

# THE PRESIDENTIAL ELECTION OF 2004, THE POLITICS OF AMERICAN SOCIAL POLICY, AND WHAT READERS INTERESTED IN FAMILY POLICY MIGHT MAKE OF THE IDEA OF NEW SOCIAL RISKS

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## INTRODUCTION

This Article<sup>1</sup> takes up the theme of whether the twenty-first century presents sufficiently new risks to justify substantial changes in American social welfare policy. In my view, there are few such new and substantially different risks, and so no grounds for any wholesale transformation of American social policy exist. The Article does, however, identify one important exception: namely, changes in family life in the period after the Second World War, including increased rates of divorce, changes in the labor force experience of women, same-sex marriages, increased informal family arrangements, and so on. Moreover, there are changes in the magnitude of traditional risks that require attention rather than reformulation: most importantly, increases in the variability of family income over time.

This version of my views proceeds from assumptions about the meaning of the election of 2004 for American social policy that were addressed in the Throver Symposium and which I have published elsewhere.<sup>2</sup> The first section

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<sup>1</sup> This Article is excerpted, with appropriate editorial modifications and a new introduction, from Theodore Marmor, *At Home Abroad: The Presidential Election of 2004, the Politics of American Social Policy and What European Readers Might Make of These Subjects*, in 17 SOCIAL POLICY REVIEW: ANALYSIS AND DEBATE IN SOCIAL POLICY, 2005, at 125 (Martin Powell et al. eds., 2005) and is reprinted with permission by The Policy Press, Bristol, U.K. Portions of this Article also appeared in Ted Marmor, *The Presidential Election, US Social Policy and Whether Canadians Should Care*, POL'Y OPTIONS, Dec. 2004–Jan. 2005, at 37, and are reprinted with permission by the Institute for Research on Public Policy, Montreal, Quebec.

<sup>2</sup> See *supra* note 1; see also Ted Marmor & Jerry Mashaw, *Private Ownership, Collective Default: The Bush Proposals for Social Security Are about Dismantling the Current System—And Not Saving It*, NEWSDAY,

of this Article will briefly summarize my critical views on claims that the re-election of President Bush constituted a mandate for social policy change and that the most fiscally important programs of the American welfare state—social security pensions and Medicare—require ‘modernization’ to adapt to contemporary realities. The Article argues that a Kerry victory in the election of 2004 would have yielded a very different social policy agenda for the years 2005–2009. The major prediction of this Article is that, despite President Bush’s earnest proposals for major reforms in Social Security and health care, policy stalemate is the most likely outcome of the second term of his Administration.

### I. THE ELECTION OF 2004 AND MANDATES FOR SOCIAL POLICY MODERNIZATION

The presumption of this Article is that the 2004 election was much more an echo of the alignments of 2000 than a mandate to change American social policy substantially. So, for instance, had Ohio—whose dire economic conditions had been predicted to help the Democratic challenger<sup>3</sup>—supported Kerry with 60,000 more votes, President Bush would have been defeated. Such narrow presidential victories neither support claims of mandates nor foreshadow major policy shifts. Thus, for domestic politics, this Article presumes continued stalemate over most of the crucial social policy issues in tax, health, and social security. Far from transforming the Congress, the election of 2004 marginally increased Republican majorities in the House and the Senate.<sup>4</sup>

In dealing with Medicare and Social Security, the Bush Administration insisted on the need for adaptive change for what they have called “modernization.” For Medicare, the result was a reform largely by stealth, one that used the addition of a complex drug benefit to add tax subsidies for private insurance administrators in Medicare and for health savings accounts that had nothing to do with Medicare. Few Americans knew what the legislation contained when it passed on December 8, 2003. Its history was replete with charges of legislative manipulation and misdeeds—including bribes for

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Jan. 9, 2005, at A31.

<sup>3</sup> See, e.g., Scott Shepard, *Political Battleground Narrows: Camps Shrink Focus to States That Show Best Odds of Victory*, ATLANTA J.-CONST., Sept. 6, 2004, at A1.

<sup>4</sup> See Janet Hook & Richard Simon, *GOP Plans Major Push in Congress*, L.A. TIMES, Nov. 4, 2004, at A13 (noting Republican gains in the Senate and the House).

support in the House of Representatives and alleged misconduct by Medicare officials in dealing with the program's actuaries.<sup>5</sup>

Modernization was the metaphorical umbrella under which changes were placed, with the argument that both pensions and Medicare needed to be shifted to programs more closely identified with individual ownership. Indeed the ownership society was the major rhetorical theme justifying the introduction of private accounts into Social Security pensions and the shifting of Medicare from a common benefit program to one, in Part D's drug benefit, that is more like a voucher.<sup>6</sup> None of these claims, this Article presumes, are supported by data concerning what Americans believe or hope. But the focus here will be on whether contemporary family life does call for other changes in these major programs of social insurance.

