

THE DECISION TO EXCLUDE AGRICULTURAL AND DOMESTIC WORKERS FROM THE 1935 SOCIAL SECURITY ACT

by Larry DeWitt*

The Social Security Act of 1935 excluded from coverage about half the workers in the American economy. Among the excluded groups were agricultural and domestic workers—a large percentage of whom were African Americans. This has led some scholars to conclude that policymakers in 1935 deliberately excluded African Americans from the Social Security system because of prevailing racial biases during that period. This article examines both the logic of this thesis and the available empirical evidence on the origins of the coverage exclusions. The author concludes that the racial-bias thesis is both conceptually flawed and unsupported by the existing empirical evidence. The exclusion of agricultural and domestic workers from the early program was due to considerations of administrative feasibility involving tax-collection procedures. The author finds no evidence of any other policy motive involving racial bias.

Introduction

In recent years, some scholars have argued that the U.S. Social Security program—like some other social institutions—is biased against women and African Americans. One major contention along these lines involves the original coverage exclusions of the Social Security Act of 1935.

The 1935 act limited its provisions to workers in commerce and industry (this is what is known as the program’s “coverage”). This meant that the new social insurance program applied to about half the jobs in the economy. Among those left out were farm and domestic workers. Contemporary scholars have looked at this provision of the 1935 act, realized that a disproportionate number of African Americans were in these two occupational groups, and concluded that the disproportionate impact is evidence of a racial bias as the motive for this coverage exclusion.

An important key to the argument is the additional assumption that Southern Democrats in Congress were the agents who engineered this restrictive coverage policy. Thus, the full argument is that Southern Democrats in Congress—motivated by racial animus—moved to block African Americans from participation

in the new Social Security program and that this was the reason for the provision excluding farm and domestic labor (Gordon 1994; Brown 1999; Lieberman 1995; Williams 2003; Poole 2006).

The Race Explanation

The description of Social Security’s restrictive coverage policy has become so epigrammatic that it has passed over from historical narrative to background historical fact; it has been assumed and repeated as a basic datum about the program’s origin.

For example, one recent labor-history text summed up the issue of Social Security and race this way:

The Social Security Act was also racially coded—in part because of the power of Southern Democrats in the New Deal coalition. Southern politicians, reported one architect of the new law, were determined to block any ‘entering wedge’ for federal interference with the handling of the Negro question. Southern employers worried that federal benefits would discourage black workers from taking low-paying jobs in their fields, factories, and kitchens. Thus

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neither agricultural laborers nor domestic servants—a pool of workers that included at least 60 percent of the nation’s black population—were covered by old-age insurance. (Lichtenstein and others 2000, 429)

One of the strongest early statements of the thesis was given by Robert C. Lieberman (1995, 514–515), who asserted, “The Old Age Insurance provisions of the Social Security Act were founded on racial exclusion. In order to make a national program of old-age benefits palatable to powerful Southern congressional barons, the Roosevelt administration acceded to a Southern amendment excluding agricultural and domestic employees from OAI coverage.”

Linda Gordon (1994, 514–515) in her influential study of the welfare state, merged a discussion of the public assistance titles of the 1935 Social Security Act with the contributory social insurance title and offered a misleading critique of both: “Social Security excluded the most needy groups from all its programs, even the inferior ones. These exclusions were deliberate and mainly racially motivated, as Congress was then controlled by wealthy southern Democrats who were determined to block the possibility of a welfare system allowing blacks freedom to reject extremely low-wage and exploitive jobs as agricultural laborers and domestic servants.”

Alston and Ferrie (1999, chapter 3), in their book *Southern Paternalism and the American Welfare State*, offered a variation on this account. They argued that class—in the form of racially based landlord/tenant paternalism—played a stronger role than simple race prejudice or other factors, such as federalism, in shaping the programs under the Social Security Act in general and relative to the coverage exclusions in particular.

Probably the best detailed look at the exclusion issue in the academic literature is provided by Lieberman (1998)—*Shifting the Color Line*. Lieberman did not suggest that any members of Congress were the direct agents of the coverage exclusions, although he did imply that the coverage exclusions were some-how engineered by Southern members of Congress. Here, for example, is one way he described the exclusions: “the CES’s [Committee on Economic Security] decision that all workers should be covered came under immediate and persistent question at the hearings ... In the end, an important step behind congressional acceptance of a national program of old-age insurance was the racial manipulation of the program’s target

population so that a national program was sure to be a segregated one” (39). At another point he summarized the history this way: “In order to pass national old-age and unemployment insurance plans, the Roosevelt administration had to compromise inclusiveness and accept the exclusion of agricultural and domestic employees from the program, with notably imbalanced racial consequences” (25).

As we will see, these kinds of generalizations overlook the degree to which members of the Roosevelt administration were the principal advocates of the coverage exclusions—the administration did not have to “accept” the exclusions; *it was the source of the idea*.

This thesis has worked its way, unquestioned, into general-interest and survey-history texts. Matters have reached such a state that if a survey-history text makes three or four general observations about Social Security, one of them will often be that African Americans were excluded from participation via the coverage exclusions owing to racist motivations on the part of Southern members of Congress. This thesis thus becomes one of the few “facts” that beginning students of history learn about the Social Security program.

Typical of the treatment the subject receives in some general history books is Gordon and Paterson’s *Major Problems in American History 1920–1945*. The authors introduced their selections on Social Security with this summing up:

Before and after 1935, the New Deal was always dependent upon the votes of conservative Southern Democrats ... but Southerners saw the labor and welfare legislation of 1935 as a clear threat to Southern race relations and economic competitiveness. In many respects, Southern legislators were able to shape federal law (winning both the exemption of agricultural and domestic workers from Social Security and local control over its administration, for example). (1999, 304)

Gordon and Paterson (1999, 304–305) then provided as their underlying source document an excerpt from Edwin Witte’s (1962) memoir of the development of the Social Security Act.¹ In this document, according to the authors, “one of the drafters of the Social Security Act explains how both political and administrative considerations led to the exemption of agricultural and domestic workers.”

Gareth Davies and Martha Derthick (1997, 217–235) examined some key aspects of the racial-bias thesis and put the decisions made in the 1935 Social Security Act in comparative international perspective; they gave an overview of how the coverage exclusions came about, as well as a differing explanation of how and where racial concerns were in play in the Congress (in the welfare provisions of the 1935 act). The authors argued that race was relevant in shaping the welfare provisions; but they also argued that nonracial factors—such as federalism and state-specific economic considerations—were more significant determinants.

Perhaps the most pertinent contribution of Davies and Derthick was to make clear the distinction between the contributory Social Security program and the various public assistance provisions and to point out that Southern Democrats in the Congress were not the source of the Title II coverage exclusions. Unfortunately, many scholars are still confused about the distinction between the public assistance programs and the contributory social insurance program under the 1935 act.²

Understanding the Social Security Act

The Social Security Act of 1935 was an omnibus bill, containing 11 titles authorizing 7 distinct programs, only 1 of which (Title II) was the program we commonly think of as Social Security.³ These various programs had unique features that make presumed equivalences among them sources of serious error.

The Title II program was a new form of federal social provision in which workers and their employers paid taxes into an insurance fund that would pay the workers retirement benefits in the future, typically after many years of paying into the system (when the worker had attained age 65). Title I was the more familiar state-based welfare program that paid immediate benefits to the needy elderly, using some federal money and some federal policy oversight. Title III was likewise a new program of unemployment benefits administered as state programs, but funded by federal dollars (and governed by federal mandates).

Because Title II was the only exclusively federal program in the 1935 act, all of its policies were federal with no state administration or policy involvement. The Title I and Title III programs, by contrast, were state-administered and partially federally financed, so there was both state and federal policymaking involved, and conflicts over federalism and related issues arose in those programs. For example, initially the Roosevelt administration proposed a federal

standard that the welfare payments under Title I should be sufficient to provide “a reasonable subsistence compatible with decency and health.” Some Southern legislators found this language potentially threatening to economic and social arrangements in their region. Much of this concern may well have been racially motivated, but this issue had nothing to do with the Title II program, in which such policy constructions had no role.

It is important to make these distinctions because, as it turns out, many of the claims of racial bias in the coverage decisions involve confusion regarding these programs—or if not outright confusion, oblique arguments that political factors known to have influenced one of the other programs could somehow be presumed to have also been active in shaping the Title II program.

