

That is the essence of federalism: helping to fund the States to perform government functions that are best performed at the local level. It is not Republican, and it is not Democratic; it is common sense.

The Federal Government and Federal taxpayers count on the States to use those Federal funds in a lawful manner, and most everyone would agree that the States should be accountable for doing so. President Bush has made accountability the central guiding principle of his education proposals. We have some immensely important differences of view on how to achieve accountability. But we should not lose sight of what unites us.

Republicans believe in accountability, and so do Democrats. We here in Washington owe the American people a duty, when we send their tax dollars to State and local authorities, to ensure that the people get a chance to hold those authorities accountable for using their money for the public good, for the benefit of all the people, and in accordance with the law of the land. That is not politics; it is common sense.

What has all this got to do with the Supreme Court? Well, 37-years ago, Congress enacted perhaps the most important piece of legislation of the post-war era, the Civil Rights Act of 1964. Title VI of the Civil Rights Act is an accountability provision pure and simple. It prohibits discrimination on the basis of race, color, or national origin, in any program or activity that receives Federal funds.

The Congress that passed the Civil Rights Act was committed to full and strong enforcement of civil rights. It recognized that discrimination comes in many forms. Governmental practices may be intentionally discriminatory or, more commonly, they may be discriminatory in their effect, because they have a disparate or discriminatory impact on minorities. To catch this more subtle but no less harmful form of discrimination, Congress authorized the Federal agencies that were responsible for awarding federal grants and administering federal contracts to adopt regulations prohibiting Federal grantees and contractees from adopting policies that have the effect of discriminating.

There has never been any serious question about Congress's intent in this matter. Before Sandoval, the Federal Courts of Appeals had uniformly affirmed the right of private individuals to bring civil suits to enforce the disparate-impact regulations promulgated under Title VI. The Supreme Court itself, in a 1979 case called *Cannon v. University of Chicago*, had concluded that Title VI authorized an implied right of action for victims of race, color, or national origin discrimination. And as Justice Stevens noted in his dissenting opinion in Sandoval,

the plaintiff in *Cannon* had stated a disparate-impact claim, not a claim of intentional discrimination.

I will not attempt in these brief remarks to go over all the reasons why Sandoval was incorrectly decided as a matter of Supreme Court precedent. Justice Stevens does an excellent job in his dissent of demonstrating how the activist conservatives on the Court rejected decades of settled laws.

I will say this: The holding in Sandoval makes no sense as a matter of national policy. The lower courts in Sandoval found that the defendant, the Alabama Department of Public Safety, was engaged in a discriminatory practice in violation of Federal regulations. The Supreme Court did not challenge that finding, and also accepted that the regulations at issue were valid. Yet the Court's conservative majority held that the victims of the discrimination had no right to sue to enforce the Federal regulations. You do not have to be liberal, and you do not have to be conservative, to be troubled by the notion that a State can engage in unlawful discrimination and yet not be accountable in any court.

The good news is that the Sandoval holding is based on statutory interpretation and not constitutional law. The Congress is therefore free to overturn it, and we should do so at the very first opportunity. By doing so, we will fully preserve what I have called cooperative federalism. We will continue to provide funding assistance to the States. At the same time, we will prove that we are serious about the right of the American people to hold their government accountable in the most basic sense, accountable for obeying the law. And we will prove that we are as serious about the civil rights of minorities as the groundbreaking Congress that passed the Civil Rights Act of 1964.

Fixing what the Court has broken should be a bipartisan undertaking. This is not about being a Republican or a Democrat; it is about reaffirming the will of the people as expressed by the Congress, reaffirming that the American people are entitled to have a government that is accountable, and reaffirming that in America, discrimination is not acceptable, whether it is done openly and crassly, or more invisibly and subtly. The unfair effects are the same and deserve redress.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY last month. The Local law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a heinous crime that occurred April 25, 2000 in

Germantown, MD. According to the victim, she and her partner and their 11-year-old daughter have been the victims of repeated anti-gay slurs. The victims have had rocks and other items thrown at their home because they are gay and some neighbors "wanted us out of the neighborhood." The incident in question occurred after a verbal altercation between the victim's child and the perpetrator's child, culminating in the victim's attack by the perpetrator. When police arrived on the scene, the victim was lying on the ground; her hand was bleeding; she had been kicked repeatedly in the head by the perpetrator and his 12-year-old son (while the son was allegedly yelling, "I'm going to kill you, dyke b---h."); her face was swollen; she had footprints on her shirt; and marks on her neck and chest which required overnight hospitalization. Despite this, the police did not handle the incident as a hate crime and said that it was against their regulations to arrest the perpetrator because they had not witnessed the attack.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation, we can change hearts and minds as well.

