1980

A Proposal for a Non-Earnings Related Retirement Income Scheme

Harry J. Glasbeek
Osgoode Hall Law School of York University

Source Publication:

Follow this and additional works at: https://digitalcommons.osgoode.yorku.ca/scholarly_works

This work is licensed under a Creative Commons Attribution-Noncommercial-No Derivative Works 4.0 License.

Recommended Citation

This Article is brought to you for free and open access by the Faculty Scholarship at Osgoode Digital Commons. It has been accepted for inclusion in Articles & Book Chapters by an authorized administrator of Osgoode Digital Commons.
A Proposal for a Non-Earnings Related Retirement Income Scheme

Harry Glasbeek

There are many acknowledged defects in private pension schemes as they are presently administered: vesting requirements are long, most plans are not portable, plans are subject to insolvencies, and benefits are inadequate because, among other reasons, they are not indexed for inflation. In this article, Harry Glasbeek argues that there is little hope that these defects in private pension schemes will be remedied since the primary motivation behind their entrenchment was not to provide retirement income for employees, but was to provide certain benefits for employers such as a more stable work force, the easier retirement of less productive workers, and the accumulation of a large private investment fund. Indeed he argues that, ironically and in spite of their expressed ideology, those who seriously argue that private pensions can be improved invariably end up making suggestions that would have private pension schemes take on the characteristics of a public pension scheme. He concludes by arguing the case for abolishing private pensions and substituting a public non-earnings related scheme.

Harry Glasbeek is a professor of law at Osgoode Hall Law School.

This paper will first concentrate on the argument that private pension schemes cannot be designed to provide adequate retirement income. Then an argument will be made that retirement income should be provided for by mechanisms other than forced savings.

This bald and bold statement sounds very much as if I see myself as Alexander, cutting the Gordian Knot. The contrary is true. I am not an economist nor am I a taxation lawyer — the kinds of professionals who dominate the pension-income retirement discussion and debate. In particular, I class myself as a labour lawyer whose major concern is the development of policies which advance the cause of employees.

When I came to look at pension schemes, both private and public, I arrived at the conclusion that employees and their dependants tend to be net losers under such schemes. This finding led me, firstly, into an inquiry as to why this should be so and, then, to make the suggestions put forward in this paper.

Pension schemes have two tangible end-products: (a) benefits for employees, and (b) the creation of large pools of capital for the purposes of investment. The arguments which follow are organized so that the issue of whether or not employees receive worthwhile benefits is directly confronted, whereas the second end-product, the accumulation of capital, is evaluated in the particular context of the controversy which revolves around the issue of public versus private pension plan schemes.

I Employee Benefits

Trick or Truck

If employees receive no benefits at all from a particular type of pension scheme or if they receive less than full benefit for what they have had to give up to obtain the promise of the benefit, the scheme will be defective. It is my belief that it can be shown, relatively easily, that all earnings-related pension schemes are defective in this way. I will discuss this in relation to private pension plan schemes.

As a labour lawyer, evaluating pension schemes established by employers, I begin with a certain skepticism because of a practice which was particularly prevalent in the nineteenth century and which still occasionally surfaces in these modern times. I refer here to the mode of payment which came to be labelled 'payment in truck.' Typically, an employer, instead of paying the agreed rate of wages in cash, would offer his employees goods in lieu of cash. This led to abuse. Over-valuation of goods was common. Frequently, employees could not get the goods elsewhere, nor could they get paid in any other way. The actual wage rate was thus eroded. There were many variants of such techniques which were used by employers to achieve this objective. One of these involved setting up a system whereby vouchers were given to employees instead of wages and these vouchers could only be redeemed at a
particular pub. The pub-keeper would give cash on the spot for vouchers offered to him on pay-day. Consequently, spouses would meet workers at their place of work on pay-day to accompany them to the 'pub-bank.' An amusing but telling story is that, in coal mining towns in Wales, workers used to hide their wives' shoes on pay-day so that they could not come to meet them. Truck practices were so endemic that legislation had to be passed to stop them.  

Employers were resourceful people, however, and statute after statute had to be passed to overcome loopholes they detected in the legislation. (Tax lawyers are not the only people with this kind of ingenuity!) Today, in The Employment Standards Act in Ontario we find a provision which says that no one shall be paid in anything but cash.  

Such a provision is testimony to the fact that employees are in a position of such potential exploitation by employers that they require legislative assistance. There are some exceptions to this modern 'truck' legislation: there may be a charge against wages for board and food (up to a limited amount) and certain deductions, such as union dues and CPP contributions, may also be made from the wages payable to the employee. The pervasiveness of the notion that pension schemes are worthwhile is demonstrated here by the fact that deductions from wages by an employer are allowable in respect of registered pension plans.

What seems clear from this excursus is that history teaches us that we have to be vigilant in preventing employers from eroding employee wages by trick or deception. It strikes me that private pension schemes have some truck, or if you wish, trick-like features.

The saviours of private enterprise plans are attempting to make them into something for which they were not designed.

An employee will not be entitled to receive benefits from her or his participation in a pension scheme unless contributions have been made by her or him, or on her or his behalf, for a prescribed period known as the vesting period. In some jurisdictions this is regulated by statute.  

In those private pension schemes in which employees contribute directly to the fund, they will be entitled to recover their own contributions plus interest should they withdraw from the scheme before vesting. This happens quite frequently since many people leave their employment before their pensions are vested.  

Inasmuch as they can recoup their contributions plus interest, the fact that they accepted less wages in their pay packet to qualify for a potential pension benefit does not mean that they have suffered a loss. But, inasmuch as the employer made contributions on behalf of the employees, should they leave their employment before the vesting of benefits, they will not be able to claim such contributions. Now, whatever once may have been the thinking on this subject, it seems to be undoubted today that contributions to pension schemes are a form of deferred wages. Since employer contributions are wages which might otherwise have been paid to employees it follows that, by not having those contributions repaid to them when they leave their employment, they have had their wage rates eroded, or, if you wish, they have been tricked out of their rightful earnings.  

