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SOCIAL SECURITY AND THE PLAIN PEOPLE*

Paul C. Cline**

Few Americans have expended as much effort or have been so effective in obtaining an exemption from social security coverage as the Plain People. These conservative nonresistant religious sects of largely German Mennonite heritage have defended vigorously their rights to be free from old age and similar governmental payments and benefits. They have chosen to take care of their members who are in need and have protested on grounds not restricted to their religious beliefs. The purpose of this article is to describe the activities of the Plain Folk and their supporters in obtaining the passage in 1965 of the exemption from social security coverage for self-employed farmers,¹ the principal occupational activity of these sects.

The Plain People, as the term is used here, includes the Amish and Mennonites of the old order. They are most readily recognized by their plain dress and horse-and-buggy transportation. They continue to perform agricultural tasks in the tradition of their ancestors.

Their forebears, stemming from the Anabaptist movement which began in 1525 in Zurich, Switzerland, considered religion to be a matter of individual conscience. They believed that neither government officials nor religious leaders had the right to make decisions for the individual in matters of faith. These European ancestors suffered death and torture for hold to their beliefs.

The Mennonites assumed their name from an early leader, the Dutch-Frisian Menno Simons (1496-1561). The Amish, an important Mennonite group, were founded in 1693 in Switzerland and Alsace under the leadership of Jacob Amman. After the first permanent Mennonite settlement in Germantown, Pennsylvania, in 1683, the plain folk continued to migrate to the United States and to move about in this country. Principally living in rural

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¹ Int. Rev. Code of 1954, § 1402 (h).

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colonies, the number of baptized members of Mennonite bodies in the United States totaled 178,589 in 1968.2

Although the Plain People are less united in opposition to social security than in their belief in nonresistance, most of the more conservative sects object to participation in the social security system. The opposition by the plain sects to this system has resulted periodically in conflict between them and federal officers who have administrative responsibilities under the plan.

The more conservative Amish and Mennonite groups consider social security to be a form of insurance.3 Their opposition to social security is based on reasons similar to the objections they raise to non-church-sponsored insurance plans.4 While it is difficult to categorize neatly the grounds for the opposition of the plain denominations to insurance and social security, the reasons may be grouped under the general headings of religious, social, practical, and moral. These groupings are related to each other in a number of ways.

A major religious objection5 to insurance is that the Bible teaches that one should provide for himself, his dependent relatives, and other needy individuals.6 The Plain People believe further that participation in insurance and social security indicates a lack of trust in God to provide the necessities of life. Faith in business and governmental organizations is said to be substituted

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2 60 Mennonite Year Book, 1968, 43, Table IV (E. Zook ed. 1968).
3 Interview with J. Ward Shank, Mennonite Bishop, in Broadway, Va., Dec. 10, 1966. Information concerning the opinions and attitudes of members of the various plain sects was obtained through interviews of members of the various sects and by means of a questionnaire sent to selected individuals in plain communities throughout the United States.
4 "Public insurance" is sometimes used by members of plain groups in referring to plans of insurance companies, as opposed to "private insurance" plans, which are sponsored by the plain groups for their members.
5 For a comprehensive discussion of the Biblical objections to life insurance see H. Troyer Life Insurance 51-63 (1982). Most of the same reasons would also apply to social security.
6 Examples of scriptural support include God's admonition to Adam that he shall obtain bread by the sweat of his face, Gen. 3:19; and the disciple of Jesus' example in taking care of Jesus' mother after the crucifixion. "If any one does not provide for his relatives, and especially for his own family, he has disowned the faith and is worse than an unbeliever." 1 Tim. 5:8. All Biblical quotations are from the Revised Standard Version, unless otherwise noted.
for belief in God's help, which is pledged in a number of scriptural passages.7

Scriptural prohibitions concerning the unequal yoke and gambling are also applied to insurance and social security. Under the Biblical admonition, "Be ye not unequally yoked together with unbelievers," the Amish and similar groups refrain from associating with others in non-church organizations, such as life insurance companies, political organizations, and secret societies.

