

Brooklyn Law Review

Volume 64

Issue 3

Symposium:

Getting Ready for Individually Managed Pensions:

A Global Perspective

Article 12

3-1-1998

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Recommended Citation

Kathryn L. Moore, *Redistribution Under a Partially Privatized Social Security System*, 64 Brook. L. Rev. 969 (1998).

Available at: <https://brooklynworks.brooklaw.edu/blr/vol64/iss3/12>

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REDISTRIBUTION UNDER A PARTIALLY PRIVATIZED SOCIAL SECURITY SYSTEM*

Kathryn L. Moore[†]

INTRODUCTION

Since its inception, Social Security¹ has balanced two competing policy objectives: equity and social adequacy.² Equity means that each worker should receive a benefit that is directly related, or actuarially equivalent, to the amount of his or her contributions.³ Social adequacy means that a certain standard of living should be provided for all contributors, regard-

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¹ For the purposes of this Article, the term Social Security will be used in its generally accepted manner as referring only to the cash benefits provided by the Old-Age, Survivors, and Disability Insurance ("OASDI") program. The Old-Age Survivors Insurance ("OASI") program provides benefits for retired workers and their spouses and children and to survivors of deceased workers. The Disability Insurance ("DI") program provides benefits for disabled workers and their spouses and children and pays for rehabilitation services for the disabled. See Martynas A. Ycas, *The Issue Unresolved: Innovating and Adapting Disability Programs for the Third Era of Social Security*, 58 SOC. SECURITY BULL. 48, 49 (1995). Moreover, since disability raises complex policy concerns that often differ from those raised by old-age, see, e.g., ERIC R. KINGSON & EDWARD D. BERKOWITZ, *SOCIAL SECURITY AND MEDICARE: A POLICY PRIMER* 137-50 (1993), this Article will focus principally on Social Security's provision of old-age benefits.

² As originally enacted, Social Security emphasized equity. See MERTON C. BERNSTEIN & JOAN BRODSHAUG BERNSTEIN, *SOCIAL SECURITY: THE SYSTEM THAT WORKS* 213-14 (1988). Since 1939, however, "the primary emphasis in the evolution of [Social Security] has been on the concept of adequacy in the prevention of hardship." J. DOUGLAS BROWN, *ESSAYS ON SOCIAL SECURITY* 25 (1977); see also MARTHA DERTHICK, *POLICYMAKING FOR SOCIAL SECURITY* 215 (1979) (explaining that welfare objectives served as one of the driving forces behind changes).

³ See ROBERT J. MYERS, *SOCIAL SECURITY* 10 (4th ed. 1993); see also Karen C. Burke & Grayson M.P. McCouch, *Women, Fairness, and Social Security*, 82 IOWA L. REV. 1209, 1211 (1997). For a more detailed discussion of definitions of individual equity, see Edmund Outslay & James E. Wheeler, *Separating the Annuity and Income Transfer Elements of Social Security*, 57 ACCT. REV. 716, 719-20 (1982).

less of the level of their contributions⁴ and implies some degree of income redistribution.⁵ Wilbur J. Cohen, a strong supporter of the Social Security system and an important player in its foundation,⁶ once declared that the balancing of equity and adequacy is "the art that has made Social Security an acceptable system."⁷ Critics of the system, in contrast, argue that the inherent conflict in these two goals makes the system defective.⁸

⁴ See MYERS, *supra* note 3, at 10; Burke & McCouch, *supra* note 3, at 1211.

⁵ One of the three conventional arguments made for government provision of Social Security is income redistribution. (The other two arguments are market failures and paternalism.) See Marilyn E. Manser, *Historical and Political Issues in Social Security Financing*, in SOCIAL SECURITY FINANCING 21, 29 (Felicity Skidmore ed., 1981) ("The goal of redistribution was important in the creation of the U.S. social security system during the Great Depression. Many aged persons were poor, and their needs were not being met adequately by existing programs."); see also U.S. GEN. ACCOUNTING OFFICE, SOCIAL SECURITY: DIFFERENT APPROACHES FOR ADDRESSING PROGRAM SOLVENCY 13 (GAO/HEHS-98-33, July 1998) ("The appropriate balance between individual equity and social adequacy is a fundamental issue surrounding Social Security's benefit structure and reflects the extent to which the program redistributes income among workers and beneficiaries.") [hereinafter GAO, SOCIAL SECURITY].

⁶ Cohen was research assistant to the Executive Director of the Committee on Economic Security (1934-1935), the committee that recommended the establishment of Social Security. See Wilbur J. Cohen, *The Social Security Act of 1935: Reflections Fifty Years Later*, in REPORT OF THE COMMITTEE ON ECONOMIC SECURITY OF 1935, AND OTHER BASIC DOCUMENTS RELATING TO THE DEVELOPMENT OF THE SOCIAL SECURITY ACT 5 (50th Anniversary ed. 1985) [hereinafter COMMITTEE REPORT].

⁷ WILBUR J. COHEN & MILTON FRIEDMAN, SOCIAL SECURITY: UNIVERSAL OR SELECTIVE? 68 (1972).

⁸ See STAFF OF HOUSE COMM. ON WAYS AND MEANS, 105TH CONG., 1998 GREENBOOK: BACKGROUND MATERIAL AND DATA ON PROGRAMS WITHIN THE JURISDICTION OF THE COMM. ON WAYS AND MEANS 97-98 (Comm. Print 1998) ("[Critics of Social Security] argue that by combining the goals of social adequacy, which is welfare-related, with individual equity, which loosely ties benefits to taxes paid, the program has become a mishmash that accomplishes neither goal well and creates inequities.") [hereinafter 1998 GREENBOOK]; see, e.g., COHEN & FRIEDMAN, *supra* note 7, at 36. (According to Milton Friedman, "[Social Security] gives too much attention to 'need' to be justified as return for taxes paid, and it gives too much attention to taxes paid to be justified as adequately linked to need."); PETER J. FERRARA, SOCIAL SECURITY: THE INHERENT CONTRADICTION 3-4 (1980) (arguing that the inherent conflict in adequacy and equity is the source of all of the program's major defects); LEWIS B. SOLOMON & GEOFFREY A. BARROW, PRIVATIZATION OF SOCIAL SECURITY: A LEGAL AND POLICY ANALYSIS 9, 13 (1995) ("The system attempts to provide two fundamentally different services—social insurance and welfare—and succeeds at neither."); see also GAO, SOCIAL SECURITY, *supra* note 5, at 26-27 (discussing annuity-welfare model and arguments for separating equity and social adequacy elements of Social Security).

Once viewed as a radical recommendation,⁹ proposals to privatize Social Security abound. Moreover, proposals to privatize partially Social Security are beginning to receive serious consideration.¹⁰ Accordingly, this Article will address the likely effect of partial privatization on Social Security's ability to redistribute income. For the purposes of this Article, privatization will refer to proposals that involve individuals directing their own pre-funded individual accounts and bearing the risk of investing in the private market and not to proposals that involve the federal government investing in the private market and bearing the risk. This Article will treat proposals that "add" a defined contribution account on to the current Social Security system as well as proposals that "carve out" a defined contribution account—that is, divert a portion of existing payroll tax revenues to fund private accounts—as partial privatization proposals.¹¹

Part I of this Article will begin by describing how the Social Security system currently balances equity with social adequacy. Part II of this Article will then describe some of the pending partial privatization proposals and explain how they will alter this balance. Next, Part III will explain why enactment of the proposals could put Social Security's redistributive role at risk. Finally, Part IV of this Article will explain why Social Security's redistributive role should be preserved.

I. EQUITY AND SOCIAL ADEQUACY UNDER THE CURRENT SOCIAL SECURITY SYSTEM

Among other things, Social Security pays old-age benefits to qualified retired workers.¹² In calculating these benefits, Social Security uses a complex benefit formula¹³ that takes

⁹ See Kathryn L. Moore, *Privatization of Social Security: Misguided Reform*, 71 TEMP. L. REV. 148-49 & n.106 and authorities cited therein.

¹⁰ See Prof. Moore's article, *supra* note 9, at 148-53, and Part II for a discussion of some of the Social Security privatization proposals under consideration.

¹¹ But see RESEARCH & POL'Y COMM., COMM. OF ECON. DEV., *FIXING SOCIAL SECURITY* 47-48 (1997) [hereinafter *FIXING SOCIAL SECURITY*] (suggesting that "add on" accounts do not constitute partial privatization of the system).

¹² See 42 U.S.C. § 402(a) (1994). It also pays disability benefits to qualified disabled workers, see 42 U.S.C. § 423(a) (1994), and derivative or auxiliary benefits to certain family members of retired or deceased workers. See 42 U.S.C. 402(b)-(h).