## II. NEW CENTURY/NEW RISKS: HOW HELPFUL AS A FRAMING DEVICE?

Let's begin by asking whether the presumption of new risks for the new century is the right place to focus. What precisely are these new risks (as opposed to changing social facts) in the labor market, family circumstances, and realities of social exclusion? Are these new risks ones that the parents of the modern welfare state did not realize or anticipate?

The claim that the twenty-first century requires sustained attention to new social risks is vividly illustrated by the writing of a Canadian political scientist, Professor Jane Jensen, and her associates at the Canadian Policy Research Network. Though directed centrally at a Canadian audience, Professor Jensen's formulation could easily be applied to U.S. experience. "On the economic and social maps that trace the daily lives of [North Americans], there has been," the forward to her paper asserts, a "transformation."<sup>7</sup> The radical social changes include where we "live, the jobs we do, the amount of time we spend learning, how long we live, who our neighbours are, and how many children we have."<sup>8</sup> As far as economic circumstances of North Americans,

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<sup>5</sup> See Theodore R. Marmor, *The US Medicare Programme in Political Flux*, BRIT. J. HEALTH CARE MGMT., May 2004, at 140, 141-43.

<sup>6</sup> See generally Theodore R. Marmor & Gary J. McKissick, *Medicare's Future: Fact, Fiction, and Folly*, 26 AM. J.L. & MED. 225 (2000); Theodore Marmor & Jonathan Oberlander, *Rethinking Medicare Reform*, HEALTH AFF., Jan.-Feb. 1998, at 52.

<sup>7</sup> Jane Jensen, *Canada's New Social Risks: Directions for a New Social Architecture*, CPRN SOC. ARCHITECTURE PAPERS: FAM. NETWORK, Sept. 2004, at iii.

<sup>8</sup> *Id.*

the major changes are in “industrial structure, trade patterns, competition, where we shop and the kinds of goods and services we buy.”<sup>9</sup>

This sketch of recent history does not in my view support a new theory of social risks. This is not a rebuke to her description of change, but rather to the assumption that these changes bring such new risks as to require social policy transformation. Jensen, in terms familiar in many American social policy circles, emphasizes the consequences for everyone’s risk profile of an aging society, new family structures, and the growth of immigration.<sup>10</sup> In my view, there are few new risks implied by these social facts with one exception: changes in the structure of the family, in the United States and elsewhere.

Before examining these claims of “new” risks, however, it is important to review their historical contexts. Unemployment was central to welfare state developments in the twentieth century and remains so today. The costs of medical care—and the risk to family income those costs represent—has been a central concern in social policy debates for a century, though with a twist. In the early years of welfare state development from the late nineteenth century to the first few decades of the twentieth, the major financial consideration about medicine was not the cost of care itself, but foregone wages from work. Social health insurance benefits used to mean “sick pay,” not reimbursement for medical bills.<sup>11</sup> Nonetheless, the common purpose of both was to deal with the risk that illness or injury would threaten family income. The purpose of sickness insurance, in short, was income protection.

Indeed, providing a basis of economic security links most of the rest of traditional social insurance programs: disability coverage, retirement pensions, and, in a limited sense, child allowances. If disabled from work, families without insurance would quickly become poor. Forced to retire without a pension, individuals or older couples would face the poor house or its equivalent unless they were among the very few with substantial savings. There are of course a whole set of familiar service programs that are protective, but not solely of income. Efforts to control child abuse illustrate these program types, but so do special programs for the mentally handicapped, those with particularly chronic illnesses or injuries, and those workers requiring retraining. The point here is simple: the scope of the traditional

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at vi.

<sup>11</sup> PAUL STARR, *THE SOCIAL TRANSFORMATION OF AMERICAN MEDICINE: THE RISE OF A SOVEREIGN PROFESSION AND THE MAKING OF A VAST INDUSTRY* 238 (1982).

welfare state was and is very broad and the image of a wholly new world of contemporary risks is in my view likely to mislead.

