Response

Social Security and Intergenerational Justice*

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What do generations owe one another? Professor Buchanan subjects to rigorous examination the commonly expressed platitude that we are obligated to future generations.[1] In doing so, he makes a valuable contribution to the literature and thinking about intergenerational equity. In his perceptive analysis, he offers several important insights often missing from that literature. He points out that even pessimistic projections indicate that future generations will be much wealthier than we are, assuming no change whatsoever in current pub-

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* Throughout this article, Social Security refers to the cash benefits programs, Old Age, Survivors, and Disability Insurance ("OASDI"), not to Medicare.

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1 Neil Buchanan, *What Do We Owe Future Generations?*, 77 GEO. WASH. L. REV. 1237 (2009).

lic policy.[2] He also reminds us that those future generations are likely to contain disparities of wealth, just as ours does.[3] In a world where policymakers and analysts blithely assert, without careful analysis, that we owe some undefined duty to future generations, a group they generally treat as a monolith, Professor Buchanan provides a welcome nuanced and sophisticated frame in which to evaluate public policy.

Professor Shaviro addresses a similar set of concerns but focuses his analysis through the lens of the projected funding gap in the federal budget.[4] Consistent with Professor Buchanan's conclusion, Professor Shaviro's discussion insightfully reveals that a generational frame does not provide a clear answer regarding intergenerational equity in the context of the federal budget.[5] On grounds of efficiency, however, he argues that the funding gap be closed sooner rather than later.[6]

Both analyses are excellent as far as they go. Professor Buchanan, however, leaves unasked a counterpart question, which, if subjected to the same rigorous analysis, would further enlighten the current debate over intergenerational equity and lead to greater distributive justice. Professor Shaviro, for his part, fails to diagnose clearly why we have a projected long-range funding gap in the federal budget. Without a clear analysis of the cause, we are in danger of taking actions which are ineffective in closing the funding gap. Moreover, those well-intentioned but misconceived actions could easily undermine the goal of distributive justice, resulting in substantially less inter- and intragenerational fairness.

Part I of this Response highlights and addresses Professor Buchanan's missing question. Part II places Professor Shaviro's analysis in a larger context. Building on those discussions, Part III suggests a direction out of the funding gap, a direction that reconciles Professor Buchanan's concern for greater distributive justice with Professor Shaviro's concern for greater efficiency—one that is fair to all generations.

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2 *See id.* at 1270–73.

3 *See id.* at 1287–91.

4 Daniel Shaviro, *The Long-Term U.S. Fiscal Gap: Is the Main Problem Generational Inequity?*, 77 GEO. WASH. L. REV. 1298 (2009).

5 *See id.* at 1300, 1326–28.

6 *See id.* at 1348–49.

I. What Do We Owe Prior Generations?

The title of Professor Buchanan's article poses the question, "What Do We Owe Future Generations?" In addition to that very important inquiry, should we not also be asking what we owe those who have come before? It is often said that all of us stand on their shoulders,[7] and this is undeniably true. The current generation would not have its living standard without the infrastructure, scientific discoveries, and other contributions that were produced by the sacrifice and hard work of prior generations. As a consequence of those contributions, no previous generation has been as wealthy as our own.[8]

Most prior generations, of course, are no longer with us, and so material transfers to them make no sense. But what about those still alive who once were productive but are no longer able to be as a consequence of advanced age or disability? The same paradigms that Professor Buchanan employs to analyze our obligation to future generations[9] lead us to the conclusion that we are obligated to those still among us who came before.

A. The Obligation of Old-Age Support

Historically, this obligation was met privately by members of the productive workforce who supplied, through individual, private transfers, the basic needs of both the next generation, their children, and also the prior generation, their parents. On farms, as older relatives aged, they slowed their work effort and the slack was taken up by younger members of the extended family.[10] In urban settings, where workers were dependent on wage incomes, people generally held jobs as long as they could, but this became increasingly difficult as they

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7 An early reference to this concept is by John of Salisbury, who in the twelfth century recounted that Bernard of Chartres said "that the modern scholar, compared with the ancients, was a dwarf standing on the shoulders of a giant." R.W. Southern, The Making of the Middle Ages 203 (1953). Perhaps the most famous use of the phrase was by Sir Isaac Newton, who wrote in a letter: "If I have seen further it is by standing on ye shoulders of Giants." Robert K. Merton, On the Shoulders of Giants: A Shandean Postscript 31 (1965) (recounting the origins of Newton's use of the phrase).

8 In 1967, for example, when the youngest of today's seniors were in their twenties and the oldest of today's seniors were in their fifties, the median income, in today's dollars, was $36,847. Carmen DeNavas-Walt et al., U.S. Census Bureau, Income, Poverty, and Health Insurance Coverage in the United States: 2006, at 4 fig.1 (2007), *available at* http://www.census.gov/prod/2007pubs/p60-233.pdf. The median income in 2006, in contrast, was $48,201. *Id.*

9 *See* Buchanan, *supra* note 1, at 1241–44.

10 Larry DeWitt, *Historical Background & Development of Social Security: Pre-Social Security Period*, http://www.ssa.gov/history/briefhistory3.html (last visited July 25, 2009).

aged. As a writer in 1909 explained: "The insatiable factory wears out its workers with great rapidity . . . . The young, the vigorous, the adaptable, the supple of limb, the alert of mind, are in demand. . . . Middle age is old age. . . ."[11] Once older workers lost their jobs, they could seldom find new ones,[12] and they rarely had sufficient savings to last until death.[13] Those unable to work routinely moved in with their adult children.[14]

With a few limited exceptions, such as food stamps,[15] the basic food, shelter, and clothing needs of children continue to be met privately, usually by parents. In contrast, the decision was made in 1935, with the enactment of Social Security, to socialize and streamline these private transfers with respect to retirees.[16] Like most pieces of complex legislation, Social Security can be appropriately conceptual-

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11 EDWARD T. DEVINE, MISERY AND ITS CAUSES 125 (1911).

12 Want ads and employers often specified age restrictions. *See* JOANNA N. LAHEY, CTR. FOR RET. RESEARCH AT BOSTON COLL., HOW DO AGE DISCRIMINATION LAWS AFFECT OLDER WORKERS? 1 (2006), *available at* http://crr.bc.edu/images/stories/Briefs/wob_5.pdf?phpMyAdmin=43ac483c4de9t51d9eb41.

13 *See* COMM. ON ECON. SEC., SOC. SEC. BD., SOCIAL SECURITY IN AMERICA 138 (1937), *available at* http://www.ssa.gov/history/reports/ces/cesbookc7.html.

14 Those who had no children or other close relatives or whose relatives were unable or unwilling to support them typically wound up in the poorhouse. I.M. RUBINOW, THE QUEST FOR SECURITY 238–39 (1934). "When Social Security became law, every state but New Mexico had poorhouses (also known as almshouses or poor farms)." NANCY J. ALTMAN, THE BATTLE FOR SOCIAL SECURITY: FROM FDR'S VISION TO BUSH'S GAMBLE 7 (2005). The proximate cause ending the system of poorhouses was the program of Grants to States for Old Age Assistance, which was enacted in the same legislation as Social Security. *See* Social Security Act of 1935, Pub. L. No. 74-271, §§ 1–6, 49 Stat. 620, 620–22.