For example, in the quotation from the labor-history textbook cited earlier, Lichtenstein and others (2000) were clearly confusing the Title II coverage issue with features of the Title I old-age welfare benefits when they argued that “Southern employers worried that federal benefits would discourage black workers from taking low-paying jobs in their fields, factories, and kitchens. Thus, neither agricultural laborers nor domestic servants—a pool of workers that included at least 60 percent of the nation’s black population—were covered by old-age insurance.” The worry here was that immediate welfare benefits (under Title I) might be a disincentive to work. But coverage for a potential retirement benefit expected years or decades down the road (Title II) could hardly be a disincentive to present labor—indeed, present labor *is required* in order to build the credits necessary to qualify for a contributory retirement benefit in the future.⁴

Probably the most explicit example of the confusion appears in the Gordon and Paterson quotation previously cited. After making their argument about the central connection between the coverage exclusions and the “Southern concession,” the authors provided the source document underlying their analysis. It is an excerpt from the contemporaneous memoir of Edwin Witte (1962), who was the executive director of the cabinet-level Committee on Economic Security (CES) that President Roosevelt appointed to design his legislative proposals. Here are Witte’s observations, as reprinted in Gordon and Paterson (1999):

In the Congressional hearings and in the executive sessions of the Committee on Ways and Means, as well as in the House debate, the major interest was in the old

age assistance.... Title I of the original bill was very bitterly attacked,... it being very evident that at least some Southern senators feared that this measure might serve as an entering wedge for federal interference with the handling of the Negro question in the South. The Southern members did not want to give authority to anyone in Washington to deny aid to any state because it discriminated against Negroes in the administration of old age assistance.⁵ (312–313)

The thing to notice about this passage is that it has absolutely nothing to do with the contributory social insurance program under Title II of the 1935 act nor with the decision to exclude agricultural and domestic workers from the program. It is a passage describing congressional interest in the old-age assistance provisions under Title I of the act. Senator Harry Byrd (D-VA) and others objected to features of Title I for the reasons Witte states.

The fact that many authors have mistaken the evidence in Witte as showing something it manifestly does not is especially surprising because Witte discussed the Title II coverage exclusions in his book, in the section “Exemption of Agriculture and Domestic Service.” Here is Witte’s (1962) explanation of how the coverage decision came about:

The staff of the Committee on Economic Security recommended that the old age insurance taxes and benefits be limited to industrial workers, excluding persons engaged in agriculture and domestic service. The Committee on Economic Security struck out this limitation and recommended that the old age insurance system be made applicable to all employed persons. This change was made largely at the insistence of Mr. Hopkins, but was favored also by Secretary Perkins.

Subordinate officials in the Treasury, particularly those in charge of internal revenue collections, objected to such inclusive coverage on the score that it would prove administratively impossible to collect payroll taxes from agricultural workers and domestic servants. They persuaded Secretary Morgenthau that the bill must be amended to exclude these groups of workers, to make it administratively feasible. Secretary Morgenthau presented this view in his testimony before the Ways and Means Committee ...

In the executive sessions of the Ways and Means Committee, the recommendations of Secretary Morgenthau were adopted, practically without dissent. (152–154)

So the historical evidence of record tells a very different story than that associated with a racial motivation behind the Title II coverage exclusions. Before we look at the historical evidence in careful detail, we need to examine the logic underlying the race explanation.

Examining the Race Explanation

First, note that the coverage decision made in 1935 was *not* to exclude farm and domestic workers, which, had that been the factual circumstance, might have lent more credence to a charge of racial bias. Rather, the decision was to include only those workers regularly employed in commerce and industry. Thus, the coverage decision also excluded the following.

- Self-employed individuals (including farm proprietors)
- Persons working in the nonprofit sector
- Professionals such as self-employed doctors, lawyers, and ministers
- Seamen in the merchant marine
- Employees of charitable or educational foundations
- Employees of the American Society for the Prevention of Cruelty to Animals
- Persons aged 65 or older
- Casual laborers
- Members of Congress
- Employees of federal, state, and local governments—everyone from the president of the United States to post office clerks

Indeed, of the 20.1 million gainfully employed workers that the president’s Committee on Economic Security estimated were excluded from participation in the Social Security system, at least 15 million were white.⁶

Moreover, African Americans, to the extent that they were members of these other professions, would be excluded from coverage because of their membership. For example, in 1935 African Americans made up about 4 percent of the federal government’s workforce in six of the largest agencies and comprised more than 20 percent of the workers in such agencies as the Government Printing Office. All of these workers were excluded from Social Security coverage

because of their employment, not because of their race (Rung 2002, 73–74). Other African Americans were likewise excluded for reasons having nothing to do with race. The professional employees of the National Association for the Advancement of Colored People (NAACP), for example, were also excluded from coverage on the grounds that they were employed by a nonprofit institution. Indeed, most of the members of President Roosevelt’s informal “black cabinet” were blocked from participating in the Social Security system because they worked in either the federal government or in nonprofit organizations.⁷ The point here is that some African Americans were excluded from the program for *occupational reasons* rather than their race. This lends credence to the idea that the other large group of excluded African Americans (those in agricultural and domestic work) might also have been excluded from coverage because of their occupation features rather than racial bias.

It is true that from the 1930 Census (the closest available data point and the main information base available to Social Security policymakers in 1935), we can observe that about 65 percent of gainfully employed African Americans worked in the agricultural or domestic sectors of the economy. This statistic, stated alone, does create an impression that African Americans might have been the target of the coverage exclusions. But there are a couple of other statistics here that are worth noting. See Table 1, for a more comprehensive view of coverage exclusions.

Although 65 percent of the African American workforce was excluded by this provision, it was also the case that 27 percent of the white workforce was likewise excluded from coverage. Moreover, African

Americans were not the most heavily impacted group: 66 percent of “other” races were excluded as well. Of those individuals excluded under the provision, 74 percent were white, and only 23 percent were African American. This hardly constitutes a compelling initial case for the assumption that the provision targeted African Americans.⁸

Moreover, the coverage exclusions had less impact than the gross 1930 Census numbers suggest because the Bureau of Internal Revenue—subsequent to the passage of the law—had to develop regulations to put the generalities of the law into practical language. They had to define, for example, what type of work was and was not considered “agricultural.” Ultimately the regulations excluded from agricultural work (and hence *included* for participation in Social Security) jobs in industries such as cotton and rice gins; milk bottling, delivery, and sales; growing, harvesting, processing, and packing gum naval stores; chicken hatcheries; raising animals for fur; and several other agricultural-type occupations. The bureau also defined any job that was not in fact agricultural in nature (such as a mechanic, bookkeeper, carpenter, and so forth) as nonagricultural, even if it was performed entirely on a farm (Schurz, Wyatt, and Wandel 1937, 91–97).⁹

Also, occupational categories are not necessarily life assignments; workers in noncovered occupations could earn coverage by working part time in covered jobs, even if their primary occupation was excluded. The Social Security Board (1945, 14) estimated that around 22 percent of agricultural workers had earned some coverage by the end of 1940; about 25 percent of white domestic workers and 13 percent of black

Table 1.
Noncoverage of agricultural and domestic workers, by occupational categories and race

Occupational category	White	Negro [sic]	Other ^a	Total, all races
Agriculture	8,192,181	1,987,839	291,978	10,471,998
Domestic and personal service	3,268,725	1,576,205	197,521	5,042,451
Total workers excluded from coverage	11,460,906	3,564,044	489,499	15,514,449
Percentage of excluded workers	74	23	3	100
Total workers in all occupations	42,584,497	5,503,535	741,888	48,829,920
Excluded workforce as a percentage of total workers	27	65	66	...

SOURCE: Census Bureau (1933, Table 12, p. 24).

NOTE: ... = not applicable.

a. Other category includes Mexicans, Indians, Japanese, Filipinos, Hindus, Koreans, Hawaiians, and so forth.

domestic workers had some covered earnings during the first few years of the program.¹⁰

Finally, if Southerners engineered the coverage exclusion of agricultural and domestic workers out of economic self-interest, we have to question whether or not the coverage exclusions would have been a rational way to proceed. If Social Security coverage was considered to be a positive, the exclusions might have acted as an incentive for workers to leave their agricultural and domestic jobs and seek employment in factory work or in other covered industries. On the other hand—to the extent that future Social Security benefits would be seen as an economic incentive—covering agricultural and domestic workers under Social Security would have served as an incentive to keep them in those jobs. So if racist Southerners were acting out of their economic self-interest here, it would seem more likely that they would have urged coverage of their agricultural and domestic workers, not their exclusion.

The Historical Context of the Coverage Decisions

In order to appreciate the legislative history of the coverage exclusions, the historical context in which the coverage decisions were made should be clarified.