Pension schemes are thus, incontrovertibly, a form of truck payment. The folklore about the value of pension schemes must be truly insidiously persuasive to permit us to tolerate them when we have manifestly set our face

2. There are similar provisions in other jurisdictions.
3. By statute, in six provinces this time period is not to exceed 10 years and the reaching of age 45 by an employee. Prior to such enactments, vesting periods could be as long as a requirement to remain employed with one employer up to age 65 or such other age as the employer decreed. Today, employees sometimes succeed in bargaining for shorter vesting periods than the statutes prescribe as a maximum.
4. There are no national data about pension coverage of employees through time, but there are some alarming indications. The Régie des Rentes du Québec looked at the circumstances of 32,939 employees who withdrew from plans to determine how many of them would have satisfied the new statutory vesting requirements. It was found only 3.1 per cent of the withdrawing employees would have met the requirements (see Les Régimes de Retraite en Québec, No. 3, (Québec 1976), pp XXIX - XXXVII.
The Economic Council of Canada in its study, People and Jobs: A Study of the Canadian Labour Market (Ottawa: Queen's Printer, 1976), found that, of males between the ages of 18 - 24, over 80 per cent left their employer within four years and, of males over 45, about 60 per cent left within the same four years. For females, the figures were slightly worse. While this does not necessarily mean that such employees would never work anywhere long enough to have benefits vest, they are dramatic figures. After all, of those few who do stay longer than four years, how many would stay the extra six years usually required? And of those who do, how much longer than ten years in a, say, 40-year working life will they work with one employer? The shorter the span, the smaller the pension.
5. This cannot, however, be asserted with certitude. The interest paid may not match the interest obtainable in the market. Further, for some employees with specific consumer needs, wages at an earlier date may have been worth more than wages and interest in a lump sum at a later point of time.
7. This does not mean that employers automatically reap a direct pecuniary benefit. The contributions left behind will support the continuing plan. But neither does it mean that there will be some rough equalization because new workers who left their other employment before vesting now take advantage of the left-behind money and that the ones who left that money behind will, in turn, benefit from other employees' left-behind contributions. Schemes are not set up that way, nor will employees necessarily move from one pension scheme place to another.
against all other truck practices. Note also at this point that the loss in benefits which is entailed in not having properly indexed pension schemes has not been referred to in the discussion so far. Clearly, it is not difficult to make an argument that the failure to adequately index pension schemes also amounts to a loss of earned wages for employees when they receive them as cost-of-living affected benefits.

Inherent Barriers to Improvements of Employee Benefits

As private pension schemes have come under attack in recent times, their defendants have acknowledged that there are serious defects with the existing schemes. In particular, the perceived difficulties have been long vesting requirements, the failure to provide adequate portability, the lack of guarantee against insolvencies, and inadequate benefits such as survivors' benefits. Accordingly, many proposals have been made to improve the schemes in these respects. But, no matter how sincerely people attempt to improve private pension schemes, their efforts are unlikely to be successful. This is so since the end result of improvements in pension schemes, namely, better benefits to employees, is not the true underlying purpose of private pension funds. This requires elaboration.

Why did private pension schemes begin at all? What is notable is that, initially, they were the creations of employers. I do not want to be overly cynical, but it seems to me that the history of employer/employee relationships does not show that employers have gone out of their way to shower benefits on their employees. Employees only got what they extracted through the use of economic power. The truck payment situation is but a minor example of the fierce battle that has been fought over the last few centuries between employers and employees. If that is an accurate assessment of the reality of the economic relationship between employers and employees, it becomes necessary to look elsewhere than generosity for an explanation as to why employers initiated pension schemes. Explanations are not hard to find.

Firstly, it is clearly in the employer's interest to have a stable workforce. A stable workforce not only means retention of experienced workers, it also means that a great deal of money will be saved. The cost of replacing workers in certain industries and industrial positions may be very high. Retirement income schemes can promote this aim. This objective is, of course, in conflict with the employee's interest in having maximum mobility in times of full employment. Secondly, pension schemes not only enable the employer to keep experienced employees who are at the peak of their skills and productive capacity, but they also make it easier to retire them when they become less productive. The provision of a retirement income makes the employer much less of a dragon when he asks employees to make way for more productive workers. Thirdly, the good public relations employers earned by voluntarily providing income benefits while giving themselves the opportunity to retire workers, also enabled them (in those days when it was a more important factor than it is today) to persuade their employees not to join a union. The argument would simply have been that the discretionary pension scheme would not be maintained if unionization was accepted by the workforce. Fourthly, the creation of general employee pension plans enabled the managers and owners of small, closely-held operations to provide themselves with more munificent pension schemes than they otherwise might have had. These selfish objectives for setting up pension plans were made attractive by the fact that employers felt that it was cheap to attain them. They were paid for by what would otherwise have been the direct payment of wages to employees. This relates back to the argument made a little earlier that contributions to pension plans are merely deferred wages. Remuneration by provision of fringe benefits is still remuneration. If the payment of remuneration in the form of fringe benefits yields benefits which the payment of wages does not, it is doubly useful. Indeed, the recent spectacular growth of


9. The employer's interest in being able to get rid of workers with diminishing productivity is real and employer-instituted pension plans frequently give the employer a discretion to retire employees, on a pension, at particular ages well below the usual retirement age. Thus the submission made by Canadian National to the Senate, Special Senate Committee on Retirement Age Policies, Proceedings, No. 19, (Feb. 20, 1979), argued (at pp. 20, 21) that if retirement income provisions were altered so that it could no longer forcibly retire employees under the discretion given by the pension plan, this "would necessitate the implementation of a alternate method of terminating unproductive employees. Some system of performance standards would have to be put in place." Apart from its complexity, this new need would be unwelcome because the trade unions would resist. They would do so because of the subjective aspects of performance evaluation and, more important, because the present scheme enables them to help create opportunities for younger, inexperienced workers, without obviously harming older ones. A similar submission was made by Amoco Canadian Petroleum Company Ltd; see Senate, Special Senate Committee on Retirement Age Policies, Proceedings, No. 17A, (Feb. 13, 1979) esp. pp. 12-13. Interestingly, the Supreme Court of Canada has supported this employer advantage by ruling that early retirement provisions were to be distinguished from discharge and thus did not require the employer to show just cause for termination. See Bell Canada v Office & Professional Employees' International Union, [1974] S.C.R.335.