KIRK O'DONNELL MEMORIAL LECTURE

Mr. HOLLINGS. Mr. President, I had the pleasure of attending the Kirk O'Donnell Memorial Lecture on American Politics last month to hear our distinguished former colleague, Daniel Patrick Moynihan. No one worked harder on public policy or served with a more distinguished record than he. His lecture offered an enlightening perspective on current discussions about Social Security and I ask unanimous consent that it be reprinted in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

A THRIFT SAVINGS COMPONENT FOR SOCIAL SECURITY: BIPARTISANSHIP BECKONS

(By Daniel Patrick Moynihan)

I have entitled this lecture "A Thrift Savings Component for Social Security: Bipartisanship Beckons." I have done so not without a measure of unease. For it was our own Kirk O'Donnell who famously declared Social Security to be "the third rail of politics." But then Kirk was ever one to take a dare. And I would note that the third rail was first installed on the I.R.T. subway in Manhattan, the Big Dig of its day, which Charles Francis Murphy had built as a favor for a friend.

But allow me a brief explanation for such reckless abandon at a time in life when serenity ought properly be one's object.

The end of the cold war did it!

On December 7, 1988 Mikhail Gorbachev went before the General Assembly of the United Nations to declare in effect that the Soviet "experiment" was over. The French Revolution of 1789, he said, and the Russian Revolution of 1917 had had a powerful impact "on the very nature of the historic process." But, "today a new world is emerging and we must look for new ways." That was then, now was different. "This new stage," he continued, "requires the freeing of international relations from ideology." The world should seek "unity through diversity." Then this: "We in no way aspire to be the bearer of the ultimate truth."

But of course since 1917 and before the essence of Marxist-Leninism had been the claim to be the bearers of "the ultimate truth." No longer; it was all over. And indeed in short order the Soviet Union itself would vanish.

For someone of the generation that had been caught up in the second world war and the cold war that followed, Gorbachev's address could fairly be described as one of the extraordinary events of the twentieth century. All but unimaginable at mid-century. I had been in the Navy toward the end of World War II and was briefly called back during the Korean War. I was in London at the time. Early one morning we mustered in Grosvenor Square and by late afternoon were crossing Holland on our way to the naval base at Bremerhaven. Partly, well mostly, for show, I had brought along a copy of Hannah Arendt's newly published *The Origins of Totalitarianism*. I opened to the first page, read the first paragraph to myself, then read it aloud.

"Two world wars in one generation, separated by an uninterrupted chain of local wars and revolutions, followed by no peace for the victor have ended in the anticipation of a third World War between the two remaining world powers. This moment of anticipation is like the calm that settles after all hopes have died."

Silence. At length the senior officer present allowed: "There must be a bar car somewhere on this train."

That war never came and soon there were signs of instability in the Soviet empire. In 1975 I returned from a spell in India convinced that the Czarist/Soviet imperium would soon break up, as had all the other European dominions following that Second World War. Shortly thereafter I was at the United Nations when the Soviet Under Secretary for Security Council Affairs defected to the United States. The diplomat, a man of great intelligence, had simply ceased to believe any of the things he was required to say. Doctrine was receding even as ethnicity was rising.

Then there was Moscow in 1987. I was there on a mission of possible importance. Was treated with great courtesy, including a tour of Lenin's apartment in the Kremlin. Behind his desk was a small bookcase, with two shelves of French language and two of English language authors. They could well have been Lenin's or possibly were put there for the delectation of visiting intellectuals in the 1930s. No matter. I found that I had personally met three of the writers. Next day I called on Boris Yeltsin, then Mayor of Moscow. Our excellent ambassador introduced me, recounting the authors I had recognized. It was clear Yeltsin had never heard of any of them. Could care less. After a pause he looked at me, and through a translator declared, "I know who you are and where you come from. And what I want to know is how the hell am I supposed to run Moscow with 1929 rent controls?"

Housing. Fairly basic, and in desperate short supply. At the other end of the consumer spectrum, as we were leaving what was still Leningrad, I told our KGB handler that some constituents in New York had given me the names of relatives, hoping I might call them. But it seemed there was no telephone book in our room. Perhaps he could find one for me. He went off; came back. There was no telephone book in Leningrad. None that is available to the public.