Social Security today prevents millions of elderly Americans from falling into poverty. *See infra* notes 19, 23 and accompanying text. The program was not, however, the main contributor to ending the poorhouses, because it was structured to be slow to develop. Social Security requires that workers achieve insured status in order to receive benefits. Insured status is achieved by obtaining the requisite number of quarters of coverage, which are earned through employment in service that is covered by Social Security. There are three types of insured status: fully insured, currently insured, and insured for disability insurance benefits. 42 U.S.C. §§ 414, 423(c)(1) (2006). Consequently, the program developed slowly. More than a decade after the program's enactment, only one out of five elderly were either insured or receiving benefits, and the benefits that were received, were very low in amount. *See* THE ADVISORY COUNCIL ON SOC. SEC., OLD-AGE AND SURVIVORS INSURANCE, S. DOC. NO. 80-149, at 2 (1948). Throughout the 1940s, means-tested welfare payments were more widespread and larger in amount than Social Security. *See* ALTMAN, *supra* at 149–50.

15 *See* Food Stamp Act of 1964, Pub. L. No. 88-525, §§ 2–10, 78 Stat. 703, 703–07 (current version at 7 U.S.C. §§ 2011–2020 (2006)). The program is a state-administered federal program of assistance for the purchase of food, available to low-income people living in the United States. 7 U.S.C. § 2011 (2006).

16 Social Security Act of 1935 §§ 201–210, 49 Stat. at 622–25.

ized in a number of ways.[17] One way to understand it is simply as a system of adult children supporting aged parents, as adult children have done throughout history, but spreading the obligation more widely and fairly in recognition that some adult children no longer have living parents, some seniors have many children, and others have few or none.

B. The Size of the Obligation

Is the right amount being transferred to the prior generation? It certainly does not seem to be too much.[18] In 2005 the Center on Budget and Policy Priorities reported: "Leaving aside Social Security income, nearly one of every two elderly people—46.8 percent—has income below the poverty line."[19] Even with Social Security, seniors have median incomes about half the level of their children. In 2006, households headed by someone aged 65 or older had a median income of $27,798.[20] In stark contrast, those households headed by someone under age 65 had a median income of $54,726—just about double the amount.[21]

Social Security benefits are modest by virtually any measure. The poverty rate among the elderly in 2006 was 9.4%.[22] This is roughly comparable to the poverty rate of the non-aged adult population.[23]

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17 For a different conceptualization, rooted in the program's structure, see Nancy J. Altman, *Social Security and the Low-Income Worker*, 56 AM. U. L. REV. 1139, 1144–53 (2007).

18 For a comprehensive discussion of whether Social Security's benefit levels are adequate, see generally VIRGINIA P. RENO & JONI LAVERY, NAT'L ACAD. OF SOC. INS., SOCIAL SECURITY AND RETIREMENT INCOME ADEQUACY (2007), *available at* http://www.nasi.org/usr_doc/SS_Brief_025.pdf (discussing how Social Security's benefits, which are a major source of retirement income of most Americans, are insufficient to meet the threshold dollar amounts of the new elderly Economic Security Standard; are, as a percentage of pre-retirement income, much less adequate than the programs of most other industrialized countries; and will decrease substantially, as a percentage of pre-retirement income, as a result of current law increases in the statutory "Retirement Age," greater taxation of benefits, and growth in Medicare premiums).

19 ARLOC SHERMAN & ISAAC SHAPIRO, CTR. ON BUDGET & POLICY PRIORITIES, SOCIAL SECURITY LIFTS 13 MILLION SENIORS ABOVE THE POVERTY LINE: A STATE-BY-STATE ANALYSIS 1 (2005), *available at* http://www.cbpp.org/2-24-05socsec.pdf.

20 DENAVAS-WALT, *supra* note 8, at 5 tbl.1.

21 *Id.*

22 *Id*. at 12 tbl.3. The 2006 poverty rate for Americans aged 65 and older was 9.4%; the poverty rate for Americans aged 18 to 64 was 10.8%. *Id*. In contrast, the poverty rate for children was 17.4%, for an overall poverty rate of all Americans of 12.3%. *Id.*

23 *Id.* Social Security is frequently called the nation's most effective and most important anti-poverty program for the nation's elderly and for the nation's children. *See, e.g*, HEATHER BOUSHEY, CTR. FOR ECON. & POLICY RESEARCH, SOCIAL SECURITY: THE MOST IMPORTANT ANTI-POVERTY PROGRAM FOR CHILDREN 2 (2005), http://www.cepr.net/documents/publications/social_security_2005_03_29.pdf ("The importance of Social Security as an anti-poverty program for the nation's elderly is widely recognized . . . . Social Security is also the country's most

Yet many analysts believe that the official poverty line vastly understates the needs of the elderly.[24] New research is underway to develop an Elder Economic Security Standard.[25] Average Social Security benefits are well below this new standard. For an elder homeowner, in

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important anti-poverty program for the nation's children."); Craig Copeland, Employee Benefit Research Inst., Comparing Social Security Reform Options 5 (EBPI Issue Brief No. 281, 2005), *available at* http://www.ebri.org/publications/ib/index.cfm?fa=IBDisp&content_id=3495 ("Social Security is widely recognized as the nation's most effective anti-poverty program for the elderly and widow(er)s."). The program lifts thirteen million seniors above the poverty line. *See* Sherman & Shapiro, *supra* note 19. The program lifts one million children out of poverty. *See* Arloc Sherman, Ctr. On Budget & Policy Priorities, Social Security Lifts 1 Million Children Above the Poverty Line 1 (2005), http://www.cbpp.org/5-2-05socsec.pdf. Without Social Security, fifty-five percent of the disabled and their families would live in poverty. *See* Susan Grad et al., Soc. Sec. Admin., Income of Disabled-Worker Beneficiaries 22 (2000), *available at* http://www.ssa.gov/policy/docs/chartbooks/income_workers/di_chart.pdf.

The benefits are particularly important to women and minorities. Poverty among older Americans falls largely on women. Of the 3.4 million elderly Americans in poverty, 2.4 million, or 71%, are female. Patrick Purcell, Congressional Research Serv., Income And Poverty Among Older Americans in 2006, at 8–9 (2007), *available at* http://aging.senate.gov/crs/pension3.pdf. Social Security provides ninety percent or more of the income of almost half of all unmarried (including widowed, divorced, and never-married) women, aged sixty-five and older. Fact Sheet, Soc. Sec. Admin., Social Security is Important to Women (Oct. 2008), http://ssa.gov/pressoffice/factsheets/women.htm.

In addition, Social Security provides ninety percent or more of the income of forty-five percent of elderly African Americans. *See* National Committee to Preserve Social Security and Medicare, Why Social Security Is Important to African Americans, http://www.ncpssm.org/news/archive/vp_africanamericans/ (last visited July 25, 2009).

