

Public Assurance of an Adequate Minimum Income in Old Age: The Erratic Partnership Between Social Insurance and Public Assistance

Peter W. Martin

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PUBLIC ASSURANCE OF AN ADEQUATE MINIMUM INCOME IN OLD AGE: THE ERRATIC PARTNERSHIP BETWEEN SOCIAL INSURANCE AND PUBLIC ASSISTANCE*

Peter W. Martin[†]

[I]t is my hope that soon the United States will have a national system under which no needy man or woman within our borders will lack a minimum old-age pension which will provide adequate food, adequate clothing, and adequate lodging to the end of the road without having to go to the poorhouse to get it. I look forward to a system coupled with that, a system which, in addition to this bare minimum, will enable those who have faithfully toiled in any occupation to build up additional security for their old age which will allow them to live in comfort and in happiness.

*President Franklin D. Roosevelt, Speech to the Teamsters Union, September 11, 1940.*¹

Social insurance and public assistance are distinctly different mechanisms for the protection of people against untoward

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¹ Quoted in A. ALTMAYER, *THE FORMATIVE YEARS OF SOCIAL SECURITY* 126 (1966).

contingencies. Both have internal requirements for effective performance. Like the two wheels of a cart, they can effectively support a load if they are reasonably matched in size and strength. If they are not so matched the cart lunges to the weak side

*J.D. Brown, An American Philosophy of Social Security.*²

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² At 61 (1972).

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INTRODUCTION

For over forty years, public assurance of an adequate minimum income to older Americans has been a legislated national goal supported by extraordinarily broad popular acceptance.³ Throughout that period, the nation has had not one but a pair of programs committed to this purpose: a contributory "social insurance" program commonly called Social Security and a need-tested or public assistance program, until recently, Old Age Assistance (OAA). Both were established by a single piece of legislation—the Social Security Act of 1935.⁴

Time has dramatically altered the respective shares of these two programs in the overall effort (see Figure 1). In part, the dynamics of the 1935 legislative scheme have been responsible. But subsequent congressional modifications reflecting changing notions about the proper relative roles of social insurance and public assistance, as well as other political forces, have also played a major role. As these internal shifts have occurred, the composite system formed by the two programs has grown enormously (see Figure 2). In several ways, this system has only recently attained maturity, as measured by reasonably comprehensive coverage and adequate benefits.

³ The commitment of the federal government to income support for the elderly dates back to 1935, the year the Social Security Act was passed. *See, e.g.*, A. SCHLESINGER, JR., *THE COMING OF THE NEW DEAL* 315 (1958) ("For all the defects of the Act, it still meant a tremendous break with the inhibitions of the past. The federal government was at last charged with the obligation to provide its citizens a measure of protection from the hazards and vicissitudes of life.").

Judicial acceptance of that goal as well as the Act's means came less than two years later in *Helvering v. Davis*, 301 U.S. 619 (1937). The Supreme Court's opinion, written by Justice Cardozo, observed:

Congress did not improvise a judgment when it found that the award of old age benefits would be conducive to the general welfare. . . . A great mass of evidence was brought together supporting the policy which finds expression in the act. Among the relevant facts are these: The number of persons in the United States 65 years of age or over is increasing proportionately as well as absolutely. What is even more important the number of such persons unable to take care of themselves is growing at a threatening pace.

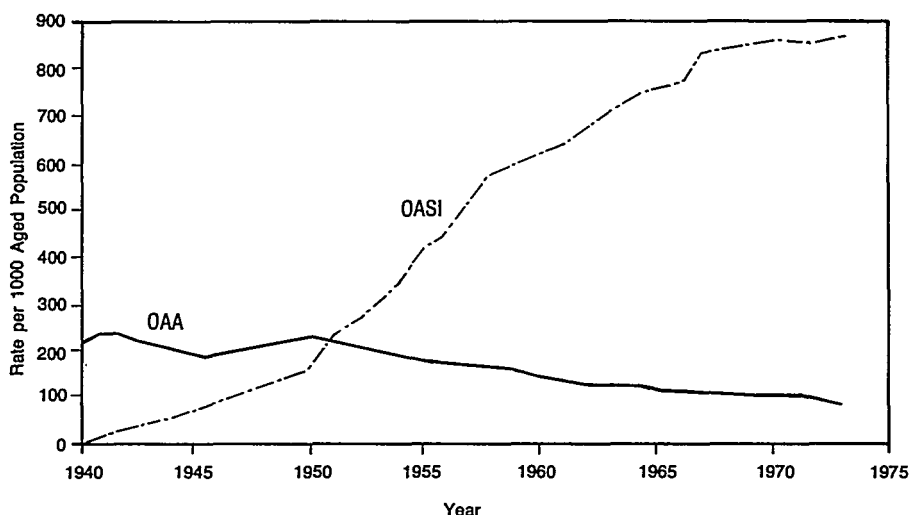
Id. at 641-42.

Popular support for this form of governmental activity was high in 1935 and subsequently grew to near unanimity. *See* M. SCHILTZ, *PUBLIC ATTITUDES TOWARD SOCIAL SECURITY 1935-1965*, at 35-36 (1970). During the first decade or so, this remarkable level of public acceptance existed side by side with considerable confusion about the relevant programs and widespread dissatisfaction with their payment levels. *See id.* at 40-49, 79-88.

⁴ Social Security Act of 1935, ch. 531, §§ 1-6, 201-210, 49 Stat. 620 (current version at 42 U.S.C. §§ 301-306, 401-432 (1976)). A variety of state and local old-age pension plans did exist prior to the Social Security Act. *See* F. BOND, R. BABER, J. VIEG, L. PERRY, A. SCAFF & L. LEE, *OUR NEEDY AGED* 39-68 (1954); SOCIAL SECURITY BOARD, *SOCIAL SECURITY IN AMERICA* 155-66 (1937) [hereinafter cited as *SOC. SEC. IN AMERICA*].

FIGURE 1

*Social Security (OASI)
Beneficiaries and Old Age
Assistance (OAA) Recipients*



Sources: W. HABER & W. COHEN, *SOCIAL SECURITY: PROGRAMS, PROBLEMS, AND POLICIES* 174 (1960); *SOC. SEC. BULL.—ANNUAL STATISTICAL SUPPLEMENT*, 1975, Table 23, at 57.

Maturity has coincided with an internal change more revolutionary than any other in the system's history. In late 1972, Congress voted to replace federal grant-in-aid support of state administered OAA programs with a new combination of federal and state aid, anchored by the federally funded and administered Supplemental Security Income (SSI) program.⁵ Although SSI began operation only in January 1974, it has already experienced several major congressional modifications.⁶ Thus, while the "system" as a whole has matured, a critical component is still in its formative years.

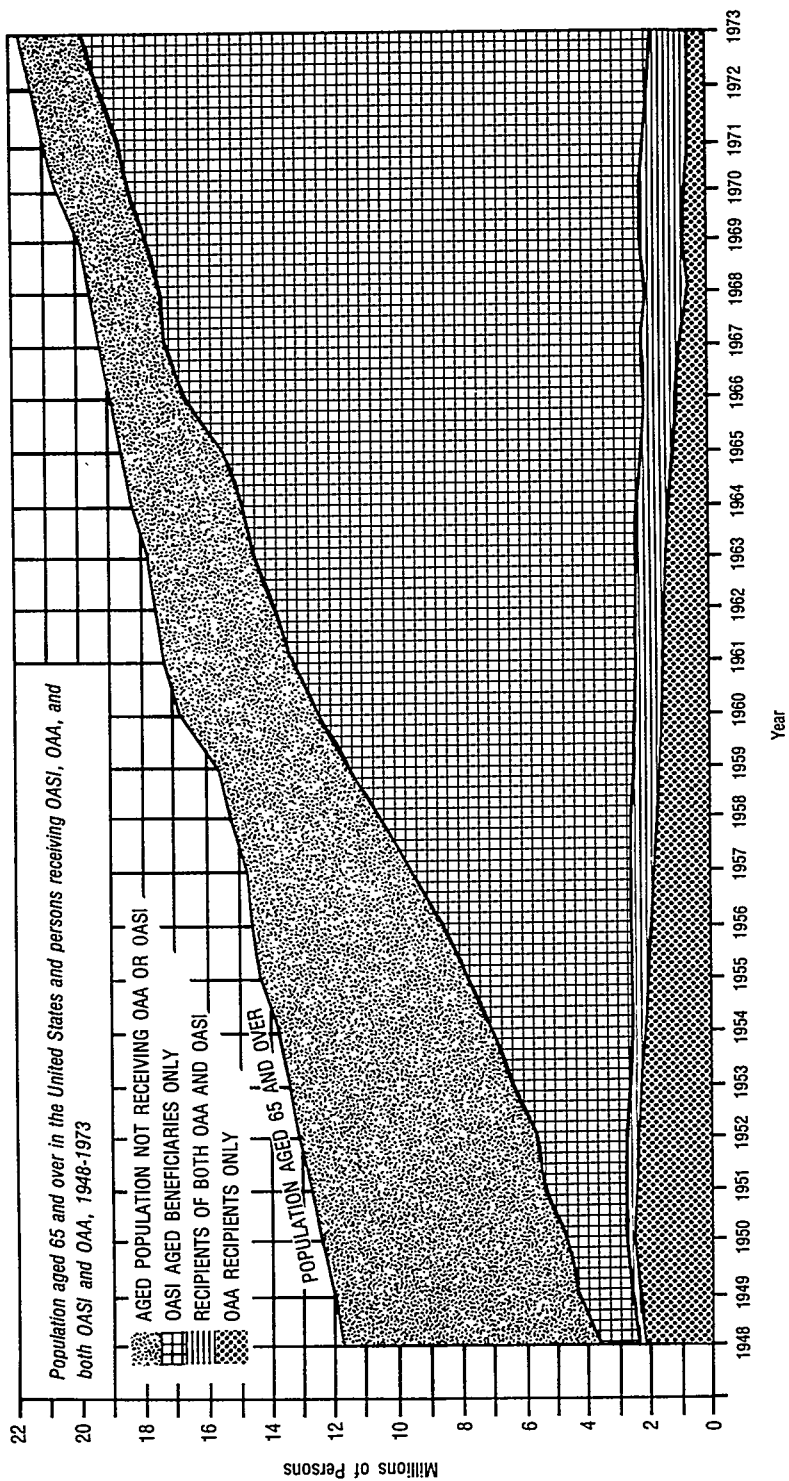
As the system has matured and changed, we have aged as a nation. Our elderly population has increased significantly in both absolute and percentage terms during recent decades.⁷ Con-

⁵ See 42 U.S.C. §§ 1381-1383c (1976).

⁶ See text accompanying notes 194-99 *infra*.

⁷ See BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, *DEMOGRAPHIC ASPECTS OF AGING AND THE OLDER POPULATION IN THE UNITED STATES* 3-4 (Current Population Reports, Series P-23, No. 59, 1976) [hereinafter cited as *ASPECTS OF AGING*]. In 1940, the first year the Social Security program paid out monthly benefits to retired workers, the country

FIGURE 2



Sources: Muggge, *Concurrent Receipt of Public Assistance and Old-Age, Survivors, and Disability Insurance*, Soc. Sec. BULL., Dec. 1960 at 12, 13; *Quarterly Statistics*, Soc. Sec. BULL., Mar. 1971, Table Q-4, at 61; Soc. Sec. BULL.—ANNUAL STATISTICAL SUPPLEMENT, 1975, Table 23, at 57.

sequently, adequate income beyond the "working years" has become a more pressing political and social issue.⁸ Although the steady increase in the percentage of the total population sixty-five and over may cease for a short period around the turn of the century, this trend of growth—both absolute and proportionate—is projected to continue.⁹

As their numbers have increased, the elderly have also grown substantially more dependent on retirement income programs—tending both to live longer after retirement and to withdraw from the work force at an earlier age.¹⁰ Together, the two national income programs for the elderly now represent the single most significant source of income to the elderly as a whole. The programs have special importance to those older people who have difficulty maintaining an adequate income measured in absolute terms, not simply in relation to earlier income from work.

These interconnected political, legislative, and demographic developments provide impetus and focus for this study of the evolution of the present legal relationship between "social insurance" and "public assistance" or need-tested benefits for the elderly. While economic and demographic data will necessarily figure prominently in this investigation, legal materials command center stage. To understand the functional relationship between social insurance and public assistance, one must scrutinize statutory eligibility and benefit formulae, grant-in-aid limits, and other related features of two intricate statutory schemes. Such legal details not only specify the contributions of social insurance and public assistance to elderly individuals in varying income situations at a particular time, but also largely determine how the programs will grow (or diminish) in relation to each other. This Article traces both forms of interaction.

contained 9.0 million persons 65 and over, comprising 6.8% of the total population. *Id.*, Table 2-1, at 3, Table, at 9. Social Security reached less than 1% of them; OAA, roughly 21%. SOC. SEC. BULL.—ANNUAL STATISTICAL SUPPLEMENT, 1975, Table 23, at 57 [hereinafter cited as 1975 ANN. SUPP.]. By 1975, America's 22.4 million elderly comprised 10.5% of the population. ASPECTS OF AGING, *supra*, Table 2-1, at 3, Table 2-4, at 8. Social Security reached almost nine out of ten; SSI, the successor to OAA, about one out of ten. 1975 ANN. SUPP., *supra*, Table 23, at 57.

⁸ See, e.g., Samuelson, *Busting the U.S. Budget—The Costs of An Aging America*, 10 NAT'L J. 256 (1978).

⁹ See ASPECTS OF AGING, *supra* note 7, at 4.

¹⁰ See *id.*, Table 5-1, at 26; BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, HANDBOOK OF LABOR STATISTICS 1975—REFERENCE EDITION, Table 4, at 35 [hereinafter cited as 1975 LABOR STATISTICS].

Ironically, the growth of our national system of old-age income security has been accompanied by a loss of the original perspective that viewed social insurance and public assistance as elements of a single system. At its birth, that view had great influence. In 1934, President Roosevelt checked a congressional inclination toward piecemeal enactment of income support legislation by appointing a cabinet-level Committee on Economic Security to develop a comprehensive program.¹¹ That committee's proposals, modified by the President and Congress, became the Social Security Act of 1935.¹² The phrase "Social Security" has since attached itself to the successor of but one of the programs launched in 1935, Old Age Insurance. Its original use, however, expressed the drafters' intention to provide protection, through a variety of complementary measures, against the major sources of economic distress for individuals and families: unemployment, loss of a parent, and old age.¹³ This integrated approach extended to the two component programs that pertained particularly to the elderly. Although quite different, these programs were explicitly intended as complements to one another.

As the original programs went their separate ways and grew enormously, the perspective fostering integration was lost. The social insurance and public assistance programs for the elderly continued to have profound impact on each other. But during the period of their greatest growth, that impact consisted almost entirely of each, in turn, being modified in light of imprecise assumptions about the other. Little attention and even less effective planning were devoted to the rationality, consistency or fairness of the composite formed by the pair.

During the nation's struggle with welfare reform in the early seventies, the need for a more comprehensive perspective was rediscovered. One of the points on which President Nixon's ill-fated Family Assistance Plan first ran aground in the Senate was its patent failure to deal adequately with problems of program overlap.¹⁴ A subsequent set of studies and a report by the Subcom-

¹¹ See E. WITTE, *THE DEVELOPMENT OF THE SOCIAL SECURITY ACT* 3-9 (1962).

¹² The Committee's report appears in *Economic Security Act: Hearings on H.R. 4120 Before the House Comm. on Ways and Means*, 74th Cong., 1st Sess. 19-59 (1935). For accounts of how that report was prepared and how it fared in Congress, see A. ALTMAYER, *supra* note 1, at 3-42; E. WITTE, *supra* note 11, at 3-11.

¹³ See Martin, *Welfare Law: The Problem of Terminology*, 60 CORNELL L. REV. 793-94 (1975).

¹⁴ See V. BURKE & V. BURKE, *NIXON'S GOOD DEED: WELFARE REFORM* 152-58 (1974); R. LEVY, T. LEWIS & P. MARTIN, *CASES AND MATERIALS ON SOCIAL WELFARE AND THE INDIVIDUAL* 754-59 (1971).

mittee on Fiscal Policy of the Joint Economic Committee of Congress highlighted the urgent need to consider as a whole the country's immense catalog of income support programs.¹⁵ While the present administration's welfare reform efforts have shown signs of responding to that lesson, its version of "comprehensiveness" seems limited to the need-tested programs. As a consequence, the resulting deliberations have largely missed the close relationship between social insurance and public assistance programs.¹⁶ In any event, the reawakened attention to how income programs complement (or frustrate) one another has yet to have a large effect on our public income programs for the elderly. While they distribute relatively generous amounts (compared either to the past or to benefits for other population segments), they display the same qualities of irrationality, unfairness, and inefficiency that led President Carter (and President Nixon before him) to call for "comprehensive reform" of the "welfare system."

Present circumstances do, however, give considerable cause for optimism. The recent substitution of SSI for OAA on the public assistance side of the public income system for the elderly has created a historically unique degree of institutional parallelism. For the first time, the social insurance and public assistance programs serving a particular population segment are administered by the same agency and financed at the same level of government.¹⁷ The basic eligibility and benefit rules for both programs are now set by Congress, and the same congressional committees exercise jurisdiction over both. In no other sector of the nation's chaotic income maintenance system are the institutional factors so favorable for program coordination.

The possibilities for such coordination are the final subject of this Article. Before projecting future prospects, however, it undertakes to survey the importance these programs have assumed for elderly Americans. It then charts the erratic paths that our pair of national income programs for the elderly have traced in relation to each other from their birth in 1935 to their present maturity and importance. Understanding this history is critical to understanding the potential of the current situation. Many of the most attractive present reforms require undoing effects that these programs have had on each other in the past.

¹⁵ SUBCOMM. ON FISCAL POLICY OF THE JOINT ECONOMIC COMM., *INCOME SECURITY FOR AMERICANS: RECOMMENDATIONS OF THE PUBLIC WELFARE STUDY*, 93d Cong., 2d Sess. (1974).

¹⁶ See Martin, *Is Social Security "Welfare"?* CORNELL L.F., Feb. 1978, at 2.

¹⁷ See text accompanying notes 192-99 *infra*.

I

THE PRESENT IMPORTANCE OF FEDERAL TRANSFER
PROGRAMS TO THE ELDERLYA. *The Need*

The central economic fact of life for most older people is that their earnings have decreased. Whether compared to the general population or to the elderly of decades past, the current labor force participation of the elderly is quite low.¹⁸ Although some people retire later than age sixty-five, they are a small minority.¹⁹ Increasing numbers, especially those with marginal skills and deteriorating health, retire earlier.²⁰ Even for the elderly who remain in the labor force, earnings tend to diminish because aged workers generally work fewer weeks per year and fewer hours per week than non-aged workers.²¹ The elderly must therefore find substitutes for what is the principal source of economic security for the general population.²²

¹⁸ For a discussion of causes, see A. MUNNELL, *THE FUTURE OF SOCIAL SECURITY* 62-73 (1977); Hollister, *Income Maintenance Reform Issues with Respect to the Aged*, in *INCOME MAINTENANCE: INTERDISCIPLINARY APPROACHES TO RESEARCH* 71, 76-80 (1971). See also J. KREPS, *LIFETIME ALLOCATION OF WORK AND INCOME* (1971).

¹⁹ In 1975, among those 65 and over, the labor force participation rates were only 21.7% for men and 8.3% for women. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR *HANDBOOK OF LABOR STATISTICS*, 1976, Table 4, at 30. Comparable rates for those 55 to 64 were 75.8% and 41.0% in 1975. In 1967, the rates for those 65 and over were 27.1% and 9.6%. *Id.* Fifteen years earlier, in 1952, they were 42.6% and 9.1%. 1975 LABOR STATISTICS, *supra* note 10, Table 4, at 35. For a focused look at trends in labor force participation among older women, see McEaddy, *Women in the Labor Force: The Later Years*, MONTHLY LAB. REV., Nov. 1975, at 17. Among women employed during the years just prior to 65, the withdrawal rate is about the same as for men. See Bond, *Retirement History Study's First Four Years: Work, Health, and Living Arrangements*, SOC. SEC. BULL., Dec. 1976, at 3, 5.

²⁰ See ASPECTS OF AGING, *supra* note 7, at 51; Lauriat & Rabin, *Men Who Claim Benefits Before Age 65: Findings from the Survey of New Beneficiaries, 1968*, SOC. SEC. BULL., Nov. 1970, at 3.

²¹ See Bixby, *Retirement Patterns in the United States: Research and Policy Interaction*, SOC. SEC. BULL., Aug. 1976, at 3, Table 2, at 4.

²² In 1975, earnings accounted for 86.2% of the aggregate income for male-headed households of all ages and were the major source of income (75% or more) for 75.6% of those households; for female-headed households the figures were 64.7% and 40.5%. HEW, *THE LOW INCOME POPULATION: WHAT WE KNOW ABOUT IT—A STATISTICAL PROFILE* 5-16 (Welfare Reform Analysis Series, Briefing Paper No. 3, 1977) [hereinafter cited as *LOW INCOME POPULATION*].

In the previous year, only 43.2% of the families headed by an individual 65 or over received any earnings (compared to 84.6% of all families). BUREAU OF CENSUS, U.S. DEP'T OF COMMERCE, *MONEY INCOME IN 1974 OF FAMILIES AND PERSONS IN THE UNITED STATES*, Table 5, at 14-15, Table 6, at 16 (Current Population Reports, Series P-60, No. 101, 1976).

Substitutes for lost earnings do exist—Social Security, pensions (public and private), public assistance, and savings—but for the majority of retired elderly, they fail to fill the gap completely. Only a small, though growing, fraction of the elderly retire without experiencing a serious reduction in available cash income.²³ And for many, retirement threatens economic security not just in terms of prior levels of income, but in absolute terms as well.

These changes are usually permanent.²⁴ As a consequence, the fairly frequent movement in and out of poverty status experienced by the low-income population as a whole does not occur for the elderly.²⁵ Because of reduced earnings, the elderly are less likely to experience income improvement due to economic growth or the reduction of unemployment—forces that have a significant beneficial effect on the number of lower-income households in general.²⁶ In fact, economic expansion is likely to have a detrimental effect on the elderly since expansion is usually accompanied by inflation. The average person reaching age sixty-five today has a life expectancy of about sixteen years.²⁷ Over that time any fixed income will be reduced by a quarter to a third if the cost of living goes up as little as two percent a year.²⁸

Because of earnings loss, the median money income of households headed by a person sixty-five or over is slightly less than fifty percent of that for all households, and only forty-five percent of that enjoyed by households with a head between fifty-five and sixty-four.²⁹ The rate of poverty (percentage with

²³ See J. SCHULZ, G. CARRIN, H. KRUPP, M. PESCHKE, E. SCLAR & J. VAN STEENBERGE, PROVIDING ADEQUATE RETIREMENT INCOME 10-23, 46 (1974); Fox, *Work Status and Income Change, 1968-72: Retirement History Study Preview*, SOC. SEC. BULL., Dec. 1976, at 15, 26.

²⁴ See Grad, *New Retirees and the Stability of the Retirement Decision*, SOC. SEC. BULL., Mar. 1977, at 3, 7-11.

²⁵ See M. BARTH, G. CARCAGNO & J. PALMER, TOWARD AN EFFECTIVE INCOME SUPPORT SYSTEM: PROBLEMS, PROSPECTS AND CHOICES 43-44 (1974); I J. MORGAN, K. DICKINSON, J. DICKINSON, J. BENUS & G. DUNCAN, FIVE THOUSAND AMERICAN FAMILIES—PATTERNS OF ECONOMIC PROGRESS 29 (1972).

Among the general population, a third or so of those who have poverty incomes rise above the poverty line each year and are replaced by a comparable number. LOW INCOME POPULATION, *supra* note 22, at 5-21.

²⁶ See LOW INCOME POPULATION, *supra* note 22, at 5-7. See also R. PLOTNICK & F. SKIDMORE, PROGRESS AGAINST POVERTY: A REVIEW OF THE 1964-1974 DECADE 122 (1975).

²⁷ ASPECTS OF AGING, *supra* note 7, at 26.

²⁸ See R. TILOVE, PUBLIC PENSION FUNDS 82 (1976).

²⁹ See BUREAU OF CENSUS, U.S. DEP'T OF COMMERCE, HOUSEHOLD MONEY INCOME IN 1975, Table 7, at 26-29 (Current Population Reports, Series P-60, No. 104, 1977). The median figure for all households in 1975 was \$11,800; those for households with heads 65 years or over and 55-64 were \$5,585 and \$12,485, respectively. *Id.* The 1970 census figures

money income below the low-income level) is correspondingly higher for the elderly than the population generally.³⁰ In 1970, approximately one quarter of all persons sixty-five or over fell below the poverty line.³¹

B. *The Contribution of Public Income Programs*

Without the economic support provided by the two national public income programs for the elderly, these income figures would be far worse. In 1972, public income support lifted nearly two-thirds of the elderly who would otherwise have been below the poverty income line above it.³² Half received enough Social Security alone to rise above the poverty line.³³ In 1974, the pov-

show a comparable relationship with median incomes of \$9,596 for all families, \$4,985 for families with a head 65 or over, \$2,488 for all unrelated individuals, and \$1,813 for unrelated individuals 65 or over. BUREAU OF CENSUS, U.S. DEP'T OF COMMERCE, 1970 CENSUS, CHARACTERISTICS OF THE POPULATION, PART 1, UNITED STATES SUMMARY, Section 2, Table 250, at 873-75 [hereinafter cited as POPULATION CHARACTERISTICS].

³⁰ The 1970 census reported that 19.2% of families with heads 65 or over had incomes below the poverty line, compared with 10.7% for all families. For unrelated individuals, the percentages bore a similar relationship but were much higher—50.8% for individuals 65 and over, 37.1% for unrelated individuals generally. POPULATION CHARACTERISTICS, *supra* note 29, Section 2, Table 259, at 962.

³¹ See *id.*

³² R. PLOTNICK & F. SKIDMORE, *supra* note 26, at 146-47. Another study puts the fiscal year 1976 fraction at close to three-quarters. CONGRESSIONAL BUDGET OFFICE, U.S. CONGRESS, POVERTY STATUS OF FAMILIES UNDER ALTERNATIVE DEFINITIONS OF INCOME, Table 6, at 12 (rev. ed. 1977) [hereinafter cited as POVERTY STATUS].

Another indication of the importance of these programs, manifest during their recent growth, is the dramatic reduction in the rate of poverty among the elderly. The economic situation of the elderly was appreciably worse several years ago, when fewer elderly were receiving Social Security, benefits were significantly lower, and public assistance (at that time OAA) was less generous. As recently as 1967, the poverty rate among persons 65 and over was 29.5%. By 1972 it had dropped to 18.6% and by 1974, to 15.7%. During the same period the poverty rate for the population as a whole moved only from 14.2% to 11.6%. BUREAU OF CENSUS, U.S. DEP'T OF COMMERCE, CHARACTERISTICS OF THE POPULATION BELOW THE POVERTY LEVEL, 1974, Table 1, at 14 (Current Population Reports, Series P-60, No. 102, 1976). See generally HEW, THE MEASURE OF POVERTY 125-26 (1976). For another more comprehensive index of the impact of these programs, reduction of income inequality, see Danziger & Plotnick, *Demographic Change, Government Transfers, and Income Distribution*, MONTHLY LAB. REV., Apr. 1977, at 7.