10. The converse may well happen now: employers faced with escalating bargaining demands may threaten that they will close down, causing unemployment and loss of accumulated pension rights.

11. See generally Bernstein, supra note 8, ch. 11.
pension plans in the private sector is largely attributable to recognition of this concept. Whenever it has been impossible because of government-imposed wage freezes to increase workers' wages up to a level that the employer was willing to pay, ingenious use of pension planning has been made to augment the workers' earnings. The recent anti-inflation legislation in Canada provides a good example. During its reign, expertise in devising pension schemes became a new, invaluable vocation. A careful reading of the statute revealed that payment by way of funding extra pension benefits permitted the wage restraints to be eluded. Unions, in the face of the legislation, asked for such extra benefits. Employers frequently acceded. The logic inherent in all this suggests that, if the cost of paying for a pension scheme increases employer costs to a level above that which the employer would be willing to pay employees directly by way of wages, it is unlikely that the employer will see sufficient benefit in the pension scheme to willingly make such a contribution.

Although the initial impetus for the establishment of pension schemes came from employers seeking advantage, it is also true that unions have become increasingly supportive of private pension schemes. Union endorsement of private pension bargaining has been motivated by two main concerns. Firstly, in view of the fact that, unlike employers, unions are interested in providing employees with adequate retirement incomes and in view of the fact that such incomes were not adequately provided for in any other way, it was logical for unions to seek to help their members by negotiating private pension agreements, given some employers' interest in creating them. Linked to this is the second reason. When unions first began to support private pension schemes there were no government schemes of any note in existence. It appears that they felt that, if they could make employers support pension schemes, then, because of the mounting cost, the employers would join the unions in lobbying governments into setting up governmentally supported schemes. In the event, as can be seen from our present situation, the unions' plan misfired. Although in Canada there has been some direct action by governments (the creation of the Canada and Québec Pension Plans), the main response of government has been to give employers tax deductions for any contributions made to private pension plans. This, of course, has meant that there is no pressure on employers to do away with private pension plans since the increased cost to them is largely passed on to the taxpayers. To underscore how little cost pressure has been put on employers, it is to be noted that the government only permits employers to make tax deductions if the pension plan is a retirement one. That is, government support for private pension plans is directly linked to the employers' desiderata of stabilizing their work forces and permitting them to retire workers as they become less productive. The notion that private pension plans, as envisaged by employers, are to remain a mainstay of our retirement income planning thus seems entrenched.

Employees, again as opposed to employers, clearly have an interest in having adequate retirement income. But this does not mean all employees have an interest in having less wages now in return for deferred wages given to them as retirement income. It is manifest that at various points of a worker's life, her or his needs for cash-in-hand will change drastically. Thus, an older and more senior employee, one who has made most of her or his purchases relating to housing, furniture and the like and who has overcome most of the burdens of educating her or his family, may have a much greater interest in setting aside wages in a forced savings plan than would a younger worker who still has all those expenses and hopes in front of her or him. (Pensions are a form of forced savings plan. Although this is obvious, it is worth noting this aspect of pensions in a society which prides itself on freedom of choice and which supports private pension planning because they are private sector, entrepreneurially-promoted schemes.) The fact that many employees would rather have higher wages than be forced to save for their retirement is illustrated by the statistics that show that when employees get a chance to get their own pension contributions back most show a remarkable interest in having cash-in-hand. Indeed, the lure of being able to get one's own contributions plus interest back may be sufficient incentive for an employee to leave one job for another. Also, in this catalogue of items showing that employees should not and do not unanimously accept the present private pension schemes, Nader and Blackwell in their study on pensions found that of 500 people who answered a questionnaire which, amongst other things, surveyed for attitudes, only 9 more people opted for a private system of pensions than opted for a comprehensive social security system which would provide higher benefits than the social security system offered at the time of the survey.

For those [employees] who believe that the employer/employee relationship is an aspect of class warfare, it must seem rather strange that, having fought very hard to obtain a particular wage, it is to be given back to the enemy in order that the enemy may use it to exploit other workers (perhaps themselves as well).

13. The estimate cited suggests that 90 per cent of employees who leave their employ before their contributions are locked-in, opt for taking them out even though this means they forfeit the employer's contributions; see J. Fichaud, "Pensions — A Primer for Lawyers," 2 Dalhousie Law J. 369, 380 (1975-76).
I have argued that the benefits to employees of earnings-related private pension schemes are seriously undermined by poor portability, vesting and indexing provisions. Thus many employees lose some of whatever wage advantage they have obtained by hard bargaining.\textsuperscript{15} In addition, pension schemes do not result in substantial benefits being obtained even by those few people who eventually have their wages plus interest returned to them by way of retirement income.\textsuperscript{16} Yet, there is persistent movement and agitation for the retention and, indeed, the augmentation of private pension schemes. If private pension schemes are to be improved and rendered more palatable to our society, costs must be increased. But these costs can be so increased only if employers, governments or wage earners are willing to accept them. Now, since employers are not primarily interested in providing adequate retirement incomes but have other more selfish objectives, which can be served by the present private pension schemes, they will not want to bear that cost. The proof is in the pudding: so far, they have not borne it. The government could bear the increased costs but since at this juncture we are concerned with the continued viability of private pensions as such (presumably because there is something good about private sector planning), the notion that governments should pick up a significant part of the tab for these necessitated increased benefits seems somewhat incongruous. This leaves us with wage earners. However, there is no reason to believe that employees would be willing to accept the extra burden of increased benefits to them: under the private pension scheme system, better retirement incomes would then mean less take home pay. That trade-off is made now. Conceivably, the forced savings component could be increased. But the upper limit to such a new accommodation may be reached very quickly, at a much lower level than the minimum required to provide benefits sufficiently high to make private sector schemes palatable. Indeed, as private pension schemes are not by their nature retirement income schemes in the sense that they can provide socially adequate sums for the period of a worker's life when he or she is no longer productive, the best that can be done through them is to provide, as retirement income, that part of wages earned which the employee does not regard as absolutely necessary for her or his present consumption. That is, they can be adequate only in the sense that workers have the capacity and willingness to accept a forced saving of a particular amount. That amount, then by definition, becomes 'adequate.' But, of course it may be totally \textit{inadequate} for the purposes of living a good and decent life as a retired worker.