One of the pitfalls here is a tendency to generalize about the South and Southern politicians in ways that are historically inaccurate. Not only was the South not a monolith culturally or politically in the 1930s, neither was the “Southern block” in the U.S. Congress of a single mind or interest. The plantation economy of the Piedmont did not necessarily always have the same economic agendas as the Southern towns whose economies centered around the textile mills. Nor certainly did the planter economy of the Mississippi Delta always have the same political interests as a border state like Delaware.¹¹ Indeed, work by Howard Reiter (2001, 107–130) has up-ended old assumptions about conservative Southern Democrats. Reiter showed that before the late 1930s in the House and the mid-1940s in the Senate, Southern Democrats were actually more liberal than their Northern counterparts. In his study of congressional reform, Julian Zelizer (2004, 22–29 and chapter 2) supported this same insight, observing that outside of the issues of civil rights and unionization, Southern Democrats were generally supporters of New Deal liberal reforms through 1937.

The size and influence of the Southern block has also been exaggerated. On the Senate Finance Committee, 6 of the 21 members were from Southern

states; on the House Ways and Means Committee, only 4 of the 18 members were from the South. The proportions can be inflated here by only considering the Democrats (as Lieberman (1998) did at one point), or by adding in border state members (as Alston and Ferrie (1999) did). But members cannot be aggregated by state without looking at the details behind the generalization. It matters who the specific members were.

For example, Rep. David Lewis of Maryland (the cosponsor of the bill in the House¹²) would be classified as being from a border state; but he was a liberal former coal miner and union official from western Maryland, in a part of the state that had much more in common with Pennsylvania than with Mississippi. And even Mississippi cannot always be assumed to act like Mississippi. Senate Finance Committee Chairman Senator Pat Harrison’s (D-MS) biographer, for example, explicitly rejected the idea that Harrison shared the racial concerns of some Southerners over the bill (Swain 1978, 83).

We should also remember what the voting was on the coverage provision. As Witte (1962) reported, excluding coverage of agricultural and domestic workers was adopted in the House Ways and Means Committee “practically without dissent” and was implicitly adopted unanimously in the Senate Finance Committee (since the Finance Committee never raised the topic). Thus, essentially all the members of both committees—of both parties and all regions of the country—voted in favor of the exclusion, not just Southerners. This suggests the presence of some other motive than Southern racism.

Many scholars also misunderstand the circumstances and attitudes of the historical actors of the 1930s when faced with the novel expansion of the social welfare system represented by contributory social insurance. In fact, many workers and their employers in 1930s America *did not want to be covered* under the Social Security system and would have been relieved to have been in the cohort of the excluded.

Remember that in the 1930s, the Title II program was an unprecedented new form of social provision, in which workers were asked to buy social insurance from the federal government—with employers paying half the cost. Money would be taken out of a worker’s paycheck every payday and sent to the federal government, with the promise that some years hence, the government would pay the worker a retirement pension. In other words, the mechanism of the Social Security program involves a form of what economists

call “deferred consumption,” or what can be described more simply as delayed gratification.

Many workers in Depression-era America were reluctant to take an immediate cut in take-home pay for the promise of a benefit in the distant future. Recall also that the original law of 1935 contemplated payroll-tax withholding beginning in January 1937, but the first monthly retirement benefits were to be paid in 1942. So 1935-era workers not only had to take on faith the idea that they would get a future benefit from the government when they retired, but it was also going to be several years before they could see examples of other people going before them for whom the government had kept its promise.

Indeed, almost all of the disputes, protests, lawsuits, and so forth, involving the program in the early years were efforts by individuals who were in the covered population to *get out* of that population for the reason that they did not want to pay the taxes involved in the new system. Indeed, the three lawsuits that led in 1937 to the U.S. Supreme Court rulings on the constitutionality of the Social Security Act were all lawsuits filed by covered employers seeking to avoid coverage by having the law declared unconstitutional.¹³

During the legislative process, some interest groups lobbied to have their professions *added* to the list of *excluded groups*. Witte (1962, 154–157) detailed, for example, how lobbying by religious organizations led to the exemptions for charitable, educational, and religious institutions. The single most contentious policy debate regarding the Old-Age Insurance program concerned a provision introduced in the Senate excluding from coverage any company with its own private pension plan. This provision, known as the Clark Amendment, was being pushed by insurance interests and, as Witte reported, “a vast amount of lobbying was carried on in connection with this amendment” (105–108). The lobbying and the dispute was so intense that the entire bill was held up in conference for nearly 2 months, while the administration sought some compromise to permit passage of the bill.¹⁴

There is also some evidence that farm proprietors did not want to be covered under the 1935 law. Witte’s (1962) eyewitness report conveyed that proprietors wanted to be excluded to avoid paying the relevant taxes. Also, the American Farm Bureau—the largest lobbying group representing farmers—continuously opposed the coverage of farmers, not only under the 1935 law, but all the way through 1954 when self-employed farmers were finally covered (Altmeyer 1966, 241 and 248). Arthur Altmeyer (the top program

administrator during this period) also indicated that farmers wanted to be excluded for similar reasons. He told an interviewer “we were smart enough politically to know there was no chance of covering the farmers to begin with. They had been excluded traditionally from all forms of regulatory legislation, labor legislation, particularly workmen’s compensation even to this day. No, they’re the last stronghold of individualism, reactionism, independence—whatever you want to call it. I thought when we got them under in 1950 we’d really crossed the mountain.”¹⁵ This point was further illustrated by a story that Altmeyer recounted. During consideration of the 1939 amendments, Altmeyer had been urging extending coverage to agricultural workers. He repeatedly lobbied Ways and Means Committee Chairman Robert Doughton (D-SC) on the issue. At one point Doughton turned to Altmeyer in exasperation and said, “Doctor, when the first farmer with manure on his shoes comes to me and asks to be covered, I will be willing to consider it” (Altmeyer 1966, 103).

In other words, the available evidence suggests that Southern agricultural producers wanted their employees excluded from coverage because they did not want to be taxed to support the Social Security system. Indeed, the evidence suggests that they did not want to pay the requisite taxes for any of their workers—white or black—or for themselves, for that matter.

Unfortunately, there is no direct evidence on the attitudes of farm workers regarding their exclusion from coverage. All that can be said with certainty is that coverage under Social Security was not universally perceived as a boon by the workers and employers of the 1930s.

Once the law was passed, one of the major administrative struggles undertaken by the Social Security Board in the early years of the system was the effort to get covered workers and employers to participate—that is, to accept the fact that they were covered. Until the mid-1940s—when benefits were finally flowing in noticeable volume—many workers and employers in all occupational categories tried to avoid coverage. Indeed, the Social Security Board had full-time positions in its field offices called field representatives, and one of their main functions was to go out into the community and find noncompliant workers and employers and convince them that they had to accept the fact that they were covered by the law.

We can gain some insight into the attitudes of domestic workers and their employers by observing what occurred after 1950, when domestic work was

brought into coverage.¹⁶ There is quite a bit of evidence of resistance from employees and employers alike. One St. Louis housewife told the *Wall St. Journal*, “I haven’t paid the tax so far, and I’m not going to pay it until someone yells.”¹⁷ A Pittsburgh woman told the *Journal*, “I’ve never given it any thought, and I don’t suppose my cleaning girl has either; she’s never mentioned it.”¹⁸ According to the *Journal’s* investigation of the issue, “Many domestic servants queried about the new Social Security provisions said they definitely would object to the withholding from their pay. Some simply don’t want to lose the 2% in cash wages.”¹⁹

One group of domestic-employing housewives in Marshall, Texas formed a rump resistance to coverage, initiating a lobbying campaign and a federal lawsuit against coverage of their employees—a lawsuit they pursued all the way to the U.S. Supreme Court, but lost in January 1954.²⁰ Ironically, the housewives’ rebellion became a political cause championed by the leading newspaper of the area—the *Houston Post*—whose publisher, Oveta Culp Hobby, would become Eisenhower’s secretary of Health, Education, and Welfare in 1953 and would thus be the federal official charged with responsibility for administering the Social Security Act.

Over the years, domestic workers often tried to avoid coverage, usually by persuading their employers to pay them “under the table” so that there was no record of their earnings. This would mean, of course, that they would not be eligible for benefits in the future.