³³ Because of the high incidence of pretransfer poverty among the elderly with a history of low earnings, roughly half of the dollars distributed in Social Security benefits go to pretransfer poor. See LOW INCOME POPULATION, *supra* note 22, Table 9, at 4-6. During 1972, over 80% of all poor households with heads 65 or over received Social Security; on average it amounted to 80% of their total income. R. PLOTNICK & F. SKIDMORE, *supra* note 26, at 145, 149. Over 20% of poor elderly households received public assistance payments; on average they accounted for one-half of those households' cash income. *Id.* at 145. As a consequence of these improvements in public income support for the elderly poor, improvements that have not been matched by similar growth in public benefits for other

erty rate among elderly persons was down to sixteen percent; prior to counting income from public cash benefit programs,³⁴ principally Social Security and SSI, it was over fifty percent (see Table 1).

TABLE 1
*Poverty and Cash Transfers
to Elderly 1965-1975*

Calendar Year	% of Elderly Receiving ^a		Pre-Cash-Transfer Poverty Rate ^b		Post-Cash-Trans- fer Poverty Rate ^c		% of Post- Cash- Transfer Poor Who Are 65 & Over ^c
	OASI	OAA/SSI	Households With Head 65 & Over	Households With Head Under 65	Persons 65 & Over	Popula- tion as a Whole	
1965	75.2	11.7	*	*	*	17.3	*
1967	82.6	11.0	*	*	29.5	14.2	24.5
1970	85.5	10.4	*	*	24.6	12.6	22.9
1972	85.6	9.6	*	*	18.6	11.9	19.0
1974	88.3	9.6	*	*	15.7	11.6	16.2
1975	89.2	10.1	53	15	*	*	*

* - not available

Sources:

^a SOC. SEC. BULL.—ANNUAL STATISTICAL SUPPLEMENT, 1975, Table 23, at 57.

^b BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, CHARACTERISTICS OF THE POPULATION BELOW THE POVERTY LEVEL, 1974, Table 1, at 13-14 (Current Population Reports, Series P-60, No. 102, 1976).

^c HEW, THE LOW-INCOME POPULATION, Table 6, at 3-4 (1977).

Despite this success, public benefit programs have not done terribly well for those just up the income scale, who also suffer severe economic loss upon retirement. The median income for elderly households remains just above the poverty line, far below that of only slightly younger households.³⁵ SSI (like OAA

segments of the population (see Danziger & Plotnick, *supra* note 32, at 8-9), the elderly have constituted a declining percentage of the low-income population. In 1967, 19.4% of the poor were older people; by 1974, only 13.6%. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, CHARACTERISTICS OF THE POPULATION BELOW THE POVERTY LEVEL, 1974, Table 1, at 13 (Current Population Reports, Series P-60, No. 102, 1976).

³⁴ In 1975, the pretransfer poverty rate (*i.e.*, the poverty rate before counting government income-transfer payments) among households headed by persons 65 and over was, by one count, 53%. LOW INCOME POPULATION, *supra* note 22, Table 6, at 3-4. See POVERTY STATUS, *supra* note 32, Table 6, at 12 (59.9%); M. BARTH, G. CARCAGNO & J. PALMER, *supra* note 25, Table 4, at 25 (54% for 1971).

³⁵ See note 29 *supra*. As a result of the clustering of elderly near the poverty line, using a definition of poverty less stringent than the official measure adds relatively more elderly than others to the low-income population. For example, doubling the present poverty income level increases the poverty rate to 50.3% among the elderly, compared to 33.1% among the population as a whole. And it increases the proportion of the poor who are elderly from 13.6% to 15.3%. HEW, THE MEASURE OF POVERTY, Tables 19 & 20, at 113-14 (1976).

before it) employs a need test that prevents assistance from reaching much above the poverty line.³⁶ Social Security provides much lower returns on contribution to those likely to have incomes above the poverty line, with the result that roughly half of its benefits go to families who number among the pretransfer poor.³⁷ Thus, one finds the elderly heavily clustered at income levels that depend on these programs. In 1975, the median age of heads of households in which the annual income was \$2,000 to \$2,999 or \$3,000 to \$3,999 was over sixty-five, while for the next lower and next higher incomes it was at least five years younger.³⁸ The average Social Security benefit for a retired worker in 1975 fell right in the middle of the first income range (roughly \$2,500) and average benefits for a family comprised of a retired worker and a dependent spouse were in the second.³⁹ The manifest shortcomings of public benefit programs for those elderly just above the poverty line does not, however, undermine their value for this group.

C. OASI, SSI and Other Important Sources for Low-Income Elderly

Looking more closely at which of the elderly get income from particular sources, distinct patterns of income combination emerge. In plotting those patterns, Social Security benefits, being largest in amount and most comprehensive in coverage, furnish the best starting point.⁴⁰

³⁶ In 1975 the poverty line for an elderly individual was \$2,572; for a couple it was \$3,232. BUREAU OF CENSUS, U.S. DEP'T OF COMMERCE, CHARACTERISTICS OF THE POPULATION BELOW THE POVERTY LEVEL: 1975, Table A-3, at 199 (Current Population Reports, Series P-60, No. 106, 1977). The federal SSI annual payment level during the latter half of that year was \$1,892.40 for an individual and \$2,839.20 for a couple. 40 Fed. Reg. 22,889 (1975).

The 1976 poverty figures were \$2,720 and \$3,417, respectively. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, MONEY INCOME AND POVERTY STATUS OF FAMILIES AND PERSONS IN THE UNITED STATES: 1976, (ADVANCE REPORT), Table 15, at 20 (Current Population Reports, Series P-60, No. 107, 1977). The SSI levels, as of July 1, 1976, were \$2,013.60 and \$3,021.60. 41 Fed. Reg. 19,999 (1976).

³⁷ See LOW INCOME POPULATION, *supra* note 22, Table 9, at 4-6. The pretransfer poor are those considered poor when income from public benefit programs is ignored.

³⁸ BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, HOUSEHOLD MONEY INCOME IN 1975, Table II, at 37 (Current Population Reports, Series P-60, No. 104, 1977).

³⁹ See *Current Operating Statistics*, Soc. SEC. BULL., Mar. 1977, Table M-13, at 48.

⁴⁰ During fiscal year 1976, the Social Security Program paid out cash benefits totaling over sixty-two billion dollars to retired persons and their dependents, and to survivors of deceased workers. *Id.*, Table M-5, at 40.

1. Social Security

At the end of 1976, ninety percent of the population sixty-five and over was receiving Social Security cash benefits.⁴¹ Seventy-four percent of all Social Security recipients were sixty-two or over.⁴² Social Security payments comprise more than one-fourth of the aggregate income of those sixty-five or over, approximately three-fourths for those with the lowest incomes.⁴³

For many recipients, Old-Age and Survivors Insurance⁴⁴ (OASI) benefits are the dominant source of income. In 1967, OASI benefits comprised at least half of total income for 51% of married couples with a head of the household sixty-five or over receiving OASI and 65% of the nonmarried elderly; for 13% of the married couples and 31% of the nonmarried elderly, OASI benefits comprised 90% or more of income.⁴⁵ In view of the growth in Social Security benefit levels over the last ten years, those percentages are almost certainly higher today.

2. Supplemental Security Income

Some of the elderly not receiving Social Security are simply postponing benefits, having not yet "retired" as defined by the program's earnings test of retirement. For the elderly who are truly ineligible for Social Security and who do not have substantial earnings or pensions (public or private),⁴⁶ the crucial income source is public assistance.⁴⁷ Overall, public assistance accounts

⁴¹ *Quarterly Statistics*, SOC. SEC. BULL., Mar. 1977, Table Q-3, at 73.

⁴² *Current Operating Statistics*, *supra* note 39, Table M-14, at 49. Sixty-four percent of Social Security recipients were 65 or older.

⁴³ See Hollister, *Social Mythology and Reform: Income Maintenance for the Aged*, 415 ANNALS 19, Table 2, at 26 (1974).

⁴⁴ In addition to OASI, "Social Security" includes disability and health insurance components.

⁴⁵ Note, *Relative Importance of Income Sources of the Aged*, SOC. SEC. BULL., Aug. 1973, at 37, 39.

Although its findings are now dated, the Social Security Administration's 1968 Survey of the Aged furnishes the most comprehensive information on income sources for the elderly. See Bixby, *Income of People Aged 65 and Older: Overview from 1968 Survey of the Aged*, SOC. SEC. BULL., Apr. 1970, at 3.

⁴⁶ Among those elderly ineligible for Social Security, roughly one-quarter receive some other public pension (not including public assistance). The 1968 Survey of the Aged put the figure at 24%—16% from the railroad retirement program, 9% from a government employment pension. Bixby, *supra* note 45, Table 5, at 13. Only three percent receive private pensions. *Id.*

⁴⁷ During fiscal year 1976, combined federal and state SSI benefits totaled 2.6 billion dollars. Compiled from *Current Operating Statistics*, SOC. SEC. BULL., Nov.-Dec. 1975, Table

for less than five percent of the income of the elderly.⁴⁸ But among the aged not receiving Social Security in 1967, twelve percent of the married couples and forty-four percent of the non-married persons received at least half their income from public assistance.⁴⁹ At that time, the principal public assistance program for the elderly was OAA. As already noted, that grant-in-aid program was replaced in January 1974 by a new program (SSI) assuring minimum levels of cash income on a nationwide scale to virtually all persons sixty-five and over. In addition to those basic federal benefits, many states fund supplementary benefits. The new public assistance combination has brought higher average benefit levels.

Most Social Security beneficiaries do not meet the need test for SSI payments. Nonetheless, SSI is an important supplement for those whose Social Security benefits are at the bottom of the scale. In June 1976, seventy percent of the elderly persons receiving SSI also received some Social Security.⁵⁰

3. Other Income Sources of the Low-Income Elderly

While asset income, pensions and earnings are significant sources of income to the elderly as a class, they are, almost by definition, fairly insignificant to the elderly who depend on SSI and OASI to provide a minimally adequate income. Compared to those at higher Social Security benefit levels, those receiving minimum Social Security benefits are less likely to receive income from private pensions or assets but more likely to be receiving a second public pension or public assistance.⁵¹ Shifting to a related

M-22, at 59; SOC. SEC. BULL., Nov. 1976, Table M-22, at 70; SOC. SEC. BULL., Jan. 1977, Table M-29, at 65. During the last month of that period, June 1976, 2.5 million elderly persons received SSI payments. Derived from *Current Operating Statistics*, SOC. SEC. BULL., Oct. 1976, Table M-22, at 74; SOC. SEC. BULL., Dec. 1976, Table M-31, at 60. That represented nearly one out of every ten persons sixty-five or over. *Quarterly Statistics*, *supra* note 41, Table Q-3, at 73. During the mid- to late-sixties, a slightly higher percentage of the elderly were receiving OAA, but benefits were significantly lower. See Table 1.

⁴⁸ The 1970 census reports public assistance income (during 1969) to be 1.2% of the aggregate income of all families headed by an individual 65 or over. POPULATION CHARACTERISTICS, *supra* note 29, Section 2, Table 264, at 1016. The 1968 Survey of the Aged put it at four percent for 1967. Bixby, *supra* note 45, at 14.

⁴⁹ Note, *supra* note 45, Table 3, at 40.

⁵⁰ *Quarterly Statistics*, *supra* note 41, Table Q-3, at 73. By contrast, fewer than three percent received any earnings. SOCIAL SECURITY ADMINISTRATION, HEW, EMPLOYMENT AND EARNINGS: SSI BENEFICIARIES, DECEMBER 1975, Table 1, at 3 (Research and Statistics Note No. 4, 1977).

⁵¹ Lauriat, *Benefit Levels and Socio-economic Characteristics: Findings from the 1968 Survey of the Aged*, SOC. SEC. BULL., Aug. 1970, at 3, Table 3, at 8.

reference point—total income⁵²—one discovers that earnings and income from assets are far less significant sources for lower-income elderly. In addition, private pensions are available to an insignificant number in this group of elderly and, quite naturally, public assistance takes on much greater importance (see Table 2 &

TABLE 2
*Importance of Various Income
Sources to Elderly
Families and Individuals*

	<i>Earnings</i>	<i>OASI</i>	<i>Public Assist.</i>	<i>Assets</i>	<i>Private Pension</i>	<i>Public Pension & Other</i>
Percent Who Have Particular Income Source (1974): ^a						
Families with Head 65 or Over						
—Below Poverty Line	35.4%	85.3%	30.0%	29.6%		6.4%
—All Income Levels	51.8	90.5	9.9	69.5		21.9
Unrelated Individuals 65 or Over						
—Below Poverty Line	8.6	84.4	28.1	30.2		7.0
—All Income Levels	18.2	89.7	14.5	57.4		16.0
Percent of Aggregate Income That Comes From Specified Source (1972): ^b						
Families with Head 65 or Over						
—Income Below \$2,500	6%	72%	10%	6%		6%
—Income Above \$2,500	47	26	1	14		12
Unrelated Individuals 65 or Over						
—Income Below \$2,000	2	75	11	5		7
—Income Above \$2,000	19	36	2	28		15

Sources:

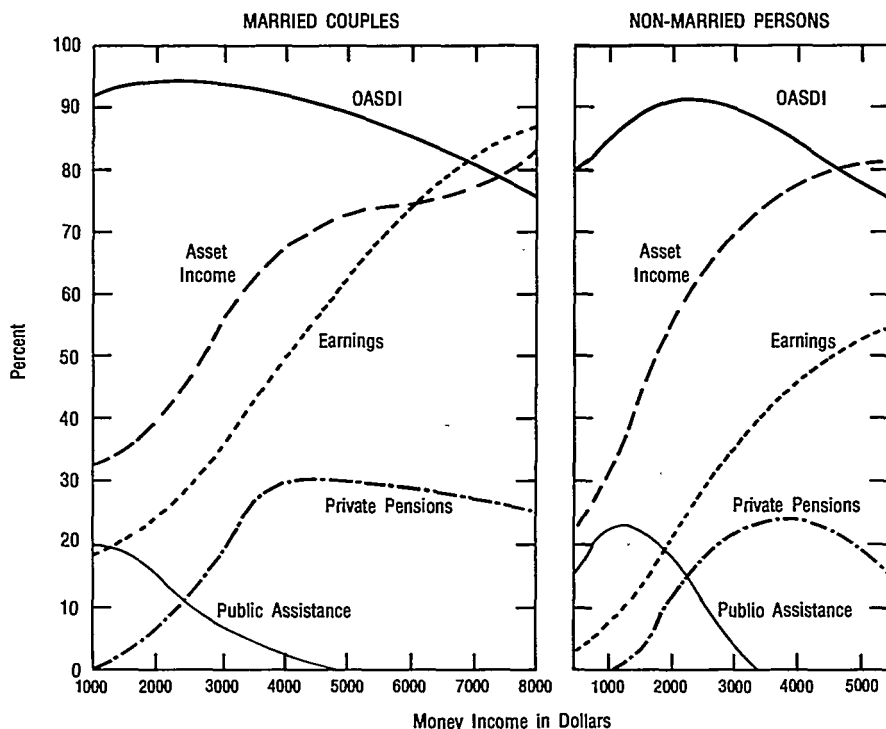
^a BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, CHARACTERISTICS OF THE POPULATION BELOW THE POVERTY LEVEL, 1974, Table H, at 9 (Current Population Reports, Series P-60, No. 102, 1976).

^b Hollister, *Social Mythology and Reform: Income Maintenance for the Aged*, 415 ANNALS 19, Table 2, at 26 (1974).

⁵² A strong correlation exists between Social Security benefit level and total income. See *id.* at 9-12. The principal class of low-level beneficiaries with higher incomes are those who have accumulated a healthy pension through a career in public employment, uncovered by Social Security, and have also acquired minimum Social Security benefits through a small amount of additional private employment or a spouse's employment. See REPORTS OF THE QUADRENNIAL ADVISORY COUNCIL ON SOCIAL SECURITY, H. DOC. NO. 75, 94th Cong., 1st Sess. 34-35 (1975); STAFF OF SUBCOMM. ON FISCAL POLICY OF JOINT ECONOMIC COMM., 92d CONG., 2d Sess., PUBLIC INCOME TRANSFER PROGRAMS: THE INCIDENCE OF MULTIPLE BENEFITS AND ISSUES RAISED BY THEIR RECEIPT 26 (Studies in Public Welfare, Paper No. 1, 1972).

FIGURE 3

*Sources of Income of Aged Units
by Size of Income, 1967*



Source: Bixby, *Income of People Aged 65 and Older: Overview From 1968 Survey of the Aged*, SOC. SEC. BULL., April 1970, 3, at 17.

Figure 3). Somewhat surprisingly, the source most important to those elderly who have managed to stay above the poverty line (when compared to those below) is earnings. The poverty rate for elderly families with a fully employed head is less than half that for elderly families generally.⁵³

4. Sources of Economic Security Generally Not Counted as Income

All official calculations of income and poverty are based on *cash income before taxes*. As a result, they fail to measure improvement in the economic condition of the elderly poor resulting from public programs like Medicare, Medicaid, and Food Stamps.⁵⁴ A

⁵³ Hollister, *supra* note 18, at 76-77.

⁵⁴ See 1975 ANN. SUPP., *supra* note 7, Table 29, at 64, Table 141, at 164, Table 145, at 167, Table 176, at 187.

recent study that placed a cash value on those benefits calculated that they reduced the poverty rate in elderly households in fiscal year 1976 to 6.1%; according to the same study, the figure for elderly families counting only cash income was 16.7%.⁵⁵

The use of *pre-tax* income means that the official statistics do not reflect the special tax advantages—sometimes termed “tax subsidies”—enjoyed by the elderly. Since a tax burden does rest on the low-income elderly, using pre-tax income apparently understates their economic hardship. But since the low-income elderly enjoy many more tax advantages than other portions of the population, these figures actually overstate the relative hardship of this age group. Thus, calculating after-tax (and after-in-kind transfer) income further trims the percentage of the poor who are elderly.⁵⁶ Among the “tax subsidies” important to the elderly are the exclusion of Social Security, SSI and other public benefits from taxable income, the double personal exemption for those sixty-five and over, and the Retirement Income Credit.⁵⁷

In addition, while assets do not compare with earnings or pensions as a major source of income for the elderly, the elderly do have larger asset holdings than the rest of the population.⁵⁸ This is equally true of the low-income elderly vis-à-vis the younger poor population.⁵⁹ Owner-occupied homes account for a significant portion of these assets and are, in theory, a source of reduced expenditure or imputed income. Liquid assets are also significant, not only as an income source, but also as a source to draw upon to augment income.⁶⁰ Yet the liquid asset holdings of

⁵⁵ POVERTY STATUS, *supra* note 32, Table 6, at 12.

⁵⁶ *Id.*

⁵⁷ Together they accounted for a “subsidy” of over \$4 billion in fiscal 1974. FEDERAL COUNCIL ON THE AGING, THE IMPACT OF THE TAX STRUCTURE ON THE ELDERLY 47 (1975).

⁵⁸ J. PECHMAN, H. AARON & M. TAUSSIG, SOCIAL SECURITY: PERSPECTIVES FOR REFORM 15-17 (1968) [hereinafter cited as PECHMAN ET AL.]. They also have less debt. See Sherman, *Assets on the Threshold of Retirement*, SOC. SEC. BULL., Aug. 1973, at 3, 10-11.

⁵⁹ PECHMAN ET AL., *supra* note 58, at 18. The amount of asset holdings is, however, closely related to income. See Murray, *Homeownership and Financial Assets: Findings from the 1968 Survey of the Aged*, SOC. SEC. BULL., Aug. 1972, at 3, 10, 17.

⁶⁰ One study lumped assets of all forms together and assigned an annuity value based upon the expected remaining lifetime of the head of the household.

[I]t was found that, whereas the aged comprised 33 percent of the total poverty population when income alone was used as a measure of poverty, when an income-net-worth measure was used the aged accounted for only 28 percent. This reduction is a result both of the higher net worth of the aged and their short-life span over which to annuitize that net worth.

Hollister, *supra* note 18, at 73. The study referred to is Weisbrod & Hansen, *An Income-Net Worth Approach to Measuring Economic Welfare*, 58 AM. ECON. REV. 1315 (1968). See also

the elderly are generally quite small, by any absolute measure,⁶¹ and the owner-occupied house is often more a curse than a blessing, at least economically.⁶² Thus, while asset holdings may not substantially enrich the low-income elderly, they are significant enough to be a matter of special concern in the framing of public income programs.⁶³

D. *When Benefits Begin*

Any data or discussion based upon a definition of "elderly" that arbitrarily lumps together all persons of a certain age will naturally distort results. The characteristics of the population over 65 or over 62 or over 60 do not suddenly appear. Mandatory retirement policies have affected a portion of the working population, but for many of those approaching age 65, economic stress is as severe as for those 65 and older (ignoring income programs that make age 65 or 62 or 60 a threshold).⁶⁴ Nor does economic stress remain constant past 65. The older the population segment, the worse off it is in economic terms. Earnings are higher for those just at 65 and immediately beyond than for those more senior; medical problems increase in severity; and private pensions based upon past earnings tend to lose substantial value over time, due to inflation.

Yet most of the important income sources for the elderly—especially the low-income elderly—do carry a specific age (or age and period of employment) threshold. These thresholds lack consistency, so transition from employment-supported living to retirement will typically see different "retirement benefits" starting

MOON, *The Economic Welfare of the Aged and Income Security Programs*, in M. MOON & E. SMOLENSKY, *IMPROVING MEASURES OF ECONOMIC WELL-BEING* 87, 88 (1977) ("Net worth holdings spread over an average aged family's remaining expected lifetime would add as much as 30 percent to its current money income each year.").

⁶¹ See Sherman, *supra* note 58, at 8-9. Half of the older people (ages 58-63) with financial assets (bank accounts, stocks, etc.) surveyed in 1969 had a total of less than \$3,200. *Id.*

⁶² See Hollister, *supra* note 18, at 84-85.

⁶³ For further discussion of this issue and an illustration of the complexity of quantifying the addition of potential asset consumption to the economic well-being of the elderly, see Moon, *supra* note 60, Tables I & 2, at 101-02; M. Moon & E. Smolensky, *Income, Economic Status, and Policy Toward the Aged 4-5* (Institute for Research on Poverty, Discussion Paper No. 350-76, 1976).

⁶⁴ About 60% of the men and 80% of the women claiming retired-worker benefits for the first time elect to have them begin before age 65, at a sacrifice of monthly benefit amount. Many of those electing benefits before 65 are long-term unemployed. See 1975 ANN. SUPP., *supra* note 7, Table 59, at 91. See generally Lauriat & Rabin, *supra* note 20.

at different times. Private and public employment pensions allow benefits to start well before age sixty-five, occasionally without any early-retirement reduction if the pensioner has enough prior service. Increasingly, private plans allow retirement as early as age fifty-five.⁶⁵ At the extreme, only about ten percent of retired military personnel now receiving pensions are sixty-five or over.⁶⁶ On the other hand, Social Security benefits are unavailable until age sixty-two⁶⁷ (sixty in the case of a widow or widower of a deceased worker with coverage⁶⁸). And eligibility for SSI, Medicaid and Medicare is limited to those sixty-five and over.⁶⁹ To the many older persons who have not yet crossed these arbitrary age thresholds, significant economic hardship often results.

Nevertheless, by age sixty-five both Social Security and SSI are available, augmented by three important non-cash benefits—Medicare, Medicaid, and Food Stamps. Although these programs have not eradicated poverty among the population sixty-five and over, they have focused benefits on the elderly in an amount not matched for any other segment of the population.

II

THE ORIGINAL BLUEPRINT: THE SOCIAL SECURITY ACT OF 1935

The Social Security and SSI programs, now so important to the economic security of older Americans, trace directly back to the Social Security Act of 1935. The framers of that landmark legislation paid priority attention to the income needs of the elderly.⁷⁰ To meet those needs, the Act established a pair of programs—Old Age Insurance (OAI) and Old Age Assistance

⁶⁵ Skolnick, *Private Pension Plans, 1950-74*, SOC. SEC. BULL., June 1976, at 3, 7-9.

⁶⁶ SOCIAL SECURITY ADMINISTRATION, HEW, BENEFITS AND BENEFICIARIES UNDER PUBLIC EMPLOYEE RETIREMENT SYSTEMS, CALENDAR YEAR 1975, at 2 (Research and Statistics Note No. 17, 1976).

⁶⁷ 42 U.S.C. § 402(a)(2) (1976).

⁶⁸ *Id.* § 402(e)(1)(B), (f)(1)(B).

⁶⁹ See *id.* §§ 1382c(a)(1), 1395c, 1396a(10). In the case of all these public programs, however, a person able to establish "disability" can start benefits earlier. *Id.*

⁷⁰ See SOC. SEC. IN AMERICA, *supra* note 4, at 137-226; E. WITTE, *supra* note 11, at 27. That attention derived in part from political pressure generated by the Townsend movement. The Townsend plan, which remained a force to be reckoned with into the early forties, offered the elderly immediate universal coverage and payments of \$200 a month. See M. SCHILTZ, *supra* note 3, at 40-44; TWENTIETH CENTURY FUND, INC., THE TOWNSEND CRUSADE (1936).

(OAA). The decision to employ a two-component rather than one-component system, though controversial at the time, set a pattern that has proven highly durable.⁷¹

Old Age Insurance was federally administered and shaped as a contributory plan; it paid benefits to those who, during their working years, had made mandatory contributions in the form of an earnings tax.⁷² This "insurance" scheme was expected ultimately to develop into the "first line of defense against destitution in old age."⁷³ Being contributory, however, the program was not designed to commence paying out significant benefits for some time. The original legislation provided for contributions to begin January 1, 1937, and for monthly retirement payments to begin no earlier than January 1, 1942.⁷⁴

Until the "insurance" program hit its stride and, it was thought, decreasingly thereafter, it would be essential to have a noncontributory program that paid benefits to all those of retirement age who lacked adequate resources. The program designed to fill that need was Old Age Assistance, administered by the states with partial federal support and only modest federal control.⁷⁵ By June 30, 1936, less than a year after enactment of the Social Security Act, thirty-four states plus the District of Columbia had OAA plans that qualified for federal support. By the end of December 1937, all but one state (Virginia) had qualifying plans.⁷⁶ In that month, OAA benefits reached over a million and a half elderly persons. During 1937, federal, state, and local expenditures for the program totaled \$311 million.⁷⁷

In short, for the initial post-enactment period, the allocation of responsibility between the two programs established by the 1935 Act was clearcut. Of the two, only OAA was capable of re-

⁷¹ The controversy centered on Old Age Insurance; Old Age Assistance was the most popular feature of the Act. See E. WITTE, *supra* note 11, at 78-79, 93-95, 103.

⁷² See Social Security Act of 1935, ch. 531, §§ 201-210, 49 Stat. 620. To anyone familiar with the present statute, the simplicity of the 1935 legislation is overwhelming. The OAI provisions take up less than four pages. They are usefully summarized in Soc. Sec. in AMERICA, *supra* note 4, at 222-26.

⁷³ A. ALTMAYER, *supra* note 1, at 16.

⁷⁴ Soc. Sec. in AMERICA, *supra* note 4, at 224-25. The 1939 amendments moved the latter date up to January 1, 1940. A. ALTMAYER, *supra* note 1, at 91, 119, 278. See L. MERIAM, RELIEF AND SOCIAL SECURITY 74-125 (1946).

⁷⁵ See Social Security Act of 1935, ch. 531, §§ 1-6, 49 Stat. 620; Soc. Sec. in AMERICA, *supra* note 4, at 189-97, 217-21.