Social security has been criticized because individuals participate in order "to lay up treasures on earth." There is also a fear that fraternization with others could lead to disputes necessitating going to court, another prohibited activity.10

The social aspect of the objection by the Plain People regarding insurance and social security is the concern that the solidarity of their denominations will be weakened by these plans. There is a fear that if monetary benefits are available to the members of the sects from outside sources, the members may leave their religious groups. Members would no longer have to rely on other members for aid in times of stress and misfortune, and the discipline within the group would diminish.11 Opinion is divided, however, among

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1 "Leave your fatherless children. I will keep them alive; and let your widows trust in me." Jer. 49:11. "It is better to take refuse in the Lord than to put confidence in man." Psa. 118:8. "Cursed is the man who trusts in man and makes flesh his arm, whose heart turns away from the Lord." Jer. 17:5. "I have been young, and now am old; yet I have not seen the righteous forsaken or his children begging bread." Csa. 37:25. "I will never fail you nor forsake you." Heb. 13:5. "Cast all your anxieties on him, for he cares about you." 1 Pet. 5:7. These scriptural passages and others relating to God's providing life, food, drink, and clothing, and caring for man as well as the birds and the lilies (Matt. 6:25, 26, 30) are quoted by H. Troyer, supra note 5, at 57.

2 If Cor. 6:14 (King James).

3 The Budget (Sugarcreek, Ohio) Jan. 28, 1965, at 1, col. 1. The Budget is a weekly newspaper serving the Plain People in North America. Correspondents, called scribes, from numerous communities throughout the United States and other countries, write accounts of the activities of the members of their sect in their community.

4 W. KOLLMORGEN, CULTURE OF A CONTEMPORARY RURAL COMMUNITY 8-9 (U.S. Department of Agriculture, Bureau of Agriculture Economics Rural Life Study No. 4, 1942).

5 Shepard Kole, attorney for the Amish in Social Security matters, related this to be the "interior" reason that the Amish do not wish to participate in social security. He told of mentioning this reason to a group of fifty Amish leaders. Their reactions, according to Kole, appeared to be one of agreement and relief that this issue was finally being discussed. Speech, Eastern Mennonite College, in Harrisonburg, Va., Oct. 20, 1961. The damage that would be caused to the stability of the Amish community by the acceptance of governmental or commercial insurance benefits is stressed in J. HOSTETLER, AMISH SOCIETY 21 (1963).
the conservative sects on the issue of whether commercial insurance plans and social security benefits would undermine the solidarity of the community.

Practical considerations affect the negative opinion of the Plain People toward insurance and social security. With the various types of mutual aid practiced by members of the group toward each other, there is simply little need for the corresponding commercial and governmental insurance plans. The means of assistance within the sect may be formal or informal. Amish Aid and Amish Hospital Aid are examples of the more formal ventures. Under Amish Aid, members receive compensation for the loss of a barn or home destroyed by fire or storm. The compensation is received by prorating the expense among the other participants in the plan. In addition to caring for members of the congregation, the Plain People are well-known for their assistance to neighbors who are not of the plain denomination.

Other practical considerations concern the aged specifically. For example, among the Amish, the proportion of members over the age of sixty-five is half the proportion of the same age group among the general population. This factor reduces the need for governmental old-age assistance to the Amish.

The requirements in insurance plans that one be in good health and be able to pay the premiums are said to place life insurance out of reach of the individuals who most need it. Life insurance is also considered to be a "losing game," or unprofitable for most policyholders. Social security is condemned because it "robs" a farmer of the money needed to establish his farming enterprise,

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12 W. Kollmorgen, supra note 10, at 78.
13 A. Schrock mentions a specific type of aid given neighbors, whether Amish or not. The Amish always donate toward the renewal of a home damaged by fire in the community. Dr. Schrock also lists donations to the Red Cross and sewing for relief as examples of assistance to the wider community. SCHROCK, AMISH AMERICANS: FRONTIERSMEN, 26 WESTERN PA. HISTORICAL MAGAZINE 57 (1943). A. Clark notes that the Amish take welfare children into their homes. A CLARK, HISTORY OF THE AMISH IN DELAWARE 61 (1963).
14 J. Hostetler, supra note 11, at 82.
15 In 1950, the percentage of Amish in Southeastern Pennsylvania in the 65-70 age group was 2.7% compared to 5.2% for the rural-farm individuals in the United States. The percentage of Amish in the same area of 75 years of age and over was 1.4%, compared to 2.3% for the rural-farm population for the nation. E. Smith, STUDIES IN AMISH DEMOGRAPHY 59 (Research Council, Eastern Mennonite College, Harrisonburg, Va., 1960).
16 H. Troyer, supra note 5, at 60.
and because there is no guarantee that Congress will not alter the law, so as to deny benefits to one who has made social security payments.\(^\text{18}\)

