Social Security program. Current beneficiaries, who have worked, paid taxes, and played by the rules, are entitled to the economic safety in retirement that it provides. But we must also take steps now to increase the viability of and confidence in the program among future beneficiaries. Social Security should be reformed so that it will live up to its promise not merely for those who are now retired or about to retire but for all who currently contribute to it and those who will do so in the future, the very young and generations yet to be born.

\section*{SOCIAL SECURITY IN THE LONGER RUN: APOCALYPSE NEVER?}

The future of Social Security is not nearly as grim as the alarmists argue. According to the Board of Trustees of the Social Security trust fund, the program will be in balance until 2013.\textsuperscript{23} At that point, some of the interest earnings will need to be combined with tax revenue to cover benefits. By 2019, income (including contributions and interest) will fall short of expenditures and it will be necessary to start redeeming trust fund securities. Under this scenario, the


\textsuperscript{23} The following figures are from the 1994 Annual Report of the Board of Trustees of the OASDI Trust Funds and are based on their intermediate assumptions.
trust funds will continue to show a surplus until 2036, at which point the trust fund will be depleted, unless some adjustments are made before that date. These may be as minor as including the millions of state and local government employees who are now not enrolled and making some limited adjustments in the ways inflation is measured.

It must be noted that an important role in the gloom and doom scenario are the assumptions that are made about the growth in wages over the coming years. The trustees of the Social Security trust funds have assumed an annual real wage growth of 1% for the next seventy-five years. One comes to rather different predictions if other assumptions are introduced. For instance, one economist suggested using the annual real rate of wage growth over the past 75 years, which was 1.7%, which results in the program being safely in the black for the foreseeable future.

Assuming a wage growth rate of 1.7% may be overly optimistic, as 1% may be too conservative. We believe that as the American economy benefits from a decade of downsizing, trimming the fat, and otherwise increasing its competitive edge, wages may very well rise at a healthier pace. In any case, this illustrates how different assumptions produce very different—and very possibly unreliable—forecasts about the future of Social Security.

Another idea under consideration is investment of a portion of the Social Security trust funds in the private sector. A modest raise in rates of return on these funds could translate into a major revenue raiser for the program. Options include investing the funds in domestic bonds that have AAA ratings, a random basket of stocks, or international low risk obligations. We recognize that this approach raises some serious issues; for instance, if the Social Security...
Administration buys fewer Treasury bonds in order to invest the trust fund surpluses elsewhere, this would have economic consequences that must be taken into account. But it deserves further examination before measures that may threaten the core of the Social Security covenant are considered.

BUILDING A FIREWALL BETWEEN POLITICIANS AND SOCIAL SECURITY

A grave danger for the future of Social Security is that the surpluses it has generated and is projected to generate over the next twenty years may be gobbled up by politicians for other purposes. We strongly urge that the Social Security program be completely separated from the control of politicians as much as possible by establishing a separate self-governing, public authority for its administration. Furthermore, Congress should be prohibited by law from drawing on Social Security funds to subsidize other spending (and vice versa, the Social Security Administration should not be able to draw on general revenues). Indeed, since 1990, the Social Security program has been, by law, excluded from federal budget calculations. Unfortunately, in practice, the surpluses are still very often counted as part of a unified budget.

In fiscal year 1994, the commonly cited figure for the budget deficit was $228 billion—but that counts the net increase in the Social Security trust fund. Exempting Social Security increases the FY1994 deficit to $288 billion, some $60 billion more. Because the program is expected to continue to net a surplus for the next couple of decades, it’s easy to see why some supporters of the balanced budget amendment and many others want to keep Social Security on

budget; fulfilling a promise to balance the budget becomes much harder if one cannot count the trust funds.

We believe this is an unacceptable practice and additional means must be found to make the program truly separate from the rest of the budget. In the context of the debate on the Constitutional amendment requiring a balanced budget, we urge the inclusion of language exempting the Social Security program, as was introduced by Senators Dianne Feinstein and Harry Reid. The Feinstein-Reid language simply states,

The receipts (including attributable interest) and outlays of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, as constituted and defined on the date of enactment of the joint resolution proposing this article as an amendment to the Constitution, shall not be counted as receipts or outlays for purposes of this article.\(^2\)

Statutory language that places the same restriction on Congress and the President should also be signed into law, independent of any possible Constitutional amendments.

