

The Constitution Changed Without a Vote - The Social Security Act of 1935

In a mere four pages, ratified in 1788, the Constitution of the United States of America became a body of fundamental law which guarantees the natural God given rights of the people to establish justice, insure domestic tranquility, provide for a common defense, promote the general welfare and secure the blessings of liberty.

One hundred and forty one years later, the Great Depression began on Oct. 29, 1929 when the stock market crashed. Suddenly, millions of people were out of work, bread lines formed to feed families, and the elderly could not support themselves. A potential solution, like the one adopted in Germany in 1889, was a "*social insurance*" program run by the federal government which stressed the government's responsibility to provide for citizens' economic security. In 1932, Franklin D. Roosevelt was elected and he put forth such a plan where workers contributed to their future economic security through taxes paid while they worked and then paid out when they retired or became disabled.

From the outset, Roosevelt's plan had a major stumbling block - - a plain reading of the Constitution finds absent the power of Congress to implement and run a federal social insurance program. But, such legal limitation did not deter Congress, or the President, or the Supreme Court to assume powers not found in the United States Constitution. The day that the Constitution was changed without a vote of the people came on August 14, 1935, when President Roosevelt signed the 33 page Social Security Act of 1935 into law.

This legislation indeed wove a new de facto constitutional thread into the United States constitutional fabric when the Congress and the President bypassed the Constitution Amendment process in Article V of the Constitution and ignored the limits of Congressional power stated in the "*Enumerated Powers*" in Article I of the Constitution. Implicit with the avoidance of the required constitutional compliance process was that the several sovereign states were denied their right to deliberate, debate and ratify the law. As a result, Congress and the President, on their own, raised everyone's taxes and created a new federal government run insurance program bearing upon all the states.

Many have claimed over the years that the Social Security Act is unconstitutional which is the Constitutional right of the people to do so. There is plenty of evidence to support the claim. However, even if they are right and it is, the program is so deeply ingrained in the workings of Republic that such may be impossible to reasonably remove or replace it.

This constitutional precedent is now manifest as one of the largest financial burdens on the American taxpayer. Along with the subsequently enacted federal social entitlement programs of Medicare and Medicaid in 1965, these programs now collectively pose a significant financial threat to the very existence of the Republic as the question of irresponsible levels of deficit spending by the Congress, potentially causing a bankruptcy of the government, becomes part of the political narrative today.

This evolving journey into the consequences of the Social Security Act began with its implementation in 1937 and its administration by the Congress. The program started modestly with 60% of all wage earners, largely older Americans, being taxed about 2%. According to the act, all tax revenue collected were to be deposited in a trust fund. The fund, known as the Social Security Trust Fund, is technically comprised of two component funds in the original Social Security Act of 1935: Section 201, the Old-Age Survivors Insurance program; and Section 904, the Disability Insurance Trust Funds.

The Republic's Social Security Act unsustainable financial dilemma came as a result of Congress converting what started as a self-funded program into an enormous de facto pay-as-you-go program by appropriating all "*surplus*" tax revenues [*monies collected which exceed what was needed to pay benefits*] to fund the annual federal budget. With this process, Congress ignored its fundamental fiduciary responsibility to retain these assets in the Treasury to pay future benefits, and clearly ignored the word "*trust*" in the "*Social Security Trust Fund*." Today, the Social Security Trust Fund contains only promises that the federal government will repay the fund.

This deficit spending process was facilitated by the specific wording in sections 201 and 904 of the original 33 page Social Security Act of 1935. Both sections state that all monies collected may only be invested "*in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States*." Congress was left to determine the nature of these "*obligations*", which presumably could have included such tangible assets as gold, silver and the like. Instead, Congress elected the option of "*borrowing*" the "*surplus*" taxes collected from the Social Security Trust Fund and spending the proceeds on other things. From an accounting perspective, Congress created nothing more than a "*Ponzi Scheme*" because there is no guarantee that future tax payers can sustain the level of payments to current beneficiaries forever. Such a system will eventually collapse, and could result in putting the federal government in default of its "*obligations*."

By 1995, 95% of the American workforce, not subject to Congressional exclusions, were covered by the Social Security Act. While many exemptions have been eliminated through 1990, six million government workers in the ten states of: Alaska, California, Colorado, Illinois, Louisiana, Maine, Massachusetts, Nevada, Ohio and Texas are still exempt from the act and its taxation requirements.

By 2011, more than 56 million people were covered by the Social Security Act spending \$731 billion or 20% of the federal budget. The Social Security Trust Fund had about \$2.6 trillion in assets on the books. The Federal Insurance Contributions Act (FICA) payroll tax rate was 6.2%, paid each by the employee and employer, for a total of 12.4%, for the first \$106,800.00 of income. There were no "*surplus*" revenues because payouts to beneficiaries exceeded the tax payments deposited in the Social Security Trust Fund. Federal spending that year was \$3.46 trillion and the Treasury posted a \$1.3 trillion federal deficit.

Today, the Social Security Act is now the largest government social insurance program in the world measured in dollars paid.