¹³ To calculate old-age benefits, the government begins by determining the

into account the worker's earning record.¹⁴ By tying benefits to earnings, the system is designed to promote equity¹⁵ because Social Security contributions are based on earnings.¹⁶

The Social Security system is designed to promote social adequacy in a number of ways. First, Social Security uses a weighted benefit formula to calculate benefits; that is, as a person's average earnings increase, the formula replaces a decreasing percentage of adjusted average earnings.¹⁷ Second,

number of years upon which to base benefits. See SOCIAL SEC. ADMIN., SOCIAL SECURITY: UNDERSTANDING THE BENEFITS 11 (1996). Currently, for everyone born after 1928 and retiring in 1991 or later, the base is 35 years. See *id.* Earnings are then indexed for inflation. See 42 U.S.C. § 415(b) (1994). Average adjusted earnings, or "average indexed monthly earnings," are then calculated by taking the best 35 years of earnings, adding them together and dividing by 420 (the number of months in 35 years). See *id.* Average adjusted earnings are then multiplied by a progressive benefit formula to determine the "primary insurance amount" ("PIA") or how much of the average adjusted earnings should be replaced. See 42 U.S.C. § 415(a). The formula replaces a higher percentage of adjusted average earnings the lower one's average earnings were so that the ratio of benefits to average earnings is higher for those with low average earnings than for those with high average earnings. Disability benefits are calculated in a similar manner, but fewer than 35 years may be taken into account in determining the PIA for disabled workers. See 42 U.S.C. § 423(a)(2). For a more detailed discussion of how Social Security benefits are calculated, see, for example, 1998 SOCIAL SECURITY EXPLAINED 157-275 (CCH 1998); MYERS, *supra* note 3, at 47-129; EUGENE C. STEUERLE & JON M. BAKIJA, RETOOLING SOCIAL SECURITY FOR THE 21ST CENTURY: RIGHT AND WRONG APPROACHES TO REFORM 75-83 (1994).

¹⁴ The special minimum benefit is an exception to this rule. It is based on years of covered employment rather than earnings. See 42 U.S.C. § 415(a)(1)(C); see also 1998 GREENBOOK, *supra* note 8, at 25.

¹⁵ Recall that equity means that benefits are related to contributions. See MYERS, *supra* note 3, at 10.

¹⁶ The Federal Insurance Contributions Act, 26 U.S.C. §§ 3101 *et seq.* (1994), requires that employers, 26 U.S.C. § 3111(a) (1994), and employees, 26 U.S.C. § 3101(a), each "contribute" 6.2% of wages, up to a maximum taxable wage base, indexed for inflation, 26 U.S.C. § 3121(a)(1), to finance old-age survivor and disability benefits. The taxable wage base was equal to \$68,400 in 1998. See 1998 SOCIAL SECURITY EXPLAINED, *supra* note 13, ¶ 208, at 40 (listing the taxable wage base for each year from 1937 through 1998). The self-employed are required to make similar contributions. See 26 U.S.C. §§ 1401 *et seq.* (1994). For 1997 through 1999, 5.35% of the payroll tax is allocated to the OASI program while .85% is allocated to the DI program. Beginning in 2000 and thereafter, 5.3% of the tax is to be allocated to the OASI program while .9% is to be allocated to the DI program. 1997 BOARD OF TRUSTEES OF FED. OLD-AGE & SURVIVORS INS. & FED. DISABILITY INS. TR. FUNDS ANN. REP. 35, Tbl. II.B1 [hereinafter TR. FUNDS ANN. REP.].

¹⁷ Specifically, in 1998, the formula replaced 90% of the first \$477 or less of average indexed monthly earnings ("AIME"), plus 32% of any AIME above \$477 to \$2,875, plus 15% of any AIME above \$2,875. See 1998 SOCIAL SECURITY EX-

Social Security provides a special minimum benefit to workers with very low wages and long covered work histories.¹⁸ Finally,¹⁹ Social Security pays "auxiliary"²⁰ or "derivative"²¹ benefits to certain family members of retired, disabled, and deceased workers²² to satisfy the presumptive needs²³ of such dependents and survivors.²⁴

PLAINED, *supra* note 13, ¶ 512, at 183. For a more detailed discussion on how to calculate Social Security benefits, see *supra* notes 13-16 and authorities cited therein.

¹⁸ See 42 U.S.C. §415(a)(1)(C). See generally MYERS, *supra* note 3, at 87-88 (discussing special minimum benefit).

¹⁹ Social Security's intergenerational transfers, see *infra* text accompanying notes 25-29, which have resulted in the redistribution of income from working generations to retired generations, may be viewed as another way that Social Security has been designed to promote social adequacy. See STEUERLE & BAKIJA, *supra* note 13, at 13-14 ("Social Security was meant to redistribute resources to the elderly from the rest of the population because the elderly as a group were considered less well-off The immediate effect of [the new tax system] was to redistribute income from later generations that, on average, were better-off to earlier generations that, on average, were worse-off."). In addition, its disability benefits may be viewed as a means of promoting social adequacy.

²⁰ See MYERS, *supra* note 3, at 57-59 (referring to benefits received by family members of retired or disabled workers as "auxiliary benefits"); Jonathan Barry Forman, *Promoting Fairness in the Social Security Retirement Program: Partial Integration and a Credit for Dual-Earner Couples*, 45 TAX LAW. 915, 924-25 (1992) (referring to benefits to dependents and survivors of workers as "auxiliary benefits").

²¹ See Burke & McCouch, *supra* note 3, at 1213 (referring to benefits received by family members of retired, disabled, or deceased workers as "derivative" benefits).

²² See 42 U.S.C. § 402(b)-(h) (1994).

²³ See, e.g., Final Report of the [1937-38] Advisory Council on Soc. Sec., *reprinted in* COMMITTEE REPORT, *supra* note 6, at 175, 189 ("Payment of supplementary allowances to annuitants who have wives over 65 will increase the average benefit in such a manner as to meet the greatest social need with the minimum increase in cost."); see also Burke & McCouch, *supra* note 3, at 1214-15. ("When derivative benefits were first introduced, they were justified on grounds of social adequacy. A supplementary benefit for a retired worker's dependent family members was considered necessary, in view of the relatively low level of primary benefits during the early years of social security."); Forman, *supra* note 20, at 935-36 (noting that auxiliary benefits help program provide socially adequate benefits to all beneficiaries).

²⁴ There is little doubt that Social Security's derivative benefit provisions have effectively redistributed income from single earners to married couples, and particularly married couples with only one earner. See, e.g., Carol T.F. Bennett, *The Social Security Benefit Structure: Equity Considerations of the Family as its Basis*, 69 AM. ECON. REV. 227 (1979) (using model to simulate social benefit and contribution structure, finds that for workers entering the OASD system in 1978, returns on Social Security contributions vary more by family pattern than any other variable. Single workers with no dependents have lowest ratio of expected benefit

Until now, Social Security has been able to promote both equity and social adequacy by paying nearly all participants far more in benefits than they paid in taxes.²⁵ These returns,²⁶ or intergenerational transfers,²⁷ are a natural re-

to expected contributions while single-earner married couples with dependents have highest ratio of expected benefit to expected contributions); Michael J. Boskin et al., *Social Security: A Financial Appraisal Across and Within Generations*, 40 NAT'L TAX J. 19 (1987) (showing single-earner couples have highest expected present value of retirement benefits); Richard V. Burkhauser, *Are Women Treated Fairly in Today's Social Security System*, 19 GERONTOLOGIST 242 (1979) (showing one-earner families receive better returns than either two-earner families or unmarried individuals); James E. Duggan et al., *Returns Paid to Early Social Security Cohorts*, II CONTEMPORARY POLY ISSUES 1, 8 (1993) (finding that married couples receiving derivative benefits have experienced higher returns than single workers); Michael D. Hurd & John B. Shoven, *The Distributional Impact of Social Security*, in PENSIONS, LABOR, AND INDIVIDUAL CHOICE 193, 212 (David A. Wise ed., 1985) (showing that for 1969, 1975, and 1979, married couples received the highest rates of return); Outslay & Wheeler, *supra* note 3, at 716 (showing single-earner family unit receives best rate of return under Social Security); Martha N. Ozawa, *Who Receives Subsidies Through Social Security, and How Much?*, 27 SOCIAL WORK: J. NAT'L ASS'N SOC. WORKERS 129, 131-32 (1982) (using benefit-contribution ratios for hypothetical workers, contends that for workers retiring at age 65 in 1982, married workers will receive higher subsidies than will unmarried workers).

Whether this is an appropriate redistributive policy, however, is subject to considerable debate. See *infra* note 81 and accompanying text.