The one distinctive development of the past half-century is, to be sure, changes in patterns of marriage and divorce. In the United States, as in most industrial democracies, the traditional retirement, old age, disability, and survivors financing arrangements took for granted a model family. That family consisted of a breadwinner (male) and a female spouse. Although this model family sometimes took shape without children, a family with children dominated the imagery.<sup>12</sup> The conception of income protection through social insurance proceeded from this assumptive world. If the breadwinner was hurt at work, died prematurely, or reached a retirement age, collective publicly funded (or regulated) transfer programs were set to replace the income from work. In the United States, the response to the increasing prevalence of divorce has been a marriage length test: benefits for the first spouse of a marriage longer than ten years. A second marriage, given that test, produces a second spousal benefit. But this adaptation cannot respond easily to what one could call serial marriages or partnerships: short-term marriages or long-term partnerships.

In other locales, the situation differs. In Quebec, for example, the civil code has adapted more easily to the reality of nontraditional families, which, in particular, includes fewer marriages altogether and extended partnerships (same-gender partnerships included).<sup>13</sup> But nothing like this flexibility has emerged in the United States, or generally elsewhere, including the rest of Canada. Which children of which marriage—or partnership—are the legally entitled “survivors” under the provisions of social security law in the United States?<sup>14</sup> This question, which has been both buried beneath moralistic

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<sup>12</sup> See generally Robert M. Ball, *The Original Understanding on Social Security: Implications for Later Developments*, in SOCIAL SECURITY: BEYOND THE RHETORIC OF CRISIS 17 (Theodore R. Marmor & Jerry L. Mashaw eds., 1988).

<sup>13</sup> See Céline Le Bourdais, McGill Univ., Conference Presentation at McGill University (Nov. 18, 2004) (presentation summarized in SOC. DEV. CAN., CONFERENCE REPORT: NEW CENTURY, NEW RISKS: CHALLENGES FOR SOCIAL DEVELOPMENT IN CANADA (2004), available at <http://www.misc-iecm.mcgill.ca/social/socialEN/presentations/New%20Century%20New%20Risks%20Report%20EN.pdf>).

<sup>14</sup> How to deal with same-sex marriages excites constitutional activism in the United States, but with prohibitionist, not welfare state adaptation, in mind. Currently, the eligibility rules for Medicare and Social Security give no benefits to any unmarried, long-term partners, regardless of sexuality. For an overview of Medicare eligibility rules, see Medicare Eligibility Tool, <http://www.medicare.gov/MedicareEligibility/home.asp> (follow “General Enrollment and Eligibility” hyperlink; then follow “Who is Eligible for Medicare?” hyperlink). See also CONG. BUDGET OFFICE, POTENTIAL BUDGETARY IMPACT OF RECOGNIZING SAME-SEX MARRIAGES 5–6, 9 (2004), <http://www.cbo.gov/ftpdocs/55xx/doc5559/06-21-SameSexMarriage.pdf>.

commentary on homosexual marriage and bound by bureaucratic rules from another period, is certain to occupy more of the public agenda in the decades to come. But this prediction does not itself validate a wholesale revision of our view of the adequacy of the conception of risks the welfare state of the twentieth century took on.<sup>15</sup>

In fact, the most important lesson for other countries from recent American politics is that the traditional risks covered by social security are ideologically under attack in new ways. The rhetorical umbrella under which the current President Bush has placed these attacks is an appeal to the idea of an “ownership society,” where psychological and economic security arises largely from individual provision.<sup>16</sup> Individual savings are held out as the most reliable means of dealing with retirement, health expenses, and unemployment. The role of the national government assumed by this array of wishes is that of a large charity for the unlucky, and a source of subsidies for those who can save on their own.

It is no surprise, then, that the Bush Administration embraced health savings accounts, individual saving free of current tax, with the added provision of catastrophic insurance as a guarantee against impoverishment. The most surprising—and worrisome—instance of a revival of prewelfare state thinking is the Bush Administration’s penchant for individual investment accounts. While not presenting them as an add-on with private savings, the President has been keen to support using social insurance retirement contributions for individual risk-bearing investments.<sup>17</sup> That, of course, entails

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<sup>15</sup> I have mentioned the increased variability of family income as a change bearing on the adequacy of social policy ideas in the twenty-first century. There is evidence supporting this trend, but it is an intensification of risk already addressed, if inadequately, by our social insurance programs of unemployment and disability. This is a worthy topic of reform discussion, but it does not represent a change from the conception of risk the American welfare state has addressed since the mid-1930s. For discussion of this change in variation of family income, see Jacob S. Hacker, *The Privatization of Risk and the Growing Economic Insecurity of Americans*, SOC. SCI. RES. COUNCIL, Oct. 20, 2004, <http://privatizationofrisk.ssrc.org/>; Jacob S. Hacker, *Privatizing Risk without Privatizing the Welfare State: The Hidden Politics of Social Policy Retrenchment in the United States*, 98 AM. POL. SCI. REV. 243, 250 (2004); .