Predictions are that the Disability Insurance Trust Fund [*Section 904 of the Social Security Act*] will exhaust in 2016. After 2020, the United States Treasury will need to fund the entire program by redeeming the unfunded "*obligations*" Congress created to pay program beneficiaries. From an accounting perspective, the Treasury will continue to use this process until the projected absolute exhaustion of the entire Social Security Trust Fund balance sheet in 2033.

The problem is getting worse. The current economic recession, world economic problems, and other matters are putting formidable upward pressures on future projections. Evidence is that the 2012 projection from the "*Social Security and Medicare Boards of Trustees*" exhaustion date of 2033 comes 3 years earlier than 2036 exhaustion date projected in 2011, only one year earlier.

Congress is well aware of the "*ticking time bomb*" aspect of the Social Security Trust Fund. Printing money is not the solution – it causes inflation which every American suffers from. "*Kicking the can down the road*" only passes the problem on to our children and grandchildren. A "*Balanced Budget*" amendment to the Constitution pursuant to

Article V of the Constitution would help. But, Congress has consistently opposed it simply because balancing the books takes away the politically popular option of deficit spending. This whole matter is plainly a "*third-rail*" issue because the people who funded the program through payroll taxes are not to be trifled with for fear that these people will reflect their outrage at the ballot box. Getting reelected is indeed at risk. Predictably, sustained legislative paralysis has ensued. The fact is that the problem is real and it is being ignored by Congress and the President.

The consequences of what started in 1935 are now overwhelming as a result of a mere 33 pages of unconstitutional legislation. If Congress only had stuck with the framer's concept of a limited federal government, that is, without a federal government run insurance program, we would not be in this mess now.

Let's look at this issue at the personal level to understand the problem in simple terms. Commonly understood is that if somebody took your money with the intent to deprive you of said monies, this act would be called theft. It is a crime. Now comes Congress persistently collecting taxes for one thing, then "*borrowing*" the money to spend it on another thing, and putting forth no plan to repay the "*borrowed*" monies. Did Congress steal the "*surplus*" money from the Social Security Trust Fund? It certainly looks like it.

How can we solve the problem?

The first problem to solve is that Congress needs to stop stealing the "*surplus*" money from the Social Security Trust Fund and start putting back what it "*borrowed*." As Will Rogers once said: "*If you find yourself in a hole, stop digging.*"

The second problem to solve is cash flow. When the "*baby boomers*" reach retirement age, the Social Security Trust Fund is projected to remain insufficient indefinitely to satisfy the level of benefit payments compared to a smaller number of projected wage earners paying into it. The only available long-term remedy is for Congress to either vote to raise Social Security Act taxes, or diminish Social Security Act benefits, or both.

The third problem to solve is the lack of personal and fiduciary responsibility. As Alexander Tyler said in 1787: "*A democracy cannot exist as a permanent form of government. It can only exist until the voters discover that they can vote themselves largesse from the public treasury. From that moment on, the majority always votes for*

the candidates promising the most benefits from the public treasury, with the result that a democracy always collapses over loose fiscal policy, always followed by a dictatorship."

During the eight years from January 20, 1993 to January 20, 2001, the total public debt outstanding went from \$4.1 trillion to \$5.7 trillion for an increase of \$1.6 trillion. In the next eight years, it increased by \$4.9 trillion to \$10.6 trillion. Today, less than four years later, it has increased by \$5.3 trillion to \$15.9 trillion. Congress has not enacted a federal budget each year, as required by law, for the last 1,200 days. The Senate majority leader has not allowed the budget from the House come to the Senate floor for a vote for three years. The President's two budgets for fiscal 2011 and 2012 were both unanimously rejected, respectively, in the Senate by 0-97, and the next year in the house of representatives by 0-414 and by the Senate 0-99. None of the President's four budgets included a plan to save Social Security. There is no budget approved for the next fiscal year. Why do we have this problem? The answer is simple. Congress and the President embrace relentless deficit spending and they see themselves as responsible fiduciary actors. Conversely, the Republic cannot continue to exist by "*borrowing*" 40 cents of every dollar it spends. The fact is that we cannot spend our way out of debt!

Let's set aside the details and get down to basic logic. Congress doesn't want a balanced budget. If Congress wanted a balanced budget, Congress could simply take a vote to make it so. Since Congress doesn't want a balanced budget, "*We the People*" need to force the federal budget to be balanced. Such will then force Congress every year to vote on what to fund, what not to fund, or to fund what is left over by raising taxes. By these votes, the people will have a better measure to determine who in Congress is fiscally responsible, or not. How do we make this happen? Start work on "*Change*" with a Constitutional amendment, pursuant to Article V of the Constitution, which requires the federal budget to be balanced. After reading the foregoing story, if you are convinced that we need to act now - call your Senator and Member of the House - make them do it.

On January 20, 1961, John F. Kennedy said "*And so, my fellow Americans: ask not what your country can do for you - ask what you can do for your country.*" Accordingly, "*We the People*" need to put the country first and stop voting for people who vote for deficit spending. Let's vote for candidates who have read, understand, and will abide by the Constitution and the oath to defend it. If not, we eventually will be left with Alexander Tyler proven right once again, as governments before us have fallen for the same reason.