²⁵ See MICHAEL J. BOSKIN, TOO MANY PROMISES: THE UNCERTAIN FUTURE OF SOCIAL SECURITY 35-37 & tbl. 2.10 (Twentieth Century Fund ed., 1986) (internal rate of return for age cohort reaching 65 by 1970 ranges from 9.7 to 7.5 and for cohort reaching 65 by 1980 return ranges from 6.6 to 5.6); ALICIA H. MUNNELL, THE ECONOMICS OF PRIVATE PENSIONS 79, tbl. 4-2 (Brookings Inst. ed., 1982) (showing favorable benefit-tax ratios for hypothetical workers retiring in 1979); STEUERLE & BAKIJA, *supra* note 13, at 108 ("[A]lmost all individuals who have retired in any year between 1940 and today—no matter what their income level or family type—have received large positive transfers from Social Security beyond the sum of their contributions to the system and a reasonable rate of return on those contributions."); Duggan et al., *supra* note 24, at 8 (1895-1922 birth cohort received aggregate real return of 9.1% annually); Hurd & Shoven, *supra* note 24, at 212 (retirees who were between 58 and 64 in 1969 earned a real rate of return of approximately 8%); Outslay & Wheeler, *supra* note 3, at 716 (showing that depending on assumptions used, as of 1982, most, if not all, workers received benefits in excess of actuarially computed annuity at retirement); Ozawa, *supra* note 24, at 132 (using benefit-contribution ratios for hypothetical workers, shows that all workers retiring at age 65 in 1982 will receive much greater benefits than their past contributions plus interest warrant); Anthony Pellechio & Gordon Goodfellow, *Individual Gains and Losses from Social Security Before and After the 1983 Amendments*, 3 CATO J. 417 (1983) (showing intergenerational transfers both before and after 1983 amendments).

²⁶ For a discussion of the various methods used to calculate Social Security's "money's worth," see Dean R. Leimer, *A Guide to Social Security's Money's Worth*

sult²⁸ of Social Security's operation, basically, as an immature pay-as-you-go system.²⁹

Since Social Security is rapidly reaching maturity,³⁰ however, its days of providing all participants with such returns are rapidly coming to a close. A mature pay-as-you-go system can only provide retirees with an average return on contributions equal to the growth in real wages (which is projected to be about 1 percent each year for the foreseeable future),³¹ and only if the population and tax rate remain constant over

Issues, 58 SOC. SECURITY BULL. 3 (1995).

²⁷ See Alan S. Blinder, *Why is the Government in the Pension Business?*, in SOCIAL SECURITY AND PRIVATE PENSIONS: PROVIDING FOR RETIREMENT IN THE TWENTY-FIRST CENTURY 17, 24-26 (Susan M. Wachter ed., 1988) (explaining how Social Security has transferred income across generations).

²⁸ See HENRY J. AARON, ECONOMIC EFFECTS OF SOCIAL SECURITY 41 (Brookings Inst. ed., 1982) (noting that Social Security "has provided . . . expected benefits worth far more than taxes for all people who have received benefits to date, and [that] it will continue to do so until the system is fully mature."); BERNSTEIN & BERNSTEIN, *supra* note 2, at 235-36 (concluding that Social Security's excessive benefits to its initial participants are inevitable in any pay-as-you-go system); Alicia H. Munnell, *Comment [on World Bank Study]*, in SOCIAL SECURITY: WHAT ROLE FOR THE FUTURE? 197 (Peter A. Diamond et al. eds., 1996) (emphasizing that first generation, inevitably, does well in a pay-as-you-go system); FIXING SOCIAL SECURITY, *supra* note 11, at 11 ("Simply put, in the early years, pay-as-you-go systems pay retirees very high benefits relative to taxes paid during the limited number of years they contributed to the system.").

²⁹ "A pay-as-you-go social security system is one in which annual revenues dedicated to the system approximately equal annual expenditures." AARON, *supra* note 28, at 7. For a discussion of the difference between the operation of a funded system and a pay-as-you-go system, see CAROLYN L. WEAVER, THE CRISIS IN SOCIAL SECURITY: ECONOMIC AND POLITICAL ORIGINS 119-21 (1982).

When originally enacted, Social Security provided for the creation of a substantial reserve to fund future benefits. The creation of such a reserve, however, was widely criticized. Accordingly, in 1939, Congress amended the program to increase benefits to the first generation of retirees and to reduce the build-up of a reserve. Since 1939, Social Security has operated principally on a pay-as-you-go basis. See Moore, *supra* note 9, at 139-40.

³⁰ Indeed, one commentator believes Social Security reached maturity in about 1975. See Lawrence H. Thompson, *Overview of Social Security Issues*, II 1994-1996 ADVISORY COUNCIL ON SOCIAL SECURITY: PRESENTATIONS TO THE COUNCIL 279 (1997) [hereinafter Thompson, *Overview*].

³¹ See C. Eugene Steuerle & Jon M. Bakija, *Retooling Social Security for the 21st Century*, 60 SOC. SECURITY BULL. 37, 42 (1997) (noting that the Social Security trustees recently have assumed that real wages will grow at an average of about 1% per year in the future, which is about the same as the average since 1950.); see also TR. FUNDS ANN. REP., *supra* note 16, at 58 (stating that "under intermediate alternative, real-wage differential is projected to be between 0.0 and 1.0 percent for the years 1997 through the year 2015, thereafter remaining at the ultimate assumed differential of 0.9 percent.").

time.³² Since the working population is projected to shrink vis-a-vis the beneficiary population,³³ Social Security faces the specter of providing future retirees with an average return of less than 1 percent.³⁴ Moreover, as long as Social Security retains its redistributive provisions, it must, as currently structured, necessarily provide some higher- and perhaps middle-income workers with even lower, or negative, returns.³⁵

³² The following formula explains why retirees will receive a return on their contributions equal to the growth in real wages if the population and tax rate remain constant over time. Assume that w is the average covered money wage, W is the number of covered workers, R is the number of retirees receiving benefits, and t is the payroll tax. A total of twW will be paid into the system, which can finance an average benefit payment of $tw(W/R)$. In a stable population, W/R will be constant over time so that a fixed payroll tax will be able to finance benefits equal to a fixed percentage of average wages. Accordingly, the average return will equal the rate of real growth in wages, if any. See ALICIA H. MUNNELL, *THE FUTURE OF SOCIAL SECURITY* 127-28 (1977); Blinder, *supra* note 27, at 21; and Moore, *supra* note 9, at 143 n.73; see also Henry J. Aaron, *The Social Insurance Paradox*, 32 CANADIAN J. ECON. & POL. SCI. 371-74 (1966) (showing that a pay-as-you-go social insurance system can increase the welfare of each person if the sum of the rates of growth and real wages exceeds the rate of interest).

³³ In 1950, there were about 16.5 covered workers for each beneficiary. See Thompson, *Overview*, *supra* note 30, at 279. By 1996, the ratio had fallen to approximately 3.3 workers for every Social Security beneficiary, TR. FUNDS ANN. REP., *supra* note 16, at 21, and is projected to fall to 2.0:1 by 2030. *Id.* at 124. Mr. Thompson notes that the increased retiree-to-worker ratio constitutes a permanent shift in the projected age distribution in our population because the fertility rate is expected to hold constant—or fall even more—while mortality rates simultaneously improve. See Thompson, *Overview*, *supra* note 30, at 279; Lawrence H. Thompson, *Altering the Public/Private Mix of Retirement Incomes*, in SOCIAL SECURITY AND PRIVATE PENSIONS: PROVIDING FOR RETIREMENT IN THE TWENTY-FIRST CENTURY 209, 210 (Susan M. Wachter ed., 1988); see also Michael J. Boskin, *Comment*, in SOCIAL SECURITY AND PRIVATE PENSIONS: PROVIDING FOR RETIREMENT IN THE TWENTY-FIRST CENTURY 227 (Susan M. Wachter ed., 1988) (agreeing with Thompson's characterization).

³⁴ Applying the preceding formula, in a shrinking working population vis-a-vis retired population, W/R will decrease over time unless real wages generate adequately larger contributions. Thus, a fixed payroll tax will only be able to finance benefits equal to a decreasing percentage of average wages. See I 1994-1996 ADVISORY COUNCIL ON SOCIAL SECURITY REPORT: FINDINGS AND RECOMMENDATIONS, at 104 (1997) ("Under present law, the average real rate of return on Social Security taxes is projected to fall to about 2% on average for workers reaching age 65 in 2020, and to level out at 1 to 2% on average for younger workers and future generations.") [hereinafter I ADVISORY COUNCIL REPORT]; see also JOHN GEANAKOPOLOS ET AL., *WOULD A PRIVATIZED SOCIAL SECURITY SYSTEM REALLY PAY A HIGHER RATE OF RETURN?* (National Bureau of Econ. Research Working Paper No. 98-6 8-13, 1998) (explaining why projected rates of return on Social Security are so low).