We saw evidence of this attitude on the part of these lower-paid workers when the issue of coverage for domestic workers broke into public attention in 1993 with the failed nomination of Zoe Baird to be U.S. attorney general. Baird had been paying her domestic help “under the table” for years, at the request of her employee. At the time the Zoe Baird case broke into public view, officials of the Internal Revenue Service estimated that only about 500,000 of the “several million” who employed domestic workers were in fact complying with the coverage requirements of the 1950 law.²¹ What these incidents all reveal is that even now, domestic workers resist being covered by Social Security, and it suggests that they would not in fact have agreed in 1935 that the decision to exclude them was adverse.

Contemporary scholars tend to look back on 1935 from their present vantage points, and they see something of value (Social Security coverage) being

withheld from African Americans. But this distorts the historical context in which the coverage decisions were actually made. There is good reason to believe that many agricultural and domestic workers in 1935 may not have agreed that something of value was being denied them.

Also, the race critique misrepresents the factual history of the exclusions, how they developed, and what the evidence of record says about the decision to exclude farm and domestic laborers from coverage.

The Legislative History of the Coverage Exclusions

The Roosevelt administration’s Social Security proposals were developed by an executive branch ad hoc Committee on Economic Security, headed by Secretary of Labor Frances Perkins, which was comprised of five cabinet-level administration officials.²² The CES was supported by a four-part organization: At the top was the executive director (Professor Edwin Witte of the University of Wisconsin); under Witte was a technical board (headed by Arthur J. Altmeyer), which contained several dozen volunteer staffers on loan from federal agencies; and finally, within the CES, there was a cadre of subject-matter experts who were recruited from academia and related entities. From outside the CES, there was also an advisory council composed of representatives from business, academia, and interest groups. All of these individuals and groups had input in the CES’s decisions.

The subject-matter experts within the CES were divided into “working groups” by topical area. The group developing the Social Security proposals (who made the initial program-design decisions) was known as the Old-Age Security Staff and was composed of three experts: Barbara Nachtrieb Armstrong, associate professor of law, University of California; J. Douglas Brown, director of the Industrial Relations Section, Princeton University; and Murray W. Latimer, chairman of the Railroad Retirement Board. Working for these three experts were numerous researchers and assistants who prepared literally dozens of background papers for the staff’s consideration.

Thus, any decision on Social Security policy, such as coverage recommendations, went through the following six-step decision process.

1. Staff recommendations were made initially by the Old-Age Security Staff.
2. The advisory council offered its recommendations to the technical board.

3. The Old-Age Security Staff and the advisory council recommendations were subject to a review by Altmeyer and the executive staff of the technical board.
4. The recommendations were then subject to a review by Witte.
5. The CES itself then made the final decision as to its recommendations.
6. President Roosevelt reviewed the CES recommendations and made the final policy decisions that would be in the administration's legislative package.

The Old-Age Security Staff recommended four broad exclusions from coverage: white-collar workers earning more than \$50 per week, government employees, railroad workers, and agricultural and domestic workers. The rationale given by Armstrong, Brown, and Latimer for excluding farm and domestic workers were reasons of administrative efficiency.²³ The matter was described in the Social Security Board's (1937) book, *Social Security in America* (which was a summary report of the CES work):

Administrative difficulties suggested further limitations of coverage to eliminate, at least in the early years of a system, certain types of employments in which it would be difficult to enforce the collection of contributions. In the case of farm labor and domestic servants in private homes, a large number of individual workers are employed in small establishments scattered over a wide area, frequently at some distance from any city or town. The close relationship which exists between employer and employee, the frequent absence of accounting records, and the usual provision of a part of compensation in the form of maintenance would greatly handicap effective enforcement. While the need of these groups for protection in old age was very apparent, it seemed expedient to postpone their inclusion until after administrative experience could develop in less difficult areas of operation. (208)

The recommendation of the advisory council was a slight variation on that of the CES staff. The council suggested four exclusions: white-collar workers earning more than \$100 per week, government employees, railroad employees, and agricultural workers. The council's rationale for excluding agricultural workers

was the same as that of the CES staff—administrative difficulties.

Altmeyer and Witte supported the recommendations of the CES staff, including the exclusion of agricultural and domestic workers. This was the proposal submitted to the CES. At the CES, both Frances Perkins and Harry Hopkins objected to the exclusion of farm and domestic workers, arguing that the program should be as nearly universal as possible. As a consequence, the final report from the CES to President Roosevelt dropped the exclusion of agricultural and domestic workers and moved toward a higher dollar amount for white-collar workers, as advocated by the advisory council. In the end, the CES's final report contained three recommendations for exclusions: white-collar workers earning more than \$250 per month, government employees, and railroad workers.²⁴

Alston and Ferrie (1999, 62–66) have added some confusion to accounts of the initial decision making by the CES by reading too much importance into some of the background papers produced by the research staff, who generally wrote more favorably of the possibility of including agricultural workers (although not domestic workers). The authors incorrectly reported that the CES staff recommended universal coverage. In fact, the Old-Age Security Staff, the advisory council, Altmeyer and the technical board, and Witte all made the contrary recommendation.

Alston and Ferrie (1999, 66) also incorrectly stated that the draft administration bill included “a special scheme to cover ‘farm owners and tenants, self-employed persons, and other people of small incomes.’” They then argued that when this “special scheme” was dropped during congressional consideration of the bill, this was evidence of a congressional influence on the coverage exclusion of agricultural workers. As Alston and Ferrie put it: “The special Old-Age Insurance program for tenants, croppers, and farm owners was similarly deleted without much ceremony by the committees” (68).

The special scheme referred to was in fact a proposal for a supplemental system of voluntary annuities to be sold in the marketplace by the Treasury Department, as an adjunct to the compulsory old-age insurance pensions. It had two aims, according to Witte's testimony and the CES's final report: (1) to supplement the pensions of those covered by the compulsory system, and (2) to permit those not covered to purchase marketplace annuities to provide for their own retirement security. This was not a proposal to create

a “special” coverage rule for agricultural workers. Essentially anyone in America would have been able to purchase the market-based annuities—rich, poor, and middling alike—regardless of their occupations and regardless of whether or not they already were covered under the program.

The quotation Alston and Ferrie (1999) provided—referring to “farm owners and tenants, self-employed persons, and other people of small incomes”—was in fact a comment made by Edwin Witte during his testimony as part of a suggestion that Congress study the possibility of providing subsidies to low-income individuals to help them purchase these voluntary annuities (Economic Security Act 1935a, 46–47).²⁵ It was not itself a “program” of any kind, and it had nothing to do with providing Social Security coverage to anyone. As it happened, the recommendation was rendered moot since Congress refused to adopt the voluntary annuity scheme. It was not, however, “deleted without much ceremony by the committees.” Actually, it was dropped in the House by a unanimous vote within the Ways and Means Committee (as part of a larger political maneuver involving other provisions of the bill), approved by a 7 to 5 vote in the Finance Committee, and finally disposed of in the Senate by a motion proffered on the Senate floor by Senator Augustine Lonergan of Connecticut, on behalf of his state’s insurance interests—eager to keep the federal government out of the annuity business.²⁶

After the CES’s final report went to the president, he reviewed it with some care, even forcing the CES to rewrite the financing provisions to make the program more clearly self-supporting (Witte 1962, 74).²⁷ But he accepted the recommendations on coverage. Therefore, the report from the president to the Congress on January 17, 1935, and the associated draft administration bill included coverage for farm and domestic workers and contained only the three other exclusions recommended by the CES.²⁸ This was in keeping with the final recommendation of the CES, as signed-off on unanimously by all five members, including Secretary of the Treasury Henry Morgenthau, Jr.