About two-thirds of the elderly receive half or more of their income from Social Security. This includes more than one third who receive ninety percent or more of their income from the program. *See* Lynn Fisher et al., U.S. Soc. Sec. Admin., Income of the Aged Chartbook, 2004, at 4 (2006), *available at* http://www.ssa.gov/policy/docs/chartbooks/income_aged/2004/iac04.pdf.

24 Today's poverty measurement was developed between 1963 and 1964. Since that time, it has been updated by the consumer price index. *See* Gordon M. Fisher, The Development of the Orshansky Poverty Thresholds and Their Subsequent History as the Official U.S. Poverty Measure 11–24 (Sept. 1997) (unpublished Census Bureau working paper), http://www.census.gov/hhes/www/povmeas/papers/orshansky.html. The measurement, which does not specifically take into account important costs of seniors such as out-of-pocket medical expenses, is believed to understate poverty rates among seniors. *See, e.g.*, Laura Henze Russell et al., Univ. of Mass. Boston, Elder Economic Security Initiative: The Elder Economic Security Standard for Massachusetts 2 (2006), *available at* https://www.policyarchive.org/bitstream/handle/10207/5517/MA%20Elder%20Standard%20Methodology%20Report.pdf?sequence=2.

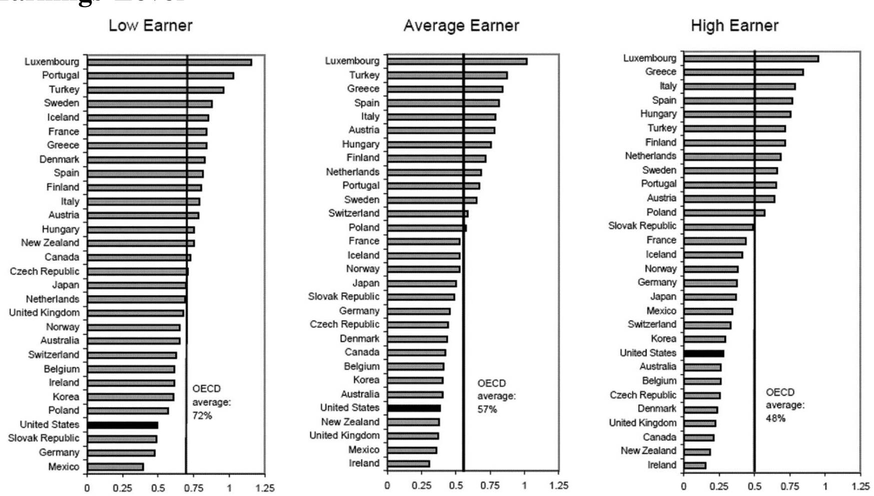
25 The new standard is in the process of being developed by the Gerontology Institute at the University of Massachusetts Boston and Wider Opportunities for Women. It seeks to be a more refined measure than the federal poverty line by taking into account expenses such as health-care costs and transportation, which are not expressly taken into account in the federal poverty-line measure. *See* Wider Opportunities for Women, Elder Economic Security Standard Index: Frequently Asked Questions, http://www.wowonline.org/ourprograms/eesi/documents/NatlEESIIndexFAQs.pdf (last visited July 25, 2009).

good health, an average Social Security benefit covers only eighty-one percent of minimal expenses; for a renter, the percentage falls to sixty-three percent.[26]

In addition to absolute measures of adequacy, the adequacy of retirement income is evaluated often in terms of preretirement income. The concept is that retirement income, in order to be adequate, should replace wages earned at retirement. In this way, retirees are able to maintain their preretirement standards of living.

Social Security's current replacement rates are too low to allow the maintenance of pre-retirement standards of living.[27] In 2007, Social Security replaced only about 27.9% of the wages of workers who consistently earned the maximum amount of covered wages; 40.2% of a lifetime of medium wages; and 54.2% of a lifetime of low wages.[28] These replacement rates are extremely low by international standards, as the following chart shows:

Figure 1. Social Security Replacement Rates in OECD Countries by Earnings Level[29]



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26 Wider Opportunities for Women, The National Elder Economic Security Initiative Program, http://www.wowonline.org/pdf/NatlEESIdatasheet.pdf (last visited July 25, 2009).

27 Most experts believe replacement rates have to be around seventy percent for average workers to maintain their standards of living in retirement. Higher percentages are needed for low-income workers, somewhat lower for the highest paid. *See* Nancy J. Altman, *Rethinking Retirement Income Policies: Nondiscrimination, Integration, and the Quest for Worker Security*, 42 Tax L. Rev. 435, 495–98 (1987); *see also* Alicia H. Munnell et al., Ctr. for Ret. Research at Boston Coll., A New National Retirement Risk Index 1 tbl.1 (2006), *available at* http://crr.bc.edu/images/stories/Briefs/ib_48.pdf?phpMyAdmin=43ac483c4de9t51d9eb41.

28 Soc. Sec. Admin., Performance and Accountability Report: Fiscal Year 2007, at 9 (2007), *available at* http://www.ssa.gov/finance/fy07_accountability.html.

29 Reno & Lavery, *supra* note 18, at 3 fig.2 (citing Org. for Econ. Co-operation &

Moreover, these already minimal replacement rates will be even lower in the future.[30] The increase in Social Security's statutorily-defined Retirement Age,[31] which, because of Social Security's structure, is indistinguishable from an across-the-board benefit cut for retirees,[32] is in the process of being phased in.[33] In 2030, only 49.1% of a low-income worker's wages will be replaced, rather than the replacement of 55.5% in 2000; for a medium income worker, only 36.5% will be replaced, rather than the replacement of 41.2% in 2000, and for a worker earning at the maximum taxable wage base, the replacement rate will have fallen from 27.3% to 24%.[34]

Moreover, these already-low Social Security benefits are not keeping pace with inflation. Medicare Part B premiums, which are automatically deducted from Social Security benefits for most beneficiaries, have, as a result of the rapid rise in health-care costs, been increasing faster than inflation generally and are projected to continue to do so.[35] In 2000, the Medicare Part B monthly premium was $45.50; by 2008, less than a decade later, it had more than doubled, to $96.40; in a decade, 2018, it is projected to increase to $131.40.[36] Similarly, the

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DEV., PENSIONS AT A GLANCE (2005), *available at* http://www.oecd.org/document/6/0,3343,en_2649_33933_34814598_1_1_1_1,00.html) ("Low earners earn half of the average wage, while high earners earn twice the average wage. Illustrative full career workers draw benefits from each country's mandatory pension program at the normal retirement age.").

30 *See id.* at 8–9.

31 42 U.S.C. § 416(*l*) (2006).

32 *See* ALTMAN, *supra* note 14, at 250–51.