⁷⁶ SOCIAL SECURITY BOARD, SOCIAL SECURITY YEARBOOK: 1939, at 12 (1940).

⁷⁷ BUREAU OF RESEARCH AND STATISTICS, SOCIAL SECURITY BOARD, TABULAR SUMMARY OF STATISTICS OF PUBLIC ASSISTANCE, Table 1, at 2 (1937).

sponding to the large, immediate income need of the elderly population. And OAA moved quite rapidly toward alleviating that need.

The initial plan for the subsequent interaction of the programs was also quite clear but perhaps a bit naive. As the number of those covered by OAI gradually increased, fewer would require assistance. Years later, Arthur Altmeyer recalled:

I well remember . . . the meeting [of the President's Committee on Economic Security in 1934] when the staff exhibited a wall chart . . . [showing] two lines: one declining year by year, which represented the declining number of old age assistance recipients; the other rising year by year, which represented the number of old age insurance beneficiaries. The two lines eventually crossed, demonstrating how the old age insurance system would gradually liquidate the old age assistance system.⁷⁸

Implicit in this blueprint was an assumption that most, if not all, recipients of OAI would not need OAA, that once the insurance program attained maturity it would furnish a minimally adequate level of benefits to all recipients, at least measured against the payment standards of state OAA programs.

⁷⁸ A. ALTMAYER, *supra* note 1, at 26. While some apparently did refer to the "liquidation of Old Age Assistance," the claims made by most supporters of the bill that became the Social Security Act were less extreme. The Report of the Committee on Economic Security stressed the need for the contributory OAI plan to hold down, not eliminate, expenditure under noncontributory OAA:

Contributory annuities [Old Age Insurance] can be expected in time to carry the major, but under the plan we suggest, never the entire load.

....

... The estimates of the actuaries indicate that if a compulsory system of contributory annuities is started by January 1, 1937, the Federal grants-in-aid to the noncontributory pensions will by 1980 total less than 40 percent of the amount they will reach by that date if a contributory system is not started.

Economic Security Act: Hearings on H.R. 4120 Before the House Comm. on Ways and Means, 74th Cong., 1st Sess. 39, 42 (1935).

The executive director of the Committee, Edwin E. Witte, made it clear in testimony before the House Ways and Means Committee that the reduced 1980 figure will remain because the contributory system [embodied in the bill] will not reach large groups in our population. If we can devise a method by which we can bring into the contributory system the groups in the population who are not now covered, the self-employed groups, then that cost can be further reduced.

Id. at 100-01.

When one compares such presentations with the recollections of congressmen unhappy with rising welfare costs during the 1960's, one is led to conclude that the "withering away" notion grew more simplistic with time. See G. STEINER, *SOCIAL INSECURITY: THE POLITICS OF WELFARE* 26 (1966) (in a chapter entitled, "The Withering Away Fallacy").

Forty-five years after [Old Age Insurance] becomes effective [1982!] persons whose wages from included employment have averaged \$50 a month will be eligible at age 65 to a life income of \$35 a month. In the absence of any radical increase in costs of living this amount may often be sufficient to provide for the person's needs without supplementary assistance from State old-age assistance plans. The Federal old-age benefit system will thus serve in the course of time to reduce materially the extent of old-age dependency among wage earners and the resulting burden on the State and Federal Governments for charitable assistance.⁷⁹

The presumed adequacy of Old Age Insurance vis-à-vis Old Age Assistance, upon which this prediction rested, was substantially enhanced by the Social Security Act Amendments of 1939. These amendments added dependents and survivors benefits to OAI (sweeping in large numbers of otherwise uncovered individuals) and changed the formula for retirement benefits to one based on average wages. At the same time, they increased the limit for federal reimbursement of OAA to benefits totaling forty dollars a month.⁸⁰ Although the amendments reduced the benefit for the single retired worker whose wages averaged fifty dollars a month over a forty-five year period (see the example quoted above),⁸¹ if that worker had a qualifying dependent wife,

⁷⁹ SOC. SEC. IN AMERICA, *supra* note 4, at 224. The \$35 a month figure is significant because it exceeded by five dollars the maximum OAA benefit for which federal grant-in-aid funds were available under the 1935 Act. *Id.* at 221. For most states, although not all, that limit on federal reimbursement set the ceiling on OAA payment levels during the early years of the program. In 1939, for example, 40 of 51 jurisdictions with approved OAA plans had an explicit limit on monthly payments of \$30 or less per month. SOCIAL SECURITY BOARD, SOCIAL SECURITY YEARBOOK: 1939, at 158. *See id.* at 201, 204.

The \$50 a month wage figure was well below the average for a manufacturing worker in 1935. 1975 LABOR STATISTICS, *supra* note 10, Table 102, at 254. It approximated monthly earnings at the minimum wage established by the Fair Labor Standards Act of 1938 (a 44 hour week at 25 cents an hour). *See* Fair Labor Standards Act of 1938, ch. 676, §§ 6(a)(1), 7(a)(1), 52 Stat. 1060.

⁸⁰ Social Security Act Amendments of 1939, ch. 666, sec. 102, § 3(a), 53 Stat. 1360. *See* A. ALTMAYER, *supra* note 1, at 278; L. MERIAM, *supra* note 74, at 77-79; Martin, *Social Security Benefits for Spouses*, 63 CORNELL L. REV. 789, 795-801 (1978). Significantly, the \$40 a month figure corresponded closely to the contemporary public's view of "the smallest income that a single person over sixty [required] for a decent living." M. SCHILTZ, *supra* note 3, at 45.

⁸¹ The formula provided 40% of the average monthly wage up to the first \$50 (plus 10% of the amount the average exceeded \$50, up to \$250), the resulting dollar amount to be increased by one percent for each year of coverage. Social Security Act Amendments of 1939, ch. 666, sec. 201, § 209(e), 53 Stat. 1360. For the \$50-a-month worker with 45 years, this yielded a benefit of \$29.00.

her benefit increased the family's total to forty dollars a month.⁸² The amendments also improved the benefits of those with less covered work before retirement. The fifty-dollar-a-month wage earner retiring after ten years rather than forty-five, received only \$17.50 a month under the original schedule.⁸³ The 1939 amendments increased the amount to twenty-two dollars a month for a single individual, thirty-three dollars a month for a husband and wife.⁸⁴

The original projections were soon upset, however, by a factor that the planners had left out of their calculations: a "radical increase in the cost of living." Between 1940 and 1949, the consumer price index rose roughly seventy percent.⁸⁵ Wages rose even more dramatically; the average weekly wage for manufacturing workers more than doubled over the same period.⁸⁶ These economic changes had a drastic effect on the relationship between OAA and the 1939 successor to OAI—Old-Age and Survivors Insurance (OASI). For two reasons, OASI proved structurally incapable of dealing adequately with such levels of inflation without further amendment of the benefit formula (which did not occur until 1950). First, OASI's benefit formula rested primarily on average wages between January 1, 1937, and the date of attaining age sixty-five.⁸⁷ Consequently, it responded very sluggishly to economic change as new waves of workers retired. Second, OASI provided no mechanism to preserve the purchasing power of benefits already awarded. In 1949, the average retirement benefit was twenty-six dollars a month, only \$3.40 more than in 1940.⁸⁸

Consider again the worker who earned fifty dollars a month in 1935. If his monthly wages kept pace with those of other workers, they would have been sixty dollars in 1937 and \$133.50 in 1948. If he retired at age sixty-five in 1949, his average monthly

⁸² The basic wife benefit was $\frac{1}{2}$ the husband's retired-worker payment, but in the example, a maximum (in this case 80% of the husband's monthly wage) would limit the two to \$40 a month. See Social Security Act Amendments of 1939, ch. 666, sec. 201, §§ 202(b), 203(a), 53 Stat. 1360. See generally L. MERIAM, *supra* note 74, at 93-107.

⁸³ See Social Security Act of 1935, ch. 531, § 202(a)(2), 49 Stat. 620; SOC. SEC. IN AMERICA, *supra* note 4, at 224.

⁸⁴ See notes 81-82 *supra*.

⁸⁵ See 1975 LABOR STATISTICS, *supra* note 10, Table 122, at 313.

⁸⁶ See *id.*, Table 102, at 254.

⁸⁷ See note 81 *supra*.

⁸⁸ 1975 ANN. SUPP., *supra* note 7, Table 84, at 121. The average benefit awarded newly retired persons during that year was slightly higher, approximately \$28.40 a month. *Id.*, Table 62, at 93.

pay would have been \$91.60, producing, after twelve years of covered employment, a monthly OASI benefit of \$27.10—only \$4.70 a month higher than if his wages had held at fifty dollars a month for the entire twelve year period.⁸⁹ These benefits amount to a meager twenty percent of the worker's immediate preretirement earnings (an index of adequacy now commonly termed replacement rate).

Old Age Assistance, the noncontributory program, proved far more responsive to the evident need for benefit increases through the war and immediately thereafter. Both Congress and state legislatures repeatedly raised the relevant benefit standards. In 1940, only .3% of OAA recipients had monthly benefits of more than forty dollars a month, the limit for federal reimbursement.⁹⁰ Nationwide, average OAA benefits were \$20.14 a month.⁹¹ In September of 1949, thirty-four jurisdictions were paying some of their OAA recipients more than the maximum for federal reimbursement,⁹² which by then stood at fifty dollars.⁹³ In ten states, including several with large OAA rolls—California, Massachusetts, New York, and Washington—fifty percent or more of the recipients had monthly payments larger than the fifty dollar figure (and to that extent, completely financed by state and local funds). Nationwide, 29.4% of OAA recipients had monthly payments larger than the federal maximum; an additional 10.4% received precisely fifty dollars a month.⁹⁴ The average monthly OAA benefit was \$44.76,⁹⁵ almost identical to the maximum attainable retirement benefit under OASI for a *high-wage* worker retiring that year.⁹⁶

⁸⁹ The wage figures are calculated by indexing the \$50-a-month figure against the average weekly earnings for a manufacturing worker. See 1975 LABOR STATISTICS, *supra* note 10, Table 102, at 254. Benefits responded somewhat more favorably to wage increases below \$50 a month. See note 81 *supra*.

⁹⁰ Only eight states paid any OAA above the \$40 level up to which the federal government would share costs. However, 20 jurisdictions paid some benefits above the \$30-a-month maximum that had been in effect only the year before; 18 paid benefits at least up to \$40. SOCIAL SECURITY BOARD, SOCIAL SECURITY YEARBOOK: 1940, at 297 (1941).

⁹¹ *Id.* at 294.

⁹² *Annual Statistical Supplement, 1949*, SOC. SEC. BULL., Sept. 1950, Table 43, at 58.

⁹³ Congress raised the level of federal reimbursement to \$45 a month as of October 1946 and to \$50 a month as of October 1948. Social Security Act Amendments of 1946, ch. 951, sec. 501, § 3(a), 60 Stat. 978; Act of June 14, 1948, ch. 468, sec. 3, § 3(a), 62 Stat. 438.

⁹⁴ *Annual Statistical Supplement, 1949*, *supra* note 92, Table 43, at 58.

⁹⁵ SOC. SEC. BULL.—ANNUAL STATISTICAL SUPPLEMENT, 1960, Table 126, at 91.

⁹⁶ 1975 ANN. SUPP., *supra* note 7, at 25.

By 1949, the OAA programs of most states had standards of need that exceeded the average level of OASI benefits. Indeed, a majority had standards that exceeded the maximum attainable OASI benefit.⁹⁷ Thus, many Social Security recipients who had no significant other income and were willing and able to meet other state eligibility requirements for OAA⁹⁸ could obtain both benefits. The patent inadequacy of OASI benefit levels placed extra weight on OAA.

By December 1949, OAA reached 24.1% of the population sixty-five and over, the broadest coverage in both percentage and absolute numbers since the program began.⁹⁹ Although the number of elderly individuals receiving retirement, dependents, or survivors benefits under OASI continued to grow, by December 1949, the total was significantly below that for OAA.¹⁰⁰ And at least one out of ten OASI recipients received OAA as well.¹⁰¹

The late forties proved critical for Old Age and Survivors Insurance. A conservative Congress (1947-1948) not only resisted President Truman's repeated urgings for improvements in coverage, but cut back slightly on the program's scope.¹⁰² In the Presidential campaign of 1948, Social Security was an important issue. The election of Truman and a Democratic Congress provided the necessary ingredients for the first major program overhaul in more than a decade—the Social Security Act Amendments of 1950.¹⁰³

⁹⁷ See *Public Assistance Supplementation of the Income of Old-Age and Survivors Insurance Beneficiaries*, SOC. SEC. BULL., Oct. 1949, at 10, 15.

⁹⁸ Other state eligibility requirements for OAA included limited assets, willingness to suffer a lien, and no children or other "responsible relatives" able to support them.

⁹⁹ Compare *Current Operating Statistics*, SOC. SEC. BULL., Mar. 1950, Table 14, at 26, Table 19, at 28 with Perkins, *Trends in Recipient Rates for Old-Age Assistance*, SOC. SEC. BULL., Oct. 1948, at 10.

¹⁰⁰ There were 2,736,000 OAA recipients in December 1949. *Annual Statistical Supplement, 1949*, *supra* note 92, Table 38, at 47. Retired wage-earners, dependent and surviving elderly spouses and surviving parents receiving OASI benefits totaled 1,951,250. *Id.*, Table 10, at 20.

¹⁰¹ *Concurrent Receipt of Old-Age and Survivors Insurance and Public Assistance*, SOC. SEC. BULL., Aug. 1952, at 13; *Public Assistance Supplementation of the Income of Old-Age and Survivors Insurance Beneficiaries*, SOC. SEC. BULL., Oct. 1949, at 10.

¹⁰² See A. ALTMAYER, *supra* note 1, at 152-68; E. WITTE, *SOCIAL SECURITY PERSPECTIVES* 46 (1962).

¹⁰³ Ch. 809, 64 Stat. 477. See A. ALTMAYER, *supra* note 1, at 163, 169-87.

III

SOCIAL SECURITY ADJUSTED TO TAKE ACCOUNT OF INFLATION:
THE SOCIAL SECURITY ACT AMENDMENTS OF 1950

The 1950 Social Security Act Amendments re-established the priority originally intended for OASI by both expanding the eligible population and nearly doubling benefit amounts.¹⁰⁴ The new benefit formula not only increased payments to those already receiving OASI, but also set six quarters as the basis of coverage for those at or near retirement age in 1950.¹⁰⁵ This "new start" provision both made it easier to qualify for benefits and permitted benefits to be calculated using recent (and therefore, on average, higher) earnings. Our hypothetical steadily employed low-wage worker who retired in 1949 found his monthly check increased from \$27.10 to \$50 as of September 1950.¹⁰⁶ With a modest period of covered employment after the amendments at wage levels equal to or above the most recent assumed in our example, he could end up with an even higher amount.¹⁰⁷

As soon as the amendments took effect, OAA rolls began to decrease.¹⁰⁸ By the end of February 1951, the number of elderly OASI recipients surpassed the number of OAA recipients for the first time.¹⁰⁹ The gap has continued to grow ever since (see Fig-

¹⁰⁴ The amendments extended coverage to self-employed persons, agricultural workers and domestics, employees of nonprofit organizations, some federal, state, and local government employees and residents of Puerto Rico and the Virgin Islands. Social Security Act Amendments of 1950, ch. 809, sec. 104(a), §§ 210, 211, 64 Stat. 477. As a result, the fully insured worker population rose rapidly—from 40.1 million in 1950 to 59.8 million in 1951 and 71.0 million in 1954. 1975 ANN. SUPP., *supra* note 7, Table 49, at 82. In 1950, 2.2 million workers aged 65 and over were eligible for OASI benefits. The figure was 3.1 million in 1951 and 4.8 million in 1954. *Id.*, Table 51, at 84. See generally Cohen & Myers, *Social Security Act Amendments of 1950: A Summary and Legislative History*, SOC. SEC. BULL., Oct. 1950, at 3; Hawkins, *Old-Age Assistance Recipients: Reasons for Nonentitlement to Old-Age and Survivors Insurance Benefits*, SOC. SEC. BULL., July 1952, at 4.

¹⁰⁵ Social Security Act Amendments of 1950, ch. 809, sec. 104(a), §§ 214, 215, 64 Stat. 477. For an explanation of the "quarters of coverage" concept, see text accompanying notes 167-76 *infra*.

¹⁰⁶ See Social Security Act Amendments of 1950, ch. 809, sec. 104(a), § 215, 64 Stat. 477.

¹⁰⁷ See *id.*

¹⁰⁸ See *Annual Statistical Supplement, 1950*, SOC. SEC. BULL., Sept. 1951, Table 37, at 44.

¹⁰⁹ At the end of February 1951, there were a total of 2,800,864 recipients of retirement, dependent or surviving elderly spouse, or surviving parent benefits under OASI. *Current Operating Statistics*, SOC. SEC. BULL., June 1951, Table 6, at 26. The same month there were 2,778,000 OAA recipients. *Annual Statistical Supplement, 1951*, SOC. SEC. BULL., Sept. 1952, Table 36, at 49.

ure 1). Later in the 1950's, significant additional segments of the population, including some important portions of the low-income working population, were brought under OASI.¹¹⁰ And between 1950 and 1974, Congress liberalized the OASI benefit formula eleven times.¹¹¹ These formula amendments prevented a recurrence of the serious devaluation of benefits that occurred prior to 1950.¹¹² Social Security amendments in 1972 and 1977 put this process on an automatic, administratively determined basis so that benefit levels now increase to adjust for inflation without need for legislative action.¹¹³

The continuing congressional attention to the scope and adequacy of OASI benefits since 1950, coupled with the program's maturation, has resulted in an enormous growth in the relative importance of Social Security. By December 1973, the eve of the start-up of SSI, there were over nineteen million OASI recipients age sixty-five and over (nearly ninety percent of that population segment) compared with approximately 1.8 million OAA recipients.¹¹⁴ Average retirement benefits that were, even after the 1950 amendments, nearly identical to average OAA benefits, climbed eventually to more than double the levels in the need-based program (see Figure 4).

Despite the vigorous growth in OASI coverage and pay out, however, OAA did not and could not wither away. Moreover, its failure to develop nationwide with the same vigor as OASI had a profound effect on the evolution of OASI.

¹¹⁰ Most important were the 1954 amendments which expanded coverage of farmers, farm workers, and domestic workers. See Social Security Amendments of 1954, ch. 1206, § 101(a), 68 Stat. 1052. See generally *History of the Provisions of Old-Age, Survivors, Disability, and Health Insurance*, 1975 ANN. SUPP., *supra* note 7, at 15.

¹¹¹ See *History of the Provisions of Old-Age, Survivors, Disability, and Health Insurance*, 1975 ANN. SUPP., *supra* note 7, at 18-19, 24-25.

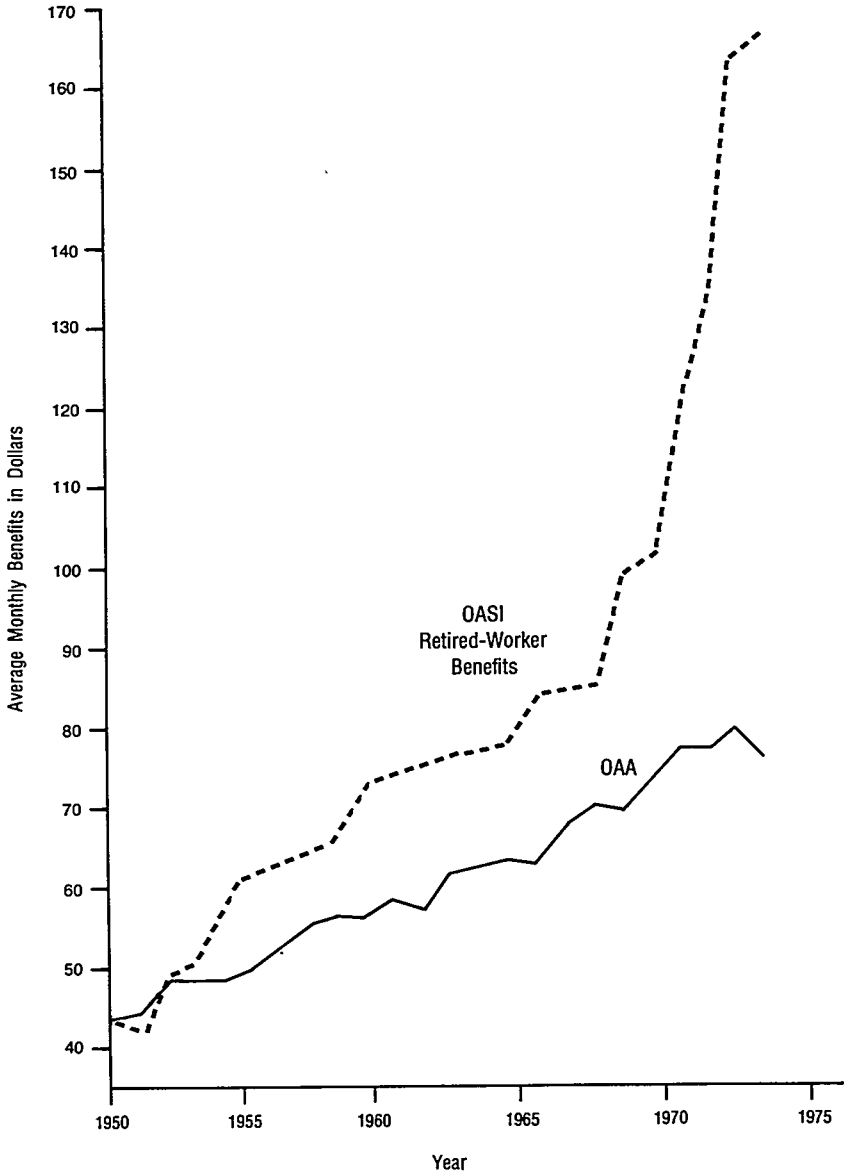
¹¹² *OASDI Benefits, Prices, and Wages: A Comparison*, SOC. SEC. BULL., Aug. 1966, at 19; Price, *OASDI Benefits, Price, and Wages: Effect of 1967 Benefit Increase*, SOC. SEC. BULL., Dec. 1968, at 288; REPORTS OF THE QUADRENNIAL ADVISORY COUNCIL ON SOCIAL SECURITY, H. Doc. No. 75, 94th Cong., 1st Sess. 19-20 (1975).

¹¹³ See Act of July 1, 1972, Pub. L. No. 92-336, § 202(a)(1), 86 Stat. 406 (codified at 42 U.S.C. § 415(i) (1976)); Social Security Amendments of 1977, Pub. L. No. 95-216, § 201, 91 Stat. 1509 (codified at 42 U.S.C.A. § 415(i) (West Supp. 1978)).

¹¹⁴ *Current Operating Statistics*, SOC. SEC. BULL., June 1974, Table M-14, at 37, Table M-25, at 46; 1975 ANN. SUPP., *supra* note 7, Table 23, at 57.

FIGURE 4

*Average Monthly Benefits for
Social Security (OASI) and
Old Age Assistance (OAA)
Recipients*



Source: SOC. SEC. BULL.—ANNUAL STATISTICAL SUPPLEMENT, 1974, Table 76, at 112, Table 155, at 175.

IV

WHY OAA DID NOT WITHER AWAY

The number of OAA recipients continued to drop from 1950 until 1973, but at nowhere near the pace at which OASI coverage was expanding. The resistance of the OAA ranks to further significant depletion stemmed not so much from the exclusion by OASI of distinct pockets of the older population (perceived in 1935 as the primary limitation on the withering away of OAA) but from the increasing overlap between the programs. For even while OASI benefits were increasing so dramatically on average, the program often did not pay enough at the bottom of the scale to take recipients off OAA. From 1950 through 1973, OASI entitlement among OAA recipients grew almost as rapidly as among the elderly as a whole (see Figures 2 & 5). By 1967, over half the OAA population also received OASI. The 1970 figure exceeded sixty percent.¹¹⁵

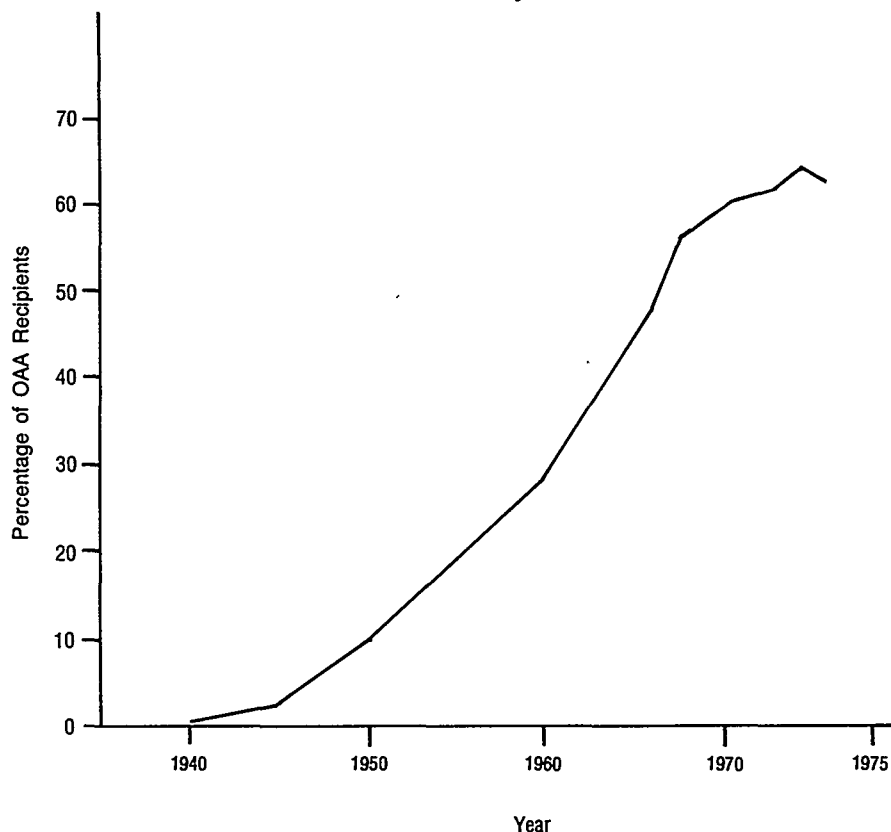
The growth in OASI clearly had a dampening effect on OAA, holding down both the number of recipients—many who would otherwise have been eligible for OAA had their full income needs, as defined by their state's program, met by OASI—and the amount paid those who were on OAA rolls. During 1970, for example, the roughly 1.2 million OAA recipients also on OASI received OASI benefits approaching \$1 billion. Without those benefits, OAA expenditures (only \$1.9 billion for 1970) would have been much larger.¹¹⁶ Nevertheless, OASI had no realistic chance to supplant the noncontributory program and, throughout this period (1950-1973), the relationship between the two programs was haphazard at best.

¹¹⁵ National Center for Social Statistics, Social & Rehabilitation Service, HEW, Concurrent Receipt of Public Assistance Money Payments and Old-Age, Survivors, and Disability Insurance Cash Benefits by Persons Aged 65 or Over, 1948-1970 and February 1970 (NCSS Report G-2, 1970) (containing both the number of joint recipients and the average of their OASI payments); 1975 ANN. SUPP., *supra* note 7, Table 23, at 57. Among new recipients, the percentages were higher still. In 1965, for example, 69% of the persons added to OAA rolls were OASI beneficiaries, while the comparable figure for all OAA recipients that year was 46%. See *Characteristics of New, Old-Age Assistance Recipients, 1965*, Soc. Sec. BULL., July 1968, at 16, 16.