Because the president had at the last minute pulled the actuarial tables from the CES document, the proposal went to Congress without benefit of the supporting financials, and Secretary Morgenthau had to appear during the House hearings on the bill to present the revised financing scheme. He did so during testimony on February 5, 1935. At the hearing, Morgenthau presented a set of revised financial estimates and asked the Ways and Means Committee to substitute

these actuarial tables for the missing data in the original report. However, he also took the opportunity to do something quite unexpected. During his testimony he complained to the Ways and Means Committee that the idea of virtually universal coverage of all workers in the country would impose an intolerable administrative burden on the Treasury Department (which would have responsibility to collect the taxes at a time well before automatic payroll deductions or computers). He thus suggested to the committee and to a startled Frances Perkins, who was present at the hearing, that coverage be dropped for certain groups of workers who would present tax-collection problems for the Treasury. He specifically recommended dropping “casual laborers,” “domestic servants,” and “agricultural workers.” As Frances Perkins (1946) recalled the event:

He argued that it would be a difficult problem to collect payments from scattered farm and domestic workers, often one to a household or farm, and from the large numbers of employees working in establishments with only a few employees. He begged to recommend that farm laborers, domestic servants, and establishments employing less than ten people be omitted from the coverage of the act. . . . The Ways and Means Committee members, impressed by the size of the project and the amount of money involved, nodded their heads to Secretary Morgenthau’s proposal of limitation. There was nothing for me to do but accept. (297–298)

Morgenthau’s testimony was quite specific as to his motives and will be considered in some detail here.²⁹ Morgenthau began by interrupting his own testimony to alert the committee that he was about to make a “personal” statement, representing the views only of the Treasury Department and not the president or the CES. He told the committee that the Bureau of Internal Revenue (which reported to him) had presented him with a report indicating that they had serious concerns about the coverage provisions and he felt duty-bound to support them. Morgenthau told the committee: “I simply feel that this is a matter [of] the responsibility . . . which will fall on the Bureau of Internal Revenue. They raised the point as to whether they can enforce this.” Congressman Treadway (R-MA) interrupted Morgenthau at this point to clarify Morgenthau’s own views as distinct from those of the Bureau of Internal Revenue. He asked Morgenthau, “I assume that you concur with the

Bureau of Internal Revenue on this point?” “Oh yes,” Morgenthau replied. To make sure, Treadway asked again, “You approve what they are recommending for you to submit to the committee?” “Yes,” Morgenthau insisted, “Otherwise I would not read it.”³⁰ Morgenthau then turned to his specific arguments for restrictions on coverage:

[T]he bill in its present form imposes a burden upon the Treasury that it cannot guarantee adequately to meet. The national contributory old-age annuity system, as now proposed, . . . means that every transient or casual laborer is included, that every domestic servant is covered, and that the large and shifting class of agricultural workers is covered. Now, even without the inclusion of these three classes of workers, the task of the Treasury in administering the contributory tax collections would be extremely formidable. If these three classes of workers are to be included, however, the task may prove insuperable—certainly, at the outset.³¹

At the very end of Morgenthau’s testimony he made another argument for delaying coverage—an argument that turned out to be prescient. He worried, he told the committee, that difficulties in enforcement would create incentives for these groups to become scofflaws, evading their taxes and thereby undermining the Treasury’s mission. This is precisely what happened in the case of domestic workers.

Alston and Ferrie (1999, 67–69) depicted Morgenthau as only lukewarmly interested in the exclusion of agricultural and domestic workers and as being stampered to this view by Vinson and other Southerners on the Ways and Means Committee. The authors made a particular point of claiming that “Morgenthau found several other options equally satisfying, including bringing agricultural workers under the bill immediately and dealing later with the peculiar problems their inclusion might pose.”

From the extensive quotations offered here, it should be clear that the Alston and Ferrie interpretation is inconsistent with the record. And the specific claim that Morgenthau abandoned the coverage exclusion position in favor of some more “ideal” option is based on a single passing remark, which comes literally as the last sentence in Morgenthau’s 15 pages of testimony and as part of a jumbled discussion among Morgenthau, John McCormack (D-MA), Arthur Altmeyer, and Fred Vinson (D-KY).³² What Morgenthau responded favorably to was a fleeting suggestion that

these categories of workers could somehow be covered “in principle” immediately, but not in practice until sometime later when the administrative problems had been solved. It is beyond reasonable doubt that Morgenthau strongly recommended excluding agricultural and domestic workers in the initial years of the Social Security system, on grounds of the administrative difficulties that he believed their inclusion would present the Bureau of Internal Revenue in its tax-collection process under the law.

No Southern member of the Ways and Means Committee spoke out either in favor of or against Morgenthau’s proposal during his hearing testimony. In fact, the only member who took a position on either side of the issue was John McCormack (D-MA), who worried and went on to explain, “if we do not get them in the bill, then you are going to have a lot of difficulty in the future getting them into the bill.”³³

Apart from Morgenthau’s surprise testimony, the topic of the exclusions was raised on only a handful of other occasions during the hearings. It was first broached by Edwin Witte in a dialog with Fred Vinson. Witte raised the issue of coverage of domestic workers in the context of the administrative difficulties in general and how taxes might be collected. He mentioned the stamp-book system in use in Britain and used domestic workers as an example of a group for whom tax collection was difficult. An exchange followed in which Vinson asked Witte if the issue about potential administrative difficulties applied to agricultural and casual laborers, as well as domestic workers. Witte conceded that it did. The context in which they discussed all three categories, however, mostly involved program costs. Vinson was apparently worried about loss of revenues from excluding these groups, although Witte apparently misunderstood his point, and they talked past each other for most of their dialog. Vinson clearly initiated the topic of excluding these categories of workers, and his colloquy with Witte did occur prior to Morgenthau’s appearance before the committee. This was the sole instance in the hearings in which any member of either committee (Southerner or otherwise) discussed the topic. Vinson specifically asked Witte to give the committee assurances that excluding these groups would not have any adverse financial impact. Witte assured him that the financial impact would be minimal, and that was that (Economic Security Act 1935a, 112–113).

In Witte’s Senate testimony, he and Finance Committee Chairman Harrison had a brief dialog concerning the exclusion of agricultural workers. Harrison

broached the topic, whose comments on the exclusion of agricultural workers consisted of a one-sentence question to Witte asking whether the CES had given any thought to excluding agricultural workers; he then asked Witte a few follow-up questions as to who had represented the agricultural perspective within the CES structure (Economic Security Act 1935b, 219–220). In his testimony before both the House and Senate, Marion Folsom, representing the Advisory Council on Social Security, briefly mentioned its support for the recommendation to exclude agricultural workers (and now domestic workers too) on grounds of administrative difficulty. Folsom’s testimony in both committees occurred after Morgenthau’s, so the Morgenthau proposals were already on the table, and Folsom stated that the advisory council supported them. In the House, no member of the committee made any comments on Folsom’s testimony on the issue.

In the Senate Finance Committee, Folsom also testified on the issue. After a long discussion about the financing of the contributory system and especially about the prospects for a large trust fund reserve—which was in fact the main topic of interest among all parties throughout the hearings when it came to the Social Security program—Folsom volunteered, “I agree that agricultural workers and domestic service should come out. Our advisory council recommended that it [sic] be excluded also. The Cabinet committee plan included them, but we think they should be excluded. Eventually they might be brought in, but right now we would cut them out” (Economic Security Act 1935b, 576–577). Chairman Harrison and Folsom then had a brief dialog on the issue.

Harrison: “Do I understand you to say that the tax should not be imposed on the employer in agriculture?”

Folsom: “They would not be eligible at all.”

Harrison: “How about the fellow when he got to be 65 years of age, who had been engaged in agriculture? Would he have to depend on the pension?”

Folsom: “On the old-age assistance.”³⁴

Harrison’s apparent interest here was in worrying about the loss of benefits to agricultural proprietors and workers if they were not covered by the program—not in keeping African Americans, or anyone else, *out* of the program.

In his testimony before the two committees, J. Douglas Brown repeated the CES Old-Age Security Staff recommendation that agricultural and domestic

workers be excluded on grounds of administrative difficulty, and no members engaged him in comment on the point.

U.S. Chamber of Commerce President Henry Harriman, in his testimony before the Senate Finance Committee, also advocated the exclusion of “agricultural workers, domestic servants, and casuals” on grounds of administrative difficulty. Harriman told the committee, “I should think that it would be, as a practical matter, practically impossible to collect the tax on, for instance, the casual worker—the man who comes and works in your garden for a day or two, or he shovels snow. I think the burden of setting up an organization to collect such taxes would be substantially impossible; and I believe that, certainly at the start, it would be very much better to remove those three classes.”³⁵

The exclusion of farm and domestic labor because of the administrative difficulties involved in tax collection was supported by political activist Abraham Epstein, who generally criticized the Social Security program from the political left, complaining it was not generous and comprehensive enough. Epstein testified before both the House and the Senate committees and made the most sustained argument of anyone in support of excluding farm, domestic, and casual workers on the grounds of administrative difficulty. Epstein was worried that if the new program foundered over administrative glitches, support would be undermined for the liberalizations he wanted to see down the road.³⁶ During Epstein’s House testimony, Rep. Frank Buck (D-CA) asked if he also advocated excluding agricultural workers, at which point Epstein replied that he did. Fred Vinson asked if he was also advocating excluding casual laborers, and Epstein replied that he was. During Epstein’s long Senate testimony, no member commented on his recommendations for excluding agricultural and domestic workers.