Separating Social Security from the budget will force politicians to deal with the formidable budget deficit in a more honest fashion. It will provide an additional guarantee that the program will not be funded with general revenues in the future, and thereby provide additional assurances that budget deficits will not explode again. This will require more attention to the program’s actuarial balance and the adequacy of its mechanisms for self-funding, but it should also increase confidence in the program. Separation also enhances the perception of Social Security as an insurance program, which is essential to public support for the program.

\(^{26}\) Correspondence from the office of Senator Dianne Feinstein.
Even those concerned only with the general budget deficit must agree that revealing the true size of the deficit will mobilize increased public support for necessary deficit reduction measures. Also, all other things being equal, the easiest and best way to raise the national savings rate is by increasing public savings. As this is achieved when we reduce the general deficit, *truth in accounting* will serve this goal. Furthermore, a higher savings rate is essential for the economy to be able to provide the additional resources needed to fulfill the future obligations of Social Security. Hence, we should:

- **Enhance the independence of the Social Security Administration.** As of March 31, 1995, the Social Security Administration has been separated from the Department of Health and Human Services. It now operates as an independent agency governed by a seven-member board, with members appointed by both the President and Congress. We applaud this change and believe that it is essential to increasing public confidence in the Social Security program. We urge that policymakers find additional ways of protecting and enhancing this new autonomy, particularly in relation to the budget process.

- **Modify Social Security to become gradually more like a true insurance plan.** The Social Security Administration should continue, as it began to do in January 1995, to send each FICA tax-payer an annual account statement. Such a statement would provide information regarding the amount of tax the individual has paid as well as the benefit that he or she could expect to receive.

  *We could also provide participants a measure of choice regarding the ways funds are invested,* that is impart the program with *some* of the attributes of a defined contribution plan. Individuals contributing to the program could be given a choice of perhaps three or four different “investment funds” of differing levels of risk. Revenues flowing into the system will be invested in the various “funds” according to the responses of the
contributors. Future benefit flows to individuals would be adjusted according to the relative returns of the varying choices and the results would be included in the annual report.

We suggest that if the Social Security program is completely separated from the other expenditures, revenues, and budgeting of the federal government, it will gradually enhance those attributes by which Americans came to trust it in the first place, its features as an insurance program, without turning it into a private contribution based plan. If the result is, as we believe, that truth in accounting will result in greater efforts to reduce the national deficit, this will make it more possible for the economy to grow and hence generate resources. Above all, we shall live up to the promise Social Security made over sixty years ago to Americans present and future.

**HEALTH CARE: PROTECTING THE ELDERLY FROM THEIR SAVIORS**

American society is facing a growing squeeze on the resources available for public programs in general and especially for health care. Budgets are being slashed, often no longer even keeping pace with inflation; hospitals are being down-sized (and often closed in rural areas); states are facing increasingly difficult budgetary choices due to exploding Medicaid costs. Debates over allocation of resources and cutting of services are becoming more frequent and more heated. It is important to ensure that the elderly, among which are many of the most vulnerable members of society, will not be short changed; that the intergenerational commitments will not be weakened or broken through either direct or indirect rationing.
LIVING WILLS, ADVANCE DIRECTIVES, AND MEDICAL POWERS OF ATTORNEY

In recent years it has become fashionable to encourage older people to endorse living wills and advance directives that basically seek to prevent the administration of unwanted medical treatments. The goal is to save elders, and others as well, from unwanted care when the person is in no position to refuse it. The Patient Self-Determination Act, which became effective in late 1991, requires all institutional providers (e.g., hospitals) that receive Medicare or Medicaid reimbursement to provide written information to patients about their rights to make health care decisions (including making living wills, etc.). The legislation also requires that the institution note whether the patient already has a living will, advance directive, or durable power of attorney.27

Attention should be paid to the sociological fact that when one introduces new social techniques, of which living wills are a prime example, one must take into account that they often will be employed under less than ideal conditions. For instance, those who first tested the IUD did so in top-notch American hospitals and did not foresee the infection rates that followed when it was used in field conditions.