33 For those born in 1938, the statutorily-defined Retirement Age, for Social Security purposes, is sixty-five and two months. *See* Social Security Online, Retirement Age: Age to Receive Full Social Security Retirement Benefits, http://www.ssa.gov/pubs/retirechart.htm (last visited July 25, 2009). For each subsequent year of birth, the Retirement Age increases by two months, until it reaches age sixty-six for those born in 1943. *Id.* The Retirement Age stays at age sixty-six until the year of birth 1955, when it again increases two months for every subsequent birth year, until the Retirement Age of 67 is reached. *Id.*

34 ALICIA H. MUNNELL, CTR. FOR RET. RESEARCH AT BOSTON COLL., THE DECLINING ROLE OF SOCIAL SECURITY 1 tbl.1 (2003), *available at* http://crr.bc.edu/briefs/the_declining_role_of_social_security_3.html (click on "For full paper in PDF").

35 *See* MARY JOHNSON, THE SENIOR CITIZENS LEAGUE, SOCIAL SECURITY CHECKS WILL STOP INCREASING AS MEDICARE PREMIUMS RISE (Dec. 2006), http://www.tscl.org/NewContent/102793.asp. For most beneficiaries, the Medicare Part B premium cannot grow faster than the annual cost of living adjustment. *See* 42 U.S.C. § 1395r(f) (2006). This so-called "hold harmless" provision does not apply to higher income beneficiaries, *see id.* at § 1395r(i), beneficiaries whose premiums are covered by Medicaid, or beneficiaries who are newly covered by Medicare Part B. *See* THE HENRY J. KAISER FAMILY FOUND., THE SOCIAL SECURITY COLA AND MEDICARE PART B PREMIUM: QUESTIONS, ANSWERS, AND ISSUES 1–2 (2009), *available at* http://www.kff.org/medicare/upload/7912.pdf.

36 BD. OF TRS., FED. HOSP. INS. & FED. SUPPLEMENTARY MED. INS. TRUST FUNDS, 2009 ANNUAL REPORT OF THE BOARD OF TRUSTEES OF THE FEDERAL HOSPITAL INSURANCE AND

deductible has risen from $100 in 2000 to $135 in 2008, and is projected to increase to $184 by 2018.[37] As a result, an average wage earner retiring at age sixty-five in 2030 will receive only about thirty-two percent of pre-retirement wages, rather than thirty-nine percent in 2005, when Medicare's increased premiums, on top of the increase in the Retirement Age, are taken into account.[38]

C. Satisfying the Obligation by Expanding Social Security

In theory, the problem of inadequate retirement income could be addressed by private pensions and private savings. In reality, these arrangements have never provided adequate supplementation for most retirees and are becoming less adequate and less secure, not more.[39] Traditional employer-sponsored pensions, so-called defined-benefit plans, which covered sixty-two percent of the American workforce in the 1970s, covered only eighteen percent in 2006.[40] The downward trajectory shows no signs of abating. As regulation of

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FEDERAL SUPPLEMENTARY MEDICAL INSURANCE TRUST FUNDS 193 tbl.V.C2 (2009), *available at* http://www.cms.hhs.gov/ReportsTrustFunds/downloads/tr2009.pdf.

37 *Id.* The premium amounts are the base amount required. Higher income beneficiaries are required to pay between $38.50 and $211.90 a month in 2009, on top of the base amount. *Id.* at 194 tbl.V.C3. Also, this analysis ignores deductibles and premiums related to Medicare Part D, the prescription drug benefit program. The base premium in that program is projected to rise from $30.36 in 2009, to $55.60 in 2018, and the initial deductible, prior to beneficiaries reaching the so called "doughnut hole," the threshold where benefits cease until a maximum is paid, is expected to rise from $295 in 2009 to $490 in 2018. *Id.* at 193 tbl.V.C2. The maximum out of pocket, when coverage resumes, is projected to rise from $4350 in 2009 to $7250 in 2018. *Id.*

38 RENO & LAVERY, *supra* note 18, at 9 fig.6. Net benefits will be even lower, because an increasing number of people will be required to pay income tax on benefits, as a result of a 1983 provision which subjects taxpayers with higher earnings to count a portion of their Social Security benefits as taxable income. *Id.* at 9. The provision did not index the earnings thresholds to keep pace with inflation. *Id.* As a result of that provision, that same average earner's net replacement rate is projected to fall to twenty-nine percent. *Id.*

39 Reliance on private pensions and individual savings is, in some ways, an historical accident. Such reliance has many shortcomings and has never achieved complete retirement security for all the nation's workers. *See* Nancy Altman, Chair of the Bd., Pension Rights Ctr., Turning Perils into Opportunities: Perfecting Retirement Security in the 21st Century, Address at the National Academy of Social Insurance's 19th Annual Conference 12–14 (Feb. 1, 2007) (transcript *available at* http://www.nasi.org/usr_doc/Session_III_Transcript_02_01_07.pdf).

40 Janice Kay McClendon, *The Death Knell of Traditional Defined Benefit Plans: Avoiding a Race to the 401(k) Bottom*, 80 TEMP. L. REV. 809, 814 (2007); *see also* NAT'L CONFERENCE OF STATE LEGISLATURES, DEFINED BENEFIT AND DEFINED CONTRIBUTION RETIREMENT PLANS (2005), *available at* http://ecom.ncsl.org/programs/fiscal/defineretire.htm (noting that "almost forty percent of private-sector employees were covered" by a defined-benefit plan in 1977 but only twenty percent were covered in 2003). Defined-benefit plans are ones where the benefit is promised or defined. *See* NAT'L CONFERENCE OF STATE LEGISLATURES, *supra*. Defined-contribution plans, in contrast, are ones where the amount to be contributed is promised or defined. *Id.*

traditional private pensions has increased, along with changes in accounting rules governing how pension liabilities are to be reported, traditional defined-benefit plans increasingly have been terminated or frozen.[41] While defined-contribution 401(k) plans have grown over recent years, they have many shortcomings. These arrangements often lack employer contributions, shift the risks of investment and longevity to the individual, are subject to the vagaries of individual investment experience, as well as high administrative costs, and are vulnerable to being cashed out before retirement.[42] Perhaps of greatest concern, accumulations in those plans are extremely low. In 2004, the median account balance for household heads aged fifty-five to sixty-four participating in a 401(k) plan was $60,000.[43] The recent economic downturn, which has cost the American people an estimated two trillion dollars in pension wealth, has brought into sharp focus the insecurity of private-sector arrangements.[44] Similarly disturbing, American households currently are not saving enough outside these retirement vehicles to provide adequate supplementation in retirement. In the decade prior to the recent economic downturn, Americans saved, as a percentage of disposable income, less than any other time since the 1930s.[45] Moreover, primarily as a result of the collapse of the housing bubble and stock market, Americans lost an estimated $1.33 trillion in net wealth in just the first three months of 2009.[46]

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41 *See* Pension Benefit Guar. Corp., An Analysis of Frozen Defined Benefit Plans 1–2 (2005), *available at* http://www.pbgc.gov/docs/frozen_plans_1205.pdf.

42 *See* Alicia H. Munnell & Annika Sundén, Ctr. for Ret. Research at Boston Coll., 401(k) Plans Are Still Coming up Short 3–5 (2006), *available at* http://crr.bc.edu/images/stories/Briefs/ib_43.pdf?phpMyAdmin=43ac483c4de9t51d9eb41.

43 *Id.* at 5.