³⁵ Obviously, if you give one participant proportionately more, you have to give

As a result of these projections, proposals to privatize partially Social Security abound.³⁶ Proponents of partial privatization³⁷ typically point to the average long-term rates of return on equities³⁸ (which have been about 7 percent per

another participant proportionately less. See Thompson, *Overview, supra* note 30, at 290 ("This illustrates a couple of points. First, the system is explicitly redistributive. Thus, if you're going to give somebody proportionately more, you have to give somebody proportionately less. It is a zero sum game. A zero sum game adds up to those cohort-wide rates of return. Second, if the system is going to continue to be redistributive, when a man who earns the maximum adds in his employer's share the total he receives is going to be less than one. It follows as night follows day—if somebody is going to get back more than one, somebody has got to get back less than one."); see also C. Eugene Steuerle & Jon M. Bakija, *How Social Security Redistributes Income*, 62 TAX NOTES 1763, 1770 (1994) ("Lifetime contributions begin to exceed lifetime benefits for high-wage single males retiring in the 1980s. Positive net transfers are eliminated for high-/average-wage two-earner couples retiring after the turn of the century. . . . [H]igh-wage single workers and two-earner couples retiring in the 2020s and later will face very large negative transfers (or positive net lifetime taxes) from the system.").

³⁶ For example, seven of the thirteen members of the 1994-1996 Social Security Advisory Council advocate the creation of individual accounts. See I ADVISORY COUNCIL REPORT, *supra* note 34, at 28 n.14, 30 n.20. Similarly, the Committee on Economic Development recommends partial privatization of Social Security. See FIXING SOCIAL SECURITY, *supra* note 11. In addition, a number of bills that would provide for the creation of individual accounts were introduced in the 105th Congress. See, e.g., H.R. 4256, 105th Cong. (1998); H.R. 3560, 105th Cong. (1998); H.R. 3456, 105th Cong. (1998); S. 2369, 105th Cong. (1998); S. 2313, 105th Cong. (1998); S. 1792, 105th Cong. (1998); H.R. 3082, 105th Cong. (1997); H.R. 2929, 105th Cong. (1997); H.R. 2782, 105th Cong. (1997); H.R. 2768, 105th Cong. (1997); H.R. 1611, 105th Cong. (1997); S. 321, 105th Cong. (1997). For a point-by-point comparison of some of the proposals to reform Social Security, see Kelly Olsen, *Appendix: A Point-by-Point Comparison of Social Security Reform Plans*, 13 BENEFITS Q. 88 (1997).

Some commentators and analysts go even further and recommend full privatization of Social Security. See, e.g., DANIEL J. MITCHELL, CREATING A BETTER SOCIAL SECURITY SYSTEM FOR AMERICA (Heritage Foundation Roe Backgrounder No. 1109, 1997); WILLIAM G. SHIPMAN, RETIRING WITH DIGNITY: SOCIAL SECURITY VS. PRIVATE MARKETS (Cato Project on Soc. Sec. Privatization No. 2, 1995).

³⁷ Investing in the private market does not require the creation of individual accounts. Rather, the system's level of funding could be increased by increasing taxes, cutting benefits, or both, and the proceeds invested in the private market through a central trust fund. In fact, proponents of the 1994-1996 Advisory Council's "Maintain Benefits" Plan recommend exploration of this option. See I ADVISORY COUNCIL REPORT, *supra* note 34, at 25-27.

³⁸ Some analysts object to comparing the current system's rates of return with these proposed returns. See, e.g., DEAN BAKER, PRIVATIZING SOCIAL SECURITY: THE WALL STREET FIX (Economic Pol'y Inst. Issue Brief No. 112, 1996) <<http://www.epinet.org/epib112.html>> (arguing that "relevant measure is not the rate of return provided by Social Security benefits relative to the taxes paid in, but rather the improvements in living standards over generations"); GEANAKOPOLOS

year over the last 100 years)³⁹ and contend that partial privatization would benefit all workers, regardless of their income level, because it would permit them to reap these higher returns.⁴⁰

The following section briefly describes the partial privatization proposals. It then explains how the proposals would alter the system's present balance between equity and social adequacy.

II. EQUITY AND SOCIAL ADEQUACY UNDER THE PARTIAL PRIVATIZATION PROPOSALS

Typically, the partial privatization proposals provide for two tiers of benefits. The first tier may entitle all participants

ET AL., *supra* note 34, at 13-23 (contending that such comparisons are inappropriate because they ignore transition costs and do not account for differences in riskiness of investments); *see also* U.S. GEN. ACCOUNTING OFFICE, SSA BENEFIT ESTIMATE STATEMENT: ADDING RATE OF RETURN INFORMATION MAY NOT BE APPROPRIATE 4-8 (GAO/HEHS-98-228, Sept. 1998) (discussing difficulty of determining rate of return estimates under current system).

³⁹ *See* Narayana R. Kocherlakota, *The Equity Premium: It's Still a Puzzle*, 34 J. ECON. LITERATURE 42, 42 (1996).

⁴⁰ *See, e.g.*, I ADVISORY COUNCIL REPORT, *supra* note 34, at 36-49 (comparing rates of return under the three Advisory Council proposals); FIXING SOCIAL SECURITY, *supra* note 11, at 44 (recognizing that not everyone is likely to receive higher returns on their contributions but contending that investments in the private sector are likely to improve the "money's worth" of contributions made by the majority of younger workers"); NATIONAL COMM'N ON RETIREMENT POL'Y, THE 21ST CENTURY RETIREMENT SECURITY PLAN 3 (introduced as S. 2313, 105th Cong. (1998); H.R. 4256, 105th Cong. (1998)) ("The Commission is persuaded that most Americans will receive more retirement income from the Social Security program if individual savings accounts are incorporated into the system than they would receive if traditional solutions alone were used to bring the system back into balance.") [hereinafter 21ST CENTURY PLAN]; Sylvester J. Schieber, *The Need for Social Security Reform and the Implications of Funding Through Personal Security Accounts*, 13 BENEFITS Q. 29, 38 (1997) ("According to the projections developed by the Social Security actuaries for the Advisory Council, the PSA proposal offers the potential for both low-wage and high-wage workers to become better off under a proposal of this sort than under the extremely low rates of return provided under the current system as a result of the funding of benefits that is an important element of the proposal"); *see also* WILLIAM W. BEACH & GARETH G. DAVIS, SOCIAL SECURITY'S RATE OF RETURN (Heritage Ctr. for Data Analysis No. CADA 98-01, 1998) (contending that Social Security rate of return for most Americans will be vastly inferior to what they could expect from placing their payroll taxes in even the most conservative private investments); Carrie Lips, *The Working Poor and Social Security Privatization: Restoring the Opportunity to Save* (CATO Inst. ed., 1998) (contending that the poor would benefit most from privatization).

to a flat benefit regardless of earnings,⁴¹ or, in the alternative, the first tier benefit may be based in part on earnings but provide a greater return on lower wages than on higher wages.⁴² First tier benefits are usually lower than benefits under the current system and may provide for more,⁴³ less,⁴⁴ or the same⁴⁵ amount of redistribution as is provided under the cur-

⁴¹ For example, the Social Security Advisory Council's PSA plan provides for a flat first tier benefit for all workers under age 25 in 1998 equal to \$410 per month in 1996 dollars, or the equivalent of 65% of the current poverty level for an elderly person living alone or 76% of the benefit payable to a low wage worker retiring in 1996. See I ADVISORY COUNCIL REPORT, *supra* note 34, at 31.

⁴² For example, the Social Security Advisory Council's IA plan provides for a first tier benefit that, like the current Social Security benefit, is based in part on earnings. The proposal contemplates retaining the current 90% replacement rate for low earnings, decreasing the replacement rate for middle earnings from 32% to 22.4% and decreasing the replacement rate for high earnings from 15% to 10.5%. I ADVISORY COUNCIL REPORT, *supra* note 34, at 29; see also FIXING SOCIAL SECURITY, *supra* note 11, at 38-39 (making similar proposal and recommending that changes in replacement rates gradually be phased in between the years 1998 and 2030).

The National Commission on Retirement Policy ("NCRP") proposes both a minimum benefit provision, for which individuals would be eligible after 20 covered years of earnings, as well as a first tier benefit based in part on earnings. Like the Social Security Advisory Council's IA plan and the Council for Economic Development's proposal, the NCRP proposal would gradually decrease the 32% and 15% replacement rates. See 21ST CENTURY PLAN, *supra* note 40, at 8-10.

⁴³ By decreasing the current system's replacement rates for middle and high-income workers, the Social Security Advisory Council's IA plan, the Council for Economic Development proposal, and the NCRP proposal would increase redistribution from higher-income to lower-income workers. See *supra* note 42.

