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# Opponents of the “Crown Jewel”

BY JUDE BLANCHETTE

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There was a time when self-reliance wasn't such a tough sell. Today, however, the thought of dismantling Social Security strikes most as somehow un-American. It is, after all, the “cornerstone of the New Deal.” It saved the poor and elderly from indigence and provided dignity in a monthly paycheck. Legend has it that 70 years ago the nation was unanimous in its support for FDR's plan to nationalize retirement.

Yet not withstanding Roosevelt critic John T. Flynn's remark—“There was no real objection to social security—everybody was for it.”—not all were duped. There did exist a group of conservatives, libertarians, Republicans, members of what we now call the “Old Right,” who fiercely opposed President Roosevelt's plan for Social Security. They saw the program for what it was and understood its long-term consequences even if Roosevelt didn't. In short, they smelled a political scam. Behind the rhetoric of “safety” and “security” they knew it was an unconstitutional usurpation of the traditional powers delegated to the states and an infringement on individual liberty.

Historians today like to emphasize the opposition to Social Security by business groups and leaders. Blinded by the pursuit of power and mammon, they were the only Americans shortsighted enough to oppose aiding the poor and elderly. To a large extent it *was* business leaders who understood the consequences of imposing a tax on labor during a massive economic contraction.

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Taxes are almost always an economic drag, especially during a recession. Former head of General Motors and FEE board member Alfred P. Sloan declared, “Industry has every reason to be alarmed at the social, economic and financial implications [of Social Security].” Looking to profit and longevity and not votes, the business community was in a better position to evaluate the effects of the employer's and employee's “contribution” to Social Security.

In early 1935 James A. Emery, chief counsel for the National Association of Manufacturers, appealed to the House Ways and Means Committee to rethink its push for national Social Security legislation. He argued that the Social Security bill before Congress would “discourage employment rather than encourage it.” Why would the federal government raise taxes on business in the midst of a recession? According to Emery, “General recovery depends on our ability to enlarge our production, to employ more people, and to cut down and not raise up the price of goods. Every time we increase the price of goods in a diminishing market, we are diminishing the possibility of employing other men, because we are making it more difficult, not less, to sell goods. Until we can market goods, we cannot employ men.”

Emery's attack on FDR and the New Deal lasted through much of 1935. Later that year he declared, “We

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are steadily confronted with an almost continuing attempt to evade the plain limitations placed upon the exercise of political power.” He continued, “We face, in our opinion, evident determination to evade by indirection what centuries of experience have written into constitutional prohibitions against doing directly.”

Delegates to the Chamber of Commerce’s 1935 annual national convention roundly denounced FDR’s New Deal, including Social Security. Regarding the Social Security bill being debated in Congress, the Chamber warned that “if the provisions in the bill pending should be adopted, the country will realize that within a decade there will be a tax burden amounting probably to as much as \$1,000,000,000 a year.” In July 1935, 200 business executives met at the Waldorf-Astoria Hotel and concluded that most of the New Deal would be thrown out as unconstitutional.

Unlike today, when both parties seem enamored with the basic tenets of “social insurance,” congressional opposition to the 1935 bill was fierce. Once again, however, modern interpretation of this principled dissent is saturated with disdain for those who couldn’t understand the “progressive” nature of FDR’s plan. In his book *The Coming of the New Deal*, the historian Arthur M. Schlesinger, Jr., detailed the congressional opposition to the Social Security bill. Most of the objections, Schlesinger notes, were toward the old-age provision, not the unemployment coverage. Through clenched teeth Schlesinger quotes congressman after congressman who (rightly) decried Social Security as a financial monster. Rep. Thomas A. Jenkins of Ohio thought the legislation “nefarious” and that it placed “a financial lash upon the backs of the people whose backs are breaking under a load of debts and taxes.” Rep. Allen T. Treadway of Massachusetts predicted the program would “destroy old-age retirement systems set up by private industries, which in most instances provide more liberal benefits.” And Rep. John Taber of New York said, “Never in the history of the world has any measure been brought

in here so insidiously designed as to prevent business recovery, to enslave workers, and to prevent any possibility of the employers providing work for the people.”

