



Social Security Checks Are Not Guaranteed

July 12th, 2011 at 4:59 pm [David Frum](#) | [105 Comments](#) |

Back when conservatives were fighting the good fight for private accounts in Social Security, we often pointed to the Supreme Court ruling that individuals had no legally enforceable right to Social Security benefits.

I [quote](#) the Cato Institute's Michael Tanner:

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.”

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.

Conservatives are blasting President Obama for “[scare tactics](#)” when he suggests in [interviews](#) that Social Security payments will not in fact be secure in the event of a hard crash with the debt ceiling.

Actually Obama is here channeling 100% classic conservative theory. Conservatives have argued for 20 years that Social Security is a pure gratuity, vulnerable to change at the whim of Congress. That's why we wanted to change it! But the consequence of Social Security being a pure gratuity is that Social Security recipients must stand at the back of the line if it becomes necessary to slash spending by 44% . Bondholders collect first. People with other contracts and other legally enforceable claims collect next. Those without legally enforceable claims collect last. That last category includes not only Social Security recipients and the unemployed, but also, for example, soldiers in the field.

It can't be right that the Secretary of the Treasury has the discretionary power to pay anybody he likes. Some people have legally stronger claims against the federal government than others. Unfortunately for the GOP's strategy in this bizarre game of threat and counter-threat, the claims that are most politically powerful also happen to be legally weaker.

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