¹¹⁶ This estimate is based on February 1970 figures. See National Center for Social Statistics, Social & Rehabilitation Service, HEW, Concurrent Receipt of Public Assistance Money Payments and Old-Age, Survivors, and Disability Insurance Cash Benefits by Persons Aged 65 or Over, 1948-1970 and February 1970 (NCSS Report G-2, 1970).

FIGURE 5

*Percentage of Old Age
Assistance Recipients
Also Receiving
Social Security*

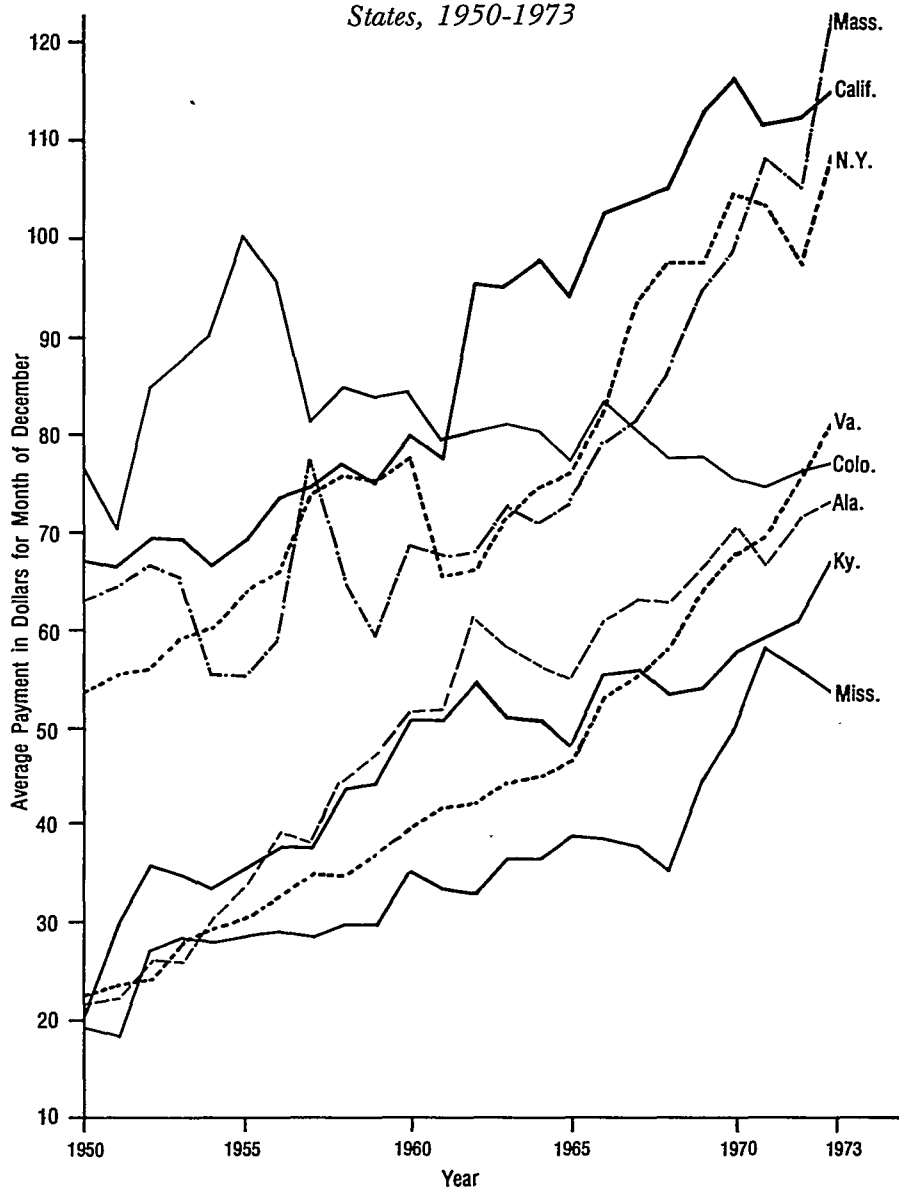


Source: SOC. SEC. BULL.—ANNUAL STATISTICAL SUPPLEMENT, 1975, Table 23, at 57.

The lack of coordination stemmed from a difference in program structure that seemed less important when OASI benefit levels and coverage were more modest and when OAA and OASI dealt with essentially distinct populations that overlapped only minimally. The difference was simply this: the federal government (Congress) set OASI benefit levels, but the states controlled OAA levels. As Congress repeatedly increased OASI benefits from 1950 through 1973, it occasionally adjusted the terms for federal contribution to state OAA programs to induce or permit similar increases. But having left to each state final authority over

FIGURE 6

*Average Old Age Assistance
Payments for Several High-
and Several Low-Benefit
States, 1950-1973*



Sources: *Current Operating Statistics*, SOC. SEC. BULL., Mar. 1951, Table 14, at 34, and corresponding table in subsequent volumes, showing December figures for the preceding year, up through SOC. SEC. BULL., June 1974, Table M-27, at 48.

its OAA benefit levels and related details, Congress lacked effective means to coordinate the two programs.¹¹⁷ The states thus ultimately controlled the interplay between OASI and OAA. Because the states did not act in concert with Congress or with one another, the interplay was incoherent.

A critical factor in the relationship between programs was the enormous variation in OAA benefit levels among the states (see Figure 6 & Table 3). Some states initially set levels that equaled or exceeded the limits for federal support and tried subsequently to keep pace with cost-of-living increases by setting and resetting higher levels of support.¹¹⁸ In California, for example, the *average* OAA payment surpassed the ceiling for federal financial support throughout the entire period from 1950 through 1965.¹¹⁹ At the other extreme were states that set their OAA benefit levels at very low figures and left them there despite increases in living costs. In Mississippi, average OAA benefits peaked in 1971 at less

¹¹⁷ The original administration bill in 1935 had included a requirement that state OAA plans furnish enough aid to an individual to assure "a reasonable subsistence compatible with decency and health." It met severe hostility in both House and Senate and was removed. In its place was put language that, by contrast, emphasized state fiscal concerns, stating that the purpose of federal support was "to enable each State to furnish financial assistance *as far as practicable* under the conditions in such State." A. ALTMAYER, *supra* note 1, at 35, 39, 59-60 (emphasis added). See M. DERTHICK, *THE INFLUENCE OF FEDERAL GRANTS: PUBLIC ASSISTANCE IN MASSACHUSETTS* 43-45 (1970); E. WITTE, *supra* note 11, at 143-45.

¹¹⁸ Massachusetts started out with payment levels pegged at the ceiling for federal reimbursement. Thus, from 1936 to 1942, the statute specified payment at the rate of "not less than thirty dollars monthly for each recipient" (\$50 for an eligible couple). In 1942, the figure was raised to \$40 for "individual[s] living outside a family group." Those living with their family stayed at \$30. MASS. ANN. LAWS ch. 118A, § 1 (Michie/Law. Co-op 1942). The standards were stated as minimum levels, creating some dispute about their conformity with federal insistence on a need-based formula. Eventually, the 1942 legislation provided that income should be subtracted from such minimum payment levels. *Id.*

In 1943, the legislature authorized the state welfare department to review local budgetary standards. Five years later, it specified that whenever living costs rose five percent or more above the levels for 1947, those budgetary standards should be increased by the same amount. *Id.* (Supp. 1948).

Additional specificity about the content of minimum payment standards and increases in those standards followed in later years, but the basic scheme of administratively-set budget standards, adjusted for increases in the cost of living (in 1965 the five percent threshold was reduced to three percent) and subjected to no maximum, continued right up to the replacement of OAA by SSI. See *id.* (1965).

For an excellent account of the political context in which these OAA benefit provisions were enacted, see M. DERTHICK, *supra* note 117, at 53-70.

¹¹⁹ See Figure 6. In December 1964, California's average rate of OAA payment was \$97.11, nearly \$30 above the federal reimbursement limit of \$70. *Current Operating Statistics*, SOC. SEC. BULL., Apr. 1965, Table 18, at 42.

California's OAA formula began as a simple and quite generous one by national stan-

TABLE 3
*Old Age Assistance and
 Social Security Benefit Levels*

<i>Old Age Assistance (OAA)</i>		<i>Jan. 1961</i>	<i>Jan. 1963</i>	<i>Jan. 1965</i>	<i>Jan. 1967</i>	<i>Apr. 1968</i>	<i>July 1969</i>
OAA Payment to Elderly	Ala.	\$ 75.00	\$ 75.00	\$ 75.00	\$ 82.00	\$ 85.00	\$ 88.00
	Cal.	95.00	106.00	151.00	151.00	162.00	165.00
Woman Living in Rented Quarters With No Other Income—Selected States ^a	Colo.	107.00	110.00	114.00	120.00	124.00	128.00
	Ky.	75.00	84.00	84.00	84.00	90.00	90.00
	Mass.	126.30	124.45	126.87	136.00	143.00	152.00
	Miss.	40.00	50.00	50.00	50.00	50.00	55.00
	N.Y.	105.75	110.65	117.60	131.45	115.00	145.00
	Va.	103.00	103.00	105.00	115.00	115.00	138.00
Average OAA Benefit (Money Payments Only)—Selected States ^b	Ala.	\$ 51.00	\$ 60.80	\$ 57.60	\$ 60.70	\$ 59.25	\$ 61.85
	Cal.	79.76	94.63	97.16	102.15	99.00	105.65
	Colo.	81.47	80.58	81.02	82.10	77.90	77.85
	Ky.	50.18	53.43	50.23	56.10	53.70	53.70
	Mass.	69.53	68.41	69.73	80.10	80.65	88.95
	Miss.	34.57	33.34	37.16	38.95	36.15	39.80
	N.Y.	78.55	68.86	73.60	83.15	92.75	93.90
	Va.	41.35	41.76	45.11	53.05	54.90	61.00
Maximum Average Benefit for Which Federal Participation Available ^c		\$ 65.00	\$ 70.00	\$ 70.00	After 1965 no limit for state electing medicaid formula. 42 U.S.C. § 1318 (1976)		
<i>Social Security</i>							
Minimum Benefit ^d		\$ 33.00	\$ 40.00	\$ 44.00	\$ 44.00	\$ 55.00	\$ 55.00
Average Retired-Worker Benefit ^e		\$ 74.04	\$ 76.19	\$ 77.57	\$ 84.35	\$ 85.37	\$ 98.86

Sources:

^a Bureau of Family Services, Social Security Administration, HEW, Monthly Cost Standards for Basic Needs Used by States for Specified Types of Old-Age Assistance Cases and Families Receiving Aid to Families with Dependent Children, January 1961 (Dec. 1962) and following reports in that series issued by successor agencies.

^b *Current Operating Statistics*, SOC. SEC. BULL., May 1961, Table 8, at 39 and the equivalent table for the appropriate period in later volumes.

^c Notes to 42 U.S.C. § 303 (1976).

^d *History of the Provisions of Old-Age, Survivors, Disability, and Health Insurance*, SOC. SEC. BULL.—ANNUAL STATISTICAL SUPPLEMENT, 1975, at 24.

^e SOC. SEC. BULL.—ANNUAL STATISTICAL SUPPLEMENT, 1975, Table 84, at 121 (averages for the end of the preceding year).

dards. In 1937, the legislature specified that: "The amount of aid to which any applicant shall be entitled shall be, when added to the income of the applicant from all other sources, thirty-five dollars per month." 1937 Cal. Stats., ch. 369, at 1079. The standard was raised to \$40 in 1941, to \$50 in 1945 and so on. By 1949, it stood at \$75. See CAL. WELF. & INST. CODE § 2020, Legislative History (Deering 1952). In 1941 the basic formula was modified slightly. For recipients with greater "actual need" the standard became a maximum. 1941 Cal. Stats., ch. 764, at 2299. Under the modified formula, in theory, an older person with "actual need" of \$100 in 1949 and monthly income of \$25 could receive a full \$75 payment.

In 1945, the legislature added a provision authorizing an automatic adjustment of the state figures when the federal government changed its reimbursement formula (up or down). It was first triggered by the Social Security Act Amendments of 1946. See 8 OP. CAL. ATT'Y GEN. 106 (1946).

than sixty dollars a month,¹²⁰ a figure significantly below California's average payments for 1950.¹²¹ In July 1970, OAA benefits for an age-qualified single person with no other income ranged from a low of sixty dollars a month in Mississippi to a high of \$200 a month in Alaska.¹²² Patently, OAA failed to establish a nationwide assured minimum income for the elderly.

As of 1957 (when the basic need standard was \$89—up from the statutory figure of \$85 because of a four dollar increase in the federal share), the formula was modified in its treatment of "actual need" above the basic figure. Additional amounts were to go only "to persons with special needs arising because of circumstances and situations not common to all recipients and not covered by the basic needs allowance." And a ceiling was placed on the total—basic needs and special grants—that a recipient could claim. For 1957, that ceiling was \$105. "Actual need" in excess of that figure still counted, however, for recipients with more than \$16 of income. See CAL. WELF. & INST. CODE § 2020.002, Legislative History (Deering Supp. 1959); tenBroek, *Welfare in the 1957 Legislature*, 46 CAL. L. REV. 331, 345-49 (1958). See also 32 OP. CAL. ATT'Y GEN. 114 (1958) (considering the relationship of the automatic adjustment section to the new special-grant ceiling).

Except for automatic and legislated increases of the basic need figure and grant ceiling, this formula remained intact until 1961. That year the legislature set those figures at \$100 and \$165 respectively and enacted a cost-of-living clause that removed the need for repeated amendments thereafter, committing the state to increases even though federal reimbursement remained the same. CAL. WELF. & INST. CODE § 2020 (Deering Supp. 1961).

From then until SSI replaced OAA at the beginning of 1974, that framework set OAA levels in California. For a sense of the political context in which those developments occurred, see J. PUTNAM, *OLD AGE POLITICS IN CALIFORNIA: FROM RICHARDSON TO REAGAN* 49-142 (1970).

¹²⁰ See Figure 6. Throughout the lifetime of OAA, Alabama and Mississippi consistently placed lowest among the states in average benefit levels. Both states achieved low averages by means of payment maxima substantially below their standard of need. See text accompanying notes 127-32 *infra*. From 1950 through 1958, Mississippi's individual maximum stayed at \$30 a month. During most of the sixties, it rested at \$50 a month. In 1971 it was \$70. See Commissioner of Public Welfare, Mississippi, Annual Report to the Governor (1951-1958); Bureau of Family Services, SSA, HEW, Monthly Cost Standards for Basic Needs Used by States for Specified Types of Old-Age Assistance Cases and Families Receiving Aid to Families with Dependent Children, January 1961, at 4 (1962) and following reports in that series issued by successor agencies up to and including National Center for Social Statistics, Social and Rehabilitation Service, HEW, OAA, and AFDC: Standards for Basic Needs for Specified Types of Assistance Groups, March 1971 (NCSS Report D-2, 1971).

¹²¹ California's average OAA payment in December 1950 was \$67.13. *Current Operating Statistics*, Soc. SEC. BULL., Mar. 1951, Table 14, at 34.

¹²² National Center for Social Statistics, Social and Rehabilitation Service, HEW, OAA and AFDC: Standards for Basic Needs for Specified Types of Assistance Groups, July 1970 (NCSS Report D-2, 1970). Ten years earlier the range was only slightly less extreme. See White, *Meeting Financial Needs Under Old-Age Assistance*, WELFARE IN REV., Dec. 1963, at 1.

A July 1972 survey conducted by the Subcommittee on Fiscal Policy of the Joint Economic Committee of Congress reported a low of \$75 a month in Mississippi and a high of \$239 a month in Nassau County, New York. STAFF OF SUBCOMM. ON FISCAL POLICY OF THE JOINT ECONOMIC COMM., 93d CONG., 1st SESS., *THE NEW SUPPLEMENTAL SECURITY INCOME PROGRAM—IMPACT ON CURRENT BENEFITS AND UNRESOLVED ISSUES* 6 (Studies in Pub-

During this long period, the only influence that Congress asserted over OAA payment levels was occasional fiscal encouragement. From the start, the OAA legislation had set an outside limit on payment levels toward which the federal government would contribute. Raising that limit, as Congress did from time to time, assisted high-benefit states in increasing payments.¹²³ In 1946, the statutory formula became a two-step one, featuring a lower range over which a more generous cost-sharing arrangement applied.¹²⁴ Each time Congress raised that lower-range share or

lic Welfare, Paper No. 10, 1973) [hereinafter cited as *IMPACT OF SSI*]. The HEW reports understate the high point of the range by calling for states that vary their standard according to living costs (e.g., New York) to average.

¹²³ The ceiling for federal participation rose from \$50 a month per individual recipient, where it stood in 1950, to \$55 a month in 1952, and \$60 a month in 1956. Social Security Act Amendments of 1952, ch. 945, § 8, 66 Stat. 767; Social Security Amendments of 1956, ch. 836, § 341, 70 Stat. 807.

In 1958, the ceiling was increased to \$65 a month and converted to an average basis; the federal government began to participate in the support of some OAA recipients at, say, \$75 a month so long as there were off-setting lower payments holding the state's average below the ceiling. Social Security Amendments of 1958, Pub. L. No. 85-840, § 501, 72 Stat. 1013.

Congress adjusted the ceiling again in 1960, 1961, 1962, and 1965. Those adjustments brought it to \$75 a month beginning January 1, 1966. They also added complicated provisions for the treatment of medical vendor payments (eventually supplanted by Medicaid). See 42 U.S.C. § 303 & note (1976).

No further adjustments have occurred, for another provision of the 1965 amendments gave states an option that effectively removed the ceiling. It permitted states with a federally approved and funded Medicaid program to elect reimbursement for public assistance expenditures (OAA, AFDC, etc.) in accordance with the "Federal medical assistance percentage" (see 42 U.S.C. § 1396d (1976)) "without regard to any maximum on the dollar amounts per recipient." 42 U.S.C. § 1318 (1976).

California and other high-benefit states were among the first to elect such limitless reimbursement (which required giving up the high rate of federal reimbursement of \$31 on the first \$37 average OAA per month for a flat percentage that in the wealthier states, like New York and California, amounted to 50%). By 1971, 33 states had made that election. See Assistance Payments Administration, Social and Rehabilitation Service, HEW, *Characteristics of State Public Assistance Plans Under the Social Security Act—General Provisions: Eligibility, Assistance, Administration* 134 (Public Assistance Report No. 50, 1971 ed., 1972).

¹²⁴ Over the lower range, federal support was more generous in two ways. First, a greater percentage of total expenses was reimbursed (first 2/3, then 3/4, still later 4/5, and ultimately 31/37), compared to a maximum reimbursement of 65% for the upper range (see 42 U.S.C. § 303 note (1976)). Second, over the lower range, states were always reimbursed for *average* expenditures, so that payments above the limit to certain recipients could still be reimbursed at the higher percentage if balanced by payments below the limit to others. Thus, in December 1952, when the *average* OAA payment in Mississippi stood at \$26.24, nearly all of that state's OAA expenditures were federally reimbursed at the rate of 80%, since it applied to up to \$25.00 a month *average* payments.

In New York, to draw the contrast, the average stood at \$56.94, only slightly above the \$55 limit on federal participation. That ceiling, however, applied not to New York's average but to payments to any particular individual receiving more than \$55 a month, so a far

the range to which it applied, both low- and high-benefit states were able, if they wished, to increase benefits by a certain amount *at no additional cost*. This "carrot" technique induced fairly widespread OAA increases in 1952 and 1956, even among low-benefit states.¹²⁵ But it was not sure-fire. States could always accept the increase in federal reimbursement as an opportunity to cut back on their own welfare expenditures rather than as a chance to increase benefits at no cost.¹²⁶

V

HOW OASI BENEFITS AFFECTED OAA

A. OASI Benefits Counted as Income

For joint recipients, the relationship between OAA and OASI seemed, at first blush, straightforward. OAA carried a need-test that required states in calculating need to "take into consideration any other income . . . of an individual claiming old-age assistance."¹²⁷ The administering federal agency made it clear that

greater share was uncovered. See Social Security Act Amendments of 1952, ch. 945, § 8, 66 Stat. 767; *Current Operating Statistics*, Soc. SEC. BULL., Mar. 1953, Table 12, at 34. The limit for federal participation over the higher range was not computed on the basis of average payments until 1958. See note 123 *supra*.

¹²⁵ See *Initial Effects of the 1952 Amendments on Assistance Payments*, Soc. SEC. BULL., Jan. 1953, at 17; *Initial Effects of the 1956 Amendments on Public Assistance Money Payments*, Soc. SEC. BULL., May 1957, at 16.

¹²⁶ It is also true that Congress did not itself always coordinate OASI increases and adjustments in the OAA formula. Throughout the fifties and early sixties proposals for OASI benefit improvements tended to come from the executive branch, while amendments of the assistance reimbursement formula—being largely an expression of state fiscal interests—typically originated in the Senate. See CONGRESSIONAL QUARTERLY SERVICE, CONGRESS AND THE NATION: 1945-1964, at 1243-59 (1965); G. STEINER, *supra* note 78, at 50-59. In October 1954, for example, Congress increased Social Security benefits by 13% or a minimum of five dollars, but no change occurred in the federal OAA provisions. In Alabama (which had the lowest average OAA payment in December 1953), the OASI increase reduced OAA rolls by nearly one-quarter. Nationwide the drop was only two percent, but the total reduction on the rolls in September 1954 translated into more than \$2 million. See *Effect of Increased OASI Benefits on Public Assistance, September-December 1954*, Soc. SEC. BULL., July 1955, at 11, Tables 1-3, at 11-13.

The 1954 increase in OASI benefits alone drew particular attention to the relationship between the two types of benefits; even by 1954, in quite a number of states, between one in four and one in three OAA recipients also received Social Security. White, *Concurrent Receipt of Public Assistance and Old-Age and Survivors Insurance*, Soc. SEC. BULL., Aug. 1954, at 12.

¹²⁷ 42 U.S.C. § 302(a)(10)(A) (1976). This explicit requirement was added in 1939 to remove any doubt. See A. ALTMAYER, *supra* note 1, at 105. The Social Security Board had taken the view that the income requirement was implicit in the 1935 Act. See Social Security Board, Explanation of the Provisions of the Social Security Act Relative to Old-Age

Social Security benefits were income (unearned income, insofar as that distinction was important) and, as such, reduced—dollar for dollar—the recipient's "need" under OAA.¹²⁸ In most states, entitlement to OASI benefits would consequently reduce one's OAA benefit dollar for dollar. This, in turn, meant that an increase in OASI unmatched by a rise in the state's OAA standard failed to produce a net increase in benefits for joint recipients.

The federal statute did not, however, require states to pay 100% of a recipient's "need," and some states chose not to. Although the terminology varied, those states that did not pay 100% of need employed one of two basic methods: (1) a maximum, paying 100% of need but only up to a certain figure; or (2) a percentage reduction, paying all recipients a fixed fraction of their calculated need after counting other income, such as OASI. The former method was more common.¹²⁹

Assistance (1936). The Report of the House Ways and Means Committee on the 1939 amendments made specific reference to OASI: "This will make it clear that, regardless of its nature or source, any income or resources will have to be considered, including . . . Federal benefit insurance payments under title II of the Social Security Act . . ." H.R. REP. No. 728, 76th Cong., 1st Sess. 32 (1939).

¹²⁸ See 45 C.F.R. § 233.20(a)(3), (6) (1973). Section 233.20(a)(4)(i) states in part: "All income must be included such as social security or other benefits . . ."

¹²⁹ Other methods existed, but in terms of OAA-OASI interaction they amounted to paying 100% of need. In one way or another, they took one need figure and reduced it to create a lower "payment standard." Other income (OASI) was then subtracted from the payment standard to determine OAA benefits. Like paying 100% of need, this approach meant OASI benefits would reduce OAA dollar-for-dollar. See STAFF OF SUBCOMM. ON FISCAL POLICY OF JOINT ECONOMIC COMM., 92d CONG., 2d Sess., HANDBOOK OF PUBLIC INCOME TRANSFER PROGRAMS 109 (Studies in Public Welfare, Paper No. 2, 1972) [hereinafter cited as PUBLIC INCOME TRANSFER].

A 1958 survey found only 13 states paying "full need" in OAA. Most states paying less used a maximum. In some states, the maximum affected very few recipients; eight states reported paying 99% or more of need despite a maximum. Only 10 states, by maximum or otherwise, reduced average payments to 90% or less of need. See Perkins, *Unmet Need in Public Assistance*, SOC. SEC. BULL., April 1960, at 3, 5-6.

After 1958, federal financial participation in OAA was limited on an average rather than individual basis. See note 123 *supra*. The \$60 a month limitation in effect just prior to the change heavily influenced the maxima then in effect. Three states had maxima below \$60, 15 between \$60 and \$65, and six between \$66 and \$70. National Center for Social Statistics, Social and Rehabilitation Service, HEW, State Maximums, Other Limitations, and Effect of Federal Matching Provisions on Public Assistance Money Payments, July 1972, at 5 (NCSS Report D-3, Feb. 14, 1973).

Once the limit on federal financial participation shifted to an average basis, the maximum lost some of its special attraction as a method for holding down OAA costs. After 1958, fewer and fewer states employed maxima with significant effect. By July 1972, only 18 states had maxima and only 10 had maxima of \$105 a month or less. *Id.* at 4 & Table 1.

The percentage reduction method of paying less than full need, although used by a number of states for Aid to Families with Dependent Children (AFDC), had very limited

The precise relationship between OAA benefits and OASI varied from state to state. Each state controlled two important variables: the definition of "need" or minimum income level below which an elderly person was entitled to OAA and the formula by which income (and therefore OASI) affected the level of payments to a "needy" person. A state might have a definition of need below the minimum level of OASI, so that the latter constituted the income floor for qualifying elderly; more commonly, the OAA figure was higher. In either case, a state might reduce OAA to an individual by one dollar for every dollar of OASI received; ignore the first twenty or thirty dollars of OASI (the consequence of a maximum); or reduce benefits in a constant ratio of less than one to one (percentage reduction).

A state with a fair amount of overlap—*i.e.*, having an OAA need standard above the OASI minimum—might, consistent with federal requirements, set up its OAA plan so that all joint recipients with no other significant income would receive the same cumulative benefits regardless of the relative proportions. Alternatively, a state could ensure that those receiving more OASI (but also OAA) would receive higher cumulative benefits. In such a case, the relationship could either be a constant one, increasing by some fraction of the person's OASI amount (the result of percentage reduction), or include a higher range over which cumulative benefits remained level and a lower range over which each dollar of OASI added a dollar to cumulative benefits (produced by a maximum).¹³⁰

use with OAA. In the early seventies, only Iowa and Puerto Rico had an OAA percentage reduction formula. See *id.* Table 3; National Center for Social Statistics, Social and Rehabilitation Service, HEW, State Maximums and Other Methods of Limiting Money Payments to Recipients of the Special Types of Public Assistance, October 1970, Table 3 (NCSS Report D-3, 1971).

¹³⁰ An example of the latter is furnished by Louisiana which in 1973 had a standard of need of \$150 (augmented for nearly one-third of the recipients by special needs amounts), but a maximum payment for a single elderly person of \$107. See *Growth of the Supplemental Security Income Program*, SOC. SEC. BULL., May 1975, at 32, 35. As a result, a person receiving OAA and OASI, but no other income, had \$43 of Social Security disregarded (or more if the person had special needs). By casting a broad "eligibility" net, such a scheme brought OAA to a high percentage of the elderly in the state and produced a high degree of overlap with OASI. Thirty-one percent of those 65 and over in Louisiana were receiving OAA in December 1973 and 21% were receiving both OAA and Social Security. *Quarterly Statistics*, SOC. SEC. BULL., Dec. 1974, Table Q-4, at 81.