Immediately after the bill’s passage, stories of popular revolt began to appear in newspapers. In Brooklyn 26,000 business owners refused to file for employer-identification numbers. Julian Olney of County Presentations, Inc., simply wrote across his application, “You don’t need to bother me any more. I don’t believe in this.” As the *New York Times* reported at the time, Olney “held that the Securities Act [sic] is unconstitutional, inasmuch as it provides no contract and no assurance of any return upon money paid by either employers or employees.”

Popular revolt against Social Security continued for over a decade after the bill’s passage. In 1951, 18 “housewives” emptied their bank accounts after they learned that the Internal Revenue Bureau (later the IRS) was authorized to seize money owed in back Social Security taxes. The women thought it unconstitutional that they were required by law to act as tax collectors for the federal government by withholding Social Security taxes from those who worked at their homes.

The *Times* also reported the case of 72-year-old Frederick C. Perkins, who in 1942 was sentenced to jail for not paying \$51.16 in Social Security taxes. (He had served 18 days in 1934 for failure to comply with the National Recovery Act.) According to the *Times*, “Mr. Perkins asserts that Social Security tax is ‘confiscatory, discriminatory and unconstitutional’ and says he will go ‘all the way to the Supreme Court, provided I have some help from friends.’”

### The Court Approves

Although the Supreme Court found many of FDR’s New Deal programs unconstitutional, Social Security was not among them. On May 24, 1937, the Supreme Court upheld the program in three cases: *Helvering v. Davis*, *Steward Machine Company v. Davis*, and

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*Carmichael v. Southern Coal & Coke Co. and Gulf States Paper.* In his dissenting opinion in *Steward Machine*, Justice James Clark McReynolds held "That the portion of the Social Security legislation here under consideration, I think, exceeds the power granted to Congress. It unduly interferes with the orderly government of the State by her own people and otherwise offends the Federal Constitution." The passage of the Social Security bill, McReynolds said, "opens the way for practical annihilation of [federalist] theory; and no cloud of words or ostentatious parade of irrelevant statistics should be permitted to obscure that fact."

Also in 1937 came a stinging rebuke by the First Circuit Court of Appeals in Boston. In a two-to-one decision the court found Social Security unconstitutional. Judge Scott Wilson's majority opinion, surely forgotten today, is perhaps the most eloquent attack on the program:

It is not a question of what powers Congress ought to have to meet certain conditions, but what powers are vested in Congress under the Constitution. In determining what they are, we must return to first principles.

The care of the unfortunate and the dependent and the relief of those unable to labor is the burden imposed on the State and until recently has always been so considered. Congress has no power either directly or indirectly to invade this province of the States.

Wilson continued:

We think that the power to provide for old age benefits was among those powers reserved to the States under the Tenth Amendment, and that a tax imposed to benefit slightly over half of the people over 65 years of age, and who are the care or burden on the State, cannot be said to be imposed for the general welfare of the United States. . . .

Another critic of Social Security was Henry Hazlitt, then lead economic editorialist for the *New York Times*. Hazlitt and many of the program's fiercest opponents soon began to see the new influx of Social Security taxes squandered. As Hazlitt wrote in a 1937 editorial, "What is now happening to the proceeds of the social security taxes substantiates the predications of the harshest critics of the reserve fund provisions of the Social Security Act." Foreshadowing the criticisms of today, Hazlitt concluded, "All this is an elaborate hocus-pocus by which the Government issues IOU's payable to itself." John T. Flynn similarly noted that the reserve was "a swindle and a solemn and cruel farce."

With Social Security today routinely called the New Deal's "crown jewel" and the most successful government program in history, we would do well to reread the prescient criticisms offered by these dissidents. In most cases, they were right. Now, 70 years later, we are living with FDR's legacy. Liberty and self-reliance in retirement are now unthinkable. 

## ***The Crisis of Social Security***

It has been well said that, while we used to suffer from social evils, we now suffer from the remedies for them. . . . Though we may have speeded up a little the conquest of want, disease, ignorance, squalor, and idleness, we may in the future do worse even in that struggle when the chief dangers will come from inflation, paralyzing taxation, coercive labor unions, an ever increasing dominance of government in education, and a social service bureaucracy with far-reaching arbitrary powers—dangers from which the individual cannot escape by his own efforts and which the momentum of the overextended machinery of government is likely to increase rather than mitigate.

—F.A. HAYEK, *The Constitution of Liberty*