⁴⁴ A number of proposals would gradually decrease spousal benefits from one-half of the worker's PIA to about one-third of the worker's PIA. See, e.g., I ADVISORY COUNCIL REPORT, *supra* note 34, at 29; FIXING SOCIAL SECURITY, *supra* note 11, at 17, 44; 21ST CENTURY PLAN, *supra* note 40, at 5-6. In doing so, the proposals would decrease the current system's redistribution from single earners and two-earner married couples to one-earner married couples. Cf. *supra* note 24. The partial privatization proposals also tend to decrease disability benefits. See GAO, SOCIAL SECURITY, *supra* note 5, at 59-60 (describing how Advisory Council's IA and PSA plans would reduce disability benefits).

⁴⁵ The General Accounting Office ("GAO") devised a method to adjust first tier benefits to recover fully the subsidy higher-income workers currently provide lower-income workers under the current Social Security system. The GAO began by determining the average implicit rate of return each age group would receive from Social Security. It then subtracted for each worker an amount equivalent to the annuity that the worker's diverted taxes would have purchased if the worker had earned her age group rate of return. By applying the same age group reduction to everyone, the adjustment would achieve the current system's redistribution because individuals earn different rates of return under Social Security depending on their level of income. See U.S. GEN. ACCOUNTING OFFICE, SOCIAL SECURITY: ANALYSIS OF A PROPOSAL TO PRIVATIZE TRUST FUND RESERVES 6-7 (GAO/HEHS-98-33 59-60,

rent system. Second tier benefits require the creation of an individual defined contribution account⁴⁶ and consist of the contributions to the individual account and any earnings or losses thereon. Although, in theory, contributions to the second tier need not be based solely on earnings,⁴⁷ they almost invariably are.⁴⁸

By creating a second tier benefit funded solely by wage-related contributions, the partial privatization proposals sever Social Security's provision of equity from that of social adequacy. Under the proposals, benefits from the second tier are directly related to contributions on earnings and any earnings or losses on those contributions; no redistribution is contemplated or provided in this second tier. Moreover, by subjecting participants to investment risk in the second tier benefit,⁴⁹ the proposals cannot, and do not, assure any level of benefit, let alone socially adequate benefits, in the second tier.⁵⁰ Thus, the

1990) [hereinafter GAO, PRIVATIZE RESERVES].

⁴⁶ The individual accounts may be called any of a variety of names, for example, "personal security accounts," see I ADVISORY COUNCIL REPORT, *supra* note 34, at 30, "individual accounts," see *id.* at 28, or "personal retirement accounts." See FIXING SOCIAL SECURITY, *supra* note 11, at 18.

⁴⁷ See II 1994-1996 ADVISORY COUNCIL ON SOCIAL SECURITY: REPORT OF THE TECHNICAL PANEL ON TRENDS AND ISSUES IN RETIREMENT SAVINGS, 90 (1997) ("It might be feasible to design the second pillar in such a way that, though it was a defined contribution system, it 'credited' a smaller rate of return to high-earners' pension contributions, and a higher return to those earning low wages.").

⁴⁸ See, e.g., I ADVISORY COUNCIL REPORT, *supra* note 34, at 28, 30 (proposing mandatory additional contribution of 1.6% of covered payroll to fund IAs and proposing reallocation of five percentage points of employee's share of the OASI tax to fund PSAs); FIXING SOCIAL SECURITY, *supra* note 11, at 18 (proposing mandatory additional contribution of 3% of covered payroll, with payments split evenly between employees and employers to fund PRAs); 21ST CENTURY PLAN, *supra* note 40, at 3 (proposing refund of two percentage points of the current OASDI tax into Individual Savings Accounts).

⁴⁹ For a discussion of the propriety of subjecting participants to investment risk, see Moore, *supra* note 9, at 153-56.

⁵⁰ Interestingly, the proponents of the Advisory Council's PSA plan appear to rely on the second tier for income adequacy. See I ADVISORY COUNCIL REPORT, *supra* note 34, at 35 n.2 ("Since ultimately the PSA plan provides a flat benefit for full-career workers, the retirement income adequacy provided through the central defined benefit plan is not as large as in other plans, although the PSA accounts are expected to more than make up for the difference.") The drafters, however, include no guarantees in the plan to assure that the individual "personal security accounts" will provide some minimal amount of benefits. I ADVISORY COUNCIL REPORT, *supra* note 34, at 35 n.2.

partial privatization proposals sever the balance between equity and social adequacy by creating a tier that is designed solely to promote equity.

Some of the partial privatization proposals go even further and fully sever the program's provision of equity from that of social adequacy by creating a first tier benefit that is designed solely to promote social adequacy. Those proposals, like the Advisory Council's PSA plan, provide a flat benefit in the first tier that is designed solely to assure some level of social adequacy.⁵¹ Other partial privatization proposals, such as the Advisory Council's IA plan, do not completely sever the program's provision of equity from social adequacy. Instead, they retain some degree of balance in the first tier by basing the first tier benefit in part on earnings but providing a greater return on lower wages than on higher wages.

By severing Social Security's provision of equity from that of social adequacy, the partial privatization proposals may place Social Security's redistributive role at risk. The following section explains why the proposals create this risk.

III. THE FUTURE OF SOCIAL ADEQUACY UNDER PARTIAL PRIVATIZATION

Typically, proponents of partial privatization express support for Social Security's redistributive function as well as its equitable role.⁵² For example, on at least six separate occasions in its 60-page report, the Committee for Economic Development expressed commitment to the current system's goal of redistributing income from higher-paid workers to lower-paid

⁵¹ The social adequacy guaranteed by the first tier in the PSA plan is rather limited. "[F]or workers under age 25 in 1998, those with full careers under Social Security (those with 35 or more years of covered employment) would on retirement, receive a flat dollar benefit equal to \$410 monthly in 1996 (equivalent to 65 percent of the current poverty level for an elderly person living alone or 76 percent of the benefit payable to a low-wage worker retiring in 1996)." I ADVISORY COUNCIL REPORT, *supra* note 34, at 31. As discussed above, see *supra* note 50, recognizing the limited nature of the guaranteed benefit, proponents point to the second tier benefit for assurance that low-wage workers will ultimately receive socially adequate benefits.

⁵² Proponents of complete privatization, in contrast, typically criticize Social Security's redistributive role. See, e.g., PETER J. FERRARA, SOCIAL SECURITY: THE INHERENT CONTRADICTION 6 (1980).

workers.⁵³ Indeed, on page 37 of the report, the Committee declared in bold type, "CED believes that Social Security should continue to provide an adequate safety net for all participants. This requires continuation of the income redistribution characteristics of the program, which has helped to dramatically reduce poverty among the elderly."⁵⁴ Similarly, the Advisory Council stated in the second sentence describing the Council's IA plan, "[t]he goal is to preserve the social adequacy protections in the present Social Security benefit system while still raising overall national retirement saving."⁵⁵ Likewise, in a statement comparing the three Advisory Council proposals, proponents of the IA and PSA plans declared, "All of the plans considered by the Council have tried to insure the adequacy of retirement income in comparison to poverty thresholds."⁵⁶

Despite these expressions of support for Social Security's redistributive role, increasing rates of return appears to be the principal driving force⁵⁷ behind the proposals for partial privatization.⁵⁸ Indeed, the Committee for Economic Security described the need for increased rates of return in the starkest of terms. It contended that not only does Social Security face

⁵³ See *FIXING SOCIAL SECURITY*, *supra* note 11, at ix, 4, 17, 24, 36, 37.

⁵⁴ *FIXING SOCIAL SECURITY*, *supra* note 11, at 37.

⁵⁵ I ADVISORY COUNCIL REPORT, *supra* note 34, at 28.

⁵⁶ I ADVISORY COUNCIL REPORT, *supra* note 34, at 35; *see also* 21ST CENTURY PLAN, *supra* note 40, at 8 (explaining that minimum benefit provision introduced because "the progressivity of the traditional benefit structure within Social Security must be increased, especially if an individual saving account element is included, with which no progressive effect is assumed.").

⁵⁷ Other justifications for partial privatization include unmasking the federal government's general budget deficit and increasing the national savings rate and American competitiveness. *See* GAO, *PRIVATIZE RESERVES*, *supra* note 45, at 1; *FIXING SOCIAL SECURITY*, *supra* note 11, at 13-15; I ADVISORY COUNCIL REPORT, *supra* note 34, at 49-56. For a discussion of the effect of a funded system on national savings and the unmasking of the federal debt, *see generally*, Barry P. Bosworth, *Fund Accumulation: How Much? How Managed?*, in *SOCIAL SECURITY: WHAT ROLE FOR THE FUTURE?* 89, 102-08 (Peter A. Diamond et al. eds., 1996) and *Promoting National Saving Through Social Security Trust Funds*, in *SOCIAL SECURITY'S LOOMING SURPLUSES: PROSPECTS AND IMPLICATIONS* 17-38 (Carolyn L. Weaver ed., 1990).