The only witness in the hearings to speak out against the exclusion provision was NAACP official Charles Houston. Houston pointed out the adverse impact of the provision upon African Americans, as part of an overall critique designed to persuade the Congress to *drop the whole Social Security program entirely*. He wanted a single, universal, federal welfare benefit in lieu of a contributory social insurance system. Houston conceded Morgenthau’s point about administrative difficulty, telling the Finance Committee, “No argument is necessary to demonstrate that the overhead of administering and really enforcing a pay roll tax on casual, domestic and agricultural

workers would practically consume the tax itself.”³⁷ So Houston was not advocating coverage for domestic and farm workers, but rather rendering the whole issue moot by rejecting the Social Security system *entirely*.

Lieberman (1998, 43) made much of Ways and Means Chairman Robert Doughton’s (D-NC) supposed disengagement and lack of comment during the hearings on the bill. He depicted Doughton as sitting silently through much of the witness testimony. Lieberman then suggested that Doughton, and Harrison in the Senate, only displayed an active interest in the specifics of the hearings when topics like the coverage exclusions were raised—suggesting, for Lieberman, a more active involvement on the part of the two chairmen in shaping the issue.

Lieberman’s characterization of the two chairmen is problematic. For example, during the House hearings, we can find Doughton carrying on colloquies with witnesses on a variety of subjects, including the qualifications of members of the advisory council; under what conditions dependent parents might be eligible for aid under state welfare programs if their adult children fail to support them; the Townsend Plan; cost estimates for the old-age pensions; the staffing, compensation, and organizational placement of the Public Health Service; the tax rates under Unemployment Insurance; and other topics, as well as defending against Republican criticisms of administration testimony.

In the case of Harrison, Lieberman (1998, 43) cited Witte’s Senate testimony as an example of the disengagement he perceived in the hearing testimony. Because this kind of impressionistic argument is subjective, it might be illuminating to perform a simple empirical test. If we count the number of instances of comment by Chairman Harrison during Witte’s testimony, we will discover that he commented 180 separate times, of which precisely 12 involved the topic of the exclusion of agricultural workers.³⁸ This is hardly indicative of an obsessive focus on the exclusion of agricultural workers.

Although I think Lieberman’s characterization of the involvement of both chairmen is debatable, his observations overlook the specifics of Doughton as an individual. For one thing, Doughton was already 72 years old by the time of the Social Security hearings, and he was hard of hearing, which may explain some of his “disengagement” during the testimony. Arthur Altmeyer (1966, 100) observed one of his experiences with the testimony before Doughton’s committee: “There was no microphone, and the

acoustics of the room were such as to make even a shout almost inaudible. Moreover, Robert L. Doughton, the Chairman, was very deaf and disdained the use of a hearing aid. I can never forget how the elderly Chairman would say, ‘Speak up, young man, speak up,’ although I was shouting at the top of my voice at the time.” Morgenthau privately made a similar observation, telling his staff on one occasion that when they presented an excess-profits tax proposal to Doughton, “we will have to shout it four times” (Swain 1978, 228). Also, according to Altmeyer (1966, 30), Doughton was reticent to speak up on subjects on which he was uncertain and would typically let other members take the lead in the questioning during hearings; the administration’s economic security bill was very much in this category.

During the House floor debate, Fred Vinson, David Lewis, John McCormack, and Jere Cooper (D-TN) voiced the administrative-difficulty argument in support of the exclusions. When a Republican member challenged McCormack over the idea of excluding domestic workers, Vinson voluntarily responded, “The tax levy in title VIII is upon wages. Taking as a basis the total wage of the domestic servants . . . you would not have money in the account sufficient to purchase a substantial annuity. You would have a nuisance feature, such as a person being paid [a] \$1 wage and taking out 1 penny and having at the end of the road a small sum that would purchase a very small annuity. The same thing applies to agriculture, and the same thing applies to other occupations.”³⁹ This reinforces the reading of the hearing testimony, which suggests that even Vinson was primarily interested in financing issues, not the racial makeup of the excluded groups.

Daniel Reed (R-NY) voiced the only opposition to the coverage exclusions. Reed was an opponent of the entire 1935 act, and he voted against it as unconstitutional and as “an invasion by the Federal Government.” In an effort to have the whole Federal Old-Age Benefits program dropped, he made this argument: “You propose to whip and lash the wage earner into paying this tax, but you are not treating everybody alike. Millions who labor will be exempted from benefits. [Referring to the exclusion of domestic and farm labor] . . . why talk about the difficulty of administering the act as a justification to exclude them? You found no difficulty in providing for administration of title I of the act . . . but when it comes to certain classes you discriminate. This title ought to be removed from the bill.”⁴⁰ In other words, it was not fair that the bill failed to whip and lash farm and domestic workers like

everyone else, so the whole Social Security program should be dropped on grounds of equity.

In responding to Reed, McCormack explained the rationale for the differential treatment between the Title I and Title II laws:

Title I is a noncontributory law. Title II is a contributory law. Title I, being noncontributory, every person in need ... without regard to their previous employment, should receive the amount set out, provided and intended by this bill.

When we come to the contributory provision, there is an entirely different situation. The administrative cost enters into the picture. Furthermore, whether or not farm laborers and domestic servants receive a salary so that when they reach the retirement age they will receive an earned annuity about \$10 a month [the minimum in the law] is also a matter of consideration. We have also excluded those employed in educational and religious activities and in all kinds of charitable activities. The committee has tried to draft a contributory annuity provision which not only [meets] the purposes desired but [does] so in a manner that can be administered without any great difficulty.⁴¹

No mention of excluding agricultural and domestic workers occurred during the Senate debate.

So the only real attention given to the issue of the exclusions by any member of Congress, North or South, was from Fred Vinson, the first to mention the administrative difficulties associated with agricultural and casual labor; and Senator Pat Harrison, who fleetingly raised the matter of agricultural workers with Edwin Witte.

Also to clarify what the policy decision really was here—Morgenthau, Epstein, Brown, Folsom, and Harriman were not, as their testimony made clear, urging the *exclusion* of agricultural and domestic workers from the system, but only a *delay in their inclusion*. Indeed, as events transpired, almost all agricultural and domestic workers would be included by 1950 and the remainder by 1954. The real aim of the proponents of the exclusion was not to exclude agricultural and domestic workers, but to include them later. The difference matters. We cannot impute racism to the Social Security program on the assumption that this provision was designed to exclude from coverage African Americans if in fact exclusion was

not the purpose. If delay in covering workers in these occupational categories was the purpose, this lends credence to the view that the provision was motivated by administrative practicality and not racism.

Administrative Difficulties Reconsidered

Some scholars have argued that there were no genuine administrative difficulties involved in extending coverage to agricultural and domestic workers in 1935, and thus their exclusion from the 1935 act could not have been on this basis.

Finegold (1988, 209), for example, said of the administrative-difficulties argument, “Opponents of extending contributory social insurance stressed its administrative difficulties, but their arguments should not be taken at face value: they showed little interest in exploring ways to address the practical problems, as had already been done in other countries, and would eventually be done rather easily in the United States.”

Lieberman (1998 41–42, 96–98) made much of the idea of a stamp-book system for recording earnings. He noted that Witte mentioned it (albeit in an ambiguous way); that J. Douglas Brown testified at length in favor of it; that there was precedent for it in some European systems (the system in use in Great Britain being specifically touted); and that during consideration of the 1939 amendments, the Social Security Board produced briefing papers suggesting it could be used to overcome the administrative difficulties involved here.⁴² Many other scholars mentioned the stamp-book system, counter-example to undermine the administrative-difficulties argument.⁴³

Lieberman reported that the stamp-book idea was dropped by the Ways and Means Committee, suggesting again the influence of Southern congressmen.⁴⁴ Actually, the stamp-book idea was not dropped by Ways and Means; it remained in the final enacted version of the law, under section 807, as an option left open to the program’s administrators. It was the Treasury Department that dropped the idea of a stamp-book system—in 1936, in a letter to the Social Security Board⁴⁵—because that agency was still convinced it was not a practical method of addressing their administrative problems, and it was the judgment of the Treasury Department that was the driver behind the whole sequence of legislative policymaking.