As of July 1972, 30% of the country's OAA recipients lived in states whose OAA programs were structured so that receipt of OASI made an individual better off by at least \$20 a month. The remaining 70% lived where the increment was less; in the case of 27%, five dollars or less. *IMPACT OF SSI*, *supra* note 122, at 12.

Quite obviously, state control of OAA affected individual benefit patterns—who got how much OAA and OASI at a particular time. But more important, the state formula also affected the interplay between the programs over time. The effect on joint recipients of an increase in OASI benefits thus depended upon whether the state increased its OAA need figure (or maximum) by an equivalent amount or, if not, how, under its benefit formula, OASI increases affected OAA payments.

B. The Addition of Federal Requirements Designed to Encourage or Ensure Pass-Through of OASI Increases (1965-1974)

This loss of control to the states is what brought the lack of coordination between OAA and OASI most forcefully to congressional attention: when it raised OASI benefits, Congress discovered it could not count on corresponding increases in OAA. (Fiscal encouragement proved to be an insufficient lever.) States with low OAA benefits and thus little overlap caused no concern. But in states where the OAA standard of need surpassed the OASI minimum benefit, an OASI increase could be nullified for joint recipients, assuming the state paid most recipients 100% of their need.¹³¹

Such a case created twin sources of embarrassment for Congress. First, the much-heralded increase had no impact for significant numbers of OASI beneficiaries. Second, it resulted in fiscal relief for precisely the wrong states—those that had failed to increase OAA standards. To the extent the additional OASI benefits reduced joint recipients' "need" for OAA, those states could reduce expenditures.¹³²

¹³¹ Ironically, states that achieved low benefits through a payment maximum substantially below their standard of need created little trouble of this sort. As long as the OASI increase did not drop an individual's net need below that maximum, the increase was, indeed, passed through to the recipient (even though the recipient's total of OAA and OASI typically fell far below that available in states where OAA nullified the OASI increase).

Thus, among the states, Mississippi—with a \$30 maximum that remained unchanged through the 1954 OASI benefit increase—had the fewest joint recipients experiencing an offsetting OAA reduction because of that increase (53.8%). *Effect of Increased OASI Benefits on Public Assistance, September-December 1954*, Soc. SEC. BULL., July 1955, at 11, Table 2, at 12.

¹³² The 1954 OASI benefit increase reduced monthly OAA expenditures in California by \$418,077, in Louisiana by \$93,343, in Massachusetts by \$127,322, and in Texas by \$136,464. *Id.* at 13. See G. STEINER, *THE STATE OF WELFARE* 12-13 (1971). For a discussion of this problem, illustrated by the 1965 increases, see *Reduction of Retirement Benefits Due to Social Security Increases: Hearings Before Subcomm. on Employment and Retirement Incomes of the Senate Special Comm. on Aging*, 90th Cong., 1st Sess. (1967).

Beginning in 1965, Congress enacted a series of minor adjustments to the OAA grant-in-aid requirements to deal with this problem. In 1965, Congress accompanied a seven percent increase in OASI with an addition to the Social Security Act authorizing (but not compelling) state OAA programs to disregard five dollars of income of any sort.¹³³ Of course, a state could already disregard five dollars and more by abandoning the pretense of paying 100% of need and imposing a maximum.¹³⁴

As a companion measure, Congress increased the federal formula share so that a state could increase benefits \$2.50 a month at no additional state expense.¹³⁵ But for the first (and last) time Congress limited the increased share to states that used it to increase benefits. This was accomplished by a "maintenance of effort" clause that reduced federal payments, under the new formula, to the extent that the state public assistance expenditures had not gone up over the base period of fiscal year 1965.¹³⁶

In 1967, the Senate passed a bill that would have required states to increase OAA payments an average of \$7.50 a month per recipient; in conference, an increase of the optional income-disregard to \$7.50 was substituted.¹³⁷ The 1967 amendments also changed the "maintenance of effort" requirement, loosening up the test and trimming a year and a half off its life (terminating it at the end of fiscal year 1968).¹³⁸

¹³³ Social Security Amendments of 1965, Pub. L. No. 89-97, sec. 403, § 2(a)(10)(A), 79 Stat. 286. The amendments also authorized, but did not require, disregard of lump-sum OASI payments attributable to the retroactivity of the 1965 increase. *Id.* sec. 406.

¹³⁴ See text accompanying notes 127-30 *supra*.

¹³⁵ Social Security Amendments of 1965, Pub. L. No. 89-97, sec. 401, § 3(a)(1), 79 Stat. 286.

¹³⁶ *Id.* sec. 405. The clause lumped all federally supported public assistance together so that increased expenditures for AFDC could make up for a failure to increase OAA. See generally *Welfare Provisions of the 1965 Social Security Amendments: Brief Guide for State Action*, WELFARE IN REV., Sept. 1965, at 1, 4.

In 1962, President Kennedy had attempted such a result through "jawboning." While signing the Social Security amendments of that year, which increased the federal share for OAA sufficiently to permit a \$4.20 a month increase, he said, "[it] would truly be a miscarriage of justice and a frustration of the legislative intent if these new Federal funds merely replaced existing state funds." CONG. Q. WEEKLY REP., Aug. 3, 1962, at 1314.

¹³⁷ Social Security Amendments of 1967, Pub. L. No. 90-248, § 213, 81 Stat. 821. See S. REP. NO. 744, 90th Cong., 1st Sess. 29 and CONF. REP. NO. 1030, 90th Cong., 1st Sess. 27, reprinted in [1967] U.S. CODE CONG. & AD. NEWS 2834, 3006-07, 3179, 3208-09.

¹³⁸ Social Security Amendments of 1967, Pub. L. No. 90-248, § 221, 81 Stat. 821. During this period, at least one state, California, nearly adopted an OAA provision guaranteeing pass-through of future OASI increases. In 1967 and 1968, the California legislature passed a bill with that effect only to see Governor Reagan veto it. J. PUTNAM, *supra* note 119, at 137-38.

The 1969 Tax Reform Act contained a mandatory provision that dealt specifically with OASI increases. The provision required each state OAA plan to achieve, in some fashion, a four dollar net increase in cumulative benefits for those OAA recipients also receiving OASI in 1970, thereby "passing through" a Social Security benefit increase.¹³⁹ Congress required a similar four dollar pass-through of Social Security increases in 1972.¹⁴⁰ But overall, these various measures constituted only minor limits on the broad state discretion to set the terms of the relationship between OAA and OASI.

VI

OASI'S ASSUMPTION OF PUBLIC ASSISTANCE FUNCTIONS

Although the existence of OASI had only a modest effect on the formal shape of OAA, the failure of OAA to assure a minimally adequate income to the elderly throughout the country had substantial impact on the structure of OASI. Early in its history, Social Security began to compete with OAA for federal money intended to meet the needs of the low-income elderly. OAA depended on the states to set payment levels, but any addition to OASI coverage or benefits became available nationwide. Particularly since 1939, OASI has therefore developed along lines that reflect two distinct and sometimes incompatible aims. It has retained a strong mandatory social insurance character, forcing workers to pay into a plan that, at the time of wage loss due to retirement or death, assures them benefits related to past wages. But it has also come to reflect a noncontributory "public assistance" purpose, the desire to improve the economic situation of those worst off among the elderly without regard to their past contribution to the program.

During the early years when OASI payments reached relatively few elderly, the inadequacies of OAA led some to propose converting OASI to a two-tier system with the bottom tier—a universally available flat pension—replacing OAA.¹⁴¹ The growth in both coverage and payout that followed the 1950 amendments, however, eroded support for such a drastic measure. But the "competition" between OASI and OAA continued and even inten-

¹³⁹ Tax Reform Act of 1969, Pub. L. No. 91-172, § 1007, 83 Stat. 487.

¹⁴⁰ Social Security Amendments of 1972, Pub. L. No. 92-603, §§ 304, 306, 86 Stat. 1329.

¹⁴¹ See A. ALTMAYER, *supra* note 1, at 181-82, 204-08.

sified.¹⁴² Between 1950 and 1972, Congress enacted a large number of more limited adjustments to OASI to enhance its coverage and adequacy as a minimum retirement income program.

Despite initial doubts about President Eisenhower's views on Social Security, by the end of 1953 his administration had committed itself (as would those of Presidents Kennedy and Johnson) to the primacy of the social insurance program as the instrument of a national policy of preventing extreme need in old age.¹⁴³ His 1954 Social Security message included proposals for expanding the program's coverage and benefits; many of these proposals were subsequently enacted in the Social Security Amendments of 1954.¹⁴⁴ Eisenhower, though not his successors, combined this commitment with a conviction that federal financial participation in public assistance (including OAA) should, as a corollary, decline.¹⁴⁵

The next Social Security amendments bearing significantly on the program's minimum income guarantee were part of a legislative package President Kennedy submitted to Congress in February 1961.¹⁴⁶ More than any prior or subsequent set of amendments, they represented a single-minded adjustment of OASI to enhance its effectiveness as an antipoverty weapon. The original proposals appeared in the President's Message on Economic Recovery and Growth, which recommended expansion of AFDC, unemployment insurance, and OASI but no change in

¹⁴² The first version of the 1950 amendments that the Senate passed contained a provision that would have reduced the federal OAA share for joint recipients who became eligible for OASI after 1950. It was dropped in conference. See H.R. REP. NO. 2771, 81st Cong., 2d Sess. 117-18 (Conf. Rep.) reprinted in [1950] U.S. CODE CONG. & AD. NEWS 3482, 3508; A. ALTMAYER, *supra* note 1, at 183-84.

¹⁴³ See A. ALTMAYER, *supra* note 1, at 238; CONGRESSIONAL QUARTERLY SERVICE, CONGRESS AND THE NATION, 1945-1964, at 1246-47 (1965); G. STEINER, *supra* note 78, at 55-58.

¹⁴⁴ CONGRESSIONAL QUARTERLY SERVICE, CONGRESS AND THE NATION, 1945-1964, at 1248-50 (1965).

¹⁴⁵ Eisenhower's 1958 Budget Message said, for example, that in light of the rapid expansion of the Social Security system and his "belief that the states should have greater responsibility" in assisting the poor, he would propose "modernizing the formulas for Public Assistance with a view to gradually reducing federal participation in its financing." *Id.* at 1252.

His successors did not share this view, but neither did they propose increases in federal participation. During most of the post-1950 period the initiative for more generous federal support for public assistance, including OAA, came from the Senate. See G. STEINER, *supra* note 78, at 50-59.

¹⁴⁶ 107 CONG. REC. 1677 (1961).

the adult grant-in-aid programs.¹⁴⁷ The Message couched the OASI changes in these terms:

The current softness of the economy underscores the inadequacy of social security benefits in relation to the needs of many present beneficiaries. The average retired worker's benefit is only \$74 a month. A majority of these beneficiaries have no other significant income. The basic principle of our social insurance system is undermined when a substantial number of retired individuals must seek public assistance or else subsist below minimum standards of health and comfort. We must not permit the benefits of retired workers and their families to lag behind rises in living costs; we cannot decently exclude our older population from the general advances in standards of living enjoyed by employed workers.¹⁴⁸

Significantly, President Kennedy did not recommend an across-the-board benefit increase, but instead submitted five proposals designed to improve OASI for those in greatest need: (1) an increase in the minimum benefit from \$33 to \$43 a month; (2) extension of actuarially reduced benefits to retired men beginning at age sixty-two ("The plight of the older unemployed man is particularly serious in areas of chronic unemployment."); (3) liberalization of the "insured" status test, to require only one quarter of coverage for each four quarters of time since 1950 rather than one per three;¹⁴⁹ (4) an increase in the aged widow's benefit from 75% to 85% of the deceased worker's primary insurance amount; and (5) some softening of the "disability" test for disability insurance.¹⁵⁰ Congress declined to pass the last proposal, but adopted the others with slight modification—the minimum benefit was increased only to forty dollars a month; the widow's percentage, to 82.5%.¹⁵¹

After 1961, Congress continued to employ such measures to improve OASI's performance for the neediest elderly; numerous subsequent amendments hurried the expansion of Social Security coverage and payout. As OASI grew to reach 66%, then 75%, and finally 90% of the sixty-five and over population,¹⁵² the pressure

¹⁴⁷ *Id.* at 1678-80.

¹⁴⁸ *Id.* at 1679.

¹⁴⁹ See text accompanying notes 167-75 *infra*.

¹⁵⁰ 107 CONG. REC. 1677, 1679-80 (1961). See Cohen & Mitchell, *Social Security Amendments of 1961: Summary and Legislative History*, SOC. SEC. BULL., Sept. 1961, at 3.

¹⁵¹ Social Security Amendments of 1961, Pub. L. No. 87-64, §§ 101, 104, 75 Stat. 131 (current version at 42 U.S.C. §§ 402, 415 (1976)).

¹⁵² See Figure 1.

to embrace the remaining few who lacked the requisite slight contact with covered employment (or family connection with a covered worker) grew stronger and stronger. The 1961 amendments do, however, represent an unusually complete range of techniques, and thus furnish a particularly useful base from which to trace subsequent developments. The amendments contain four distinct methods for strengthening Social Security vis-à-vis OAA.

A. Improvement of Benefits for Those with Limited Covered Employment

The 1961 increase in the minimum benefit to forty dollars a month significantly boosted the lowest benefits on the Social Security scale in relation both to average benefits and to the maximum available to a high-wage retired worker.¹⁵³ Throughout the sixties, subsequent amendments increased the minimum at a faster pace than benefits farther up the scale.¹⁵⁴ In addition to these improvements at the very bottom, Congress repeatedly made upward adjustments of the multipliers that converted average covered wages into benefit amounts, accentuating the "tilt" of the benefit schedule in favor of the neediest. This "tilt" grew increasingly more severe.¹⁵⁵ Changes in the calculation of a worker's average wage also brought particular benefit to those with a spotty employment history.¹⁵⁶

B. Improvement of Widows Benefits

The 1961 increase of a widow's share of her husband's basic benefit amount to 82.5% was similarly not an isolated event. Vari-

¹⁵³ In 1961, the average and maximum were, respectively, \$75.65 and \$120.00. 1975 ANN. SUPP., *supra* note 7, at 25, Table 84, at 121.

¹⁵⁴ The minimum rose to \$44 in 1956, \$55 in 1968, \$64 in 1970, and \$70.40 in 1971. *Id.* at 25. The minimum represented 27.5% of the maximum in 1960, 32.8% in 1963 (a consequence of the 1961 amendments), 33.2% in 1966, and 34.3% in 1969 (all calculated in terms of the retirement formula for men). Compared to the average male retirement benefit, the minimum was 40.3% in 1960, 47.2% in 1963 (reflecting the 1961 amendments), 47.2% in 1966, and 49.6% in 1969. *See id.* at 25, Table 84, at 121.

In 1972, Congress established a new special minimum for those with many years of coverage at low wages. Social Security Amendments of 1972, Pub. L. No. 92-603, § 101(b), 86 Stat. 1329 (codified at 42 U.S.C. § 403(a)(5) (1976)).

¹⁵⁵ From 1955 to 1975, the replacement rate (monthly benefits as a percentage of immediate preretirement earnings) rose from 45 to 56 for a low-wage worker, 31 to 43 for a worker with average earnings, while it held at roughly 30 throughout the period for a worker with maximum taxable earnings. STAFF OF SUBCOMM. ON SOCIAL SECURITY OF HOUSE COMM. ON WAYS AND MEANS, 95TH CONG., 1ST SESS., BACKGROUND MATERIALS FOR HEARINGS ON SOCIAL SECURITY 16 (Comm. Print 1977).

¹⁵⁶ *See* 1975 ANN. SUPP., *supra* note 7, at 18.

ous adjustments to the remarriage provisions increased the value of those benefits through the late sixties.¹⁵⁷ Then, in 1972, Congress increased the widow's share to 100%.¹⁵⁸ This change had been pressed for several years on explicit "welfare" grounds. For example, the influential book by Pechman, Aaron and Taussig, *Social Security: Perspectives for Reform*, observed in 1968:

Abolition of the widow's "discount"—one of the major deficiencies in the benefit structure—deserves high priority. [There is no evidence] . . . that women [require] significantly less income than men to achieve a given living standard Widows receive lower incomes, possess fewer assets, and are even less capable of supplementing their benefits with earnings than are other retired persons. As a welfare measure, an increase in the widow's benefit to a full 100 percent of [her husband's basic benefit amount] would more effectively aid the poor, per dollar of added cost, than any other change in the system, including a higher minimum benefit. The nonpayment of taxes by the widow is clearly not a determining factor, since she already receives 82.5 percent of the standard benefit on the basis of her husband's earnings.¹⁵⁹

C. Relaxation of the Age Sixty-Five Test of Old Age

The original age threshold for both OAA and OASI was sixty-five.¹⁶⁰ The 1950 addition of federal support for need-tested benefits to the permanently and totally disabled permitted states to reach below sixty-five for those with severe medical problems.¹⁶¹ Social Security benefits for the disabled, added six years

¹⁵⁷ See Martin, *supra* note 80, at 802-09.

¹⁵⁸ Social Security Amendments of 1972, Pub. L. No. 92-603, § 102, 86 Stat. 1329 (codified at 42 U.S.C. § 402 (e)(2)(A) (1976)).

¹⁵⁹ PECHMAN ET AL., *supra* note 58, at 84.

¹⁶⁰ Social Security Act of 1935, ch. 531, §§ 2, 3, 202, 49 Stat. 620. Prior to 1940, state OAA plans could impose a more stringent age test, starting benefits as late as age 70. *Id.* § 2(b)(1).

¹⁶¹ See 42 U.S.C. §§ 1351-1355 (1976). States could, of course, reach below 65 if they chose to do so without federal support. Colorado's OAA program paid (nonfederally funded) benefits starting at age 60 for long-term residents of the state. See COLO. REV. STAT. § 26-2-111(2)(11) (1973); F. BOND, R. BAKER, J. VIEG, L. PERRY, A. SCAFF & L. LEE, *OUR NEEDY AGED* 133-34 (1954).

General assistance benefits in a few states, available without age limit, approached OAA levels and thus reduced the importance of the latter's age threshold. Compare PUBLIC INCOME TRANSFER, *supra* note 129, at 332-33 with *id.* at 116.

States could also cover some persons under 65 in their OAA program by including their needs in the check of a person 65 or over. Federal guidelines allowed the inclusion of

later (initially limited to those fifty and over, but eventually without regard to age), represented a similar adjustment on the social insurance side.¹⁶² For those unable to qualify as "disabled," however, sixty-five remained the age threshold for public assistance throughout the history of OAA. By contrast, a series of amendments, including the 1961 extension of retired-worker benefits to men as early as age sixty-two, ended the age sixty-five definition of "old age" for Social Security.¹⁶³ In 1965, Congress, showing the special sensitivity to the problems of widows already noted, reduced their age of eligibility still further to sixty.¹⁶⁴ (Seven years later dependent widowers gained equivalent treatment.¹⁶⁵) Those in greatest economic distress especially benefited from the opportunity to draw benefits before age sixty-five, albeit at an "actuarially" reduced monthly rate.¹⁶⁶

D. Extension of Benefits to Retired Workers with Minimal Contribution and Eventually to Individuals with No Contribution

The Social Security Act Amendments of 1939 tied OASI entitlement to "insured" status,¹⁶⁷ which required a certain number of "quarters of coverage."¹⁶⁸ Earning fifty dollars in covered wages during a three month period chalked up a quarter of coverage.¹⁶⁹ Despite drastic changes in nearly all other parameters of the system, the quarter of coverage remained the basis for enti-

the needs of a younger spouse or other "essential person" in the benefit calculations for an OAA recipient. Most states made some use of that opportunity. *See id.* at 102.

¹⁶² Social Security Amendments of 1956, ch. 836, § 103, 70 Stat. 807 (codified at 42 U.S.C. § 423 (1976)).

¹⁶³ Social Security Amendments of 1961, Pub. L. No. 87-64, § 102, 75 Stat. 131 (codified at 42 U.S.C. § 402(a) (1976)). Congress in 1956 had already dropped the age threshold for women to 62. Social Security Amendments of 1956, ch. 836, § 102(a), 70 Stat. 807 (codified at 42 U.S.C. § 402(a), (b), (c) (1976)).

¹⁶⁴ Social Security Amendments of 1965, Pub. L. No. 89-97, § 307, 79 Stat. 286 (codified at 42 U.S.C. § 402(e)(1)(B) (1976)).

¹⁶⁵ Social Security Amendments of 1972, Pub. L. No. 92-603, § 107, 86 Stat. 1329 (codified at 42 U.S.C. § 402(f)(1)(B) (1976)).

¹⁶⁶ *See* Lauriat & Rabin, *supra* note 20.

¹⁶⁷ Social Security Act Amendments of 1939, ch. 666, sec. 201, § 209(g), (h), 53 Stat. 1360. The benefits central to this study (retired-worker, wife, and widow) required "fully insured" status. *Id.* sec. 201, § 202(a), (b), (d).

¹⁶⁸ *Id.* sec. 201, § 209(g).

¹⁶⁹ *See* 42 U.S.C. § 413(a) (1976). The 1977 amendments finally changed the \$50 figure. As of January 1, 1978, \$250 is required for a quarter of coverage (with the calculation performed on an annual basis). After 1978, that figure is subject to an automatic yearly adjustment. Social Security Amendments of 1977, Pub. L. No. 95-216, §§ 351, 352, 91 Stat. 1509 (codified at 42 U.S.C.A. § 413(d) (West Supp. 1978)).

tlement from 1939 on. Since wage rates climbed dramatically after 1939, leaving the wage test for counting a quarter at fifty dollars¹⁷⁰ significantly enhanced Social Security's coverage of part-time and casual workers.

The 1950 amendments, reflecting a fresh start, provided retirement benefits to all workers who had one quarter of coverage for each two quarters that elapsed after 1950 and before the quarter in which the individual became old enough for benefits, subject, however, to a six-quarter minimum requirement.¹⁷¹ In 1960, the required one quarter of coverage for two quarters of time became one for three.¹⁷² The 1961 amendments, as already noted, set the ratio at one for four.¹⁷³ Thus, a male worker who turned sixty-five in 1962 needed only eleven quarters (two and three-quarter years) since 1936 in which he earned fifty dollars or more of covered wages.¹⁷⁴ A person seventy years old or older in 1962 could claim benefits with as few as six quarters (a year and one-half).¹⁷⁵ Because the threshold carried such a low contribution requirement, excluding any elderly for failing to meet it seemed patently arbitrary. This led to renewed efforts to "blanket-in" all uncovered elderly.¹⁷⁶

When the 1965 Social Security Amendments established Medicare, all persons attaining age sixty-five before 1968 became eligible for it even though they failed to meet the regular "insured" status requirements set for the program.¹⁷⁷ An amendment was offered in the Senate that would, in like fashion, have granted the minimum Social Security cash benefit to all persons seventy and over, but it was tabled.¹⁷⁸ The 1965 legislation did, however, establish a new class of benefits for certain people already in their seventies who met a new, reduced "transitional insured status" test. That test required as few as three quarters of coverage for men who were seventy-six or over and women who were seventy-three or over in 1965.¹⁷⁹ The following year, a Senate amend-

¹⁷⁰ See note 169 *supra*.

¹⁷¹ Social Security Act Amendments of 1950, ch. 809, sec. 104(a), § 214(a)(2)(A), 64 Stat. 477.

¹⁷² Social Security Amendments of 1960, Pub. L. No. 86-778, § 204(a), 74 Stat. 924.

¹⁷³ Social Security Amendments of 1961, Pub. L. No. 87-64, § 103(a), 75 Stat. 131.

¹⁷⁴ One for each year (four quarters) from 1951 through 1961.

¹⁷⁵ One for each year from 1951 through 1956 or the minimum of six.

¹⁷⁶ See Cohen, Ball & Myers, *Social Security Payments to Noninsured Persons*, Soc. SEC. BULL., Sept. 1966, at 3, 3-5.

¹⁷⁷ 42 U.S.C. § 426a(a) (1976).

¹⁷⁸ Cohen, Ball & Myers, *supra* note 176, at 4.

¹⁷⁹ Social Security Amendments of 1965, Pub. L. No. 89-97, § 103, 79 Stat. 286; Cohen & Ball, *Social Security Amendments of 1965: Summary and Legislative History*, Soc. SEC. BULL.,

ment to the Tax Adjustment Act of 1966 "blanketed-in" all persons then seventy-two or over plus those who attained that age before 1968.¹⁸⁰ Reflecting the clear "public assistance" character of these benefits, they, though not the "transitionally insured" benefits of 1965, were funded out of general revenues.¹⁸¹

The eligibility provisions for these blatantly noncontributory benefits demonstrated a novel degree of attention to the problems of interface with government retirement pensions and OAA. Receipt of or eligibility for any government pension caused a reduction of this special class of Social Security benefits by an equal amount (an early though limited recognition of the "double-dipping" problem).¹⁸² Receipt of any OAA rendered an individual ineligible, but a potential recipient could reject OAA in favor of the new benefits.¹⁸³ The latter provision evidenced an intention that the new benefits not be paid where they would provide no advantage to the recipient—*e.g.*, in a state where Social Security benefits produced a dollar-for-dollar reduction of OAA—but merely reduce state OAA expenditures.¹⁸⁴

Sept. 1965, at 3, 15; S. REP. NO. 404, 89th Cong., 1st Sess. 14-15, *reprinted in* [1965] U.S. CODE CONG. & AD. NEWS 1943, 1956. The new benefits were \$35 a month for a retired worker or widow, and \$17.50 for the wife of a retired worker (80% of the minimum benefit for those meeting the regular "fully insured" status test). Social Security Amendments of 1965, Pub. L. No. 89-97, § 103, 79 Stat. 286. The minimum benefit was then \$44 a month. 1975 ANN. SUPP., *supra* note 7, at 25.

¹⁸⁰ Tax Adjustment Act of 1966, Pub. L. No. 89-368, sec. 302(a), § 228(a), 80 Stat. 38 (codified at 42 U.S.C. § 428 (1976)). See Cohen, Ball & Myers, *supra* note 176, at 5-9. For such individuals, without regard to quarters of coverage, the Act established a special monthly benefit of \$35, plus \$17.50 in the case of an eligible couple (the same amounts as the 1965 provision awarded the "transitionally insured"). Tax Adjustment Act of 1966, Pub. L. No. 89-368, sec. 302(a), § 228(b), 80 Stat. 38 (codified at 42 U.S.C. § 428 (1976)).

These amounts, like those for the "transitionally insured," were increased each time the regular benefit schedule was adjusted. See 1975 ANN. SUPP., *supra* note 7, at 22. Those reaching 72 after 1967 had to have some quarters of coverage, the number increasing gradually, so that by 1970 for women (1972 for men), it equalled the number that would produce regular retired-worker benefits. Cohen, Ball & Myers, *supra* note 176, at 6.

¹⁸¹ See 42 U.S.C. § 428(g) (1976). In 1972, several members of the House Ways and Means Committee expressed the view that at least a portion of the cost of the new special minimum benefit established that year (see note 154 *supra*) should similarly be funded out of general revenues. H.R. REP. NO. 231, 92d Cong., 2d Sess., *reprinted in* [1972] U.S. CODE CONG. & AD. NEWS 4989, 5363.