44 *See* Emily Brandon, *Retirement Savers Lost $2 Trillion in the Stock Market*, U.S. News & World Rep., Oct. 8, 2008, http://www.usnews.com/blogs/planning-to-retire/2008/10/08/retirement-savers-lost-2-trillion-in-the-stock-market.html.

45 *See* Bureau of Econ. Analysis, U.S. Dep't of Commerce, Table 2.1. Personal Income and Its Disposition (2009), http://www.bea.gov/national/nipaweb/TableView.asp?SelectedTable=58&ViewSeries=NO&Java=no&Request3Place=N&3Place=N&FromView=YES&Freq=Year&FirstYear=2002&LastYear=2008&3Place=N&AllYearsChk=YES&Update=Update&JavaBox=no (showing that, starting in 1929, the years 1999–2008 have the lowest personal savings rates of any years since the 1930s.) While the fourth quarter of 2008 and the first quarter of 2009, the latest period for which there are figures, show a return to the somewhat higher personal savings rate prior to 1999; it is unclear whether this rate will continue. *Id.*

46 Associated Press, *A $1.33 Trillion Drop in Net Worth in First Quarter*, N.Y. Times, June 11, 2009, http://www.nytimes.com/2009/06/12/business/economy/12worth.html?_r=1&scp=1&sq="A%20$1.33%20Trillion%20Drop%20in%20Net%20Worth%20in%20First%20Quarter"&st=cse#.

II. The Nation's Funding Gap

The logical response to the failure of private pensions and individual savings to adequately supplement Social Security for most retirees is to simply increase Social Security's benefits.[47] But can we afford it? What about Professor Shaviro's funding gap?[48] This section makes clear that we unquestionably can afford an expanded Social Security system. What Professor Shaviro fails to note is that, as large as the funding gap is, it is merely the symptom of a much more serious problem that extends far beyond the federal government's outlays and revenues.

A. The Unsustainability of the Nation's Health-Care Costs

The growth in the nation's health-care costs, private as well as public, has, for decades, far outpaced income growth in the United States, a fact that shows no signs of abating.[49] In 1960, the nation's total spending on health care, public and private, equaled 4.7% of gross domestic product ("GDP").[50] By 1980, this percentage had almost doubled, to 8.4%.[51] By 2005, the percentage had almost doubled again, to 14.9% of GDP.[52] If this historical rate of growth were to continue into the future, we would spend more than thirty percent of our GDP on health care in another twenty-five years, approximately

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47 Virginia P. Reno, Econ. Policy Inst., Building on Social Security's Success 7 (EPO Brief Paper No. 208, 2007), *available at* http://www.sharedprosperity.org/bp208/bp208.pdf (arguing that Social Security is much more fair, secure, efficient, and adequate than private pension arrangements and embodies all the best features of those private arrangements). Professor Buchanan's concern about distributive justice also points toward more generous current benefits, particularly if they are aimed toward low- and moderate-income Americans, and certainly against scaling today's benefits back on the grounds of fairness to future generations. As he insightfully points out: "The variation in incomes within generations is much, much greater (even within a wealthy country like the United States) than variations in average income levels even over the course of a very good century or three." Buchanan, *supra* note 1, at 1291. Social Security, through a progressive benefit structure that provides lower wage workers with higher proportionate benefits, incorporates a strong element of distributive justice. *See* Altman, *supra* note 17, at 1148–49; *see also supra* note 23 and accompanying text.

48 *See* Shaviro, *supra* note 4, at 1301–17.

49 Noah Meyerson et al., Congressional Budget Office, The Long-Term Outlook for Health Care Spending 1 (2007), *available at* http://www.cbo.gov/ftpdocs/87xx/doc8758/11-13-LT-Health.pdf. According to the Report: "Most analysts agree that the most important factor contributing to the growth in health-care spending in recent decades has been the emergence, adoption, and widespread diffusion of new medical technologies and services." *Id.* at 6.

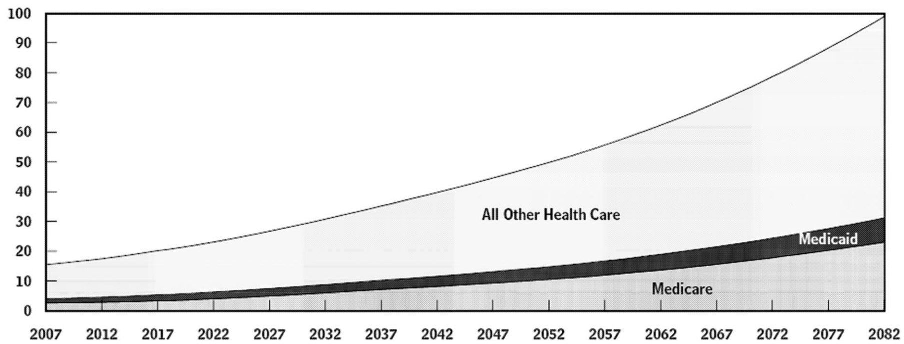
50 *Id.* at 5, 7 fig.2.

51 *Id.* at 7 fig.2.

52 *Id.* at 5, 7 fig.2.

fifty-six percent in fifty years, and a whopping ninety-nine percent in seventy-five years, as the following graph illustrates:

Figure 2. Spending on Health Care as a Percentage of GDP Under an Assumption that Excess Growth Continues at Historical Averages[53]



As the above chart reveals, public spending on Medicare and Medicaid simply mirrors these trends. In 1980, Medicare and Medicaid accounted for 2.3% of GDP.[54] By 2005, the cost of the two programs had more than doubled to 5.3%.[55] In 2030, if the historical trend continues, the cost of these two programs will almost double again to eight percent.[56] In 2050 the programs will cost fourteen percent of GDP.[57] In 2082, the cost is projected to be thirty-one percent of GDP.[58]

From 1960 on, federal receipts have ranged between seventeen and twenty-one percent of GDP.[59] Medicare and Medicaid by themselves are projected to cost more than seventeen percent of GDP in 2059, only 50 years from now, if present trends continue.[60] It is no surprise to see the alarm of Professor Shaviro and other analysts: this rate of growth cannot be maintained. Obviously, no nation can allocate its entire gross domestic product, including its entire national budget, to health care.

53 *Id.* at app. D fig.D-1.

54 *Id.* at 7 fig.2.

55 *Id.*

56 *Id.* at app. D fig.D-1.

57 *Id.*

58 *Id.*

59 DAVE KOITZ ET AL., CONGRESSIONAL BUDGET OFFICE, A 125-YEAR PICTURE OF THE FEDERAL GOVERNMENT'S SHARE OF THE ECONOMY, 1950 TO 2075, at 4 tbl.3 (2002), *available at* http://www.cbo.gov/ftpdocs/35xx/doc3521/125RevisedJuly3.pdf.

60 *Id.* at 3 tbl.2.