⁵⁸ The fact that the proponents of the Advisory Council's IA and PSA plans devoted 13 pages of their 22-page "Comparison of Plans" to comparing the rates of return under the Advisory Council's three proposals gives an idea of the relative importance of increased rates of return. *See* I ADVISORY COUNCIL REPORT, *supra* note 34, at 36-49.

fiscal insolvency, but that it also faces "political insolvency," which it defined as "the serious crisis in confidence in the system which is eroding public support. Younger workers are, with good reason, especially skeptical, believing correctly that it will provide a very poor, even negative, return on their contributions to the system."⁵⁹

The partial privatization proposals are not designed to increase rates of return under the first tier. First, they retain the current system's pay-as-you-go funding structure which limits the average return on contributions to the growth in real wages.⁶⁰ Moreover, the first tier benefit is designed to redistribute income from the higher-paid to the lower-paid, either by providing a flat benefit or a benefit that provides a greater return on lower wages than on higher wages. This redistribution necessarily further reduces the rates of return higher- and middle-income workers can receive from the first tier.⁶¹ In contrast, the second tier benefit is designed solely to increase rates of return by eliminating any redistribution and pre-funding benefits.

If the partial privatization proposals are as successful as proponents predict, higher- and middle-income workers should receive substantially higher rates of return from their second tier benefit than from their first tier benefit. Indeed, the larger the second tier, the starker should the differential between the first and the second tier appear to higher- and middle-income workers.

For example, proponents of the PSA plan, which would divert 5 percentage points of the current payroll tax to the second tier, project that maximum-wage workers would receive about 80 percent of their total benefit from their individual personal security account,⁶² while less than 40 percent of their contributions would go to fund that account.⁶³ The PSA

⁵⁹ FIXING SOCIAL SECURITY, *supra* note 11, at ix.

⁶⁰ See *supra* note 32 and accompanying text.

⁶¹ See *supra* note 35.

⁶² See I ADVISORY COUNCIL REPORT, *supra* note 34, at 46.

⁶³ Proponents of the PSA plan propose that 5 percentage points of the current 12.4% OASDI tax be diverted to the "personal security accounts." In addition, the proponents propose a 72-year payroll tax increase of 1.52%. I ADVISORY COUNCIL REPORT, *supra* note 34, at 30. Thus, for the first 72 years of the plan, the 5% tax used to fund the personal security accounts would only constitute about 36% of the total 13.92% (1.52+12.4%) payroll tax. *Id.*

proponents further project that average-wage workers would receive about 62 percent of their total benefit from their individual personal security account ⁶⁴while less than 40 percent of their contributions would go to fund that account.⁶⁵ Proponents of the IA plan, which would be funded by an additional 1.6 percent payroll tax contribution, project that maximum-wage workers would receive just under 40 percent of their total benefit from their individual account,⁶⁶ while less than 12 percent of their total payroll taxes would go to fund that benefit.⁶⁷ Average-wage workers are projected to receive about 27 percent of their benefits from the IA plan's individual accounts,⁶⁸ while less than 12 percent of their total payroll taxes would go to fund those benefits. Only low-wage workers are projected to receive only a slightly higher percentage of their benefits from their second tier benefit than the percentage of the payroll taxes they pay to fund those benefits.⁶⁹

If partial privatization were adopted and individual accounts were as successful as proponents predict, their very success could place the first tier at risk. Higher- and middle-income workers could look at the substantially higher rates of return from the second tier and ask that the first tier be eliminated and all of their contributions fund the second tier. In fact, Professors Jerry Mashaw and Theodore Marmor argue

⁶⁴ See I ADVISORY COUNCIL REPORT, *supra* note 34, at 46.

⁶⁵ See *supra* note 63.

⁶⁶ See I ADVISORY COUNCIL REPORT, *supra* note 34, at 46.

⁶⁷ Proponents of the IA plan propose that individual accounts be funded by an additional 1.6% tax. I ADVISORY COUNCIL REPORT, *supra* note 34, at 30. The 1.6% tax would constitute about 11.4 % of the total 14% (1.6%-12.4%) payroll tax. *Id.*

⁶⁸ See I ADVISORY COUNCIL REPORT, at 46.

⁶⁹ Low-wage workers are projected to receive about 42% of their benefit from the second tier benefit of the PSA plan, see I ADVISORY COUNCIL REPORT, *supra* note 34, at 46, while about 36% of their total payroll tax will go to fund that benefit. See *supra* note 63. Low-wage workers are expected to receive about 20% of their total benefit from the second tier IA benefit, see I ADVISORY COUNCIL REPORT, *supra* note 34, at 46, while about 11.4% of their total payroll tax will fund that benefit. See *supra* note 67.

that the real risk with partial privatization is the inexorable pressure it would create for full privatization.⁷⁰ They contend:

Investment of some Social Security funds in equities, rather than Treasury securities, will of course improve the investment performance of Social Security. But if this investment is done in a privatized form, it will appear that the improvement has come through privatization of accounts rather than from a simple shift in investment holdings. And, because most workers tend to ignore the life insurance, dependents' benefits, and inflation protection that are a part of the Social Security pension package, this argument may be persuasive.

Even more importantly, workers may ignore the crucial protection that social insurance provides to everyone against low average lifetime earnings, poor performance of their individual investments, or against higher taxes or intrafamily transfers to support those who do have those experiences. The less stake that American workers believe themselves to have in the collective provision of retirement benefits through Social Security, the more likely political support for the system is to erode. Partial privatization in this scenario would be destabilizing rather than anchoring. It could lead to the very destruction of the economic security that "reform" was supposed to preserve.⁷¹

Of course, it is not certain that partial privatization would result in the ultimate dismantling of the current defined benefit system. First, there is no guarantee that partial privatiza-

⁷⁰ See Jerry L. Mashaw & Theodore Marmor, *The Great Social Security Scare*, in THE AM. PROSPECT n.29 (Nov.-Dec. 1996) <<http://epn.org/prospect/29/29mash.html>>.

⁷¹ *Id.*; see also *Social Security Reform Options: Preparing for the 21st Century*, Hearings Before the Subcomm. on Social Security and Family Policy of the Comm. on Finance, 104th Cong. 58 (1996) (statement of Robert J. Myers) ("[I]t is my firm belief that, if the Social Security program is partially privatized by instituting a system of personal savings accounts and, at the same time, reducing the level of Social Security benefits, the inevitable result will be the destruction of the Social Security program. Higher-income persons will become less and less supportive, and the praiseworthy sharing of the economic-security risk in connection with retirement among persons of all income levels will be lost."); Karen C. Burke & Grayson M.P. McCouch, *Privatizing Social Security: Eight Myths*, 74 TAX NOTES 1167, 1173 (1997) ("In a two-tier system like the one discussed in the Advisory Council Report, the bottom tier of benefits might prove an irresistible target for reduction or elimination, ultimately forcing many low earners onto the public assistance rolls."); Lawrence H. Thompson, *The Advantages and Disadvantages of Different Social Welfare Strategies*, 57 SOC. SECURITY BULL. 3, 8 (1994) (noting that higher-income workers in the United States sometimes argue that they should not be required to participate in Social Security because they could get a higher return on their contributions if invested privately).

tion would be as successful as proponents predict. Indeed, there has been a great deal of debate on this issue.⁷²

Moreover, even if it were successful and most higher- and middle-income workers were to receive substantially higher rates of return from their second tier benefit, it is possible that rather than decreasing support for the first tier, success in the second tier could increase support for the first tier. Flush with their successes in the second tier, higher- and middle-income workers could feel more altruistic and thus more supportive of the first tier.⁷³ While this is possible, it does not appear consistent with the current demand for higher rates of return that is giving rise to the so-called "political insolvency" of the current system. Nor does it appear consistent with trends in charitable contributions. Charitable giving does not steadily rise as income rises. Rather, the percentage of household income devoted to charitable contributions remains fairly constant until income exceeds \$100,000 per year.⁷⁴ Even then, households

⁷² See, e.g., GEANAKOPOLOS ET AL., *supra* note 34 (contending that partially privatized system would not necessarily pay higher rate of return); JOHN MUELLER, CAN FINANCIAL ASSETS BEAT SOCIAL SECURITY?: NOT IN THE REAL WORLD (National Comm. to Preserve Soc. Sec. and Medicare, 1997) (arguing that ending pay-as-you-go financing would lower the total return on retirement saving); Robert J. Myers, *Privatization of Social Security: A Good Idea?*, J. AM. SOC'Y C.L.U. & CHFC, July 1996, at 42 ("If such huge amounts of money were available for investment in common stocks, then it is likely that rates of return will be lower than historical ones. Such massive new investment would probably produce some desirable economic growth, but there are limits to this effect. Moreover, the vast majority of the private contributions would go into the secondary capital markets, rather than into issues which would generate new capital.").