\textbf{Indexation as a Special Problem}

Private pension plan proponents recognize the need to improve benefits. They also acknowledge that costs will increase. They seem to believe that there is a willingness to bear such extra costs. But is there?

One of the real deficiencies of the present schemes is that when the deferred wages (plus interest) are finally paid to wage-earners, the decrease in value of money as the result of inflation may make the return worth much less to the workers than they might have hoped for. To off-set this loss, pension benefits need to be indexed to increases in the cost of living. Actuaries should be able

\textit{(J)ust as there are many people perhaps who are concerned about the possible abuse the government would make of large sums of new capital, there are also many people who are concerned about the possible abuses inherent in the private sector having such a large sum of capital available to it as a result of the existence of private pension plans.}

15. See the figures cited in \textit{supra} note 4. The number of persons who actually receive some job-related pension as opposed to return of some of their contributions is truly small. From the Canadian Labour Congress's Submission to the Royal Commission on the Status of Pensions in Ontario, "Of all the retirees surveyed, 42.4 per cent of the men and 9.2 per cent of the women were receiving some job related pension." If one notes that, as of 1974, Statistics Canada's \textit{Pension Plans in Canada,} 1974, Oct 74-401 showed that only 40.7 per cent of the work force was covered by a private pension plan, a sense of the small number of real benefits that the huge private pension schemes bestow can be had. Further, the CLC in its submission goes on to point out that pension participants do not benefit equally: "The incidence of job related pensions varied among men from a high of 88.1 per cent among former managers, professionals and technicians to 27.9 per cent among former primary blue collar workers... Among former managerial and professional women, 65.0 per cent were receiving job related pensions compared to 5.0 per cent among former blue collar workers." Partly this disparity is due to the longer job retention by managerial and professional employees; partly it represents the point made in the text that employers, as a collateral benefit to the creation of a pension scheme, may be able to look better after their managers and executives. Finally, as much as statutory provisions now provide for more advantageous funding periods for employees, the percentage of retirees receiving pension benefits ought to increase. But increases in unemployment may more than offset gains made in this way.

16. From the CLC's above-cited submission, in turn relying on figures published by Statistics Canada, \textit{Pension Plans In Canada,} 1974, Oct., 74-401: "In 1975 dollars, the $2105 average pension for both sexes would have amounted to $2587 ($3100 in 1978 dollars), which was well below the poverty line." The same paper compared the pre-retirement income of employer pension recipients with their pension income. More than half received less than 30 per cent of their pre-retirement income, more than 35 per cent received less than 20 per cent of their pre-retirement income. If one of the benefits of a forced savings scheme is to avoid pov- erty of employees, the private pension schemes, so far, seem poorly equipped to achieve this aim. For a dramatic and passionate plea to alleviate the epidemic of poverty of the retired in Canada, see brief submitted by The Honourable Monique Bégin, Minister of National Health and Welfare, Senate, Special Senate Committee on Retirement Age Policies, \textit{Proceedings,} No. 10 (Dec. 14, 1978) pp. 1-85.
to calculate pension benefits and their costs on a basis which includes inflation by changing some of their actuarial assumptions. But, even though this is theoretically possible, to so cost a plan is fraught with grave risks which private fund managers might not be willing to run. In fact, the record of insurers generally suggests that they do not want to accept them. To my knowledge there are no insurance schemes which provide for benefits which are indexed to the rising costs of living, with the sole exception of the Israeli no-fault road accidents compensation scheme. This may be the most fundamental difference between private and public schemes. Thus, for instance, the New Zealand no-fault accident compensation scheme is indexed to the cost of living. But that scheme is government run. Professor Ison has pointed out that from an efficiency point of view there is nothing to choose between private and public schemes in terms of spreading the risk throughout society and, indeed, that it may well be true that private schemes would be more efficiently run, but that in the end their failure to cope properly with allocation of risk in society arises from their unwillingness to allow for rising prices at an uncertain rate.18

Even if we permit private sector schemes to flourish and we buttress them with better vesting, portability and indexation provisions and, in addition, offer better benefits than they do at present for surviving spouses and for disabled persons, the private sector plans will still fall well short of providing adequate retirement income for our elderly people.

This unwillingness to index benefits has thus far been demonstrated by private pension fund managers in spades. In 1974, of over 15,000 employer based plans, only 141 had provided even partial indexing. Of these 141 plans, 101 were private sector employers, covering 2 per cent of private sector plan participants.19 Thus, it is of interest that the proponents of the private pension schemes (who acknowledge that they must improve those schemes' benefits) advocate that indexation should take place but, in doing so, seek to provide some kind of buffer for the private fund managers against making wrong calculations. Knowing that I am oversimplifying, I will just comment on two of the more interesting recently proposed buffers. One is offered by Pesando and Rae.20 They suggest that benefits can be supported by indexation and that fund managers, to protect themselves against the risk so incurred, should be able to purchase government bonds which would, in turn, be indexed to the cost of living. Fund managers, by purchasing such bonds, would be enabled to cover themselves against risks which are unanticipated. From a private sector proponent's point of view, this scheme presents a difficulty. At present, the plans' money is invested in privately issued bonds which are not indexed. The issuing of indexed bonds by the government will make non-indexed bonds much less attractive. In theory, this could lead to a more competitive capital market but, in practice, it seems unlikely that there will be serious competition offered to a government which is willing to issue inflation-proofed bonds. The cost of meeting this challenge would be too high. The result would be that in order for the private sector to attract investment money, the government would have to become some kind of financial intermediary, having attracted much of the available incentive capital. That is, the government would become a major source of private enterprise capital funding. While this might not be objectionable to many, I have more than a hunch that those people who favour private sector activity over government activity would view such a development with a jaundiced eye. Perhaps it is this kind of perceived problem which led Pesando to make a second proposal to encourage the indexation of pension plans in the private sector.21

Pesando suggested that the government should insure part of the risk incurred by the provision of indexed benefits in private pension plans. The apparent underpinning for this suggestion is that inflation is stable over the long term and that it is only short-term fluctuations which must be protected against. Thus, if inflation rises 3 per cent more in one period than could have been anticipated, money to cover the shortfall in pension benefits will be made available by the government through this insurance scheme. When the risk, in due course, falls 3 per cent below that which has been anticipated, the government will be repaid. In that way there will be no net losers, and it will be safe to index. But this reasoning seems to have built into it an assumption which may not be borne out in fact: that inflation will stabilize over a long run period. It may not. If, for instance, it keeps steadily increasing for a long period, say 10 years, it may well be that the government will be the true indexer of the private sector pension plan.