The Constitution of the United States of America – A Brief Overview

The Constitution was adopted by a convention of the States on September 17, 1787. It was ratified by nine States pursuant to Article VII of the Constitution: Delaware, Pennsylvania, New Jersey, Georgia, Connecticut, Massachusetts, Maryland, South Carolina and New Hampshire. Ratification was completed on June 21, 1788.

The Constitution "...*shall be the supreme law of the land...*" pursuant to Article VI. It represents a body of fundamental law put forth under the authority of the people, which guarantees the people their God given rights and establishes the government of the United States of America. In it, the founding fathers of the Republic detailed the scope of federal powers to affect a limited federal government, and it conversely empowers the sovereign states or the people with all other powers. Specifically, the Constitution defines the three co-equal branches of the federal government in Article I, II and III; each delineating their respective roles and powers within the federal government. Article IV defines the role of the sovereign states.

The sole process to amend the Constitution is found in Article V. When a proposed law is put forth for passage by Congress, or to be signed by the President, that fails the test of constitutionality, Article V is the only authoritative path available to make such law constitutional. To ensure this process trigger, the President is subject to an oath of office pursuant to Article II, Section 1, Clause 8, to "...*preserve, protect and defend the Constitution of the United States.*" Other parts of the Constitution impose similar requirements on other federal office holders. There are now twenty seven amendments to the Constitution, including the "*Bill of Rights*", which rights were proposed to the legislatures of the several States by the First Congress on September 25, 1789. Ten of the twelve submitted were ratified by the eleven States of: New Jersey, Maryland, North Carolina, South Carolina, New Hampshire, Delaware, New York, Pennsylvania, Rhode Island, Vermont, and Virginia. Ratification was completed on December 15, 1791. The last amendment to the Constitution was ratified on May 7, 1992, more than 202 years after being first proposed.

The first branch of the federal government, the legislative branch, is set forth pursuant to Article I, Section 1, of the Constitution: "*All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.*" Article I, Section 8, details eighteen clauses known as the

"Enumerated Powers" of Congress which identifies the bounds of Congressional legislative power. The Tenth Amendment to the Constitution requires that: "*The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.*" This amendment, as part of the "*Bill of Rights*", sets forth the Constitutional mandate that all other legislative powers, outside of the eighteen "*Enumerated Powers*" assigned to Congress belong to the sovereign states or to the people. Accordingly, such limits the breadth of federal powers.

The second branch of the federal government, the executive branch, is set forth pursuant to Article II of the Constitution, Section 1, "*The executive Power shall be vested in a President of the United States of America.*" In summary of Section 2, "*The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States,and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment ... and ... with the Advice and Consent of the Senate, to make Treaties, ... appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, ... and ... fill up all Vacancies that may happen during the Recess of the Senate*" The President has no legislative or judicial powers. Pursuant to Article II, Section 3, "*... he shall take Care that the Laws be faithfully executed...*".

The third branch of the federal government, the judicial branch, is set forth pursuant to Article III of the Constitution, "*The judicial Power of the United States, shall be vested in one supreme Court...*" whose decisions serve to adjudicate certain Constitutional controversies. The Supreme Court has no legislative or executive powers, nor the power to interpret the Constitution, or to amend it, or to create new constitutional rights, or to destroy old ones. Although, the doctrine of Judicial Supremacy is not contained in the Constitution, the court expanded the original jurisdiction of the Supreme Court in the case of *Marbury v. Madison, 5 US 137 (1803)*, whereby the court claimed the authority to evaluate challenged legislation and other matters to determine its constitutionality, and to nullify any laws the court found to be unconstitutional. Pursuant to Article III, Section 1, justices "*... shall hold their Offices during good Behaviour*". Accordingly, abuses of Judicial Supremacy or other act proven to be other than "*good Behaviour*" could result in articles of impeachment voted by the House of Representatives, and, if impeached, the Senate would conduct a trial to determine the party's guilt or innocence.

Excerpts from the United States Constitution

[Legislative Powers of Congress -and- the Enumerated Powers of Congress]

Article I. *[Ten (10) Sections in total – Section 1 and 8.in their entirety]*

Section 1. *[Legislative Powers of Congress]*

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section. 8. *[Enumerated Powers of Congress]*

Clause 1: The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

Clause 2: To borrow Money on the credit of the United States;

Clause 3: To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

Clause 4: To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

Clause 5: To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

Clause 6: To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

Clause 7: To establish Post Offices and post Roads;

Clause 8: To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

Clause 9: To constitute Tribunals inferior to the supreme Court;

Clause 10: To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

Clause 11: To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

Clause 12: To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

Clause 13: To provide and maintain a Navy;

Clause 14: To make Rules for the Government and Regulation of the land and naval Forces;

Clause 15: To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

Clause 16: To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

Clause 17: To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; --And

Clause 18: To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.