B. The Affordability of Social Security

In sharp contrast, Social Security, which today costs 4.8% of GDP, is projected to peak at around 6.2% of GDP in twenty-five years, and then settle back to 5.8% sixteen years later and remain at that level thereafter.[61] This increase of around 1.4% of GDP is not only manageable but unsurprising and fully warranted. At a time when the percentage of the population composed of people over age sixty-five will grow from twelve percent to twenty percent,[62] it is perfectly appropriate that they consume a somewhat larger percentage of the nation's goods and services. If that were not the case, the elderly in the future would be even less well off, in relation to the younger population, than they are today.

Recent history assures that the increase in spending on Social Security is absorbable by the nation.[63] The increase as a percentage of GDP is smaller than the growth in spending for public education when members of the baby boom generation were children.[64] Spending on public education rose by 2.8 percentage points between 1950 and 1975, from 2.5% to 5.3% of GDP.[65] In that case, states and localities had little, if any, advance warning. In contrast, the fact that this same generation is now becoming eligible for Social Security benefits has been part of the official Social Security projections since their births.[66]

Many Americans mistakenly believe that Social Security will be unaffordable in the future because of the retirement of the baby boom generation. President George W. Bush contributed to the misimpression by frequently reminding Americans during his campaign to fundamentally restructure Social Security that there were sixteen workers for every Social Security beneficiary in 1950; currently there are three

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61 The 2009 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds, H.R. Doc. No. 111-41, at 12 (2009) [hereinafter 2009 Annual Report].

62 Fed. Interagency Forum On Aging-Related Statistics, Older Americans 2008: Key Indicators of Well Being 2 (2008), *available at* http://www.agingstats.gov/agingstatsdotnet/Main_Site/Data/2008_Documents/Population.pdf.

63 Virginia P. Reno & Joni Lavery, Nat'l Acad. of Soc. Ins., Can We Afford Social Security when Baby Boomers Retire? 6–7 (2006), *available at* http://www.nasi.org/usr_doc/SS_Brief_022.pdf.

64 *Id.*

65 *Id.*

66 Since 1941, the Board of Trustees has issued an annual report projecting income and outgo well into the future. In calculating projections, Social Security's actuaries examine numerous data, including contemporaneous fertility rates. *See* Larry DeWitt, Soc. Sec. Admin., Research Note #14: Key Data from Annual Trust Fund Reports (2005), http://www.ssa.gov/history/trustchart.html.

workers for every beneficiary; and in 2030 the ratio will be two to one.[67]

The worker-to-beneficiary ratio, which compares the number of workers contributing to Social Security to the number of people drawing Social Security benefits, reveals virtually nothing, however, about the affordability of Social Security because it sheds no light on how productive those workers are or whether other burdens on those workers are increasing or decreasing.[68] The projected reduction in the

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67 *See, e.g.*, President's Address Before a Joint Session of Congress on the State of the Union, 41 WEEKLY COMP. PRES. DOC. 126, 128 (Feb. 2, 2005). The sixteen-to-one ratio is a meaningless and misleading factoid plucked from 1950, a year when Social Security was expanded to cover millions of new workers. *See* 2009 ANNUAL REPORT, *supra* note 61, at 51–52 tbl.IV.B2. The ratio never influenced policy in the slightest. It is the kind of ratio experienced by all pension plans, public and private, at the start when few workers have yet qualified for benefits. By 1960 the ratio was five to one; by 1975 the ratio was 3 to 1, where it has remained. *Id.* In 2005, 158.8 million workers contributed to Social Security and 48.1 million people received benefits, for a ratio of approximately 100 workers for 30 beneficiaries, or 3 to 1. *Id.* Social Security's actuaries estimate, under the intermediate assumptions, that in 2030 there will be 46 beneficiaries for every 100 covered workers, and in 2050, 48 beneficiaries for every 100 covered workers, for a worker-to beneficiary-ratio of 2 to 1. *Id.* In contrast to the 16-to-1 ratio, the shift in ratios from 3:1 to 2:1 is meaningful, though the shift does not provide a great deal of insight about affordability, as discussed in the text.

68 RENO & LAVERY, *supra* note 63, at 2. The worker-to-beneficiary ratio does not reveal much about burdens imposed on workers from support of all dependents, just of those receiving Social Security benefits. A better, but still limited, measure of the economy's ability to support non-workers is the total-dependency ratio, which is the sum of those under age twenty plus those aged sixty-five and over divided by those aged twenty to sixty-four. *Id.* at 3. As with the worker-to-beneficiary ratio, the greater the number of workers in relation to dependents, the larger the number of people upon whom the costs of support can be spread. The fewest number of workers in relation to dependents occurred in 1965, when there were a total of 94.6 children and elderly, combined, for every 100 adults of working age; that high number of dependents in relation to workers has declined substantially since then, and is not projected to reach that level again in the foreseeable future. *See* 2009 ANNUAL REPORT, *supra* note 61, at 84 tbl.V.A2; *see also* LAURA B. SHRESTHA, CONGRESSIONAL RESEARCH SERV., AGE DEPENDENCY RATIOS AND SOCIAL SECURITY SOLVENCY 14 app.tbl.1 (2006), *available at* http://aging.senate.gov/crs/ss4.pdf. Currently, there are approximately 66 dependents for every 100 workers; the actuaries estimate, using their intermediate, most-likely assumptions, that there will be 81.2 dependents for every 100 workers in 2030; 81.1 dependents for every 100 people of working age in 2050; and in 2085, 86 dependents for every 100 people of working age. *See* 2009 ANNUAL REPORT, *supra* note 61, at 84 tbl.V.A2; *see also* SHRESTHA, *supra*. Moreover, the composition of the dependency ratio has changed: there are now more elderly and fewer children in the mix. RENO & LAVERY, *supra* note 63, at 11 tbl.1. Because few children can support themselves, but many seniors can and do, the change in the composition means that programs of income support—e.g., Social Security—are more easily affordable than if the mix were otherwise. Of course, the change in the composition of the dependency ratio has different impacts on programs like health care and education. One shortcoming of the total-dependency ratio, in addition to ignoring productivity, is that it only looks at age, not work status. Though still imperfect, a measure without some of the flaws of either the worker-to-beneficiary ratio or the total-dependency ratio is the consumer-to-worker ratio, which reflects the total number of people consuming goods in relation to the actual

ratio from 3:1 to 2:1, which results from the aging of the population, demonstrates, in a rough way, that Social Security will cost more in the future, but it is silent with respect to the affordability of those higher costs.

Dependency ratio measures,[69] which simply reflect age distributions, and, when more refined, work status, ignore the crucial measure of productivity. When the cost of Social Security is examined in terms of GDP, it becomes unquestionably obvious that our economy can support our elderly, the widespread demographic anxiety notwithstanding. The U.S. Social Security system, at its most expensive, will cost our nation a substantially smaller percentage of GDP than many other industrialized nations spend on their counterpart old-age programs today.[70] In 2000, Germany spent 11.8% of GDP, France, 12.1%, Japan. 7.9%, and Italy, 13.8% on the old-age, survivors, and disability benefits of their Social Security systems.[71] At its most expensive, Social Security will account for 6.2% of GDP.[72]

III. Equity for All Generations: Reconciling Buchanan and Shaviro

Social Security has been unfairly singled out by those concerned about the federal budget partly because of its size and partly because it is often mistakenly characterized as an out-of-control entitlement. Ironically, Social Security is, in my view, the most fiscally conservative and responsible part of the federal budget.[73] Unlike the general fund

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number of workers. *Id.* at 2, 5–6. Like the total-dependency ratio, this ratio was also highest when members of the baby boom were children. *Id.* at 5. In 1960, for example, every 100 workers supported 268 consumers (including themselves). *Id.* at 5 chart 3. By 2000, the ratio had fallen substantially, with 100 workers supporting only 201 consumers. *Id.* In 2030, every 100 workers are projected to support 214 consumers, and in 2050, 216. *Id.*

69 For a discussion of dependency ratios that are more informative than the very crude worker-to-beneficiary ratio, see *supra* note 68 and accompanying text.