In the years preceding and the years following this brief adventure it appeared to me that ethnicity was the central conceptual flaw of Marxism-Leninism. The workers of the world were not going to unite. The Red Flag, red being the color of the blood of all mankind, was not going to fly atop the capitols of all the world. I continue to think that, and to suppose that the 21st century will see even more ethnic division. But I have added to my views a further component to the failure of communism which is nothing more mundane than consumerism.

It serves to recall the fixed belief of the early Marxists that free markets—capitalism in that ugly French term—would bring about a steady lowering of living standards, from which a politicized proletariat would rise in revolt. In John Kenneth Galbraith's phrase, "The prospect of the progressive immiseration of the masses, worsening crises and . . . bloody revolution." But as a new generation of Soviet leaders ventured abroad, they came to realize that nothing of the sort was happening in the West. While at home . . . In the end they simply gave up.

Let us see if these two categories can be related in terms of our future as the one remaining world power, to use the phrase of the moment. Which will not necessarily or may not be current two or three generations hence. Unless, in my view, we ought to tend to certain domestic issues very soon now.

Begin with ethnicity. It would be just forty years ago that Nathan Glazer and I finished *Beyond the Melting Pot*. Our subject was "The Negroes, Puerto Ricans, Jews, Italians and Irish of New York City," but we had something more in mind. Marxist theory predicted, you might say, that these groups would meld together as a united and militant mass, as espoused by assorted left-wing organizations. We argued that nothing of the sort had happened, or would; if anything, groups tended to become rather more distinctive with time.

We wrote that ours was a beginning book, and after forty years I can report that a more than worthy successor has come along.

In yet another remarkable achievement, *The New Americans: How the Melting Pot Can Work Again*, Michael Barone, drawing in part on our earlier paradigm finds parallels with new immigrant groups, notably Latins and Asians, members of the largest wave of immigration in our history. Demography is a kind of destiny. If there are any parallels in history, and there are, should we not look to a new era of inequality, competition, and conflict of the sort we experienced in the late 19th and early 20th century? I would think we ought, and would further contend that we got through that earlier time in our history in considerable measure through the social provision made by governments of that era, culminating in the New Deal of the 1930s. I would add, gratuitously if you like, that much of that social contract began with New York Governor Alfred E. Smith, who rose out of the quintessential melting pot, the lower east side of Manhattan.

Here, then is a proposition. Our response to the end of the cold war has been singularly

muted, both in foreign and domestic affairs. In particular there has been no domestic legislation of any consequence. Neither as reward or precaution. (The G.I. Bill of Rights of 1944 was a bit of both. A reward to the veterans, and a measure to moderate the anticipated return of high unemployment.) I can envision a similar combination, albeit in reverse order.

In a word, unless we act quickly, we are going to lose Social Security established in that first era as a guaranteed benefit for retired workers, widowed mothers, and the disabled and their dependents.

We have just fifteen years before outlays of Social Security exceed income. This after eighty years of solvency and surplus. Again, demography. Social Security began as a pay-as-you-go system. The population cohort in the work force paid taxes that provided pensions for the population cohort that had retired. A Social Security card was issued to each worker, with the faint suggestion that there was a savings account of some sort somewhere in the system. Franklin D. Roosevelt famously told Luther C. Gulick, a member of his committee on government organization, that while it might indeed be a bit deceptive, that account number meant that "no damned politician" could ever take his Social Security away. But all understood the reality.

Problem is that in the early years there were thirty odd workers providing benefits for one retiree. No longer. Today there are three. By 2030 there will be two.

To repeat, as the Trustees now calculate, by 2016 the system will pay out more money than it takes in. There is nominally a trust fund representing surpluses accumulated over the years, but to redeem the bonds will require general revenue. The system is no longer self-financing, with all that implies.

Obviously we ought to forestall insolvency. But would it not be well, at the same time, to address the matter of intergenerational transfer. This was well and good when there were so few retirees. No longer. Would it not then be prudent to enable workers within the Social Security system to accumulate savings of their own to be used as they see fit during retirement?

I will argue that we have to do the first, and if we do, in the process we would be enabled to do the second.

The workings of such a system are not complex, or so I would contend. Mentored by David Podoff, I introduced a bill in the 105th Congress. With some refinements I reintroduced it in the last Congress, the 106th, as S. 21, a first day bill. Senator BOB KERREY of Nebraska, a fellow member of the Finance Committee, was a co-sponsor.