In any event, whatever the merit of my rudimentary critique of these ingenious ideas, what everyone seems to accept is that indexation is so risky that the private

17. And there, I believe, the government backs the indexation costs of the scheme.
18. Ison, "The Politics of Reform in Personal Injury Compensation," 27 University of Toronto Law J. 50, 385, 393-94 (1977). There are other substantial differences between private and public insurance schemes. Private schemes are never likely to be truly universal in coverage and they do not provide adequately for rehabilitation and retraining; see Hasson and Mesher, "No-Fault/Private or Social Insurance," 4 Industrial Law J. 169 (1975).
20. Pesando and Rae, supra note 6.
sector pension plans are unlikely to be able to develop adequate indexation of benefits unless they receive some guarantees to offset the risks which have to be taken. If that is so, the question arises as to why the private sector should be given the right to offer pension schemes when they are not willing to bear the full freight.\textsuperscript{22}

II Private Versus Public

Fear of Greyness

If the private sector finds it so difficult to provide adequate benefits for people who are retired, why should there be so much agitation for the continuation of the private sector schemes — even though it might mean modifying them to such an extent that they will be unrecognizable by their originators? I think the agitation has a lot to do with ideology. Take, for instance, the recent writing of Professor William R. Waters of the University of Toronto, who is the Chairman of the Private Sector Task Force on Retirement Income Issues. After giving a couple of examples of the inflexibility of public plans when compared to private plans,\textsuperscript{23} he went on to say:

Having concluded universal approaches to the provision of retirement income are flawed, I must make it clear that I do not believe that most private sector plans as they are presently constituted, provide a clearly preferable alternative to universal plans. However, I do believe that, with reasonable changes, private sector plans offer a far more pleasing mosaic than the universal shade of grey that would result from expanded coverage of publicly sponsored plans.\textsuperscript{24}

This is a representative illustration of how the precepts of individualism and free choice — undoubted 'goods' — are considered to be undermined by the possibility that plans underwritten by government may replace private pension schemes.

In addition to the fear that individuality will be eroded, it is generally assumed by the proponents of private enterprise that the private sector is more efficient in providing pensions than the public sector.

In this section of the paper I will address myself to both of these notions.

Improvement of Private Sector Plans and Likely Developments

It is worth repeating that the adequacy of the private sector plans has arisen because of these plans' manifest failure to provide adequate benefits for retired employees. This is so despite the fact that private enterprise is supposed to be efficient because of the competitive element. Why has not this guiding spirit of free enterprise led the private pension system to raise retirement incomes to a plateau which is acceptable to our society? Indeed, if it had not been for the modest legislative interference which we have had, supplemented by government action in respect of retirement income (CPP/OPP/OAS/GIS), the present situation would be even more dismal.\textsuperscript{25}

Coming now to grips with the argument that, while private sector planning has not 'brought home the goods' so far, it is nevertheless capable of doing so, let us return to some of the earlier subject matter covered. In order to give better benefits, private pension plans have to improve conditions in respect of vesting, portability and indexation. It is going to be very difficult to convince fund managers that this ought to be done. Naturally, they will be prepared to offer such improvements if the costs are borne by the contributors. These costs will be considerable. To exemplify this, note that some hard-pressed private sector plans have sought to better portability criteria. These efforts show that, unless there is concentrated activity (and, dare I say it, even direct legislative interference) the private sector schemes are going to fall far short of providing adequate portability provisions. Thus, John J. Breithaupt,
...one of the questions that obviously arises is cost. There are at least five good reasons why the cost of a company's adopting the portability plan cannot be determined in advance. The first four have to do with the wide variation among plans and the factors which effect cost. These are the differences in the pension plan provisions, the vesting provisions, the employee turnover rate, and the transfer payment formula chosen. The first factor that makes the cost so unpredictable is uncertainty as to how employees will react to portability. If employees continue to take out their own contributions on termination the cost will be negligible. The more that employees opt for portability, the greater the cost. What employees will do cannot be predicted until portability comes available to them. An estimate of cost based on a company's particular circumstances can be made. As indicated earlier, a system offers employers sufficient latitude so that the cost can be digested a bit at a time — due to different termination dates of individual employees — rather than at one gulp. One thing is certain, however — portability doesn't come free. In keeping with the idea of slowly digesting the cost, portability is being extended at the outset only to salaried employees, and in most cases, only to head office employees of these companies.26

It would seem that, for efficiency of administration, it is very likely that as plans get closer to providing immediate vesting, full portability and indexation, costs can only be kept down if there is increasing similarity among various plans.27 That is, the very means sought to be used to save the private sector schemes have in them the germs for developments which will inflict on the private sector plans the blight that opponents of governmental interference see in all government activity: the failure to recognize the need for individualism and free choice, leading to 'greyness.'

Further, administration of plans in which portability has become an important feature will require a central clearing house so that portability can be effectively managed. That is, there will be a need for central keeping of records and fund accounting. The question that then arises is whether there will be any further need for private investment managers? After all, much of what private managers do relates to the administration of particular plans and the investment of the accounted for funds. Why could not an appropriate centralized manager do all of this for all funds?