70 *See* Century Found., Social Security Reform: Revised 2005 Edition 27 fig.N (2005), *available at* http://www.tcf.org/Publications/RetirementSecurity/SocialSecurityBasicsRev2005.pdf.

71 *Id.* In 2000, the United States spent 4.8% of GDP on Social Security. *Id.*

72 *See supra* note 61 and accompanying text.

73 In 2008, Social Security ran a surplus of $180.2 billion and had an accumulated reserve of over $2.4 trillion. *See* 2009 Annual Report, *supra* note 61, at 5 tbl.II.B.1. In contrast, the rest of the federal budget (minus the Postal Service, which ran a $2.4 billion surplus) had a deficit of $641.8 billion and an accumulated debt, not including the $2.4 trillion borrowed from Social Security, of over $5.8 trillion in 2008. *See* Congressional Budget Office, Historical Budget Data (2009), http://www.cbo.gov/budget/historical.shtml (click on "data"). It is extremely efficient, returning in benefits more than ninety-nine cents of every dollar collected in taxes. *See* 2009 Annual Report, *supra* note 61, at 31 tbl.III.A6 (showing administrative costs as a percentage of both revenue and expenditures for OASI to be 0.6% in 2008 and for OASDI, to be 0.9%). Moreover, Social Security satisfies Professor Shaviro's concerns about efficiency with respect to

of the federal budget, Social Security is prohibited from paying benefits unless it has sufficient revenue to cover the cost of the outlays. As a result, it has a built-in check on its spending.[74] If no change were to be made by 2037, Social Security benefits would automatically be reduced (assuming current projections of a shortfall starting that year are perfectly accurate).[75]

Unlike other federal programs which are generally projected out at most ten years, Social Security's Board of Trustees issues an annual report projecting income and outgo over a valuation period of three-quarters of a century—a considerably longer valuation period than any private pension or public pensions of most other countries.[76] If, like other programs, Social Security were projected out merely ten years, it would reveal a $4 trillion accumulated *surplus*.[77] Its long-range projections, designed to give policymakers ample time to make mid-course corrections, have instead been used by opponents of the

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tax and lifetime consumption smoothing. *See* Shaviro, *supra* note 4, at 1337–48. Social Security's long-range projections and policy implementation provide an implicit mechanism for tax smoothing. The decade of the 1990s was a period when those reaching retirements had been born during the Great Depression and World War II, a time of relatively low numbers of births. Consequently, there were relatively few new retirees. *See* 2009 ANNUAL REPORT, *supra* note 61, at 50–51 tbl.IV.B2 (showing that growth in the numbers of retirees, from 1990 to 2005, was significantly smaller, in both absolute numbers and percentage increase, than the fifteen year period, from 1975 to 1990). It was also a decade when those born during the baby boom were in their forties and fifties, their most productive years. Consequently, Social Security ran large surpluses. *Id.* at 141–42 tbl.VI.A2. Instead of providing a tax reduction, to bring income and outgo into line, policymakers chose to keep the percentage of earnings that employer and employee were required to contribute unchanged, even though they knew that this would produce more revenue than the cost of paying then-current benefits and indeed would build a sizeable surplus, in essence, smoothing the tax burden by advance funding the retirements of the baby boom generation. On the consumption side, Social Security is structured so that current workers contribute toward Social Security and thus consume less during their productive years, but then draw benefits at retirement, smoothing out their lifetime consumptions.

74 *Boomer Bust? Security Retirement in a Volatile Economy: Hearing Before the S. Special Comm. on Aging*, 111th Cong. 4 (2009) (statement of Barbara B. Kennelly, President, National Committee to Preserve Social Security and Medicare), *available at* http://aging.senate.gov/events/hr204bk.pdf.

75 *See* CHRISTINE SCOTT, CONGRESSIONAL RESEARCH SERV., SOCIAL SECURITY: THE TRUST FUND 14 (2005), *available at* http://fpc.state.gov/documents/organization/51264.pdf. The law is unclear whether benefits would be reduced or whether payment would be delayed until sufficient revenue had accumulated to cover the cost. *See* KATHLEEN S. SWENDIMAN & THOMAS J. NICOLA, CONGRESSIONAL RESEARCH SERV., SOCIAL SECURITY REFORM: LEGAL ANALYSIS OF SOCIAL SECURITY BENEFIT ENTITLEMENT ISSUES 12–13 (2008), *available at* https://secure.wikileaks.org/leak/crs/RL32822.pdf.

76 In the past, valuation periods have been as short as thirty-five years and as long as eighty years. Starting in 1965, a seventy-five year valuation period has been consistently used. *See* DEWITT, *supra* note 66.

77 *See* 2009 ANNUAL REPORT, *supra* note 61, at 41 tbl.IV.A3.

program in an opportunistic way to convince younger Americans that the program somehow is broken and will not be there for them.[78]

Much of the current debate over the federal budget gap is muddied by references to an entitlement crisis and various claims about the sustainability of select federal programs.[79] These facile references create confusion rather than clarity and hide what is actually going on. Ironically, Social Security can only be labeled unsustainable because its benefits are paid not from the general fund, which has the power to borrow, but from trust funds that do not.[80] Currently, Social Security is projecting a manageable deficit, decades away.[81] Elsewhere, I have put forth a plan to restore Social Security to long range actuarial balance, without benefit cuts, without increasing the retirement age, and with only modest tax increases on the top six percent of the workforce.[82]

It is only in this technical sense—that current law raises insufficient dedicated revenue to cover all costs of all future benefits for the next seventy-five years—that the current program can be called unsustainable. Unsustainability, in this technical sense, is qualitatively different from future health-care costs, which, at their present rate of growth, are neither sustainable nor affordable.[83] It is imperative that we immediately reform our health-care system in a way that controls costs.

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78 In his effort to replace a portion of Social Security with private accounts, President George W. Bush repeatedly made hyperbolic, misleading claims. *See, e.g.*, President's Address Before a Joint Session of Congress on the State of the Union, 41 WEEKLY COMP. PRES. DOC. 126, 128 (Feb. 2, 2005) ("If you've got children in their twenties, as some of us do, the idea of Social Security collapsing before they retire does not seem like a small matter. And it should not be a small matter to the United States Congress.").