⁷³ Randall Justice, a student in my social welfare legislation seminar, deserves credit for this argument. Mr. Justice also argued that the fact that until now the general public has accepted Social Security's redistributive features suggests that middle- and higher-income workers would not abandon the first tier if Social Security were partially privatized. It is worth noting, however, that as an immature pay-as-you-go system, Social Security has not yet required workers, within generations, to sacrifice equity for redistribution. See *supra* text accompanying notes 25-29. Thus, history does not fully test the political support for Social Security's redistributive provisions.

⁷⁴ See VIRGINIA HODGKINSON & MURRAY WEITZMAN, GIVING AND VOLUNTEERING IN THE UNITED STATES D148-49, tbl. I (Indep. Sector 1996). Households with incomes under \$10,000 on average contribute 1.9% of household income to charity; households with incomes from \$10,000 to \$19,999 on average contribute 1.3% of household income to charity; households with incomes from \$20,000 to \$29,999 on average contribute 1.5% of household income to charity; households with incomes from \$30,000 to \$39,999 on average contribute 1.5% of household income to charity; households with incomes from \$40,000 to \$49,999 on average contribute 1.0% of

with income under \$10,000 contribute the second highest percentage of income to charity (1.9 percent); they are exceeded only by households with incomes equal to or greater than \$100,000 (which give 3.0 percent of their annual income to charity).⁷⁵ Absent altruism, workers might still support the first tier if they recognized that it provided other things of value, such as protection against inflation and protection against poor performance in their individual investment accounts. The fact that most workers tend to ignore the life insurance, dependents' benefits, and inflation protection that the current Social Security system offers,⁷⁶ however, makes it appear unlikely that most workers would value these other benefits the first tier would provide.

Finally, it is possible that even if the first tier were dismantled, the replacement system could expressly provide for redistribution. For example, Laurence J. Kotlikoff, Kent A. Smetters, and Jan Walliser developed a model that would gradually fully privatize Social Security while retaining its redistributive effects by providing for matching contributions to private accounts on a progressive basis and financing transition costs with a consumption tax.⁷⁷ Providing for progressive matching contributions, however, would not guarantee all workers "socially adequate" benefits. Rather, it would subject all workers to investment risk on all of their benefits. While progressive matching contributions would assure some redistribution, it would not guarantee social adequacy.

household income to charity; households with incomes from \$50,000 to \$59,999 on average contribute 1.5% of household income to charity; households with incomes from \$60,000 to \$74,999 on average contribute 1.5% of household income to charity; households with incomes from \$75,000 to \$99,999 on average contribute 1.4% of household income to charity; and households with incomes of \$100,000 or more on average contribute 3.0% of household income to charity. *Id.*

⁷⁵ *Id.*

⁷⁶ See Mashaw & Marmor, *supra* note 70, at 4 (noting that "most workers tend to ignore the life insurance, dependents' benefits, and inflation protection that are a part of the Social Security pension package.").

⁷⁷ Laurence J. Kotlikoff et al., *Social Security: Privatization and Progressivity*, 88 AM. ECON. REV. 137 (1998); see also Joseph G. Simanis, *The Weighted Benefit Formula—A Method of Redistribution*, 57 SOC. SECURITY BULL. 102 (1994) (describing variety of methods used by a variety of countries to redistribute income through Social Security programs).

Proponents of complete privatization may find this prediction comforting. Indeed, the first issue of the Cato Project on Social Security Privatization is titled: Dismantling the Pyramid: The How and Why of Privatizing Social Security.⁷⁸ Those who believe that Social Security can and should play a role in securing income adequacy for the retired elderly, however, may find this distressing. The following section discusses why it is important that Social Security preserve its redistributive role.

IV. IMPORTANCE OF SOCIAL SECURITY'S REDISTRIBUTIVE ROLE

When Social Security was originally enacted, the poorhouse was a reality for many older Americans near the end of their lives.⁷⁹ In fact, "[p]erhaps the most fundamental reason for the adoption of a Social Security system was the desire for some progressive redistribution to help meet the needs of the elderly."⁸⁰ Although there is some debate as to how effective Social Security has actually been in redistributing income within generations,⁸¹ it appears clear that Social Security has

⁷⁸ KARL BORDEN, DISMANTLING THE PYRAMID: THE WHY AND HOW OF PRIVATIZING SOCIAL SECURITY (Cato Project on Soc. Sec. Privatization SSP No. 1, 1995).

⁷⁹ See Robert M. Ball, *The Original Understanding of Social Security: Implications for Later Developments*, in SOCIAL SECURITY: BEYOND THE RHETORIC OF CRISIS 17, 19 (Theodore R. Marmor & Jerry L. Mashaw eds., 1988) (noting that when Social Security was enacted, "[t]he poorhouse towards the end of life, with all its horrors, was a very real part of America.").

⁸⁰ See Steurele & Bakija, *supra* note 31, at 39; FIXING SOCIAL SECURITY, *supra* note 11, at 24 ("retirement insurance was not the only objective of Social Security. A major goal of the program that could not be served easily by private insurance was to redistribute benefits to favor the poor.").

⁸¹ Some analysts contend that the system as a whole effectively redistributes income to lower-income workers. See, e.g., JOINT ECON. COMM., PAYROLL TAXES AND THE REDISTRIBUTION OF INCOME (1997); HENRY J. AARON, ECONOMIC EFFECTS OF SOCIAL SECURITY 80 (1982); PAUL LIGHT, STILL ARTFUL WORK: THE CONTINUING POLITICS OF SOCIAL SECURITY REFORM 37 (1995); Richard V. Burkhauser & Jennifer L. Warlick, *Disentangling the Annuity from the Redistributive Aspects of Social Security in the United States*, 27 REV. OF INCOME AND WEALTH 401, 402, 408 (1981); Duggan et al., *supra* note 24, at 1; Dean R. Leimer, *Projected Rates of Return to Future Social Security Retirees Under Alternative Benefit Structures*, in POLICY ANALYSIS WITH SOCIAL SECURITY RESEARCH FILES 235 (U.S. Dep't of Health, Educ. and Welfare Research Report No. 52, 1978); Martha N. Ozawa, *Who Receives Subsidies Through Social Security, And How Much?*, 27 SOCIAL WORK: J. NAT'L ASS'N SOC. WORKERS 129, 131-32 (1982).

Others argue that factors such as the derivative benefit provisions, basing

been enormously successful in lifting the elderly out of poverty.⁸² In 1996, more than 90 percent of all "aged units," that is, married couples living together with a spouse aged 65 or older or individuals 65 or older who did not live with a spouse,⁸³ received Social Security benefits.⁸⁴ Although those benefits only represented 40 percent of all aged units' total money income,⁸⁵ its importance differed dramatically depending on the recipient's income status. It represented about 80 percent of the income for the two lowest quintiles of aged units, while it only represented 21 percent of the income for

benefits on 35 working years, and lower-income workers' shorter life expectancies, limit or eliminate the program's ability to redistribute income within generations from higher-income workers to lower-income workers. See WILBUR J. COHEN & MILTON FRIEDMAN, *SOCIAL SECURITY: UNIVERSAL OR SELECTIVE?* 35 (1972); PETER J. FERRARA, *SOCIAL SECURITY: THE INHERENT CONTRADICTION* 54-57, 292 (1980); Henry J. Aaron, *Demographic Effects on the Equity of Social Security Benefits*, in *THE ECONOMICS OF PUBLIC SERVICES* 151 (Martin S. Feldstein & Robert P. Inman eds., 1977); David M. Garrett, *The Effects of Differential Mortality Rates on the Progressivity of Social Security*, 33 *ECON. INQUIRY* 457 (1995); and Martha N. Ozawa, *Income Redistribution and Social Security*, 50 *SOC. SERV. REV.* 209, 219 (1976); *Assessing Social Security Reform Alternatives: A Report on EBRIs*, POL'Y FORUM (Dec. 4, 1996).