Contrary to Finegold’s assumption, the matter of administrative options (and especially the stamp-book scheme) was explored in detail both by the CES and the Social Security Board. And contrary to

Lieberman's report, the Social Security Board's internal studies around the time of the 1939 amendments often concluded that the stamp-book scheme was unworkable—despite the board's stated policy objective of extending coverage. One summary study of the issue listed five advantages of the stamp-book system, along with twice as many disadvantages.⁴⁶

But of course a study from 1939 speaks only indirectly to policy decisions made in 1935. The pertinent study on this question was the one prepared by the CES researchers in 1934. Their main report on the issue, *The Case for Payroll Recording as Against the Stamp System*, was presented to the technical board on October 16, 1934, by CES staffer Merrill G. Murray.⁴⁷ Not only did Murray tell the technical board that the stamp-book scheme had insurmountable problems—such as being too complicated; incapable of dealing adequately with part-time employment; less capable of yielding useful program statistics; more difficult to coordinate with other social insurance measures; and more prone to fraud—he also attached a special addendum in which he detailed the fraud and other well-known abuses that afflicted the British stamp-book system. This report by Murray and the internal study by the Treasury staff constituted the available information the CES had and used in making their decisions about the stamp-book system during the 1934–1935 period, no matter what the Social Security Board may have believed in 1939.⁴⁸

Because the idea of a stamp-book system is used so widely to discredit the administrative-difficulties thesis of the coverage exclusions, it might be useful to explore in a little more detail just why the staffs of the Treasury Department and the CES considered it unworkable. Consider just two of the many problems with the stamp-book scheme.

First, under the U.S. system adopted in 1935, employers made their tax payments quarterly, based on the actual wages paid during the preceding quarter. Under a stamp-book system, employers would be required to prepay their taxes by purchasing stamps equal in value to their expected tax burden in the ensuing pay period. Also, under a stamp-book system, purchase of the stamps by the employer is the method of tax payment; this is how the tax-collection problems for Treasury are overcome. Prepayment of taxes is required, and the employer must paste stamps in the workers' stamp books whenever earnings are paid; this is how earnings are certified so that the worker may eventually qualify for a benefit. Employers have to purchase stamps at the beginning of each pay

period—weekly, biweekly, monthly, or whatever the pay periods may be for their employees—sufficient to cover the upcoming payroll. Thus, the administrative burdens of tax collection and earnings certification are shifted from the Treasury Department to the nation's employers. This is something many employers would most likely find highly objectionable.

Second, under the U.S. system, the government goes to the effort and expense to maintain the earnings histories of every covered worker for the duration of their working lives. Then when they retire and file a claim, the workers have no burden to establish their earnings history; they only need to prove that they are of retirement age. Under a stamp-book system, the entire burden shifts either to the worker or the employer, who must maintain and preserve the stamp books until they can be turned over to the Social Security Board. If the stamp books are lost, damaged, or destroyed, the worker has no certified record of earnings to use in establishing entitlement to a benefit. Shifting the burden of proof in this way would almost certainly have created enormous administrative difficulties, not for the government, but for millions of workers and employers. For these and other reasons, the stamp-book scheme was one never likely to be enacted into law.

It should be noted that the administrative challenges were in fact still formidable nearly 20 years later when all agricultural and domestic workers were finally covered by amendments enacted in 1950 and 1954. The top administrator at the time, Robert M. Ball, described extending coverage to agricultural workers as “one of the toughest things that Social Security ever undertook,” and he has given a fairly detailed account of some of the administrative difficulties the government faced when coverage became available.⁴⁹ Also, it is interesting to note that during the 1950s, the Social Security Administration had to more than double its staff—from 12,000 to 25,000—in order to cope with the challenges of the expansions in coverage.⁵⁰

Conclusions

It was the surprise testimony of Henry Morgenthau, Jr., rather than any initiative by any member of Congress, that was the source of the decision to exclude farm and domestic workers from coverage. It was not presumptively racist Southern politicians who moved to delete coverage for these workers, but northeastern patrician Henry Morgenthau, Jr., who was trying to avoid an onerous task for the Treasury.⁵¹ Congress was only too happy to oblige Secretary Morgenthau by excluding

several million workers and their employers from the burden of paying those taxes.

It is more in keeping with the evidence of record to conclude that the members of Congress (of both parties and all regions) supported these exclusions because they saw an opportunity to lessen the political risks to themselves by not imposing new taxes on their constituents.

It is not as if observers of these events were oblivious to the issue of race as it influenced particular provisions of law. As we saw, Witte recounted how race was a factor in the development of Title I of the 1935 act. Another contemporary observer, Paul Douglas (1936, 100–102), also pointed an accusing finger at Southern Democrats in Congress when it came to the Title I program.⁵² Yet neither Witte nor Douglas reported any such influence on the Title II program coverage issue. Nor did other eyewitnesses—such as Arthur Altmeyer, Frances Perkins, or Thomas Eliot—mention any such influence in their memoirs (Eliot 1992).⁵³

The actual historical sequence of coverage exclusion follows.

- The Old-Age Security Staff, the Advisory Council on Social Security, Arthur Altmeyer and the technical board, and Edwin Witte all recommended excluding agricultural and/or domestic workers on the grounds of administrative simplicity.
- The CES overruled them and included such workers.
- President Roosevelt supported agricultural and domestic worker coverage.
- Little notice or mention of the issue appeared in the Congress before Henry Morgenthau, Jr., urged the House Ways and Means Committee to adopt the exclusion.
- Little notice or mention of the issue occurred in the Congress after Morgenthau's testimony.
- The exclusion was adopted without any reported debate by Ways and Means, acceded to in the Senate Finance Committee, and adopted in both chambers without real debate and only passing mention.
- At no point did Southern Democrats create the exclusion or push it through Congress.

The overwhelming bulk of the evidence here suggests that it was bureaucratic actors who were the effective parties in shaping and moving this policy.

This was preeminently a policy promulgated by the bureaucracy to satisfy its own administrative needs.

The allegations of racial bias in the founding of the Social Security program, based on the coverage exclusions, do not hold up under detailed scrutiny.

Notes

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¹ Gordon and Paterson's (1999) underlying source document is an excerpt from Witte's (1962) memoir under a different title, "An Architect of Social Security Recalls the Southern Concession."

² This is especially true of the Gordon and Paterson (1999) analysis cited earlier. The authors clearly confused the title I welfare provisions of the 1935 act with the title II social insurance provisions.

³ The other titles were financing and administrative titles in support of these seven programs.

⁴ One could make an indirect argument here, as Linda Gordon (1994, 275) did, that receipt of a retirement benefit by an elderly family member might allow younger dependents to quit work thereby depriving Southern economic interests of some fraction of their labor pool. Even here, retirement benefits are still paid after years of contributions and work—they are not an immediate threat to anyone's economic arrangements.

⁵ The full original quote can be found in Witte (1962, 143–145).

⁶ See Table 1 of this article for data on the number of gainfully employed African Americans, and see Social Security Board (1937, Table I-2, 387) for the estimates of the number of gainfully employed workers excluded from the program. The 15 million figure is derived by assuming that virtually 100 percent of the 5.5 million gainfully employed African Americans were excluded from the program. This is of course not true. But it does indicate

the absolute minimum floor of the proportion of excluded workers who must have been white.

⁷ Early in his presidency, Franklin Roosevelt assembled a group of African American leaders to serve as his advisers on matters of race. This group—known as the Federal Council on Negro Affairs—was composed of prominent black leaders, most from various nonprofit organizations. Some council members—such as Mary Mcleod Bethune—also held positions in the federal government.

⁸ One might also think that the data show evidence of a bias against persons of color more generally. But this seems even more implausible, as it would require that the members of Congress in 1935 held some sort of animus toward Mexicans, Indians, Chinese, Japanese, Filipinos, Hindus, Koreans, Hawaiians, and so forth, and that they were also aware of which occupational categories typically included those various racial groups. Also, the racial-bias thesis has an initial plausibility only because some Southern members of Congress in 1935 can be assumed to harbor racial bias against African Americans. But who comprises the group of congressmen we can presume to be prejudiced against those other racial groups? And can we demonstrate that this particular group of congressmen were in a position to influence the shape of the legislation? This is illustrative of why one cannot look at the data shown in Table 1 of this article and simply conclude that it demonstrates racial bias. The more straightforward explanation is that these occupational groups were excluded from coverage because of characteristics of the occupations themselves, not the race of the workers.

⁹ Interestingly, as part of the 1939 amendments, Congress made an attempt to define “agricultural employment” for Social Security purposes and in the process reversed some of the early Treasury decisions. The net effect of the 1939 amendments was to exclude an additional 550,000 to 850,000 agricultural workers from participation in the program.

¹⁰ See also, Safier, Quinn, and Fitzgerald (1941, 11–14) and Safier, Unseem, and Quinn (1943, 18–24).

Note, however, that the opportunity to earn some coverage does not mean that all of these workers would earn sufficient coverage to be insured for an eventual benefit—in fact the board’s studies suggest most would not.