79 *See, e.g.*, Paul D. Ryan, Editorial, *How to Tackle the Entitlement Crisis*, WALL ST. J., May 21, 2008, at A19 (claiming that Congress needs to curb entitlement spending because inaction is "shackling our future with unsustainable debt and taxes").

80 42 U.S.C. § 401(a) (2006).

81 The most recent trustees' report, using the intermediate assumptions, projects that, if no action were taken in the interim, full benefits could nevertheless be paid until 2037—over a quarter of a century from now. 2009 ANNUAL REPORT, *supra* note 61, at 54 (2009). The trust fund surplus would continue to grow until around 2024, at which point the funds would begin using principal to cover the shortfall. Even after 2037, when the reserves were depleted, then-current revenue would continue to cover about three-quarters of promised benefits. *Id.* at 57–59. The size of the shortfall over the next seventy-five years is projected to be 2% of taxable payroll. ("Percentage of taxable payroll" is the standard method used by Social Security's actuaries to express the long-range deficit as well as the amounts generated by revenue increases or benefit reductions. Because the main source of Social Security's financing is from taxable payrolls, expressing these amounts in that form allows easy comparison and understanding).

82 *See* ALTMAN, *supra* note 14, at 299–309.

83 *See supra* Part II.A–B.

A. The Cost of Misdiagnosing the Cause of the Funding Gap

The danger of focusing on only the budget gap without addressing the underlying driver of the gap or, even worse, popularizing the misguided notion that there is "an entitlement crisis" as the mainstream media has done,[84] is that not only will we fail to address the real problem but we will do great harm as well. Our federal entitlement programs benefit the most vulnerable of our population: the poor, the aged, the sick, the disabled, the widowed, and the orphaned.[85] If every entitlement in the federal budget were repealed outright—Medicare, Medicaid, Social Security, Food Stamps, the Earned Income Tax Credit, and others—but nothing were done to slow the growth in health-care costs overall, we would find ourselves nevertheless unsustainably spending more and more of our incomes on health care—almost seventy percent of the nation's wealth by 2082.[86]

A remedy to the funding gap which is merely ineffective delays the day of reckoning. A remedy which is not only ineffective but penalizes our most vulnerable, and cuts back on hard-fought gains to increase distributive justice, would do serious harm.[87] If policymakers rely on the misdiagnosis and make arbitrary, unwarranted cuts in entitlements, the result will be injury to the most vulnerable among us.

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84 *See, e.g.*, The Second McCain-Obama Presidential Debate (Oct. 7, 2008) (statement of Tom Brokaw, debate moderator, that "[E]veryone in this hall and across this country understands that there are going to have to be some choices made. Health policies, energy policies, and *entitlement reform* . . . ." (emphasis added)), http://www.debates.org/pages/trans2008c.html.

85 In addition to the spending entitlements, the Internal Revenue Code has what many label tax entitlements, which are available to anyone who meets the specified criteria. *See* HENRY AARON ET AL., A BALANCED APPROACH TO RESTORING FISCAL RESPONSIBILITY 6 (2008), *available at* http://www.cbpp.org/files/7-9-08bud.pdf. These entitlements, however, disproportionately go to those of higher income. *Id.*

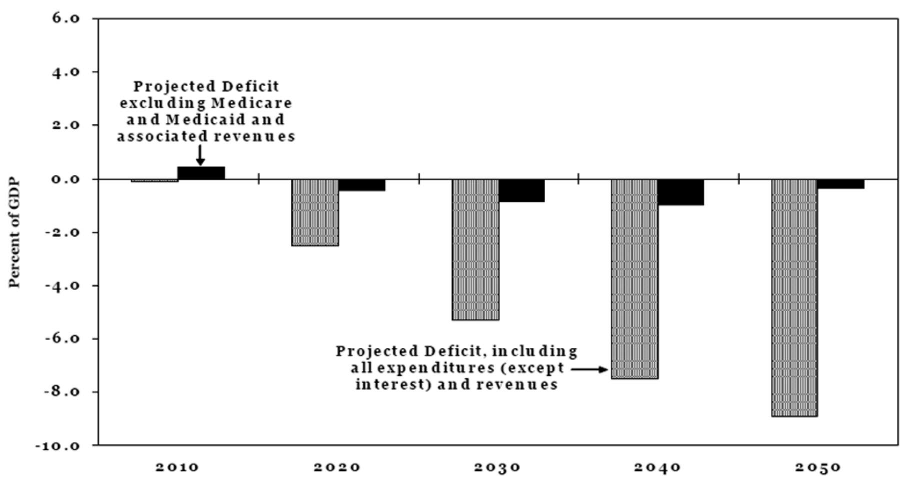
86 *See supra* Part II.A–B.

87 Professor Buchanan importantly focuses our attention on the distributive inequalities within generations. *See* Buchanan, *supra* note 1, at 1237, 1287–96. Social Security has, from its inception, recognized this inequality and responded by providing a weighted benefit formula, which generates larger dollar payments, in absolute terms, for higher paid workers, but larger proportionate benefits for lower paid workers. For an explanation of the concept behind the benefit formula, see ALTMAN, *supra* note 14, at 80–82. In analyzing Social Security in the context of intergenerational justice, it is worth remembering that in addition to being a program of retirement income, it also is, as a consequence of its life insurance and disability protection, one of the nation's largest children's programs. *See generally* JONI LAVERY & VIRGINIA P. RENO, NAT'L ACADEMY OF SOC. INSUR., CHILDREN'S STAKE IN SOCIAL SECURITY (2008), *available at* http://www.nasi.org/usr_doc/SS_Brief_027.pdf (discussing how Social Security is a source of income for millions of children).

B. The Benefit of an Accurate, Clear Diagnosis

In contrast, if we effectively limit the growth of these costs, the root cause of the funding gap will start to close, as the following chart graphically illustrates:

Figure 3. Projected Budget Deficit or Surplus (Excluding Interest): Including and Excluding Medicare and Medicaid, Selected Years[88]



Controlling health-care costs is no easy task. The first step, however, is the clear-eyed recognition of its necessity. It is here where public-policy solutions should be directed. Our nation would then be in a position to increase spending on the most vulnerable among us through expanding Social Security and other worthwhile programs. That would be a solution that addresses both the distributive justice concerns of Professor Buchanan *and* the efficiency concerns of Professor Shaviro.

88 This graph was developed by Henry Aaron, Bruce and Virginia MacLaury Senior Fellow at the Brookings Institution, and included in a statement he prepared as part of his testimony before the U.S. House of Representatives Committee on the Budget on June 24, 2008. *See SAFE Commission Act (H.R. 3654) and The Long-Term Fiscal Challenge: Hearing on H.R. 3654 Before the H. Comm. on the Budget*, 110th Cong. 3 (2008) (statement of Henry J. Aaron, Bruce and Virginia MacLaury Senior Fellow, The Brookings Institution), *available at* http://budget.house.gov/hearings/2008/06.24aaron.pdf. It should be noted that the Congressional Budget Office's projections, on which the graph was based, have now changed. Nevertheless, the qualitative picture that the graph provides remains useful. For Aaron's testimony see *id.*