The same problem must be guarded against here. In highly scrupulous medical settings, with families and communities intact, medical ethics committees in place, and courts vigilant, living wills and advance directives pose few dangers. However, given the less scrupulous parts of our society, and they are far from minuscule, one must expect that these instruments will be promoted to save resources for other uses, to keep hospitals’ utilization rates in line with HMO

and state requirements, and by families who seek to prevent their parents from "squandering" what they consider to be "their" inheritance. One recent study reveals that 39% of physicians who refused a request to turn off a ventilator did so because they felt that the family was not acting in the patient's best interests. A Dutch study uncovered hundreds of cases in which physicians terminated life support treatment against the wishes of the patients.

Health care providers are under enormous and growing pressure to reduce health care costs from everyone from HMOs that pay bonuses to physicians to cut costs to state and federal agencies that demand lower utilization rates, to corporations that transfer their millions of dollars to less costly health care programs. Among the items already cut to the bone and beyond is the length of stays in hospitals. Mothers are now sent home one day after delivery, and a move is afoot to send people home three days after open heart surgery. In this context, it is likely that living wills and advance directives will be promoted for other reasons than the desire of the patients and at an ever earlier point in the treatment process. We therefore urge that living wills and advance directives be available to those who seek them; that government efforts to promote them be suspended until better safeguards are developed and their effectiveness tested; and that associations that champion the interests of the elderly both call attention to the merits and the dangers of these directives.

HEALTH CARE RATIONING AND THE ELDERLY

We use the phrase “Eskimo syndrome” to refer to the tradition of putting elders out on the ice to die after they are said to have outlived their social usefulness. Such a practice could readily spread in a society that feels great economic pressures from the costs of health care and believes that elders use a disproportional share of medical resources in the last years of life. We could find ourselves surprisingly quickly in a society that tries to ration medical services for the elderly and demands that all but palliative services be cut off at a given age (82 has been mentioned) and for this age to be reduced as economic conditions worsen.

For example, Daniel Callahan, a social philosopher and ethicist, has called for health care rationing for the elderly in his book Setting Limits, and we fear his thesis is likely to have a growing appeal. The United States is going through a difficult time as it attempts to work its way out of its budget deficit and reduce its skyrocketing debt. Also, as the national economic “pie” is growing more slowly, the fight over how to divide it up is intensifying. In this environment, the elderly may become a new target because as they have grown in numbers, they have been taking a increasingly large slice of the resources (at least those dedicated to health care), and are expected to take even more in the future. Old people are widely held to be “nonproductive” and to constitute a growing “burden” on an ever-smaller proportion of society that is young and working. Also, the elderly are viewed as politically well-organized and powerful; hence “their” programs, especially Social Security and Medicare, have largely escaped attempts to scale back social expenditures, while those aimed at other groups—especially the young—have generally been cut.

In response to the reality of scarce resources and rising health expenditures, Callahan has provided a detailed rationale and blueprint for limiting care to the elderly, explicitly in
order to free resources for the young. To free up economic resources for the young, Callahan offers the older generation a deal: trade quantity for quality; the elderly should not be given life-extending services but better years while alive.

Instead of the relentless attempt to push death to an older age, Callahan would stop all development of life-extending technologies and prohibit the use of ones at hand for those who outlive their "natural" life span, which he suggests in his book *What Kind of Life*, ends in the late 70s or early 80s. At the same time, the old would be granted more palliative medicine (e.g., pain killers) and more nursing-home and home-health care, to make their natural years more comfortable.

Callahan's call to break an existing ethical taboo and replace it with another raises the classic "slippery slope" problem. Once the precept that one should do all one can to avert death is given up, and attempts are made to fix a specific age for a full life, why stop there? If, for instance, the American economy experiences hard times in the future, should the maximum age be reduced to 72, 65—or lower? And should the care for other so-called unproductive groups be cut off, even if they are younger? Should countries that are economically worse off than the United States set their limit, say, at 55?