¹¹ Some scholars are more thoughtful on this point than others. Lieberman indicated that he appreciates the limitations of this generalizing about the South, but then he proceeded to over-generalize on the coverage issue anyway.

¹² David Lewis was chosen by the Roosevelt administration to introduce their bill in the House because he was viewed as the leading subject-matter expert on the Ways and Means Committee, owing to his work on other liberal reform legislation, often in concert with Senator Robert Wagner of New York. What happened is that Lewis introduced the bill and then Chairman Doughton, feeling his

prerogatives abused, forced the clerk of the House to alter the record to show that Doughton had submitted the bill earlier than Lewis, and hence, Doughton was listed as the official sponsor of the bill.

¹³ For the text of the three U.S. Supreme Court cases and a brief narrative introduction to the issues involved in the question of the act’s constitutionality, see my essay “The 1937 Supreme Court Rulings on the Social Security Act,” available at <http://www.socialsecurity.gov/history/court.html>.

¹⁴ I have previously published a brief research note on the legislative history of the Clark Amendments. This note is available at <http://www.socialsecurity.gov/history/clarkamend.html>.

¹⁵ Arthur J. Altmeyer, Interview #4, with Peter A. Corning, June 29, 1967, available at <http://www.socialsecurity.gov/history/ajaora14.html>.

¹⁶ The 1950 law extended coverage to farm and domestic workers regularly employed by a single employer, but not to farmers themselves or farm labor or domestic servants who worked for multiple employers. These latter groups were brought under coverage in 1954. So it was 1954 before all agricultural and domestic workers were covered under the Social Security Act.

¹⁷ “Household Help: Social Security Tax Adds New Complication in Hiring Home Help,” *Wall St. Journal*, March 22, 1955, 1.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ “Housewife Loses Long Tax ‘Revolt,’” *New York Times*, January 5, 1954, 15.

²¹ “Overhaul Set for Domestic-Help Rules,” *New York Times*, March 5, 1993, A10.

²² The five CES members were: Frances Perkins, secretary of labor and CES chairwoman; Henry Morgenthau, Jr., secretary of the Treasury; Homer Cummings, attorney general; Henry A. Wallace, secretary of Agriculture; and Harry L. Hopkins, Federal Emergency Relief administrator. Strictly speaking, this was the CES, although the various staff groups in support of the CES are often spoken of as the CES as well, sometimes leading to confusion.

²³ The Old-Age Security Staff Report is available at <http://www.socialsecurity.gov/history/reports/ces/ces2armstaff.html>.

²⁴ The final report of the CES is available at <http://www.socialsecurity.gov/history/reports/ces/ces5.html>. Also some selections from the unpublished studies of the CES can be found at <http://www.socialsecurity.gov/history/reports/ces/ces10vol.html>.

²⁵ Available at <http://www.socialsecurity.gov/history/pdf/hr35report2.pdf>.

²⁶ I have given a more detailed account of the voluntary annuity plan and its fate in the Congress in a research note at <http://www.socialsecurity.gov/history/voluntaryannuities.html>. For the Senate floor debate, see the *Congressional Record*, 74th Congress, 1st Session, 10018-10023. For a third-party account, see Douglas (1936, 116).

²⁷ The president ordered a rewrite of the financing provisions because the initial proposal contained a long-range deficit that was to be covered by the use of general revenues. The president was opposed to the use of general revenue financing for the Social Security system. See DeWitt (2007) for a more detailed discussion on this matter.

²⁸ The full text of the administration's proposed bill can be found at <http://www.socialsecurity.gov/history/pdf/fdrbill.pdf>.

²⁹ "Statements of Henry Morgenthau Jr.," in *Economic Security Act (1935a, 897–912)*; Morgenthau's testimony can also be found at <http://www.socialsecurity.gov/history/35house.html>.

³⁰ *Ibid.*, 901.

³¹ *Ibid.*, 901–902. Morgenthau raising the issue of the "transient or casual laborer" is also the source of the provision in the 1935 act, which excluded "casual labor not in the course of the employer's trade or business."

³² "Statements of Henry Morgenthau Jr.," in *Economic Security Act (1935a)*. See in particular the last two pages of dialog beginning near the bottom of page 910 and running to the end of page 911.

³³ *Ibid.*, 911.

³⁴ *Ibid.*

³⁵ "Statement of Henry I. Harriman, President United States Chamber of Commerce," in *Economic Security Act (1935a, 915)*.

³⁶ "Statement of Abraham Epstein," in *Economic Security Act (1935a, 559–560, 571–572)*. "Statement of Abraham Epstein," in *Economic Security Act, Senate (1935b, 514–515)*.

³⁷ "Statement of Charles H. Huston," in *Economic Security Act, Senate (1935b, 644)*.

³⁸ This includes all of the chairman's comments—procedural as well as substantive—to provide a fully objective measure. My subjective parsing of this distinction reads Harrison as commenting on matters of substance on at least 150 of these occasions.

³⁹ *Congressional Record*, House of Representatives, April 18, 1935, 5992. Note that Vinson refers here to title VIII of the 1935 act. This was the title of the bill that mandated the taxes to be paid to provide the benefits available under the Title II program. The taxes were in a separate title of the bill from the coverage rules as a stratagem undertaken by the framers to try to protect the act from wholesale invalidation by the U.S. Supreme Court.

⁴⁰ *Ibid.*, 5991.

⁴¹ *Ibid.*, 5992.

⁴² Although J. Douglas Brown was pushing the stamp-book system, he was not suggesting this as a way of overcoming the problems associated with coverage of agricultural and domestic workers, but rather, as the system of tax collection for the covered categories. In fact, Brown was one of the three experts on the CES who crafted the original recommendation that excluded agricultural and domestic workers, and he persisted in this position notwithstanding his advocacy of the stamp-book system.

⁴³ For example, Linda Gordon (1994, 275 and endnote 96, 413) alluded to the stamp-book scheme to prove that the administrative-difficulties explanation was bogus. Gordon also suggested that Social Security could have been established with general tax-revenue funding rather than on a contributory basis—a doubtful proposition—but that allowed her to conclude that this imagined possibility somehow undermined the administrative-difficulties argument. Her argument appears to be that if contributions were not collected from workers or employers, then there would be no administrative difficulties involved in collecting taxes from them. This seems surely true, but of doubtful relevance.

⁴⁴ *Ibid.*, 42.

⁴⁵ Letter from Stephen B. Gibbons—acting secretary of the Treasury—to the Social Security Board, May 16, 1936. See also the board's reply letter, June 22, 1936; and the Treasury Department's acknowledgement of the board's reply in a letter, June 23, 1936. Copies of all three documents are available in the Social Security Administration's History Archives, revolving files, folder labeled "Stamp Book Plan For Reporting Agricultural & Domestic Workers."

⁴⁶ "Universal Stamp Book System," undated Social Security Board document, available in Social Security History Archives, revolving files, subject files: carrier #12, folder labeled "Stamp Book Plan For Reporting Agricultural & Domestic Workers."

⁴⁷ Available in Social Security History Archives, lateral file #3, drawer #2, folder labeled "CES Staff Paper—Folder 2."

⁴⁸ The idea of a stamp-book system did have a certain intuitive appeal. Social Security Board member Arthur Altmeyer thought it was a workable option, but John G. Winant, board chairman, was opposed to the idea and Altmeyer would later describe his advocacy of a stamp-book system as "naïve and wrong." See Altmeyer Oral History Interview #4, with Peter A. Corning, June 29, 1967, available at <http://www.socialsecurity.gov/history/ajaoral4.html>. In any case, the British abandoned their stamp-book system in 1944.

⁴⁹ Robert M. Ball, Oral History Interview #2, with Larry DeWitt, March 12, 2001, available at <http://www.socialsecurity.gov/history/orals/ball2.html>.

⁵⁰ *Annual Report of the Federal Security Agency, 1950*, 8 and the *Annual Report of the Department of Health, Education, and Welfare, 1960*, 23.

⁵¹ Or it could be said that Morgenthau was trying to get the Congress to recognize the administrative difficulties it sometimes imposes on the executive branch when it adopts public policies without sufficient consideration of their administrative impacts. Two excellent in-depth case studies of just this dynamic in operation as applied to the administration of Social Security programs can be found in Derthick (1990).

⁵² Douglas also made the quite pertinent observation that Southerners were not the only members of Congress amenable to racial motivations during this era—another reason that broad generalizations about “Southern influence” in New Deal policymaking are doubly suspect.

⁵³ Eliot was another close participant in the 1935 legislation, actually drafting much of the legislative language.

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