¹⁸² 42 U.S.C. § 428(c) (1976).

¹⁸³ *Id.* §428(d). See Cohen, Ball & Myers, *supra* note 176, at 5-6.

¹⁸⁴ This provision had a strange effect on the distribution of the 1966 benefits. In low OAA benefit states the new "special" Social Security benefits were more attractive than OAA to many or perhaps most of those on the OAA rolls who met the more stringent age test of the special Social Security benefits. But in high OAA benefit states, where the basic

E. The Resulting Stress on OASI

The "transitionally insured" and "blanketing-in" provisions of 1965 and 1966 were one-time gestures of gradually dwindling importance.¹⁸⁵ But the other "welfare" modifications of Social Security traced in this section—including a comparatively generous minimum benefit paid to those making negligible contributions, a benefit formula that discriminated generally in favor of those with lower levels of average earnings, and a system of dependents and survivors benefits paid on behalf of those with qualifying family members without additional contribution—grew into major elements of the system.

Writing in 1968, Pechman, Aaron and Taussig observed:

The basic dilemma in considering reform of the social security system is that the United States has attempted to solve two problems with one instrument—how to prevent destitution among the aged poor and how to assure to people, having adequate incomes before retirement, benefits that are related to their previous standard of living. The earnings replacement function calls for benefit payments without an income test. Basic income support, on the other hand, can be carried out most efficiently if payments are confined to households with low income.

Two separate systems are needed to accomplish the two functions at the lowest cost. The earnings replacement function should continue to be performed by a social security system. Social security would become strictly wage-related, with the replacement rate roughly the same at all earnings levels between subsistence and the median earnings level. The income support function should be transferred to a negative income tax system

payment exceeded the rates of \$35 for an individual and \$52.50 for a couple, the new special benefits were more attractive than OAA only to those with other income that reduced their OAA benefits. In other words, in such states the provision discriminated in favor of those OAA recipients in better financial shape. See PECHMAN ET AL., *supra* note 58, at 108-09.

The enactment of SSI led many more of the dwindling population of potential special-benefit recipients to elect public assistance at the cost of losing their special benefits. Compare 1975 ANN. SUPP., *supra* note 7, Table 55, at 88, Table 116, at 143 with SOC. SEC. BULL.—ANNUAL STATISTICAL SUPPLEMENT, 1972, Table 104, at 119. Since SSI benefits are more than twice as large (for a person with no other income) as the special benefits, the remaining 162,000 recipients must, by SSI's criteria, be relatively non-need. See *Current Operating Statistics*, SOC. SEC. BULL., Mar. 1978, Table M-14, at 48.

¹⁸⁵ The blanketed-in beneficiaries totaled 728,577 at the end of 1967. Since then the figure has declined every year—the consequence of few additions to the eligible group and significant attrition through death. See 1975 ANN. SUPP., *supra* note 7, Table 55, at 88.

or to a comprehensively reformed system of public assistance.¹⁸⁶

Few could have predicted then how soon such a "comprehensively reformed system of public assistance" (for the elderly at least) would in fact come about. Pechman *et al.* judged prospects for total reform "dim" over the "foreseeable future."¹⁸⁷

VII

WELFARE REFORM: THE REPLACEMENT OF OAA

Defying such predictions, in August of 1969, President Nixon publicly launched a major program of welfare reform. Its central feature was a proposed Family Assistance Plan (FAP) designed to replace federal grants-in-aid to state programs of Aid to Families with Dependent Children (AFDC) with a purely federal benefit program augmented by state supplements. Nixon's original address devoted but one sentence to OAA and the other "adult programs,"¹⁸⁸ and from 1969 through 1972 nearly all attention focused on FAP. Parallel reform of the other federally supported state assistance programs—Old Age Assistance, Aid to the Blind, and Aid to the Permanently and Totally Disabled—received continuing, though low-level, attention as the political battles surged over FAP.¹⁸⁹ Although Congress ultimately failed to enact FAP,

¹⁸⁶ PECHMAN ET AL., *supra* note 58, at 215. At an earlier point, the authors note:

The need for any minimum benefit would be greatly reduced, or would be eliminated, if there were some method outside the social security system by which the aged poor . . . could be assured adequate income without the imposition of degrading application procedures. The old-age assistance program is today the only major alternative for providing aid to the aged poor, but payments under it are far from adequate.

Id. at 93.

¹⁸⁷ *Id.* at 217.

¹⁸⁸ V. BURKE & V. BURKE, *supra* note 14, at 112-13.

¹⁸⁹ The Nixon administration's initial reform bill, H.R. 14173, 91st Cong., 1st Sess., introduced in October 1969, and the version passed by the House in 1970, H.R. 16311, 91st Cong., 2d Sess., both left the adult categories in state hands, supported, as before, by federal grants-in-aid. Both bills would have imposed a nationwide minimum payment level and uniform national eligibility standards. H.R. 1, 92d Cong., 1st Sess., reported out by the House Ways and Means Committee in May 1971 and passed by the House on June 22, 1971, recast the adult programs in the same form as FAP—a federal benefit, federally administered, with state supplements.

In June 1972, following its hearings on H.R. 1, the Senate Finance Committee announced several tentative points of agreement including dropping the new federal program for the aged, blind, and disabled contained in Title 11 of the bill. Instead, the committee favored minimum benefit standards for state assistance programs for the adult

in late 1972 it did vote to replace OAA and the other adult programs with a FAP-like scheme.¹⁹⁰ The new program, Supplemental Security Income (SSI), began operating in 1974. For the first time, it established a national, minimum level of public assistance for the elderly.¹⁹¹

categories (essentially the approach contained in President Nixon's original plan). But by the time the committee reported out a bill on September 26, 1972, the federal program for the adult categories, now named Supplemental Security Income, was back in. *See generally* M. BOWLER, *THE NIXON GUARANTEED INCOME PROPOSAL* 123-58 (1974); SSI Study Group, Report to the Commissioner of Social Security and the Secretary of Health, Education, and Welfare on the Supplemental Security Income Program 1-13 (Jan. 1976).

¹⁹⁰ Social Security Amendments of 1972, Pub. L. No. 92-603, § 301, 86 Stat. 1329 (codified at 42 U.S.C. §§ 1381-1383c (1976)). FAP stalled in the Senate twice after the program passed the House:

SSI, however, was approved by the Senate because needy blind, aged, and disabled adults were seen as more deserving of help than poor families, because it did not cost as much or add as many new recipients to welfare rolls, and, most important, because the attention of the Senate was focused almost completely on the proposed programs for families. Describing action on the Senate floor, [Senator] Ribicoff's legislative assistant said,

people were so concerned about Title IV (the family provisions) that no one paid any attention to Title III (provisions pertaining to aged, blind, and disabled adults). If SSI had been on its own it never would have made it. Also, it passed because it looked like peanuts next to the family programs.

A Senate Finance Committee staff member told a reporter that "During conference, the SSI barely captured the conferees' attention."

M. BOWLER, *supra* note 189, at 147. Reviewing the same record, the Burkes conclude that the controversy surrounding FAP "probably helped passage" of SSI:

The welfare revolution embodied in SSI escaped detection because few read the plan, because few understood the welfare status quo well enough to appreciate the plan; because man [*sic*] interpreted the triple endorsement of Richard Nixon, Wilbur Mills, and Russell Long as a guarantee that the plan was modest.

Except for the few persons who engineered it and for governors, who anticipated savings from its federally paid floor for the aged, blind, and disabled, few knew what was in Title III of H.R. 1.

V. BURKE & V. BURKE, *supra* note 14, at 197. All in all, a strange chain of events led to SSI; as the Burkes observe:

Had Republican Nixon not won the presidency in 1968, America almost surely would not have adopted a federal income guarantee for the aged in 1972. Not only was this revolutionary concept missing from the Democratic agenda; the party's leaders and professionals were embarrassed by welfare and loath even to discuss the matter.

Id. at 4.

¹⁹¹ The 1972 legislation set payment standards of \$130 a month for an individual, \$195 for a couple. Social Security Amendments of 1972, Pub. L. No. 92-603, sec. 301, § 1611(b), 86 Stat. 1329. Subsequent amendments brought the respective figures to \$140 and \$210 for the first half of 1974. *See* 42 U.S.C. § 1382(b) note (1976). Such standards far surpassed what the "low benefit" states were paying under OAA, but fell substantially below the levels in "high benefit" states. For a comparison, see *IMPACT OF SSI*, *supra* note 122, at 53.

The original SSI legislation left to the states the question of whether they would supplement the new federal benefits. Certain very limited types of state or local benefits were discouraged by the way benefits were calculated under the federal plan. No public body is likely to assist an SSI recipient if the aid is counted as income and produces an equivalent reduction in the federal benefit.¹⁹² But the SSI income definition excluded most local need-tested benefits, which thus did not reduce SSI benefits.¹⁹³

Six months before the new program was to take effect, however, the Senate Finance Committee became concerned that many recipients might be hurt by the change-over from SSI's grant-in-aid predecessors because of the states' unwillingness to supplement SSI.¹⁹⁴ This concern resulted in a new requirement that states supplement the federal benefit to a level that would assure each individual who was a recipient under one of the prior categorical grant-in-aid programs the same level of support under SSI. Congress imposed this requirement as a condition for the states to continue receiving federal support for Medicaid.¹⁹⁵

During the brief history of the federal SSI program, Congress has increased benefit levels several times.¹⁹⁶ Indeed, an August 1974 amendment put SSI on the same automatic adjustment basis as OASI, thereby explicitly coordinating the two programs and regularizing increases in benefit levels.¹⁹⁷ But each time the federal SSI benefit went up, those states that by choice or

¹⁹² In-kind benefits furnished by state or local agencies were discouraged by SSI in this fashion. Although supplementary "cash payments" furnished by local public bodies were not counted as income in SSI benefit calculations, there was originally no comparable exemption for in-kind benefits. A 1976 amendment removed the distinction. See Unemployment Compensation Amendments of 1976, § 505(b), 90 Stat. 2667 (codified at 42 U.S.C. § 1382a(b)(6) (1976)).

¹⁹³ See note 192 *supra*.

¹⁹⁴ A reading of the one-day Senate Finance Committee hearing on the subject (June 19, 1973) raises doubts about the grounds for that concern. See *Supplemental Security Income Program: Hearing on the Need for Protecting Aged, Blind, and Disabled Welfare Recipients from Suffering a Reduction in Benefits When the New Federal Supplemental Security Income Program Becomes Effective in January 1974 Before the Senate Comm. on Finance*, 93d Cong., 1st Sess. (1973).

¹⁹⁵ Act of July 9, 1973, Pub. L. No. 93-66, § 212(a), 87 Stat. 152. The requirement was originally attached by the Senate Finance Committee as one of several Social Security amendments to a bill (H.R. 8410, 93d Cong., 1st Sess. (1973)) that had already passed the House, extending the federal debt limit. When the House resisted use of that vehicle, the requirement was promptly (one day later) appended to H.R. 7445, 93d Cong., 1st Sess. (1973), "An Act to Amend the Renegotiation Act for Two Years and For other Purposes." This time the House acquiesced.

¹⁹⁶ See 42 U.S.C. § 1382 note (1976).

¹⁹⁷ *Id.* § 1382f.

mandate were supplementing SSI still retained the same option that all states had under OAA: they could supplement to a correspondingly higher benefit level, in tandem with the federal increase, or stay at the same level. The latter choice effectively denied recipients the federal increase.¹⁹⁸ In late 1976, Congress severely limited this remaining area of state discretion with a further Medicaid condition. To receive federal support for Medicaid after June 30, 1977, states must continue to supplement SSI, maintaining total SSI payments at their December 1976 level.¹⁹⁹ Thus, to receive federal support for their Medicaid programs states must maintain a supplementary benefit program at a steady level of financing—a level which they may not reduce simply because the federal benefits have increased.

These revolutionary changes occurring between 1972 and 1976 removed virtually all the structural features that previously blocked effective coordination of social insurance and public assistance programs at the federal level.

VIII

THE NEW PARTNERSHIP: HOW OASI AND SSI FIT TOGETHER

A. OASI

OASI's present broad coverage stems from eligibility rules that qualify: (1) those who have worked a minimum period in covered (and taxed) employment,²⁰⁰ (2) the spouses of such workers,²⁰¹ and (3) dependent parents of deceased covered work-

¹⁹⁸ The OASI/SSI cost-of-living increase of June 1975 took at least 14,000 elderly off state supplementation rolls. The following year's increase removed 35,000. *Social Security in Review*, Soc. SEC. BULL., Nov., 1975, at 1, 1-2; *Social Security in Review*, Soc. SEC. BULL., Nov. 1976, at 1, 1-2.

¹⁹⁹ Act of Oct. 21, 1976, Pub. L. No. 94-585, sec. 2, § 1618(a), 90 Stat. 2901 (codified at 42 U.S.C. § 1382g(a) (1976)).

²⁰⁰ That minimum period is one quarter of coverage for each year after 1950 and before the year in which the worker turns 62. (Workers who turn 21 after 1950 need count only years after that.) A worker turning 62 in 1978 needed 27 quarters. In 1991, the statutory maximum of 40 quarters (10 years) will be reached. See 42 U.S.C. § 414(a) (1976). Prior to 1978, \$50 of covered wages in a quarter produced a quarter of coverage. See text accompanying note 169 *supra*. The 1977 Social Security Amendments shifted the test to an annual one. For 1978, \$250 of covered wages produced one quarter of coverage; \$500, two; \$750, three; \$1,000, four. Thereafter, the figures are subject to automatic adjustment to reflect increases in wage levels. Pub. L. No. 95-216, secs. 351(c), 352(b), §§ 213(a)(2), 213(d), 91 Stat. 1509 (to be codified in 42 U.S.C. § 413(a), (d)).

²⁰¹ See 42 U.S.C. § 402(b), (c), (e), (f) (1976). See generally Martin, *supra* note 80.

ers.²⁰² Surviving spouses of deceased workers are entitled to payments at age sixty; all other claimants must be sixty-two to receive benefits.²⁰³

For any recipient, the monthly benefit depends upon at least the following: the average covered earnings of the worker during a base period;²⁰⁴ the age at which the recipient first claims benefits;²⁰⁵ and, prior to age seventy-two, the recipient's current earnings if they are above a modest amount deemed consistent with retirement (e.g., \$3,000 in 1977).²⁰⁶ Earnings above that figure reduce benefits fifty cents per dollar.²⁰⁷

Benefits are calculated in terms of a "primary insurance amount" (PIA)—the monthly benefit a retired worker would receive if he had no excess earnings and first claimed benefits at age sixty-five.²⁰⁸ Thus, a worker who claims benefits upon turning sixty-two receives eighty percent of his (or her) PIA.²⁰⁹ The spouse of a retired worker who claims a dependent's benefit at

²⁰² See 42 U.S.C. § 402(h) (1976).

²⁰³ Compare *id.* § 402(e), (f) with *id.* § 402(a), (b), (c), (h). Spouses who care for eligible children of retired or deceased workers are eligible for benefits without regard to age. See *Weinberger v. Wiesenfeld*, 420 U.S. 636, 645 (1975) (extending such benefits to husbands of deceased workers); 42 U.S.C. § 402(b)(1)(B), (g) (1976).

²⁰⁴ Only wages up to a certain figure are taxed and counted. The limit was \$3,600 for the years 1951-1954, \$4,200 for 1955-1958, \$4,800 for 1959-1965, and so on. In 1972, the adjustments were put on an automatic formula basis, which, for example, produced a limit of \$16,500 for 1977. See 42 U.S.C. §§ 409, 430 (1976); *History of the Provisions of Old-Age, Survivors, Disability, and Health Insurance*, 1975 ANN. SUPP., *supra* note 7, at 15, 32. The 1977 amendments further increased the amounts. Social Security Amendments of 1977, Pub. L. No. 95-216, sec. 103, § 230(c), 91 Stat. 1509 (codified at 42 U.S.C.A. § 430(c) (West Supp. 1978)).

The worker's base period covers the years after 1950 and before age 62 (death in the case of survivors benefits), with the lowest five years dropped. A person working beyond his or her 62nd birthday can substitute later years for lower ones before 62. See 42 U.S.C. § 415(b) (1976).

²⁰⁵ See 42 U.S.C. § 402(q)(1) (1976).

²⁰⁶ See *id.* § 403(b), (f); *History of the Provisions of Old-Age, Survivors, Disability, and Health Insurance*, 1975 ANN. SUPP., *supra* note 7, at 15, 29. The 1977 amendments dropped the age at which the "excess earnings" reduction for OASI beneficiaries ceases from 72 to 70 (as of 1982) and increased the "exempt amount" for those 65 and over. As a result, there are now two reduction formulae—one which applies to those under 65, another, more generous, to those from 65 to 72 (65 to 70 beginning in 1982). See Social Security Amendments of 1977, Pub. L. No. 95-216, §§ 301, 302, 91 Stat. 1509 (to be codified in 42 U.S.C. § 403).

²⁰⁷ See 42 U.S.C. § 403(f) (1976).

²⁰⁸ *Id.* § 402(a) ("Except as provided in [the reduction subsection], such individual's old-age insurance benefit for any month shall be equal to his primary insurance amount . . .").

²⁰⁹ The reduction formula is 5/9 of one percent for each month prior to age 65, which, for three years, totals 20%. *Id.* § 402(q)(1)(A).

age sixty-five receives fifty percent of the worker's PIA.²¹⁰ A surviving spouse who first receives benefits at sixty-five receives 100% of the deceased worker's PIA.²¹¹ A single surviving parent receives 82.5%.²¹² And so on.

For those receiving benefits prior to January 1979, PIAs are determined from an annually-amended schedule according to the worker's average covered earnings over a post-1950, preretirement (or predeath) base period.²¹³ The Social Security Amendments of 1977 established a new and more complicated method for calculating a worker's PIA. The new formula necessitates converting covered (and taxed) earnings to an indexed average derived by comparing wage levels during the years of the worker's base period to wage levels shortly before his retirement.²¹⁴

²¹⁰ *Id.* § 402(b)(2), (c)(3). Drawing benefits at age 62 reduces the amount to 37.5%. The reduction formula is 25/36 of one percent per month prior to age 65, which, for a three-year period, totals 25% (of 50% of the PIA). *Id.* § 402(q)(1)(A).

²¹¹ *Id.* § 402(e)(2)(A), (f)(3)(A).

²¹² *Id.* § 402(h)(2)(A). If more than one parent is eligible, each receives 75% of the PIA. *Id.* § 402(h)(2)(B).

²¹³ *See id.* § 415(a), (i); 43 Fed. Reg. 20,867, 20,869-72 (1978).

OASI BENEFIT SCHEDULE—JUNE 1, 1978

<i>Average Monthly Earnings</i>	<i>PIA</i>
\$76 or less	\$121.80
\$100	156.70
200	222.40
250	251.80
300	278.10
350	307.10
400	336.00

Id. at 20,869-70.

²¹⁴ *See* Social Security Amendments of 1977, Pub. L. No. 95-216, sec. 201, § 215(a), (b), 91 Stat. 1509 (to be codified in 42 U.S.C. § 415). The relationship between average indexed earnings and PIAs that took effect in January 1979 is set forth below:

OASI BENEFIT SCHEDULE—JANUARY 1, 1979

<i>Average Indexed Monthly Earnings</i>	<i>PIA</i>
\$135 or less	\$122.00
\$150	135.00
200	168.40
250	184.40
300	200.40
350	216.40
400	232.40
500	264.40
600	296.40
700	328.40
800	360.40

Both formulae include an initial bracket in which the return of benefits to earnings is extremely high. The pre-1979 formula (as adjusted for the latter half of 1978) provides a PIA of approximately 156% of the first \$110 of average monthly earnings (with a minimum of \$121.80).²¹⁵ The new formula yields 90% on the first \$180 of average indexed monthly earnings (with essentially the same minimum).²¹⁶ Beyond the first bracket, the return drops off sharply—under the old formula to roughly 56% for the next \$290 of average monthly earnings;²¹⁷ under the new, to 32% for average indexed monthly earnings in excess of \$180 but not more than \$1,085.²¹⁸ Additional brackets exist for high-income workers, but the first two brackets are the ones pertinent to beneficiaries for whom a minimally adequate income during old age, and often before, is a serious problem.²¹⁹

The boundary between the first and second brackets is set low enough to assure that any person with reasonably steady employment during the program's base period will have substantial earnings falling in the second bracket. As a result, the cumulative return on earnings for a steadily employed low-wage worker falls somewhere between the first and second bracket percentages. Only those with spotty, low-wage employment in covered work fall completely in the first bracket. The minimum benefit goes to individuals with only the barest employment experience; a person claiming benefits at age sixty-two in January 1979 would receive the minimum PIA only if his monthly earnings over the best twenty-three years between 1951 and 1978 averaged seventy-six dollars or less.²²⁰

A steadily employed low-income worker is currently able to retire with a PIA (under both the new and old formula) in the

Social Security Amendments of 1977, Pub. L. No. 95-216, sec. 201, § 215(a), 91 Stat. 1509 (to be codified in 42 U.S.C. § 415).

²¹⁵ See 43 Fed. Reg. 20,867, 20,869 (1978); note 213 *supra*.

Between 1954 and 1979, the system responded to price and wage increases through increases in the multipliers applied to a steadily increasing number of brackets, *but* the initial brackets themselves remained constant. Thus, the PIA formula was 55% of the first \$110 in 1954, 71% in 1967, and 90% in 1971. *History of the Provisions of Old-Age, Survivors, Disability, and Health Insurance*, 1975 ANN. SUPP., *supra* note 7, at 15, 18-19.

²¹⁶ See Social Security Amendments of 1977, Pub. L. No. 95-216, sec. 201(a), § 215(a), 91 Stat. 1509 (to be codified in 42 U.S.C. § 415); note 214 *supra*.

²¹⁷ See 43 Fed. Reg. 20,867, 20,870 (1978).

²¹⁸ Social Security Amendments of 1977, Pub. L. No. 95-216, sec. 201(a), § 215(a), 91 Stat. 1509 (to be codified in 42 U.S.C. § 415).

²¹⁹ See Table 4.

²²⁰ See 42 U.S.C. § 415(b) (1976); 43 Fed. Reg. 20,867, 20,869 (1978).

neighborhood of \$240, approximately twice the minimum (see Table 4). A spouse without equivalent retired-worker entitlement is eligible for an additional benefit of approximately \$120.²²¹

TABLE 4

*OASI Benefits of Two Hypothetical
Low-Income Workers About to Retire*

		<i>Worker A Steadily Employed Forty Hours a Week at the Federal Minimum Wage (1951-1977)^a</i>	<i>Worker B Employed at Annual Earnings Equal to 1/2 the Median for Workers of Same Age (1951-1977)^b</i>
	<i>Poverty Line</i>		
Annual Earnings—	1959 (\$1952)	\$2080	\$1876
Illustrative Years,	1963 (2052)	2388	2105
Compared to Poverty	1969 (2458)	3328	2906
Line for Non-	1972 (2808)	3328	3355
Elderly Couple ^c	1976 (3830)	4784	4203
Average Monthly Earnings		244	227
Primary Insurance Amount (PIA)—			
June 1, 1978 Schedule		246	239
Monthly Benefit if Begun at Age 62 (80% of PIA)		197	191
Average Indexed Monthly Earnings		432	387
PIA—Jan. 1, 1979 Schedule*		243	228

* A person eligible for benefits before 1984 is entitled to use the PIA from the June 1, 1978 schedule if higher, which it would be in both cases. Social Security Amendments of 1977, Pub. L. No. 95-216, sec. 201, § 215(a)(4)(B), 91 Stat. 1509.

Sources:

^a H.R. REP. NO. 521, 95th Cong., 1st Sess. 17, *reprinted in* [1977] U.S. CODE CONG. & AD. NEWS 3201, 3218.

^b SOC. SEC. BULL.—ANNUAL STATISTICAL SUPPLEMENT, 1975, Table 42, at 75.

^c *Id.*, Table 9, at 46.

²²¹ 42 U.S.C. § 402(b), (c) (1976). Benefits are, respectively, 20% and 25% lower than these amounts if begun at 62 instead of 65. *Id.* § 402(q)(1)(A).

In late 1977, the average benefit to workers who had first claimed benefits at age 65 or later (and had therefore received at least 100% of their PIA) was \$274; the average for the 59.3% who started benefits between 62 and 65 (at a reduced rate) was \$221. *Quarterly Statistics*, SOC. SEC. BULL., June 1978, Table Q-4, at 74. Taken together, they represented average monthly earnings in the neighborhood of \$290. Compare the average earnings of the low-income workers in Table 4. *See id.*; 42 Fed. Reg. 24,210, 24,211 (1977). Because

While Social Security's "retirement test" may reasonably measure retirement for higher-income workers, it allows low-wage workers to receive benefits without retiring. The workers used as examples in Table 4 both made less than \$400 a month in 1977 and qualified, at age sixty-two, for beginning benefits of roughly \$190. During 1977, a "retired" worker could earn up to \$250 a month while receiving full OASI benefits.²²² Earnings of \$400 a month reduced benefits only \$75.²²³ As a consequence, the low-income worker can supplement continuing earnings with OASI. Indeed, as long as such an individual is able to work, OASI permits a higher standard of living than was possible before "retirement."²²⁴

B. SSI

SSI is available to all persons sixty-five and over who have income and assets falling below the program's standard of need. As of July 1, 1978, the standard for an individual was \$189.40 of monthly income and \$1,500 in assets;²²⁵ the comparable figures for an eligible married couple were \$284.10 and \$2,250.²²⁶ Certain amounts of both earned and unearned income may be disregarded, and "assets" do not include such significant assets as the applicant's home, automobile, and household furnishings.²²⁷ Although undoubtedly more could qualify, approximately ten percent of the elderly receive some SSI.²²⁸

these averages pre-date the 6.5% increase of mid-1978, they understate the benefits available under the schedule shown in note 213 (*supra*) by at least that amount. The benefits paid new retired-worker claimants, based on more recent and therefore, on average, higher earnings, exceeded the average benefits for all retired-worker beneficiaries. The difference amounted to 5%. See *Current Operating Statistics*, *supra* note 184, Table M-13, at 47. The average payments during late 1977 for dependent wives and husbands and surviving widows and widowers (including those electing benefits before age 65) were \$123 and \$222, respectively. *Id.*

²²² See 42 U.S.C. § 403(f) (1976).

²²³ The reduction amounted to 50 cents for each dollar over \$250 a month. See *id.* § 403(b), (f).

²²⁴ Using the above figures, the individual would receive \$400 in earnings and \$115 in OASI a month.

²²⁵ 43 Fed. Reg. 20,867, 20,868 (1978). See 42 U.S.C. §§ 1382(a), 1382a, 1382b (1976).

²²⁶ 43 Fed. Reg. 20,867, 20,868 (1978).

²²⁷ See 42 U.S.C. §§ 1382(a), 1382a, 1382b (1976).

²²⁸ *Quarterly Statistics*, SOC. SEC. BULL., Mar. 1978, Table Q-3, at 77. On the gap between the number eligible and the number receiving benefits, see Note, *Outreach: Bringing the Eligible Into Federal Assistance Programs*, 62 CORNELL L. REV. 1093, 1108-10 (1977).