Four measures are required to ensure solvency:

First. Social Security benefits are tied to the Consumer Price Index compiled by the Bureau of Labor Statistics. Some forty years ago as an Assistant Secretary of Labor I was nominally in charge of the B.L.S. where, in the aftermath of a study carried out for the National Bureau of Economic Research, it was agreed that the C.P.I. overstates inflation. It can't be helped; it is in the nature of the beast. It simply needs to be corrected. A 0.8 percentage point drop would do it nicely. We need normal taxation of benefits; as with other pensions.

Second. We need to bring all newly-hired State and local employees into the system. (It is still optional, a holdover from the 1930s when the Supreme Court would probably have ruled that the Federal Government could not tax State governments or subdivisions thereof.) Well down the line we will

need to raise the retirement age once again. We did this in 1983, providing a gradual ascent to age 67 by 2027. This will one day need to rise by similar small steps to, say, 70 at mid-century. But consider; we estimate that persons who retire at age 70 in the year 2060 will on average live another 17 years. Surely a goodly spell. And note that the majority of today's beneficiaries retire before reaching 65. Benefits are lower, but the option is there and most persons take it. (It would be well for the now freestanding Social Security Administration to do some survey research to sort out the different reasons folk take this option.)

Third. We should tax benefits in the same way other retirement payments are taxed. We began partial taxation in 1983.

Fourth. We would increase the maximum computation period over time from 35 to 38 years, and by stages increase the OASDI contribution and benefit base to \$99,900.

Now to a thrift savings plan. The payroll tax began in 1935 at 1 percent for employee and employer. It rose by degrees until in 1977 it was set at a combined rate of 12.4 percent, scheduled to take place in 2011. However, a combination of miscalculation, the Consumer Price Index, and misfortune, a sharp inflation owing to oil price increases, led to a sudden crisis. In 1982 the revered Robert J. Myers judged that under the existing law "the OASDI trust fund will very likely be unable to pay benefits on time beginning in July, 1983." A Presidential Commission was created, and in the end it succeeded. Deficit was avoided. But the date that the maximum rate of 12.4 percent to kick in was advanced to 1990. Hence the current surplus.

We argue, however, that with the adjustments I have outlined, the earlier 10.4 percent payroll tax will provide present retirement benefits for the required 75-year period.

This is crucial. We must absolutely guarantee that the present benefit structure will continue in place before we start devising a thrift savings component. To do otherwise is to invite the most shrill protests of raiding a sacred trust for the benefit of Wall Street, and so on.

However, we can do both. And oughtn't we? At this point in time our income tax system is remarkably progressive. The top 5 percent of taxpayers pay 53.8 percent of income tax. The bottom 50 percent pay 4.2 percent. But Social Security is paid on the first dollar of income however low that income might be.

We could, of course, repeal the 1977 increase. It would mean some money in people's pockets, but not so much as you'd notice.

Or we could start thrift savings accounts for the work force at large, much along the lines of the Federal government program begun in the 1980s. An add on, not a "carve out." Employees would choose among a number of plans, from government securities to market funds, and switch about from time to time. It is not unreasonable to forecast that such funds would double every ten years; making for a sizable portfolio after, say, forty years. A third to half a million dollars. As much a twice that for two-earner families.

An argument up front for doing this is that it would immediately affect the Personal Savings Rate which literally vanished in the 1990s. In 1980 annual personal saving as a percent of disposable personal income was 10.2 percent. By 1990, 7.8 percent. By 2000, -0.1 percent. Last February -1.3 percent.

I don't claim to understand this, but surely it needs attention. And I assume a national thrift savings plan would help.

Why, then, has our proposal been so little welcomed in, well, the Democratic Party and organizations with similar political and social perspectives? A possible partial explanation is that in the early 1970s conservative economists began talking up the so-called "Chilean model" in which all social insurance funds are invested in private securities. Not a good idea, I would think. But an idea withal. And we need ideas.

I would hope we could be spared a left-right imbroglio here. The risk, as Kenneth S. Apfel, the first Commissioner, 1997-2001, of the newly freestanding Social Security Administration, has recently written that if we do we will end up in a "stand off." Which is to say we will do nothing, until there is nothing to be done. The system goes into deficit and becomes politicized beyond recognition.