<sup>16</sup> President Bush frequently expresses his conception of an ownership society. One representative example is his speech at the White House Economic Conference of 2004. See President George W. Bush, Closing Address at the White House Economic (Dec. 16, 2004) (transcript available at [www.whitehouse.gov/news/releases/2004/12/20041216-6.html](http://www.whitehouse.gov/news/releases/2004/12/20041216-6.html)) (“[O]ne of my strong beliefs is that all public policy . . . ought to encourage ownership in America.”). Similarly, in a press conference shortly after the conference, President Bush asserted, “One of the philosophies of this government is if you own something . . . the country is better off.” President George W. Bush, Press Conference (Dec. 20, 2004) (transcript available at [www.whitehouse.gov/news/releases/2004/12/20041220-3.html](http://www.whitehouse.gov/news/releases/2004/12/20041220-3.html)).

<sup>17</sup> Janet Hook, *Social Security Plan Hits Shoals*, L.A. TIMES, June 27, 2005 at A1.

transferring the risk of stock market investment to individual families. One would have thought that the rash of recent bankruptcies and loss of work-related pensions—Enron and United Airlines to name just two of the most prominent examples—would have prompted policy caution in this arena over the past three years.

The reality is that such proposals come from ideological conviction, not disciplined reflection about the risks ordinary families face. Just as most people regard their driving skills as above average, so do many citizens delude themselves into thinking the stock market must go up or that their family will somehow avoid all the risks the welfare state was designed to address. This myopia is what makes the contemporary attack on the welfare state's foundations at least possible, if not popular. In the end, the American welfare state—centered as it is on popular social security pensions, a much appreciated Medicare for the elderly and disabled, and modest provisions for unemployment and workers compensation—will neither wither away nor disappear in a bold victory for its ideological enemies. But for those interested in family policy, it would be wise to watch out for the illusions now in play in the American social policy arena. For the remainder of this administration's term, these proposals will be the center of continuing ideological conflict. That makes it prudent to sort out the myths from the realities and, if the election of 2004 is any guide, that will be a substantial task.

One might close there, but for the obvious interest in what 2005 and beyond would have been like had Senator Kerry rather than President Bush won the election of 2004. On taxes, Kerry would not have accepted the Bush proposals for further tax cuts disproportionately directed at the wealthy. Here the threat of a Presidential veto would have been enough to count on. On the implementation of the Medicare reforms, one could confidently predict that Kerry would not have in practice accepted the statutory restraints on using Medicare's market power to bargain with the pharmaceutical industry over prices and volume. How Kerry would have proceeded here is not easy to say, but that he would either have gone back to the Congress for authorization or used administrative means is overwhelmingly likely. And, on Social Security reform, nothing along the lines of the Bush plan would have been on his agenda.<sup>18</sup> Had Republicans proposed and managed to pass a Bush type plan, he would have certainly vetoed it. The election then was important in shaping

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<sup>18</sup> See, e.g., Matea Gold & Maura Reynolds, *Presidential Rivals Try to Tap into Social Security*, L.A. TIMES, Oct. 20, 2004, at A20.

the agenda for 2005 and beyond. But while the lineup of plans and responses changed because of Bush's re-election, the fundamental partisan balance will, as I have previously argued, make stalemate on large-scale change the most likely scenario.<sup>19</sup>

### III. A CONCLUDING NOTE

Some observers interpret the Bush agenda with extraordinary generosity. For instance, columnist Michael Barone, lauds President Bush for "fighting for long-term stakes . . . [and] acting with an eye to what America will look like twenty, thirty, even forty years out."<sup>20</sup> Understood as a rationale for the programmatic reforms Bush has advanced in social policy, this is a stunning confusion of justifications offered and demonstrated merit. That Bush has his eye on long-term changes in American life is true, but that does not make either his incremental steps or his policy design defensible.

One can add, moreover, that neither conceptions of "new risks" or newly celebrated ideas of individual ownership constitute persuasive critiques of American social policy and its role in family life. Where dramatic change has taken place—as with the structure of the American family—this Article argues that reform attention within traditional social insurance programs is fully justified. But that is adaptation, not transformation, and it has less to do with new risks than old ones applied to new social facts.

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<sup>19</sup> See *supra* Part I.

<sup>20</sup> Michael Barone, *Eyes on the Future*, U.S. NEWS & WORLD REP., Jan. 24, 2005, at 36.