I presume that the argument to keep investment management in the hands of the private sector is that this will ensure that investments will be made in the most efficient way possible, whereas if investment was left to a bureaucratic, governmentally managed agency there would be no incentive to make good investment choices. Further, there is a real social-political difficulty in that many people would consider the impact of the government's new power to directly interfere in the market with these large aggregations of capital obtained from the private sector to be potentially harmful. This notion, that the creation of a governmental pool of capital is a danger in itself, is another aspect of the objections that private sector plan proponents have to governmental plans. I cannot, in this context, grapple with the ideological difficulties that arise out of this issue. It is very important, however, because it underlies (covertly perhaps) so much of the opposition to public retirement schemes. I will content myself, therefore, with pointing out that just as there are many people perhaps who are concerned about the possible abuse the government would make of large sums of new capital, there are also many people who are concerned about the possible abuses inherent in the private sector having such a large sum of capital available to it as a result of the existence of private pension plans. Let me briefly illustrate the nature of this latter concern.

At present, unions, on behalf of employees, permit employers and fund managers to capitalize private enterprise with funds raised from the wages of the employees they represent. Assuming for the moment that this is an efficient way of capitalizing enterprise in our society, notice the social-political impact from the union-employee point of view. For those members of this group who believe that the employer/employee relationship is an aspect of class warfare, it must seem rather strange that, having fought very hard to obtain a particular wage, it is to be given back to the enemy in order that the enemy may use it to exploit other workers (perhaps themselves as well). Even for those who do not see our society as one in which class warfare is being fought, it is not obvious that much of the investment in private enterprise is for the benefit of employees. For instance, is it clear that workers benefit from the fact that their funds are being used to boost industries which hide behind high tariff walls, causing prices for goods and services they need to increase? Is it so obvious that workers benefit from living in a society where enterprises that pollute or make shoddy products have managed to flourish because of the investment they received from private pension plans to which workers contributed? Is it manifest that workers benefit from investment, made with their money, in technological devices which diminish employment opportunities or create employment opportunities which rob workers of their dignity? Are workers served when their funds are used to invest in firms that engage in union-busting?

Thus, unless private fund management is overwhelmingly more efficient than public fund manage-

27. The brief to the Special Senate Committee on Retirement Age Policies, submitted by Amoco Canada Petroleum Company Ltd., see supra note 9, p. 10, argued that the idea of increased portability is "superficially intriguing, but it ignores the formidable array of technical and administrative difficulties which would arise. It also implies that every employer would be required to have a pension plan, since it would hardly be fair to impose portability only on those companies now offering plans to their employees. Of more significance is the fact that the introduction of portability might impair an employer's ability to design a plan of a type which best secures the interest of its employees."
The question of whether an investment pool ought to be private or public is a political one, not an economic one.

The private sector was created, this would not necessarily mean the creation of a government pool of capital with the political implications of the kind discussed above and which are apparently feared so much by private enterprise. An arrangement could be made whereby government agencies could auction off chunks of the money collected through a government-administered pension plan to private fund and investment managers. This would create competition among the bidders for the government capital and thus lead, supposedly, an efficient allocation of these funds. If we were politically so minded, we could ask the government to tie a string to the private fund management bidders. That is, in the same way the government requires tenderers for certain government contract work to pay certain wage rates and provide certain conditions, it could require successful bidders for the investment of government administered pension funds not to use the obtained capital to invest in enterprises which are, say, unacceptable polluters. Such control over investment of the pooled money could also be used to affect the regional distribution of investment. Thus it could be used as a powerful instrument in the pursuit of national objectives.

In sum, those proponents of private sector pension plans who are seriously interested in improving them in order to ensure their survival, invariably find themselves making recommendations which undermine their own ideological justification for the schemes' retention. As well, the notion of a large pool of funds in government hands — a possible outcome — is not axiomatically evil, nor is it to be feared.

A Proposal for a Public Non-Earnings Related Scheme

Even if we permit private sector schemes to flourish and we buttress them with better vesting, portability and indexation provisions and, in addition, offer better benefits than they do at present for surviving spouses and for disabled persons, the private sector plans will still fall well short of providing adequate retirement income for our elderly people. They would not cover non-wage workers, such as homemakers. They would not cover workers who are unable to find work. They would inadequately cover low-wage workers, seasonal and secondary earners. Thus, if we are truly interested in providing a decent standard of living for people of a certain age, even though they are no longer productive, or were never directly involved in wage-labour situations, private sector plans will not do the job. This is so because private pension schemes, being wage deferral schemes, have a limited coverage: they are not aimed at providing universal old age security. Also, as I have argued, even accepting their limited coverage, such retirement schemes are seen by employers as having quite a different set of primary purposes than the provision of adequate retirement income for participating employees. Thus, the saviours of private enterprise plans are attempting to make them into something for which they were not designed.

The question for me thus has been: Does the problem of providing for the elderly truly raise questions in respect of the creation and refinements of private pension plans or a question of how much social security needs to be provided by the State?

I think that Bernstein said it all when he pointed out that social security has never lost a penny to a dishonest trustee, never paid a kick-back to a union or management official, never failed to pay off for lack of funding, can readily be made to keep up with increases in the cost of living, pays off to widows and children and other dependents when a worker dies, retires or becomes disabled. In sum, social security is dependable where private pensions are undependable. Its weakness is benefits that are too low. But there is no easier, no cheaper, no more dependable way to improve retirement income than through social security.

A scheme for universal coverage for people who reach a particular age and who have retired from the workforce or who were never in it can be organized very simply. All that needs to be done is to provide that everyone who reaches a certain age is entitled to a set proportion of the average wage earned in the nation in that year. The actual proportion is, of course, vital but not axiomatically evil.
requires a relatively simple political decision. I would propose that somewhere between 40 to 60 per cent of the average annual income would be a sensible amount. The system would be a pay-as-you-go system, whereby funds to be paid out to beneficiaries would be raised by taxes levied in that year.