In addition to concern about slipping down the slope of less and less care, the way the limitations are to be introduced raises a serious question. There are other major targets to consider within health care, as well as in other areas, which seem, at least by some criteria, much more inviting than terminating care to those above a certain age. We are far from a point where there is a moral, social, or economic justification for cutting medical services to anyone. This

issue was treated extensively in a previous position paper of The Communitarian Network, prepared by a team that included leading authorities in the fields of medicine and ethics.\footnote{Christine Cassel, M.D., University of Chicago; Charles J. Dougherty, Ph.D., Creighton University; Amitai Etzioni, Ph.D., George Washington University; C. McCollister Evarts, M.D., Pennsylvania State University; John F. Griffith, M.D., Georgetown University; James Lindemann Nelson, Ph.D., The Hastings Center; Marian Osterweis, Ph.D., Association of Academic Health Centers; and Daniel Winkler, Ph.D., University of Wisconsin, \textit{Core Values in Health Care Reform: A Communitarian Approach} (1993). The text is available from The Communitarian Network, 2130 H Street, Suite 714J, Washington, D.C. 20052, (202) 994-7997.} Let us summarize the main points here: \textit{there are plenty of sources to reduce very significantly national health care expenditures without denying services or putting anyone out on the ice.} Most important of these are:

- **Reduce administrative costs.** The U.S. is spending 24% of its health care resources on administration and paper work compared to around 11% in the Canadian system. Reducing these costs substantially, say to 14%, could be a major source for health care savings. More than money is squandered by our distorted health care system: health care personnel who could be caring for the ill push paper instead.

- **We must also stop performing procedures that are unnecessary or have no proven health benefit.** Some studies suggest that they amount to more that 20% of all procedures.\footnote{For evidence of unnecessary care, see R.H. Brook and K.N. Lohr, “Will we need to ration effective health care?” \textit{Issues in Science and Technology}, 1986, (3)1, 68-77; and A.L. Siu, W.E. Manning, and B. Benjamin, “Patient, provider and hospital characteristics associated with inappropriate hospitalization,” \textit{American Journal of Public Health}, 1990, (80)10, 1253-1256.}

- **Above all, we must call society’s attention, in the strongest possible terms, to other sectors that impose huge costs on the health care system.** It makes no sense to bind the wound of gunshots, and disregard the guns. Why should we tolerate free reign for gunslingers and absorb the huge health care costs they impose? The same question...
holds for gross polluters and those who knowingly market clearly unsafe products. We say "gross" and "clearly" because we realize that one cannot have a risk-free society, but we should curb these risks rather than deny care to their victims if we feel overwhelmed by health care costs. This is not a liberal agenda; this is a matter of elementary logic: practicing prevention, it is widely recognized, is better than relying on acute care most of the time.

- We could save billions of dollars a year by insisting that drug companies stop marketing their wares through objectionable means, such as granting individual physicians and members of hospital pharmacies free entertainment, meals, and travel or by using other high-pressure sales tactics.

- We must enact tort reform to dramatically reduce malpractice insurance fees and defensive medicine. Limiting benefits for pain and suffering, and using arbitration and mediation are among the mechanisms that should be considered.

Only when these steps have been taken, and the truly wasteful health spending extracted from the system, should the option of rationing health care be entertained. And even then, age of the patient alone should not be used as the primary factor in deciding whether to provide treatment. Nothing could be a greater violation of the communitarian intergenerational covenant. The reason is elementary: such restrictions on treatment are based not on capacity to recover but on age alone, which is discriminatory on the face of it. While age and capacity to function are sometimes associated, the correlation is by no means perfect. There is no moral or social or economic reason we can discern why a terminal patient who is, say, 27 years old and has lost consciousness—and has no hope to regain it or function as a productive, loving, or meaningful member of the community—should be give unlimited health care services, while an 83-year-old patient who is able to do all the above is to be denied services. If we must resort
to health care rationing, capacity to recover, function, love, and lead a meaningful life should be the basis for allocation of services and not merely age.

IN CONCLUSION

The intergenerational contract is one in which one discharges duties first and then collects the benefits of fulfilling those duties. Elder Americans who live up to their responsibilities rightfully expect certain benefits on retirement that were promised them throughout their working years. This contract must not be weakened or broken. This is crucial not only for the sake of current retirees, but also for all those yet to retire. This does not mean that the elderly should refrain from voluntarism, discontinue their very extensive financial support of the young, or cease making other contributions of their energies and expertise to society. But inability to do so in no way nullifies the contract. The elderly have already spent a lifetime in fulfilling their duties and contributing to the community. The promises to which we refer are not just some ephemeral words. They are embodied in pension plans, health insurance for the elderly, Social Security, and the distribution of health care resources. It is here that they must be honored.

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