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COMMENTARY

Is There a Right to Social Security?

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You worked hard your whole life and paid thousands of dollars in Social Security taxes. Now it's time to retire. You're legally entitled to Social Security benefits, right? Wrong. There is no legal right to Social Security, and that is one of the considerations that may decide the coming debate over Social Security reform.

Many people believe that Social Security is an "earned right." That is, they think that because they have paid Social Security taxes, they are entitled to receive Social Security benefits. The government encourages that belief by referring to Social Security taxes as "contributions," as in the Federal Insurance Contribution Act. However, in the 1960 case of *Fleming v. Nestor*, the U.S. Supreme Court ruled that workers have no legally binding contractual rights to their Social Security benefits, and that those benefits can be cut or even eliminated at any time.

Ephram Nestor was a Bulgarian immigrant who came to the United States in 1918 and paid Social Security taxes from 1936, the year the system began operating, until he retired in 1955. A year after he retired, Nestor was deported for having been a member of the Communist Party in the 1930s. In 1954 Congress had passed a law saying that any person deported from the United States should lose his Social Security benefits. Accordingly, Nestor's \$55.60 per month Social Security checks were stopped. Nestor sued, claiming that because he had paid Social Security taxes, he had a right to Social Security benefits.

The Supreme Court disagreed, saying "To engraft upon the Social Security system a concept of 'accrued property rights' would deprive it of the flexibility and boldness in adjustment to ever changing conditions which it demands." The Court went on to say, "It is

apparent that the non-contractual interest of an employee covered by the [Social Security] Act cannot be soundly analogized to that of the holder of an annuity, whose right to benefits is bottomed on his contractual premium payments.”

Social Security is not an insurance program at all. It is simply a payroll tax on one side and a welfare program on the other. Your Social Security benefits are always subject to the whim of 535 politicians in Washington.

The Court’s decision was not surprising. In an earlier case, *Helvering v. Davis* (1937), the Court had ruled that Social Security was not a contributory insurance program, saying, “The proceeds of both the employee and employer taxes are to be paid into the Treasury like any other internal revenue generally, and are not earmarked in any way.”

In other words, Social Security is not an insurance program at all. It is simply a payroll tax on one side and a welfare program on the other. Your Social Security benefits are always subject to the whim of 535 politicians in Washington. Congress has cut Social Security benefits in the past and is likely to do so in the future. In fact, given Social Security’s financial crisis, benefit cuts are almost inevitable. Several proposals to cut benefits, from increasing the retirement age to means testing, are already being debated.

In contrast, under a privatized Social Security system, workers would have full property rights in their retirement accounts. They would own the money in them, the same way people own their IRAs or 401(k) plans. Congress would have no right to touch that money.

Opponents of privatizing Social Security often warn that it would be risky to rely on private markets to provide retirement benefits. But, with the Social Security system more than \$10 trillion in debt, being forced to rely on the unsupported promises of politicians is far more risky. By giving individuals ownership of their own retirement money, privatization would guarantee the security of retirement.

Indeed, only privatization would give Americans a true right to their Social Security.