Apfel makes four proposals. First, those "on the left side of the political spectrum" have to give up the notion that "future Social Security benefits can never be reduced even modestly." Our bill would have done that modestly. (Although a C.P.I. correction only reduces the rate of growth.) Second, he continues, those on the left must need to give up the stand "That mandatory retirement savings proposals are out of the question." That I fear is now doctrine of the old cadre of Social Security administrators. But why persons on the left would oppose providing workers with a measure of wealth would seem a mystery. (But, alas, may not be.) Respected economists such as Martin Feldstein have proposed investment accounts as an extension of what is already going on with the various private retirement savings plans already in place and widely in practice.

As for the "right," Apfel argues that first they must give up the notion "That private savings accounts should be carved out of Social Security benefits." He means that money be diverted from providing the existing benefit schedule. To which I surely agree. To say again, we propose an add on, not a carve out. Secondly, he contends the right must give up the notion "That future Social Security revenues should never be increased even modestly." Again, agreed.

As for the current surplus in the funds, Apfel is more adventurous than I might be, or my colleague, David Podoff. President Clinton briefly mentioned the idea of investing some of the surplus in private equities. I suspect that would have been Apfel's idea, and he holds to it. Keep in mind that between now and 2015 we will accumulate a surplus of near \$5 trillion. If it is not invested outside government, it will be spent on other things. And so a respectful hearing is in order, withal I would be cautious. We have learned to manage private and public pension funds without interfering with markets. But direct Federal investment poses temptation. Or invites blunder.

But what really are the prospects of such a transformation in our Social Security system? I know we could do it, for we have done. In the early 1980s we were on the edge of insolvency. A bipartisan Presidential Commission was stalemated, but solutions were worked out in a final two weeks of intense, albeit secret negotiations. In his account of the events, *Artful Work*, Paul Light cites my observation at the time: "Only by defining the problem as manageable, can you manage it." It may also be worth noting, as recorded in an article in the current issue of *Foreign Affairs*, Germany, France, Spain, and Italy are evidently going to have to move from pay-as-you-go state pension systems to investment in securities.

The 2000 election campaign may have seen a breakthrough. The Republican candidate called for a thrift savings component. Let it be clear that there was no mention, has been no mention, of the preconditions I set forth earlier. Still. The Democratic candidate dismissed the idea as "risky." And more. William Galston, a professor of government associated with Democratic politics later observed, with professorial candor, "He [Governor Bush] touched the third rail of politics. We turned on the juice. Nothing happened." Indeed polling during the campaign showed voters approved the program by fair to considerable margins. And so in his first address to a Joint Session of Congress, now President Bush called for a thrift savings component to Social Security that would provide "access to wealth and independence" for all. Again, no mention of the unpleasant preliminaries. Even so, let it be recorded that the 21st century began with an avowedly conservative president espousing perhaps the most progressive social insurance measure since the New Deal. Come to think, though, Theodore Roosevelt might have liked it. Even those early 20th century British conservatives who called for a "property owning democracy."

We are not to expect that anything like this will happen soon. But it is scarcely too soon to get serious about the subject.

In a typically concise article in *The Wall Street Journal* of April 26, Albert R. Hunt described "An Electorate Up for Grabs." Looking at recent polls he finds "The bottom line: Neither party commands a comfortable majority." He cites Robert Teeter: "Right now . . . neither side has the makings of a governing coalition." Then James A. Johnson, a Democratic counsel, who concludes: "If both realize that, it'll drive them to bipartisan solutions."

Could that be a Thrift Savings Component for Social Security?

COMMENDING BOSTON MEDICAL CENTER AND DR. BARRY ZUCKERMAN FOR THEIR ADVOCACY ON BEHALF OF POOR CHILDREN

Mr. KENNEDY. Mr. President, for the past 8 years, the Boston Medical Center has had a unique program in place to give legal help to disadvantaged children and their families. Under the leadership of Dr. Barry Zuckerman, the hospital's chief of pediatrics, the Family Advocacy Program was established to fight the legal and administrative problems that doctors often face when trying to improve children's health in ways that "pills and surgery cannot." Dr. Zuckerman believes that we must impact the whole child. As he puts it, "you can't separate out a child's organ functions from the rest of his body and the context of his environment." That is why at Boston Medical Center, the hospital that treats more poor people than any other in Massachusetts, Dr. Zuckerman and fellow pediatricians decided to get their own lawyers to advocate on behalf of these poor children and families.

The three lawyers in the program do what they can to pressure negligent landlords to improve living conditions,