In one sense, SSI has supplanted the minimum income assurance function that OASI had been previously stretched to fill. Those receiving Social Security benefits based on a low earnings record—their own or that of a spouse or child—are now entitled to a greater level of support under SSI. The SSI payment for an individual is fifty-six percent higher than the minimum Social Security PIA²²⁹ and only slightly below the retired-worker benefit a steadily employed minimum-wage worker receives upon electing benefits at age sixty-two (see Tables 4 & 5).

In another sense, however, SSI has only supplemented Social Security for recipients at lower benefit levels. To remain eligible for SSI, persons also eligible for OASI benefits must apply for them.²³⁰ Approximately seventy percent of the elderly who receive SSI also receive Social Security.²³¹ Joint recipients get undiminished OASI benefits, with only enough SSI to bring them up to that program's standard of need, plus a small bonus created by its disregarding a small amount of OASI. SSI thus forces primary reliance on OASI. Currently, Social Security payments to elderly SSI recipients slightly exceed their total SSI payments.²³²

C. The OASI-SSI Relationship

When received, OASI benefits are treated as unearned income that produces a dollar-for-dollar reduction in SSI payments after the first twenty dollars per month.²³³ (The relationship between the two benefits is shown in Table 5 and Figure 7.) For the income range in which SSI eligibility exists, therefore, eligibility for OASI merely adds twenty dollars to the total income of an individual or couple.²³⁴ This increment is the same whether the

²²⁹ See 43 Fed. Reg. 20,867, 20,869 (1978); text accompanying note 225 *supra*. If one assumes OASI benefits are begun at age 62 (see text accompanying note 209 *supra*), SSI is 94% higher than the minimum OASI retired-worker benefit.

²³⁰ Those eligible for OASI benefits or similar payments must apply for them within 30 days after receiving a notice to that effect, or they become ineligible for SSI. 42 U.S.C. § 1382(e) (2) (1976).

²³¹ 1975 ANN. SUPP., *supra* note 7, Table 23, at 57.

²³² For December 1977, the 70% of aged SSI recipients with Social Security benefits received a total of approximately \$210,508,000 of OASI. SSI payments (including state supplements) to all aged recipients that month were only approximately \$199,340,000. See OFFICE OF RESEARCH AND STATISTICS, SOCIAL SECURITY ADMINISTRATION, HEW, PROGRAM AND DEMOGRAPHIC CHARACTERISTICS OF SUPPLEMENTAL SECURITY BENEFICIARIES, DECEMBER 1977, Table B, at 5, Table F, at 9 (1978).

²³³ The SSI benefit formula ignores \$20 of income of any type. 42 U.S.C. § 1382a(a)(2)(B), (b)(2)(A) (1976).

²³⁴ It adds nothing if there are other sources of income.

wage-earner's prior average earnings were the absolute minimum consistent with insured status (fifty dollars a quarter for twenty-seven quarters—six and three-quarter years—for an individual turning sixty-two in 1973)²³⁵ or were as high as \$267 a month. Between those amounts, past employment and the related payment of Social Security tax (FICA) affect only the mix of OASI and SSI in the recipient's total income during a period when both are available. The steadily employed low-wage worker and the person with minimal covered employment receive identical total benefits.

TABLE 5
Cumulative Benefits—OASI and SSI

<i>No State Supplement</i>	<i>OASI</i>	<i>Average Monthly Earnings (AME)</i>	<i>SSI</i>	<i>Total</i>	
Individual	\$ 0.00		\$189.40	\$189.40	
	97.40	(\$76 or less, if benefits claimed at 62)	112.00	209.40	
	121.80	(\$76 or less, if benefits claimed at 65)	87.60	209.40	
	209.40	(\$178 if benefits claimed at 65, \$267, if at 62) ^a	0.00	209.40	
Couple with Only One Covered Worker	0.00		284.10	284.10	
	143.10	(\$76 or less, if benefits claimed at 62)	161.00	304.10	
	182.70	(\$76 or less, if benefits claimed at 65)	121.40	304.10	
	304.10	(\$165 if benefits claimed at 65, \$263, if at 62) ^b	0.00	304.10	
<i>AME (assuming benefits claimed at 62)</i>					
<i>High State Supplement</i>	<i>OASI</i>		<i>SSI</i>	<i>State Supp.</i>	<i>Total</i>
Individual	\$ 0.00		\$189.40	\$100.00	\$289.40
	209.40	(\$267)	0.00	100.00	309.40
	309.40	(\$312) ^c	0.00	0.00	309.40
Couple with Only One Covered Worker	0.00		284.10	150.00	434.10
	304.10	(\$263)	0.00	150.00	454.10
	454.10	(\$496) ^d	0.00	0.00	454.10

Sources: 42 U.S.C. § 1382a(a)(2)(B), (b)(2)(A) (1976); 43 Fed. Reg. 20,867, 20,868-69 (1978).

a \$178 AME = \$2,136 average annual earnings; \$267 AME = \$3,204 average annual earnings.

b \$165 AME = \$1,980 average annual earnings; \$263 AME = \$3,156 average annual earnings.

c \$312 AME = \$3,744 average annual earnings.

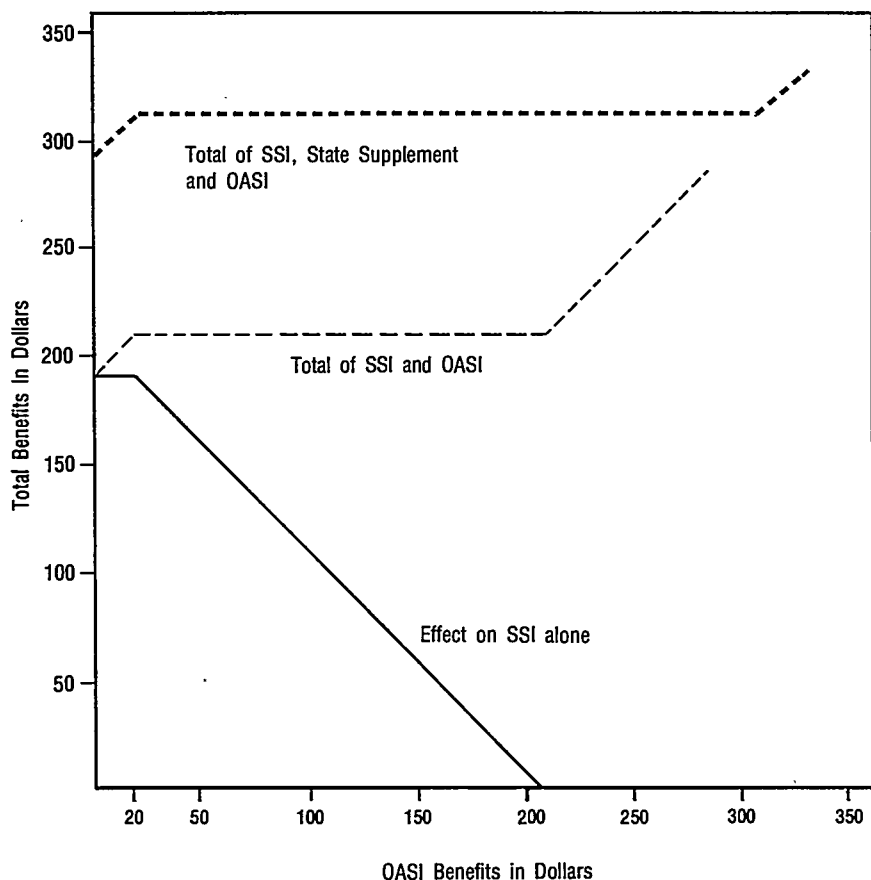
d \$496 AME = \$5,952 average annual earnings.

²³⁵ See note 200 *supra*.

The OASI-SSI relationship sketched so far represents the situation for individuals to whom both programs are potentially available. But both may not be available. While the programs focus on much the same population, a number of significant discrepancies exist in their coverage.

FIGURE 7

*Relationship of Total Benefits to
OASI Benefit Level*



1. Age

Except in the case of disability, for which Social Security and SSI provide specially, strict age thresholds define access to the two programs. At present, there is a three to five year discrepancy as

to when that threshold is reached. A widow or widower who claims OASI on the account of a deceased wage-earner can obtain benefits as early as age sixty; in all other OASI cases, the age threshold is sixty-two.²³⁶ Reflecting the contributory or "insurance" character of the program, a benefit reduction formula adjusts the monthly payment according to the age at which the recipient begins benefits.²³⁷

In contrast, SSI has an absolute age sixty-five threshold.²³⁸ As a consequence, the low-income (low-OASI benefit) individual or couple draws three to five years of unsupplemented OASI (at a reduced monthly amount, because drawn ahead of the "normal" retirement age of sixty-five). But once SSI is available, it cancels out the OASI "early retirement" benefit reduction.

2. Marriage

When a married couple with disparate ages²³⁹ moves across these thresholds, the results seem even more discrepant because of another difference in the programs: their treatment of marriage at benefit time.

SSI has an expansive definition of marriage and a benefit scheme that treats a married couple household as an economic unit. This affects both eligibility (because of income imputation) and the definition of "need."²⁴⁰ Eligibility for each partner nevertheless still depends on age.²⁴¹ Under OASI, marital status can provide additional benefits without regard to whether the spouses still live together.²⁴² Thus, OASI provides a bonus for

²³⁶ See note 203 and accompanying text *supra*.

²³⁷ See 42 U.S.C. § 402(q)(1)(A) (1976).

²³⁸ *Id.* § 1382c(a)(1)(A).

²³⁹ Most married couples approaching retirement are three or more years apart in age. Typically the husband is older. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, PERSPECTIVES ON AMERICAN HUSBANDS AND WIVES, Table 4, at 5 (Current Population Reports, Series P-23, No. 77, 1978).

²⁴⁰ SSI treats the married couple household differently from, for example, a brother-sister household in at least two ways. First, whether or not the husband and wife are both 65 or over, their combined income is compared with a single need standard for the household. See 42 U.S.C. §§ 1382(a)(2), 1382c(f)(1) (1976). Second, for an eligible couple, that standard is only $\frac{3}{4}$ the total need figure for two unmarried individuals with a joint household. Compare *id.* § 1382(a)(1)(A) with *id.* § 1382(a)(2)(A). SSI includes within its definition of married couple "a man and woman . . . found to be holding themselves out to the community in which they reside as husband and wife." *Id.* § 1382c(d)(2). The program also continues to treat eligible couples as a household for the first six months after they have begun living apart. *Id.* § 1382c(b).

²⁴¹ See *id.*

²⁴² See *id.* §§ 402(b), (c), 416(b), (f), (h); Martin, *supra* note 80, at 805.

marriage under some circumstances while SSI penalizes married couples in the sense that it treats them less favorably than, say, a brother and sister living together.²⁴³ The following example illustrates the impact of the different treatment accorded married couples under the two programs.

Year 1: Mr. and Mrs. Doe are age sixty and fifty-seven respectively. Both have Social Security wage records, but Mr. Doe's reflects higher average wages and more consistent employment. Consequently, Mrs. Doe, as a spouse, will receive additional benefits beyond her retired-worker amount, especially after Mr. Doe dies. Neither are "disabled," but a combination of deteriorating health and limited education is causing a year-by-year reduction in their earnings. OASI and SSI are not yet available to the pair.

Year 3: Mr. Doe is now sixty-two. He files for and receives OASI retired-worker benefits which are actuarially reduced to reflect his "early retirement." Mr. Doe can continue to earn at his "preretirement" level (\$4,000 a year) and still receive significant benefits. His wife's earnings and age have no effect on his benefits.

Year 6: Mr. Doe is sixty-five at last. SSI benefits, as well as Medicaid and Medicare, are now available to *him*. (His OASI monthly benefit is slightly below the SSI need standard.) The reduction of his OASI because of early retirement is cancelled out by SSI. *But*, if he continues to earn more than \$780 per year, his SSI will be reduced (fifty cents for each dollar above sixty-five dollars per month). *Furthermore*, his wife, who is too young for SSI, may adversely affect his benefits. She is now sixty-two and can claim OASI retired-worker benefits, plus an additional amount as the wife of a retired worker. Those benefits, plus the earnings that she may continue to bring in without effect on either spouse's OASI amount (so long as they fall below the amount permitted by the "retirement test") are "deemed" to be income to Mr. Doe for purposes of SSI.²⁴⁴ Of course, assuming SSI benefits of only thirty to forty dollars are at stake, the Does may be better off despite their loss due to such "deemed" income.

Year 9: Mr. Doe is sixty-eight, Mrs. Doe sixty-five. They are finally an SSI "eligible couple." That means simply that the SSI standard of need for the household increases; the increase is less than would occur if the two were not married. As before, the

²⁴³ See note 240 *supra*.

²⁴⁴ 42 U.S.C. § 1382c(f)(1) (1976); 20 C.F.R. § 416.1185(a) (1978).

OASI benefits and the earnings of both diminish their SSI benefits.

Year 10: Mr. Doe dies. Mrs. Doe becomes an SSI individual and a Social Security widow. So long as her widows benefits do not put Mrs. Doe above the SSI standard of need plus twenty dollars a month, the Social Security has no effect on Mrs. Doe's total income *unless* reasonable earnings are still available to her.

Year 11: Mrs. Doe meets a widower, Mr. Roe, and the two contemplate marriage. Mr. Roe is living on his OASI retired-worker benefit, which is slightly above the point at which SSI would be available. (His assets would disqualify him in any event.) Marriage will not reduce OASI benefits for the two.²⁴⁵ But Mrs. Doe's SSI will be lost, for a marriage (or even "living together as husband and wife") will create a new couple for SSI purposes with full attribution of income and assets between the "spouses."²⁴⁶

3. *Relationship to Other Income and Assets*

Consistent with OASI's basic contributory character, the program pays full benefits without regard to possession of other assets and other "retirement" income. It also has a fairly generous disregard of earned income which Congress has repeatedly increased. In contrast, SSI has income and asset policies—forcing consumption of most other resources before turning to SSI—designed to assure that only the most needy receive its benefits. For those potentially subject to the benefit policies of both programs, the difference in signals must be startling. The policies of SSI prevail for individuals whose OASI falls significantly below the SSI need standard.

a. *Savings and Similar Provision for Eventual Self-Support Other Than by Earnings.* Future self-support is "encouraged" by OASI. It is often said that the program furnishes a basic layer of support upon which individuals, through savings, will add. Yet significant pre-sixty-five savings merely create a disqualifying asset that must be consumed by potential SSI recipients. Consequently, the SSI incentives encourage full consumption of past savings during the pre-SSI period, when OASI alone is available.²⁴⁷

²⁴⁵ Even if Mrs. Doe is receiving widows benefits on the account of her deceased husband, remarriage has no impact by virtue of a 1977 amendment. Social Security Amendments of 1977, Pub. L. No. 95-216, sec. 336(a)(3), § 202(e)(4), 91 Stat. 1509 (to be codified in 42 U.S.C. § 402).

²⁴⁶ See note 240 *supra*.

²⁴⁷ The eligibility rules of some state Old Age Assistance programs attempted to prevent the most blatant forms of asset dissipation by would-be recipients. R. LEVY, T. LEWIS & P. MARTIN, *supra* note 14, at 111-12. SSI has nothing comparable.

b. *Earnings*. SSI is also much more sensitive to earnings than is OASI. As already noted, OASI is only slightly affected by earnings at levels likely to be available to potential joint recipients and then only until age seventy-two. The "supplementing" SSI, however, quickly disappears if the individual is earning more than sixty-five dollars per month. The rate of reduction for earnings, fifty cents per dollar, is the same for both programs, but OASI totally disregards a monthly amount close to four times larger than SSI's sixty-five dollars.²⁴⁸

D. State Supplementation of SSI

Due in part to federal "mandates,"²⁴⁹ most states supplement SSI benefits for at least some needy elderly.²⁵⁰ Strong fiscal incentives have also led the majority of them to elect federal administration of their supplementary benefits.²⁵¹ The federal agency merely adds the state's money to the federal benefit check. Recipients deal with one agency, the Social Security Administration, and receive SSI and state supplements in a single payment. Because large-supplement states have particularly strong incentive to choose federal administration, nearly ninety percent of all state supplementary dollars are federally administered.²⁵²

Some state supplements are simply indirect subsidies of certain special living arrangements for the elderly, such as adult foster homes. Several states limit supplements to such cases.²⁵³ As a consequence, in a slim majority of the states the federal SSI benefit is the only public assistance available to an elderly individual

²⁴⁸ See 42 U.S.C. § 1382a(b)(4)(C) (1976); note 206 *supra*.

²⁴⁹ See text accompanying notes 196-99 *supra*.

²⁵⁰ See *Quarterly Statistics*, *supra* note 228, Table Q-23, at 91, Table Q-29, at 94.

²⁵¹ In 1976, 26 states and the District of Columbia used federal administration for at least some supplementary payments to the elderly. *Quarterly Statistics*, SOC. SEC. BULL., June 1977, Table Q-24, at 99. Twenty-four states administered their own supplements. *Id.*, Table Q-30, at 102.

²⁵² Compare *Current Operating Statistics*, SOC. SEC. BULL., Apr. 1977, Table M-22, at 78 with *Current Operating Statistics*, SOC. SEC. BULL., June 1977, Table M-29, at 70.

²⁵³ During 1976, for example, Alabama provided no supplements to elderly individuals or couples living independently, but added \$56.20 a month to the federal benefit for a couple living in a "personal or foster care home." Arizona limited supplements to individuals or couples in licensed nursing homes, adding \$145.20 a month to the federal benefit for a couple in a private nursing home. Bureau of Supplemental Security Income, Social Security Administration, HEW, Summary of State Payment Levels, State Supplementation, and Medicaid Decisions 1, 3 (Revised Aug. 9, 1976 with addendum dated Sept. 2, 1976) [hereinafter cited as Summary of State Supplementation].

or couple living independently.²⁵⁴ At the other extreme lie a few states that add \$100 or more a month to the federal standard for an individual and \$150 or more for a couple.²⁵⁵ Table 6 shows the range of state supplements, in relation to the poverty line, for elderly persons living independently, as of September 1976.

TABLE 6
*State Supplements for Individuals
and Couples Living Independently,
September, 1976*

<i>Supplement</i>	<i>Number of States</i>
\$100 or more per individual, \$150 or more per couple	3 states (Alas., Cal., Mass.)
Less than \$100/\$150 but enough to bring both individuals and couples to the poverty line (\$60 or more per individual, \$33 or more per couple)	5 states (Conn., Idaho, Neb., N.Y., Wis.)
Not enough to bring an individual to the poverty line, but meets that standard for a couple (\$33 or more per couple)	9 states (Colo., Mich., Minn., Nev., Okla., Pa., R.I., Vt., Wash.)
\$10-\$25 per individual and per couple	4 states (Hawaii, Me., N.J., Or.)
Less than \$10 per individual, \$0 per couple	2 states (Ill., N.H.)
No supplement for individual or couple	27 states and D.C.

Source: Bureau of Supplemental Security Income, Social Security Administration, HEW, Summary of State Payment Levels, State Supplementation, and Medicaid Decisions (Revised Aug. 9, 1976 with addendum dated Sept. 2, 1976).

States electing federal administration must have income disregards at least as generous as those contained in the basic federal SSI benefit formula. States may disregard additional amounts or types of income, but such disregards cannot affect benefits in the income range in which federal SSI benefits are still being paid. These disregards can come into play only for those with incomes

²⁵⁴ The total is 27 states and the District of Columbia. In all but 12, elderly persons living in nursing homes or adult foster homes or other special care living situations received some supplement. See *id.* at 1-35.

²⁵⁵ *Id.* at 2, 4, 13.

above the federal SSI limit.²⁵⁶ Assuming that a state disregards only the required twenty dollars a month of all types of income, supplementary benefits have no effect on the relationship between SSI (as supplemented) and OASI, other than to increase the amount of total benefits and therefore the range over which Social Security does not affect the total income of the recipient beyond the first twenty dollars a month. This effect should not be belittled. The increase of the range is quite large in some states; in a few, it extends up to the average retired-worker benefit.²⁵⁷

When the state administers supplementary benefits, there are no federal constraints on the treatment of OASI or other income. Thus, a state can nullify the twenty dollars per month disregard in SSI, placing recipients of OASI and other types of income on a par.²⁵⁸ There is little reason, however, to expect state-administered supplementary benefits to have less respect for the SSI disregards than federally-administered programs do. Consequently, Figure 7 can be assumed to depict the relationship between OASI and SSI and state supplementary benefits generally, not just for states that choose federal administration.

Since 1975, SSI has contained an automatic cost-of-living adjustment to accompany that in the basic Social Security program; since 1976, "mandatory pass-through" has assured comparable adjustment of state supplementary benefits.²⁵⁹ Prior to enactment of the latter, the dynamic interaction between SSI and OASI—over time—was as much subject to state control as OAA had been,²⁶⁰ at least in states with a sizeable supplement. Currently, the SSI-OASI benefit "system" assures upward adjustments for inflation to virtually all elderly covered by the "system."

Despite this coordination of OASI, SSI and state supplements, several areas remain in which the existence of significant state benefits can have an important impact on the OASI-SSI system. First, by raising the income range over which OASI benefits do not affect the total income of an individual or couple, state

²⁵⁶ 20 C.F.R. § 416.2025 (1978).

²⁵⁷ In the latter half of 1976, that extension required a monthly state supplement of between \$35 to \$40 for an individual living individually. Eight states were supplementing at or above that level. See Summary of State Supplementation, *supra* note 253, at 1-35; *Quarterly Statistics*, SOC. SEC. BULL., Dec. 1977, Table Q-4, at 75.

²⁵⁸ This would be true, for example, if a state chose to supplement SSI \$25 a month but reduce the supplement one dollar for each dollar disregarded by SSI.

²⁵⁹ See text accompanying notes 196-99 *supra*.

²⁶⁰ See text accompanying notes 117-26 *supra*.

supplements can accentuate all the features of the basic federal program, including its offset of the "early retirement" reduction of OASI, its override of Social Security incentives for savings and earnings, and its identification of old age with age sixty-five. A state can, by providing public assistance at or near SSI levels prior to age sixty-five, reduce or eliminate the effects of SSI's age sixty-five threshold; however, such assistance is rare.²⁶¹ Far more common is an additional state SSI supplement for eligible individuals living with a younger spouse not old enough for SSI. In late 1976, the SSI supplement programs of eight states contained such a benefit.²⁶² This form of indirect support for the younger spouse (without a specific age limit) eases some of the transition problems for the married couple that the differing age thresholds of OASI and SSI create.

The structure of state supplements can also affect the marriage penalty that SSI contains. Treatment of a married couple household as an economic unit—with the income of one spouse assumed to be available for both—is required of federally-administered state supplements and is no doubt included in state-administered programs as well. But state benefits that supplement couples more generously than individuals offset the sac-

²⁶¹ State and local programs of general assistance to needy individuals not within the coverage of federally supported welfare programs (SSI and AFDC) typically have much lower payment standards. Often, they furnish only temporary or emergency assistance. See STAFF OF SUBCOMM. ON FISCAL POLICY OF JOINT ECONOMIC COMM., 93D CONG., 2D SESS., HANDBOOK OF PUBLIC INCOME TRANSFER PROGRAMS: 1975, at 349-56 (Studies in Public Welfare, Paper No. 20, 1974).

²⁶² See Summary of State Supplementation, *supra* note 253, at 1-35.

State Old Age Assistance plans had been permitted to include the needs of a person living in the same household and "essential" to the well-being of the recipient in calculating the recipient's needs. Most OAA plans made some provisions for such "essential persons." The rubric allowed indirect coverage of the younger spouse. See PUBLIC INCOME TRANSFER, *supra* note 129, at 101, 102.

SSI contains no generally available "essential person" increment. However, a grandfathering provision applies to that dwindling number of recipients who had an "essential person" recognized under one of the predecessor programs (OAA, Aid to the Blind, Aid to the Permanently and Totally Disabled) when they were transferred to SSI in 1974. See Act of July 9, 1973, Pub. L. No. 93-66, § 211, 87 Stat. 152. In December 1975, there were 65,690 such "essential persons," 88.5% of them spouses; in December 1976, 47,051, 89.2% of them spouses. OFFICE OF RESEARCH AND STATISTICS, SOCIAL SECURITY ADMINISTRATION, HEW, PROGRAM AND DEMOGRAPHIC CHARACTERISTICS OF SUPPLEMENTAL SECURITY BENEFICIARIES, DECEMBER 1975, Table 31, at 53 (1977); OFFICE OF RESEARCH AND STATISTICS, SOCIAL SECURITY ADMINISTRATION, HEW, PROGRAM AND DEMOGRAPHIC CHARACTERISTICS OF SUPPLEMENTAL SECURITY BENEFICIARIES, DECEMBER 1976, Table 31, at 55 (1977).

In the latter half of 1978, a grandfathered "essential person" added \$94.80 a month to the federal standard for an individual eligible for SSI. 43 Fed. Reg. 20,867, 20,868 (1978).

rifice in payment standard upon marriage that the federal benefit scheme contains. The supplements of two states (California and Colorado) result in combined federal and supplementary benefits for a couple precisely twice those paid an individual.²⁶³

Overall, however, such reshaping of the SSI benefit scheme through supplements is rare. From a national perspective, state supplements appear to have limited effect on the OASI-SSI relationship beyond expanding the range of SSI in a number of states, quite significantly in a few.

IX

PROSPECTS FOR GREATER COORDINATION

In 1974, Congress enacted SSI, a public assistance program, to go alongside the social insurance program, OASI. The latter itself had by then taken on many "welfare" features largely because of the prior lack of an adequate public assistance program for the elderly. Initially, Congress left those features undisturbed; it made no coordinating changes in OASI and shaped SSI without evident attention to that program's interaction with Social Security.

Since 1974, Congress has acknowledged this interaction, but has yet to address most major issues of coordination. The most fundamental question is: Should Congress shift more of the task of providing minimally adequate old-age benefits from OASI to SSI? Congress must also consider how to treat those who could potentially qualify for benefits under either or both programs. Three groups deserve particular attention: (1) elderly who had been steadily employed low-wage workers dependent on their income from OASI-covered work; (2) elderly whose marginal covered employment results from marginal employment overall; and (3) elderly whose marginal covered employment masks significant uncovered work—most notably, longtime federal civil servants with comparatively generous public pensions ("double-dippers").

A. *The Basic Division of Labor*

As a device for assuring a minimally adequate income to the elderly, OASI has several major drawbacks. Because the program

²⁶³ See Summary of State Supplementation, *supra* note 253, at 4.

lacks a "need" test, Social Security benefits justified on grounds of minimum adequacy will reach some who have a more than adequate income from other sources, including a significant number of the now-notorious "double-dippers." Moreover, the wage taxes that finance OASI, whatever their merit as a base for the "insurance" strand in the program, compare unfavorably with the federal income tax as a method of paying for public assistance.

The existence of SSI makes it possible to shift public assistance functions assumed by OASI to a program that will perform them more efficiently and more equitably. Yet an examination of the major "minimum adequacy" features of Social Security reveals that realignment of the program with SSI requires complicated surgery. Few of those features so completely express welfare aims that straightforward excision can be viewed as an attractive reform. Most call for new and complex adjustments to OASI or SSI, or both.

1. Inflated Benefit Levels for Those with Limited Covered Employment—OASI's Minimum Benefit

One bit of simple surgery does seem desirable and possible. With SSI available, there is no reason for OASI to pay a substantial minimum benefit to those who have had only marginal covered employment. That minimum should be removed.