Arguments Which Need To Be Addressed

The advantages of a scheme of social security as opposed to an earnings-related pension scheme (whether private or public) are that it is automatically indexed in a very sound way, and that it does away with all the problems of vesting, portability, insolvencies and the need to have special schemes for the provision of retirement income for survivors of income-earners and for disabled people. Provision can be made for people who cannot be provided for in any earnings-related scheme. In addition, it is possible to use such a scheme for regional income adjustments, if that is a desideratum sought to be achieved.

Apart from ideology, the strongest argument against such a scheme is simply that it will be too costly. It is not clear that this is a very persuasive argument at all.

The universal kind of scheme that is being proposed in this paper would lead to the abolishment of the CPP/QPP schemes which are earnings related. This would leave more wages in the take-home pay pocket of people so that the burden of the extra amounts which they would be taxed to support the universal scheme will be lightened. Similarly, the old age security and the guaranteed income supplement would no longer have to be funded. Also, if such a scheme were implemented it may become possible to reduce government expenditures on such things as housing and health subsidies, which are presently given to the needy, many of whom, of course, are retired people. And, of course, contributions to private sector plans would no longer be necessary: both employer and employee contributions could be paid in wages. Thus, my first point is that some of the additional costs of a universal scheme will be offset by savings from reductions in existing government expenditures.

Secondly, the increase in tax burden necessitated by a universal scheme will be further offset by the fact that there will be less need for people to save over and above what they contribute at present to the private and public pension schemes.

Overall, then, the proposed scheme may not mean that there will need to be any, or, in any event a large reduction in spending power for most taxpayers. In particular, one has to note that the counterproposal to the kind that I am making is an increase in private sector plan costs which, of course, would force greater saving on employees than they make at present and, therefore, would certainly reduce the spending power of such employees. In this context, it is necessary to address, briefly, another argument which might be made in opposition to a universal scheme. It is that if people do not save (whether they are compelled to do so or do so voluntarily) an important reserve of potential investment capital will be lost and, thereby, enterprise will be inhibited. I have argued that there will be no such drastic reduction in saving power, but for the moment I will assume that there might be.

It seems to me that investment is attracted by the possibility of making profit. Enterprise is not induced by the mere fact of having large sums of capital lying around in savings accounts. If I am right, then it ought to follow that where there is a possibility of a profitable venture the inducement to make capital available will be strong enough to guarantee money coming forward whether or not it otherwise would have been saved. Theoretically, there might be a point at which people are so burdened by the impact of taxation that even the possibility of making a profit would not permit them to save. The scheme that I propose seems to leave circumstances well short of that theoretical possibility. In any event, much is made of the fact that Canadians have been saving much more than their neighbours to the south. Yet, whenever I turn to economic discussions on television or read them in newspapers, I find economic advisors complaining bitterly about the fact that too few people in Canada seem to be using that capital for profit-risk ventures. This may well be an indication that the existence of large amounts of financial capital do not guarantee investment. The possibility of a good return does that; it will generate investment funds.

Another advantage of financing a comprehensive social security plan is that it can be made much more equitable than the present private sector pension plans. If the scheme is financed through the income tax system, the proposed raising of revenue to benefit retired people will be progressive. In addition, the scheme would do away with the need for the government to entice people to put money aside for their retirement in registered retirement savings plans through tax measures which are clearly regressive in their impact.

31. An important gain would be the abolition of the imposition of a tax burden which is manifestly regressive. See National Council of Welfare, Bearing the Burden, Sharing the Benefit (Ottawa, 1978).

32. There is a strong correlation between adequacy of income and health. Thus, Retirement in Canada: Summary Report (Health and Welfare Canada, 1977) reports that “about 60 per cent of retired men and 56 per cent of retired women with adequate incomes had adequate health compared to only 16 per cent of men and 21 per cent of women with inadequate incomes.” Similarly, housing costs are so high that persons with inadequate income at present need help. Provinces have had to play an increasingly larger role in the provision of housing or rental supplements, tax credits and grants. Institutional dwelling is also heavily subsidized. See Economic Council of Canada, One in Three: Pensions for Canadians to 2030 (Ottawa, 1979), p. 12.

33. The regressive nature of these measures has been incontrovertibly established in National Council of Welfare, The Hidden Welfare System (Ottawa, 1976).
I now turn to what is the most oft-raised argument to support the notion that costs will escalate if pension plans are made too generous, let alone if a universal social security scheme is created. This is what I think of as the lingering grandparents bogy. We have been told repeatedly that, because of the famous baby boom, we are facing a period during which the proportion of retired people to young working people in the population will be dramatically increased. The Economic Council of Canada's Report, One In Three, opens up with such an assertion (as indeed do most commentaries on the problem of the provision of retirement incomes):

By the time today's high school students reach the age of retirement — around the year 2030 — approximately 1 out of every 5 Canadians will be 65 years old or over, compared with roughly 1 out of every 10 now. At the same time, the proportion of elderly people among the population age 20 and over could jump from about 1 in 7 now to nearly 1 in 3, 50 years hence. 14

The sonorous tones in which such sombre messages are delivered are clearly meant to lead to the following conclusion: we cannot really provide adequately for all elderly people in future.

Finally, let me point out that there are countries with a greater proportion of retired people in their population than we have in Canada. 15 As far as I can tell they have not ground to a halt nor, do I believe, is the incidence of poverty among old people in these comparatively industrialized countries as great as it is in Canada at present. This must lead one to doubt the proposition that the potential of a decreasing ratio between the income earners and retirees presents an insuperable problem.

Secondly, it strikes me that the way that the proposition is phrased is not quite as honest or as careful as it ought to be. Usually the ratio is calculated on the basis of total population, that is, the number of people over a certain age (the retirees) compared to all the other people over a certain age up to the retirement age (the income earners). The proportion of those out of the workforce to those in the workforce is not calculated. Yet, why should one assume that the profile of the workforce will be the same as it is now? Is it not possible, indeed, likely, that many people who are not in the workforce at present will enter into it as the years develop? For instance, the increase in female labour participation is not diminishing, but increasing. Thus, it would follow that the number of people between 20 and 65 in the population who are actually in the workforce might increase dramatically and, therefore, the decrease in the ratio between people over 65 and those over 20 in the workforce may not be as alarming as the doomsayers would have us believe. 16

In a similar vein, the statement that the ratio is going to decrease so much that we will not be able to provide for elderly people without imposing an unbearable burden on the workforce loses some of its validity when one realizes that retirement age is a flexible notion and that the present retirement age may not be the same as a future one. It is quite possible that, as our technology develops, people may be able to work for considerably longer periods without as much strain and with much more enjoyment than they do now. Indeed, given a social security system of the kind proposed, it is more likely that practical plans to train people to partake in productive activities will emerge. There will be a strong financial incentive to promote such planning.