Commentators similarly dispute the system's treatment of minorities. For arguments that the system redistributes income away from non-whites due to their shorter life expectancy, see, for example, FRANK G. DAVIS, *THE BLACK COMMUNITY'S SOCIAL SECURITY* 86, 112-13 (1977); Geoffrey T. Holtz, *Note, Social Security Discrimination Against African-Americans: An Equal Protection Argument*, 48 *HASTINGS L.J.* 105, 108-10 (1996); Michael D. Hurd & John B. Shoven, *The Distributional Impact of Social Security*, in *PENSIONS, LABOR, AND INDIVIDUAL CHOICE* 193, 212 (David A. Wise ed., 1985); Walter Williams, *Little Abuses Add Up to Height of Injustice*, *CINCINNATI ENQUIRER*, Nov. 20, 1994, at F3, available in 1994 WL 6302475. For arguments that factors such as the weighted benefit formula and the disability benefit provisions result in redistribution to nonwhites, see, for example, KINGSON & BERKOWITZ, *supra* note 1, at 125-26; Duggan et al., *supra* note 24, at 8; Leimer *supra*; see also U.S. ADVISORY COUNCIL ON SOC. SEC. 1978-1979, *REPORT OF THE 1979 ADVISORY COUNCIL ON SOCIAL SECURITY* 125 (1980) (concluding that Social Security does not treat minorities less favorably but noting that treatment of minorities is complex).

⁸² See Peter M. Wheeler & John R. Kearney, *Income Protection for the Aged in the 21st Century: A Framework to Help Inform the Debate*, 59 *SOC. SECURITY BULL.* 3, 5 (1996) ("In the United States, Social Security has been instrumental in bringing about a significant reduction in poverty among the aged. Although the aged poverty rate continues to be higher than in many European countries, it has remained for several years below the poverty rate for the population as a whole.")

⁸³ SOCIAL SEC. ADMIN., 1996 INCOME OF THE AGED CHARTBOOK ii (July 1998) [hereinafter AGED CHARTBOOK].

⁸⁴ *Id.* at 8.

⁸⁵ *Id.* at 15.

the highest quintile. Currently, 9 percent of aged beneficiaries receive a total income that falls below the poverty line.⁸⁶ Without Social Security, however, the income of 50 percent of aged beneficiaries would fall below the poverty line.⁸⁷

Not only has Social Security helped lift many of the elderly out of poverty, but it has done so without many of the problems of pure welfare programs. Programs for the poor tend to be just that, poor.⁸⁸ Means-tested programs tend to stigmatize recipients and create work and savings disincentives.⁸⁹ By blending redistributive objectives with equitable provisions, Social Security has avoided these problems. Recipients can accept the benefits with pride because their contributions help pay for the benefits.⁹⁰ In addition, the benefit formula retains work incentives by providing retirees with absolutely larger

⁸⁶ *Id.* at 10. For the current poverty guidelines, see U.S. Dep't of Health and Human Servs., *Annual Update of the Health and Human Servs. Poverty Guidelines*, 63 F.R. 9235, 9236 (1998).

⁸⁷ AGED CHARTBOOK, *supra* note 83, at 10. For a more lengthy discussion of the role Social Security plays in the well-being of the elderly, see KINGSON & BERKOWITZ, *supra* note 1, at 71-86.

⁸⁸ See, e.g., DERTHICK, *supra* note 2, at 217 (noting that it was a dictum of program executives that "a program for the poor is a poor program").

⁸⁹ See Paul Starr, *Social Security and the American Public Household*, in SOCIAL SECURITY: BEYOND THE RHETORIC OF CRISIS 119, 139 (1988) ("Means-tested programs also have perverse incentives, which conservatives themselves frequently emphasize. Rather than seeing their savings eaten away gradually until they qualify for such a program, some of the aged would divest themselves of their assets, transferring them to their children."). In addition, means-tested programs tend to have high administrative costs while Social Security's old-age program has very low administrative costs. See Thompson, *Overview*, *supra* note 30, at 8 & n.12 (noting that "[t]he annual administrative costs for the U.S. Old-Age and Survivors social insurance program average about 0.8 percent of annual benefit payments. By comparison, the administrative costs of the parallel means-tested program for the aged and disabled operated by the same agency averages about 7.6 percent of benefit payments.").

⁹⁰ See ALICIA MUNNELL, *THE FUTURE OF SOCIAL SECURITY* 85 (1977) (contributory financing of Social Security allows workers to receive benefits as earned right rather than as a dole); Wilbur J. Cohen, *The Social Security Act of 1935: Reflections Fifty Years Later*, in COMMITTEE REPORT, *supra* note 6, at 5, 13 (describing Social Security as "a way of assuring the dignity and independence of the individual, the integrity of the family, and the stability and purchasing power of the community."); see also Thompson, *Overview*, *supra* note 30, at 7 (noting that "social insurance promotes individual respect and dignity through the philosophy that those who make contributions have earned the right to the benefits. . . . In contrast, those who receive means-tested benefits are often stigmatized.").

benefits the more they contribute to the system.⁹¹ Finally, since there is no means-test, there is no incentive to dis-save upon reaching retirement age.

Admittedly, not all of Social Security redistributive provisions are free from criticism. Indeed, its auxiliary or derivative benefits are subject to a great deal of criticism.⁹² The fact that it may be appropriate to amend Social Security's derivative benefit provisions,⁹³ however, does not suggest that all of Social Security's redistributive provisions should be abandoned. Rather, its weighted benefit formula, which is designed to ensure lower-income workers socially adequate retirement benefits, should be preserved. As the only source of retirement in-

⁹¹ Of course, Social Security, itself, may create work disincentives for the elderly. Those disincentives, however, to the extent that they exist, are due more to the provision of retirement benefits in the first place (and Social Security's earnings test) than to the program's redistributive provisions. See generally Rachel Floersheim Boaz, *Labor Market Behavior of Older Workers Approaching Retirement: A Summary of the Evidence from the 1970s*, in SOCIAL SECURITY: A CRITIQUE OF THE RADICAL REFORM PROPOSALS 103 (1987) (discussing studies on Social Security's effect on labor supply incentives and concluding that Social Security has limited role in encouraging older workers to leave the workforce); Michael V. Leonasio, *The Effects of the Social Security Earnings Test on the Labor-Market Activity of Older Americans: A Review of the Evidence*, 53 SOC. SECURITY BULL. 2 (1990) (describing studies and concluding that earnings test has fairly small impact on labor supply of older Americans); Thompson, *Overview*, *supra* note 30, at 9 (noting that economists have found that work effort would be somewhat higher in the absence of social welfare benefits).

⁹² See, e.g., MIMI ABRAMOVITZ, *REGULATING THE LIVES OF WOMEN: SOCIAL WELFARE POLICY FROM COLONIAL TIMES TO THE PRESENT* 259 (1996) (criticizing derivative benefit provisions for devaluing women's domestic work and enforcing their subordination to men); Mary E. Becker, *Obscuring the Struggle: Sex Discrimination, Social Security, and Stone, Seidman, Sunstein & Tushnet's Constitutional Law*, 89 COLUM. L. REV. 264, 280 n.85 (1989) (same); Richard V. Burkhauser, *Are Women Treated Fairly in Today's Social Security System*, 19 GERONTOLOGIST 242 (1979) (arguing that Social Security derivative benefit provisions are based on outdated norms and system should be adjusted to take into account changing role of women); Jonathan Barry Forman, *Promoting Fairness in the Social Security Retirement Program: Partial Integration and a Credit for Dual-Earner Couples*, 45 TAX LAW. 915, 944-47, 957-69 (1992) (proposing partial integration of Social Security program and individual income tax); Garrett, *supra* note 81, at 457 (arguing that derivative benefit provisions are inefficient because they discourage secondary earners from working); Nancy M. Gordon, *The Treatment of Women Under Social Security*, in 1 DISCRIMINATION AGAINST MINORITIES AND WOMEN IN PENSION AND HEALTH, LIFE, AND DISABILITY INSURANCE 410 (1978) (analyzing earnings-sharing and homemaker credit proposals designed to eliminate inequities in current derivative benefit provisions).

⁹³ In fact, a number of partial privatization proposals would amend the derivative benefit provisions as well as create individual accounts. See *supra* note 44.

come for many retired low-income workers, Social Security should remain a "floor of protection on which private-sector economic security measures can be built."⁹⁴

CONCLUSION

In theory, partially privatizing Social Security need not upset the system's balance between equity and social adequacy. In fact, however, most proposals to privatize partially Social Security sever the program's equitable component from its redistributive role. In so doing, the partial privatization proposals place Social Security's redistributive role, perhaps the fundamental justification for the system, at risk.

Although proponents of complete privatization may find that prediction comforting, those who respect Social Security's redistributive role should find it of concern. Social Security has been enormously successful in lifting the elderly out of poverty. Moreover, it has done so without stigmatizing the elderly or creating work or savings disincentives. If Social Security is partially privatized, it may be effective in providing retirement income for some middle- and higher-income workers. Its role in providing a floor of protection for all retired workers, however, may be compromised.

⁹⁴ MYERS, *supra* note 3, at 231. For a detailed discussion of the appropriate role of Social Security in our national retirement system, see Moore, *supra* note 9, at 162-68.