In 1977, Congress took a hesitant step in that direction. As part of a major overhaul of the system, it froze the "minimum benefit." The 1977 amendments permanently fix the minimum PIA at the December 1978 figure, rounded off to the next highest dollar—\$122.²⁶⁴ The Report of the House Ways and Means Committee tied the change to the existence of SSI:

Freezing the minimum emphasizes that the supplemental security income (SSI) program is an appropriate source of income for needy aged, blind, or disabled people. . . . The committee believes that this is a more efficient and appropriate method of dealing with the problem of poverty for those who have only a marginal attachment to work covered by social security.²⁶⁵

²⁶⁴ Social Security Amendments of 1977, Pub. L. No. 95-216, sec. 201, § 215(a)(1)(C)(i)(1), 91 Stat. 1509 (to be codified in 42 U.S.C. § 415).

²⁶⁵ H.R. REP. NO. 702, 95th Cong., 1st Sess., pt. 1, at 32, reprinted in [1977] U.S. CODE CONG. & AD. NEWS 4155, 4189.

The report noted that "[i]ncreasingly, the minimum benefit is being paid to people who did not, during their working years, rely on their covered earnings as a primary source of support." To some of them—notably federal civil servants with lengthy employment in uncovered work producing a public pension—the minimum is a "windfall." Finally, the report pointed out that freezing the minimum would have little or no effect on "low-paid workers who worked regularly under the social security program."²⁶⁶

On the House floor, Representative James C. Corman (Chairman of the Public Assistance Subcommittee of the Committee on Ways and Means) offered an amendment that would have eliminated the minimum.²⁶⁷ He argued that "freezing" the minimum responded inadequately to the considerations the committee recited. The amendment failed by a vote of 131 to 271.²⁶⁸

The arguments for eliminating the minimum are compelling, and quite possibly Congress will return to the proposal. The likelihood that elimination will replace the gradual "real" reduction, achieved by the 1977 freeze, rests in part on whether Congress extends Social Security coverage to presently uncovered federal and state employees. So long as they remain uncovered, the minimum generates a particularly troublesome "windfall" to the significant fraction of those workers who by retirement have enough work in the private sector to qualify for Social Security.²⁶⁹

2. *The Weighted Benefit Formula*

Although the 1977 amendments reduced the importance of the minimum, they reaffirmed—for some, even increased—the weighting of the benefit schedule in favor of those with low average earnings over a lifetime of employment. By most measurements, the steadily employed low-wage worker will, under the revised benefit formula, do as well in comparison with the average- or high-income earner as before.²⁷⁰

²⁶⁶ *Id.* at 31-32, reprinted in [1977] U.S. CODE CONG. & AD. NEWS at 4188-89.

²⁶⁷ See 123 CONG. REC. H11,612 to H11,615 (daily ed. Oct. 26, 1977).

²⁶⁸ *Id.* at H11,615.

²⁶⁹ Representative Corman introduced his elimination amendment only after the House had rejected extension of OASI coverage to public employees. *Id.* at H11,613. The final 1977 legislation directs HEW to study "the feasibility and desirability" of such an extension or, as the act puts it, "universal coverage." Social Security Amendments of 1977, Pub. L. No. 95-216, § 311, 91 Stat. 1509 (codified at 42 U.S.C.A. § 902 note (West Supp. 1978)).

²⁷⁰ For 1979 the amendments intentionally adjusted the new formula to provide slightly lower PIAs, on average, than the old formula would have, but preserved the *relative* advan-

Do the arguments for eliminating the minimum apply equally to the benefit formula's severe "tilt" in favor of those with a history of steady but low average earnings? Some seem persuaded that they do. At the time of SSI's passage, one commentator observed that

[t]he existence of a large, uniform Federal benefit program for the low-income aged will force congressional attention on the question of structural changes in social security. That is, the need for a special minimum social security benefit *and the need for a heavy weighting of the benefit schedule in favor of the low-wage worker* will diminish, and the benefits paid out under these provisions will become less efficient in reducing poverty.²⁷¹

Linking the minimum and the weighted formula in this way ignores a fact to which Congress was quite sensitive in 1977. The minimum provides advantage only to those who have had very slight contact with covered employment. The weighted formula, in contrast, benefits many who have had a long period of earnings-based self-sufficiency. Moreover, because it falls significantly below the SSI payment standard, the minimum keeps no one off public assistance. The weighted formula, on the other hand, provides large enough benefits to those above the very bottom of the scale to keep them off SSI. Providing a constant ratio of OASI benefits to covered average indexed earnings would, like removing the minimum, deny "windfall" benefits to former public employees whose low average covered wages resulted from few covered years out of many years of work. But leveling the formula would also allocate to SSI a major share of the old-age income support of steadily employed low-wage workers. Indeed, a flat Social Security formula with a benefit-earnings ratio pegged at the current rate for middle-income workers would bring many more retired workers, including some middle-wage workers without private pensions, into SSI. In the process, these workers would necessarily shift from OASI's to SSI's policies concerning earnings, savings and marriage. To qualify for SSI, they would have to exhaust any individual savings for old age, losing, as a consequence, any incentive to save in anticipation of retirement.

tage of the low-wage worker. See H.R. REP. NO. 702, 95th Cong., 1st Sess., pt. 1, 23-24, reprinted in [1977] U.S. CONG. CODE & AD. NEWS 4155, 4180-81. In addition, those eligible for benefits before 1984 may use the old formula if it produces a higher PIA. Social Security Amendments of 1977, Pub. L. No. 95-216, sec. 201, § 215(a)(4)(B), 91 Stat. 1509 (to be codified in 42 U.S.C. § 415).

²⁷¹ IMPACT OF SSI, *supra* note 122, at 5 (emphasis added).

The prospect is not an attractive one. Strong reasons point toward fixing the boundary between OASI and SSI at a line that assures that "persons regularly employed at even minimum wage levels . . . receive reasonable insurance protection without resorting to assistance [SSI], except under exceptional conditions of need."²⁷²

This allocation principle does not, however, support retention of the present OASI formula. The formula fails on two counts. First, it inflates benefits for some who have marginal covered work, most conspicuously, the "double-dippers." Second, it falls short of guaranteeing the steadily employed low-wage worker enough Social Security to avoid reliance on SSI. Although at first glance the formula appears adequate for such a worker when judged against the SSI standard, that holds only if he first collects OASI at age sixty-five. With benefits begun at age sixty-two (or

²⁷² J. BROWN, AN AMERICAN PHILOSOPHY OF SOCIAL SECURITY 58 (1972). Brown sets this as the "upper side" of the desirable "boundary" between "protection by assistance" and "by social insurance." *Id.* His companion proposition is that social insurance should not be stretched to cover those with marginal contact with employment:

A simple first approximation in establishing the model area of coverage for public assistance is that it should protect those persons whose earnings under contributory insurance coverage would be inadequate to form a sufficient base for *insured* protection. Social insurance *is* insurance in the sense of relating benefits to a loss of income *normally* received. If the income lost is already inadequate, . . . reliance on the insurance mechanism would be inappropriate.

Id. at 57 (emphasis in original). See also Ball, *Some Reflections on Selected Issues in Social Security*, in SUBCOMM. ON FISCAL POLICY OF JOINT ECONOMIC COMM., 90TH CONG., 1ST SESS., OLD AGE INCOME ASSURANCE pt. 1, at 48, 52-53 (Comm. Print 1967).

The preference for Social Security as the vehicle of income assurance for the low-income worker derives from its identification with earnings. The 1965 Advisory Council expressed the point in this fashion:

[T]he Council believes that where it can be properly applied [social insurance] is much to be preferred to the method of public assistance, with its test of individual need, and the Council therefore strongly favors the improvement of social insurance as a way of reducing the need for assistance. The Council recognizes the need for an adequate public assistance program, but it believes that assistance should play the role of a secondary and supplemental program designed to meet special needs and circumstances which cannot be dealt with satisfactorily by other means.

No matter how well designed and administered, assistance has serious inherent disadvantages in terms of human dignity People view receipt of assistance as meaning a loss of self-support. In contrast, they view social insurance as an extension of self-support. People who have led productive lives and have supported themselves through their own efforts do not want to see their self-reliance end with their ability to work.

ADVISORY COUNCIL ON SOCIAL SECURITY, THE STATUS OF THE SOCIAL SECURITY PROGRAM AND RECOMMENDATIONS FOR ITS IMPROVEMENT (1965), *reprinted in* SOC. SEC. BULL., Mar. 1965, at 3, 5.

sixty in the case of a widow or widower)—the assumption that corresponds more closely to when beneficiaries in fact file—OASI monthly amounts for the low-income worker fall within the SSI range (see Tables 4 & 5). The fundamental problem with the present weighted formula is that it blurs together quite different groups of people. Those it favors—individuals with low average wages over the base period—include those with steady low wages and others having sporadic covered wages for a variety of reasons. On grounds of efficiency and equity, some (but not all) of them should be denied special treatment under Social Security, now that SSI provides more than adequate replacement protection.

A feature of OASI materially strengthened in 1977 shows one way to separate these groups. Congress increased the "special minimum" (added in 1972 for low-wage workers with many years of coverage) to the point where it now assures a PIA of \$11.50 for each year of coverage in excess of ten but not more than thirty.²⁷³ For the worker with a full thirty years, that produces a minimum PIA of \$230 for 1979. This minimum, in sharp contrast to the regular minimum frozen by Congress in 1977, is paid to those with a history of steady low-wage employment, rather than those who have marginal covered work.

Only a modest additional increase in the "special minimum" would assure that a thirty-year worker employed at the minimum wage would receive a large enough OASI benefit, even if begun at age sixty-two, to meet SSI's standard of adequacy. Increasing the multiplier for those with low average indexed earnings would achieve the same effect, but less efficiently.²⁷⁴ As with the regular minimum, this inefficiency is particularly troublesome so long as public employees remain uncovered by Social Security. If Congress increased the special minimum sufficiently to assure an adequate retirement income to the steadily employed low-wage worker, the heavy weighting of low average indexed earnings could be cut back.

²⁷³ Social Security Amendments of 1977, Pub. L. No. 95-216, sec. 201, § 215(a)(1)(c)(i)(II), 91 Stat. 1509 (to be codified in 42 U.S.C. § 415). The \$11.50 figure will subsequently be adjusted to reflect average-wage increases. *Id.* sec. 201(g)(1), § 215(i)(2)(A)(ii). Thus, the 1977 amendments fail to follow the path suggested by some—elimination of both the minimum benefit *and* weighted benefit formula—to turn OASI into a fairly pure contributory system. See *IMPACT OF SSI*, *supra* note 122, at 83-84.

²⁷⁴ The inefficiency lies in its also producing increased benefits for those without a history of steady employment in covered work.

3. *Spouse Benefits*

The 1939 addition of OASI benefits for surviving and dependent spouses, and subsequent improvements in benefits for spouses—particularly widows benefits—were strongly motivated by a concern with minimum adequacy.²⁷⁵ What implications does SSI have for these features of the Social Security system?

With SSI available to the widow of a marginally employed male, there is less reason to retain such spouse benefits—or their present fraction of the worker's PIA—as a welfare measure in such a case. Yet without major changes in the OASI structure to assure greater benefit equality between men and women and more equitable treatment of the many women who divide their time between home and work, spouse benefits simply cannot be eliminated.²⁷⁶ SSI alone is an inadequate replacement. If major reforms occur, however, the existence of SSI should ease the removal of these “welfare” features from OASI.

4. *Old-Age Benefits Prior to Age Sixty-Five*

Income needs associated with old age often begin before age sixty-five—particularly for those with lower Social Security benefits or none. Congress has lowered the age threshold for OASI in response to this phenomenon.²⁷⁷ SSI ought to extend at least to the same ages. The existence of a significant age band for which OASI is available but SSI is not (currently five years in the case of a widow or widower) puts pressure on OASI to perform essentially “public assistance” functions. A coordinating step less drastic but also less complete than lowering the general age threshold for SSI would be to add an SSI benefit increment to cover the younger (needy) spouse of a person meeting the age sixty-five eligibility test. The younger spouse of an SSI recipient can claim OASI at age sixty-two. SSI currently treats the couple as an economic unit for purposes of charging those OASI benefits against the older spouse's SSI amount but not for setting that amount. The couple should be treated as a unit for both purposes.

²⁷⁵ See Martin, *supra* note 80, at 795-801; text accompanying notes 157-59 *supra*.

²⁷⁶ See HEW, REPORT OF THE TASK FORCE ON THE TREATMENT OF WOMEN UNDER SOCIAL SECURITY (1978) (comparing a wide range of “reform” proposals); HEW, SOCIAL SECURITY AND THE CHANGING ROLES OF MEN AND WOMEN (1979); Martin, *supra* note 80, at 828-29. Some proposals add to the value of spouse benefits rather than eliminating them. See *id.* at 826.

²⁷⁷ See text accompanying notes 160-66 *supra*.

5. *Benefits for Those with Little or No Contribution*

The existence of SSI should curb any congressional desire to repeat the mid-sixties experiments with special Social Security benefits for those with slight or no contribution. Its existence also points toward eliminating those enduring features of the regular benefit scheme that permit benefits to go to such individuals. The distinction between steadily employed low-wage workers and individuals "who have only a marginal attachment to work covered by social security" applies here. Workers qualify for Social Security on the basis of "quarters of coverage." Congress should consider tightening that basic eligibility unit.

With SSI in place, there seems far less reason than before to count years of income below the SSI need standard (*e.g.*, \$2,000) toward OASI eligibility. In 1978, the test for coverage rose from the historic fifty dollars of covered earnings per quarter to \$1,000 in a year (for four quarters of coverage—five times the previous test). Years with earnings below \$250 are taxed and figured into the benefit formula but do not count toward the initial eligibility test of "insured status." Congress should increase the test figure.

B. *Possible Financing Changes*

The same figure could set an annual minimum below which Social Security would not tax or record earnings for benefit purposes. While OASI carried a heavy minimum-income responsibility, the comparatively large entitlement it eventually triggered justified the program's tax on very low incomes. SSI undercuts that justification. Consider the point at which Social Security takes over from SSI for a person claiming benefits at sixty-two (see Table 5). Assuming fairly steady employment, a person with average monthly earnings of \$267 as of 1978 will have had to pay approximately 3.6% of those wages in Social Security tax.²⁷⁸ His employer will have paid a like amount, which, in effect, the worker probably bore as well.²⁷⁹

²⁷⁸ Such a person would, for example, have paid 1.5% on earnings of \$1540 in 1951 and 4.375% on earnings of \$5,200 in 1977. A table of the OASI tax rates is contained in *History of the Provisions of Old-Age, Survivors, Disability, and Health Insurance*, 1975 ANN. SUPP., *supra* note 7, at 15, 32. The rates cited here are for OASI alone. The companion taxes to support the Disability Insurance program and Medicare are not included. The average rate is calculated by assuming a wage profile that parallels—year by year, from 1950 on (see Table 4)—the median for a person of the hypothetical individual's age but an average monthly earning figure of \$267.

²⁷⁹ "Most economists now think that, in spite of the intent of the law, the entire tax is borne by the employee." A. MUNNELL, *supra* note 18, at 86-87.

When persons with annual earned incomes in this neighborhood turn sixty-five, they qualify as needy under the SSI standard.²⁸⁰ Depending on family size and composition, they may be eligible for other forms of public assistance before sixty-five.²⁸¹ And they are free from the federal income tax because of a clear policy that low-income families should not be required to pay.²⁸² Nonetheless, such individuals are forced to contribute large annual sums for their old-age income support.²⁸³ Recently, some of these needy have been shielded from the impact of the Social Security tax by the earned income tax credit, which provides a refundable credit for low-income workers supporting children.²⁸⁴ In effect, the credit funds such workers' contributions out of general revenues. But the current earned income tax credit shields only those low-income workers who have children in their homes. In addition to that limitation of scope, this device has the disadvantage of holding those with sporadic and low wages within Social Security. Their wages are taxed and counted toward eventual Social Security funded out of the Social Security tax; the credit merely removes the burden of the tax from some during their working years.

The existence of SSI should prompt serious consideration of a more direct and complete approach—keeping those with mar-

²⁸⁰ The "earned income disregard" resulted in SSI being available to persons with earnings of \$440.60 a month (\$5,287 on an annual basis) during the latter half of 1977. (For couples, the figures were higher.)

²⁸¹ During 1977, the Food Stamp program reached two-person households with earned incomes up to \$292 a month and three-person (and larger) households with earnings well above that amount (considering only the program's \$30 per month earned income disregard and none of the other potential exclusions). See 42 Fed. Reg. 22,356 (1977); 7 C.F.R. § 271.3 (1977). In a number of states, AFDC payments were made to households with earnings of \$5,200. See ASSISTANCE PAYMENTS ADMINISTRATION, SOCIAL AND REHABILITATION SERVICE, HEW, CHARACTERISTICS OF STATE PLANS FOR AID TO FAMILIES WITH DEPENDENT CHILDREN UNDER THE SOCIAL SECURITY ACT TITLE IV-A (1976 ed.).

²⁸² The Tax Reform Act of 1969 established a Low Income Allowance to shield "the poor" from the federal income tax. See Tax Reform Act of 1969, Pub. L. No. 91-172, § 802, 83 Stat. 487 (repealed 1977); Dodyk, *The Tax Reform Act of 1969 and the Poor*, 71 COLUM. L. REV. 758, 786 (1971). The successor of that device is an initial zero rate bracket in the tax, which, combined with the personal exemption deduction and the general tax credit, set a \$5,200 tax threshold for a married couple in 1977. I.R.S. 1977 TAX TABLES, Table B. See I.R.C. §§ 1(a), 42, 151.

²⁸³ And these amounts are rising steadily. The 1977 amendments remedied the system's financial imbalance, in part, through a schedule of tax rate increases. See Social Security Amendments of 1977, Pub. L. No. 95-216, § 101, 91 Stat. 1509 (to be codified in 26 U.S.C. § 3101); H.R. CONF. REP. NO. 837, 95TH CONG., 1ST SESS. 64, reprinted in [1977] U.S. CODE CONG. & AD. NEWS 4308, 4310.

²⁸⁴ I.R.C. § 43.

ginal employment and slight wages out of the contributory scheme altogether. Annual wages below \$250 do not count toward OASI's "insured status" test. With SSI available to needy older persons, there is no reason to tax wages at such a low level. Indeed, a substantially higher threshold for both contribution and establishing "insured status" appears desirable. A figure of \$1,000 or even \$2,000 would excuse many needy individuals from the tax, yet leave the steadily employed low-wage worker in the system.

The Social Security program currently "subsidizes" all recipients—both former high-income workers and low. All receive benefits well beyond the value of their past contributions, paid for by the current work force—an "intergenerational transfer" of considerable magnitude.²⁸⁵ Focusing benefits at the bottom to assure the steadily employed low-wage worker an income above the SSI need standard implies only a modest shift of that intergenerational subsidy from high benefits to low. Shifting some of the subsidy of the low average-earnings person with relatively few years of coverage from OASI to SSI actually implies a reduction of the amount of the subsidy that the Social Security tax bears—an increasingly attractive proposition as the ratio of those supported by OASI to those supporting it grows.

C. *Desirable Adjustments to SSI*

A more rational and equitable fit between SSI and OASI requires some changes on the SSI side as well. The need for a coordinated age threshold has already been addressed. Another obvious target for reform is SSI's treatment of OASI income.

Reducing SSI payments one dollar for each dollar of OASI, beyond the first twenty dollars, neutralizes at least two features of Social Security. It cancels out the benefit reduction for pre-sixty-five retirement—which is particularly troublesome so long as the programs' age thresholds remain different—and denies the low-wage worker whose OASI falls below the SSI "break-even point" the sense of return on contribution. As one study put it:

Setting the SSI level at an amount that is only a few dollars below the average social security benefit lowers the value of so-

²⁸⁵ See Ozawa, *Individual Equity versus Social Adequacy in Federal Old-Age Insurance*, 48 Soc. SERV. REV. 24 (1974). The amount of the "intergenerational transfer" will inevitably fall now that the system is both mature and nearly universal. By 2020 it is likely to be gone for the retired high-wage worker. A. MUNNELL, *supra* note 18, at 40-41.

cial security to individuals who receive both types of benefits. The feeling that a large part of their retirement income is earned through a lifetime of payroll tax payments may be of psychological value to individuals who receive small SSI supplements. But the psychological value may succumb to reality when a retired worker realizes that the payroll tax he has paid gives him no more income than if he had worked less or not at all. . . . Twenty dollars a month may seem to be a small return to an individual who has worked and paid increasingly higher social security taxes for many years.²⁸⁶

A disregard of twenty or thirty percent of OASI (and similar retirement benefits) would solve this problem. It would also increase the adequacy of the system for joint recipients. Currently, neither SSI alone nor SSI coupled with OASI assures a poverty-line income to eligible individuals or couples. State supplements take recipients across that line in only a few states (see Table 6). Adding a thirty percent OASI disregard to SSI would assure a poverty-line income to many joint recipients.²⁸⁷

The importance of such a change in SSI depends heavily upon whether Congress adjusts the OASI benefit to assure an income significantly higher than the SSI standard to all steadily employed low-income workers, including those starting benefits at age sixty-two. Should Congress reshape Social Security along the lines suggested earlier in this section, far less reason would exist to give joint recipients some proportionate return on their Social Security contributions; under such a system, no one who has made a substantial contribution will end up as a joint recipient.

D. *Will SSI Survive?*

The foregoing discussion assumes the relative permanence of SSI. In 1977, however, President Carter proposed that Congress abolish SSI as part of a comprehensive plan for welfare re-

²⁸⁶ IMPACT OF SSI, *supra* note 122, at 84. Numerous others have since made the point. E.g., A. MUNNELL, *supra* note 18, at 11-12.

²⁸⁷ In 1976, \$60 a month separated the SSI payment standard from the poverty level for an elderly individual. For couples, the gap was \$33. In December 1976, the average monthly OASI benefit received by SSI-OASI joint recipients was \$137.50. OFFICE OF RESEARCH AND STATISTICS, SOCIAL SECURITY ADMINISTRATION, HEW, PROGRAM AND DEMOGRAPHIC CHARACTERISTICS OF SUPPLEMENTAL SECURITY BENEFICIARIES, DECEMBER 1976, Table 19, at 42 (1977). With a 30% disregard, the average benefit would have added \$41.50 to the combined income of a recipient rather than the flat \$20 provided by the actual SSI disregard.

form.²⁸⁸ Introduced in the House as H.R. 9030, the plan called for a new federal public assistance program to replace AFDC, SSI, Food Stamps, and significant aspects of state and local general assistance programs.²⁸⁹ It promised an SSI-like reform for those categories of the poor presently covered by AFDC or no federally supported cash assistance program at all. But because that reform was to be accomplished without major additional federal expenditure, it necessarily threatened the SSI population, which currently enjoys a higher standard of support than other segments of the poor.

Those representing the elderly generally opposed the legislation because it jeopardized the improvements gained through SSI.²⁹⁰ These opponents viewed the proposed standard of support as inferior, particularly since the administration's bill contained no automatic cost-of-living adjustment.²⁹¹ Many of the SSI features highlighted in this Article, however, were preserved in the new proposal. Indeed, it included a few of the coordinating elements suggested in this final section. For example, although the proposed program distinguished sharply between employables and unemployables and placed the SSI population (those sixty-five and over, blind or disabled) in the latter, high benefit group, it did offer modest assistance payments to needy individuals and couples below sixty-five.²⁹² It also contained a twenty percent disregard for OASI benefits.²⁹³

²⁸⁸ See President's Message to Congress on Welfare Reform, 13 WEEKLY COMP. OF PRES. Doc. 1205 (Aug. 6, 1977).

²⁸⁹ "This new program will . . . [r]educe complexity by consolidating the current AFDC, Supplemental Security Income (SSI), and the Food Stamp programs, all of which have differing eligibility requirements, into a single cash assistance program, providing for the first time a uniform minimum Federal payment for the poor." *Id.* The plan would not, however, have abolished the categorically different treatment of the elderly (and blind and disabled). It set higher payment levels for such individuals and special earned income disregards. H.R. 9030, 95th Cong., 1st Sess., § 101 (1977).

²⁹⁰ See *Welfare Reform and the Elderly Poor: Hearing Before the House Select Comm. on Aging*, 95th Cong., 1st Sess., pt. 1, at 15-16, 24, pt. 2, at 26-27 (1977); *Administration's Welfare Reform Proposal: Joint Hearings Before the Welfare Reform Subcomm. of the House Comm. on Agric., Comm. on Educ. and Labor, and Comm. on Ways and Means*, 95th Cong., 1st Sess., pt. 4, at 2517-60 (1977).

²⁹¹ *Welfare Reform and the Elderly Poor: Hearing Before the House Select Comm. on Aging*, 95th Cong., 1st Sess., pt. 1, at 62 (1977) (statement of Max Serchuk, President, Dade County Council of Senior Citizens and Member of the Executive Board, National Council of Senior Citizens).

²⁹² See note 289 *supra*. The bill contained a payment standard, for a 64 year old individual, of \$91.67 a month compared to \$208.33 for a 65 year old. H.R. 9030; 95th Cong., 1st Sess., § 101 (1977).

²⁹³ See H.R. 9030, 95th Cong., 1st Sess., § 101 (1977).

The President's bill, substantially rewritten by a special House subcommittee, failed to win necessary support in the 95th Congress.²⁹⁴ Most now see alternative plans for "incremental" reform as the best—and only—hope for legislative action in the near future. "Incremental" reform, virtually by definition, leaves SSI intact and focuses on the younger population presently served, if at all, by AFDC.²⁹⁵

Despite its short life, SSI has apparently acquired sufficient support—especially among the elderly, who are an increasingly organized and politically effective group—that neither its central features nor its program identity are likely to fall victim to welfare reform.

CONCLUSION

During the long period when no adequate national program provided need-tested benefits for the elderly, Social Security assumed many "welfare" characteristics. Now an adequate public assistance program—SSI—exists, and financing Social Security benefits has become an economic and political problem of major proportions. Set against its long-term fiscal demands, the funds OASI distributes to meet "welfare" needs seem modest; yet they are not insignificant. Currently, Social Security pays substantially more to needy elderly people than does SSI.²⁹⁶ Further, Social Security pays sizeable additional benefits—designed, like the minimum, largely with the needy in mind—to those who fail to meet the SSI standard or any other reasonable test of need. Shifting greater responsibility for minimum income assurance to SSI could relieve some of the pressure on the Social Security tax structure. In addition to these financing considerations, the need for equitable benefit distribution also calls for reallocation of responsibility between the two programs as well as greater coordination at the individual-benefit level.

The two major federal programs paying cash income to older Americans—Social Security and SSI—have only recently attained

²⁹⁴ H.R. 10950, 95th Cong., 2d Sess. (1978). See *Compromise Talks Open in Effort to Salvage Some Welfare Reform*, 36 CONG. Q. WEEKLY REP. 1064-68 (1978).

²⁹⁵ The two important "incremental" reform bills introduced in 1978—the Ullman bill (H.R. 10711, 95th Cong., 2d Sess. (1978)) and the Baker-Bellmon bill (S. 2777, 95th Cong., 2d Sess. (1978))—left SSI intact. See *Compromise Talks Open in Effort to Salvage Some Welfare Reform*, *supra* note 294, at 1065.

²⁹⁶ See note 232 *supra*.

near comprehensive coverage and comparatively high levels of support. Before the advent of SSI, which brought the need-tested programs for the elderly into federal hands, few realistic possibilities for coordination between social insurance and public assistance existed. Today, these possibilities are manifest and the arguments for greater coordination are compelling.