Yet another factor which diminishes the strength of the argument that the consequences of the baby boom prevent us from making adequate provision for elderly people is that, just as the number or proportion of old people in society will increase, the proportion of young people will decrease. The consequence of this will be that people who are actually in the workforce will have fewer young dependents to support than they do now. 17 As a result, the argument that the burden imposed on them by having to provide for elderly people who up to now would not have had to be provided for is again diminished in force.

Finally, and perhaps most importantly, is the implicit assumption that this increase in proportion of retired people to those in the workforce will take place all of a sudden. That is not so. It will be a gradual process. If we assume that under a universal social security scheme based on a fixed taxation impost the propor-

34. One in Three: Pensions for Canadians to 2030, supra note 32, p.3.
35. The percentage of population over 65 in 1977 in East Germany was 16, Sweden and Austria 15, Norway, Belgium, France, West Germany, United Kingdom 14, Denmark, Luxemburg 13, Switzerland, Czechoslovakia, Hungary, Greece, Italy 12, Ireland, Netherlands, Belgium 11, United States, Finland, Spain Portugal 10, Cyprus, Barbados, Uruguay, Iceland, Poland, Romania, Malta, New Zealand, U.S.S.R. 9, Canada 8. These figures are taken from the submission made by Dr. David Ross to the Senate: Senate Special Committee on Retirement Age Policies, Proceedings, No. 11 (Jan. 23, 1979), p. 4.
36. The calculus will also be affected by changes in immigration policy.
37. David Ross has calculated that the present working age population (18-64) is 59.5 per cent of the total population. Interpreting Statistics Canada's predictions, Ross shows that, by 2031, the population's retirees will have jumped from the present 8 per cent to 20 per cent. By that time, however, the expected much lower birthrate will diminish the proportion of those aged 0-17, leaving the working-age population (18-64) at 59.9 per cent, almost the same as it is today. See supra note 35, p. 3.
tional growth in the average pension equals the proportion of growth in the average wage minus the growth in the proportion of the average number of pensioners, it follows that, unless there is an enormous growth in the number of pensioners in any one year, the pay-as-you-go system will not require much adjustment annually to keep the pension benefits at a constant level. This allows for counter-planning, for instance, by adjustment in the use of manpower in society as well as by re-training of the elderly to adapt to new technologies. Similarly, tax rates can be adjusted and (only if need be) the benefits allowed to retired people may, ever so slowly, be diminished. That is, the universal social security system envisaged is capable of handling the consequences that the much ballyhooed baby boom might have on retirement income.

III Conclusion

A social security system has been advocated for a number of reasons. Even if it turns out to be more expensive than I anticipate, the question I would put is: what else can we do for people who are no longer productive in our society, in the sense of not being capable of earning wages? They do not deserve to be as poorly treated as the private pension plans plus the earnings-related government plans would have them be.

In one last swipe at the agitators for the continuation of our present scheme (albeit they have adopted reformers' guises) let me note who the real opponents of a change to a government-run, universal social security scheme might be. First and foremost are the ideologues who fear the effect of losing yet another function, which had formerly been left to the anarchy of private enterprise, to a planned society mechanism. It is they whom I respect most, because their opposition is, at bottom, not rooted in false intellectual argument but in something approaching a sincere and devout religious belief. Then there are those who profit from the present scheme who, of course, are the fund managers, in particular insurance companies, trust companies and banks. And finally, the greatest opponents of the abandonment of the present earnings-related CPP/QPP systems are, of course, the provinces who are getting a large amount of their revenue from borrowing from these federally held funds at low interest rates. They fear, quite naturally, that with the introduction of a pay-as-you-go social security system this source of cheap finance will dry up.

Apart from the first mentioned group (which encompasses a variety of people), there does not seem to be too much to say for the opponents of social security type schemes. They are merely interested in their own self-interest, even if it is to be fostered at the expense of people who have spent all of their lives producing the wealth a good chunk of which they so eagerly seek to expropriate.

In sum, private pension schemes or, indeed, government pension schemes based on contributions from workers' earnings cannot:

1. provide for immediate vesting;
2. adequately provide for portability;
3. provide full indexation of benefits;
4. provide adequate survivors' benefits or disability benefits;
5. provide guarantees against insolvency; or
6. provide retirement income for people who never enter the wage-earning labour force.

At least, they cannot achieve these aims under present conditions. If costs were increased enormously, private pension schemes could take care of some of the problems. As has been indicated, the tab will have to be picked up (especially in respect of indexation costs and insurance to guard against insolvency of either employers or funds) by some kind of government funding. But no matter how they are structured, no matter how high the costs accepted, they will still leave large numbers of the elderly population without benefits. Apparently the State is to look after them. The argument has been that there is no reason why the State should not provide for all people, at a cost which can be spread in a progressive manner throughout society.

38. For an instructive comment on how lucrative the business is, see Wente, "The New Power of the Pension Funds," 53 Canadian Business (No. 3) 33 (1980) and Lecky, "The Tasteful Success of André Molnar," 53 Canadian Business (No. 3) 42 (1980).

39. Time and space did not permit discussion of this problem. The issues are raised at length by Bernstein, supra note 10 and Fichaud, supra note 13.

Shifting the Tax Burden to Families

Recently, attention has been drawn to the power of taxation in creating poverty. As well as taxing people at a lower and lower level of income, the tax burden has also been shifting from single people and childless couples onto tax payers with children, irrespective of their level of income. Admittedly taxation has increased for all groups of the population, but the increase has been placed disproportionately on households with children.

F. Field, Fair Shares for Families
(London: Study Commission on the Family, 1980)