Moral considerations for opposition to insurance by the Plain People include those reasons based on morality which are not specifically religious in their source. One such reason is that participation in insurance programs "undermines business integrity," in that the emphasis is upon the hope of gain, rather than upon honestly earning the money through work. Another moral question has been raised among those of the plain folk who would accept social security benefits. Some members say that they do not believe that one should accept more than he has paid into the program.\(^\text{19}\) There is further objection to Governmental plans which permit one who is monetarily well off to receive benefits, while one who is in need may be unable to collect because he is ineligible.\(^\text{20}\)

The plain denominations fear a loss of liberty from becoming dependent upon the Federal Government for support through reliance upon social security benefits. The Plain People fear that the privilege of being exempt from military service might be withdrawn if they appear to be willing to accept benefits from the government, but are not willing to support it.\(^\text{21}\)

The plain denominations consider social security to be insurance,\(^\text{22}\) and also a form of taxation. These groups usually express the view that they do not object to the payment of taxes and ordinarily do not question the purpose for which the government requires the money or the use to which the money will be applied. They believe that the disposition of tax monies is a government function, which they should not attempt to alter.\(^\text{23}\)

Even though many of the Amish and Mennonites object to insurance and to social security for the reasons that have been given,

\(^{18}\) The Farmer's Voice (Wooster, Ohio), Feb., 1960 at 6.

\(^{19}\) Interview with Eli Tice, Beachy Amish Bishop, in Grantsville, Md., Dec. 28, 1965; The Budget (Sugar Creek, Ohio) Jan. Dec. 31, 1964, at 1, col. 2.

\(^{20}\) The Budget (Sugar Creek, Ohio) Nov. 12, 1964, at 8, cols. 7 and 8.

\(^{21}\) The Budget (Sugar Creek, Ohio) Jan. 28, 1955, at 1, col. 2.

\(^{22}\) An Amish farmer said at his hearing, "Isn't that social security about the same thing as insurance? We pay in and then draw." United States v. Byler, Miscellaneous No. 2944, Transcript of Hearing 22 (W.D. Pa., Aug. 25, 1960).

\(^{23}\) Interview with J. Shank, supra note 3; The Budget (Sugar Creek, Ohio) Nov. 12, 1964, at 8, col. 8.
there is no uniform policy on this matter. Each congregation determines its own policy on a matter of concern to its members. A considerable amount of uniformity is attained throughout a plain denomination by the constant reference to tradition, which is kept alive by the consultation among the ministers of the denomination.

This diversity of thought among the Amish applies to social security. Those willing to accept payments from a government-sponsored insurance plan apparently feel no conflict with the idea that primary responsibility for the needy is upon the family and the community. The attitude that acceptance of benefits paid into a governmental insurance program is a matter of right seems to outweigh the fear that receiving assistance from outside the group is an admission that the responsibilities of brotherhood have weakened.

In addition to the belief that one is entitled to social security benefits because he has paid into the system, other arguments have been advanced for acceptance of "social security." Government aid is believed by some to be proper in the case of an emergency. In addition, where payments are accepted, the social security program relieves the churches from expending income for the support of their members.

The extent of participation in insurance and social security varies among plain groups because of the differing attitudes of the Plain People regarding these matters. As a rule, the more conservative and traditional the congregation and denomination is in matters of dress and principles, the more likely that it will oppose paying into or receiving benefits from either insurance company plans or social security programs. Another rule seems to be: the higher the proportion of farmers in the plain group, the greater the likelihood that the group opposes governmental insurance plans. As more members of a group become involved in occupations which are performed by working for others or by hiring workers, the group appears to shift more toward an acceptance of social security.

The practice with regard to social security varies among the denominations and even within denominations of Plain People. The Old Order Amish have consistently refused to receive any benefits under the social security system, including public assistance, unemployment compensation, and Old-Age and Survivors Insur-
ance. Beachy Amish are about equally divided in this matter, indicating that decisions are made somewhat on an individual or congregational basis regarding this question. The Mennonites also are apparently divided in their inclination to accept or reject these benefits. Paying into the Old-Age and Survivors Insurance is only slightly less objectionable than receiving benefits to the Old Order Amish. Considerably fewer of the Beachy Amish object to paying into OASI than object to receiving benefits. Opinions of members of the various Mennonite branches varied little from their opinions on the receiving of benefits.

The Plain People are law-abiding individuals and ordinarily do what is required of them by statute. When self-employed farmers were included in the compulsory categories of OASI in 1955, however, many refused to obtain a social security number or to pay into the program. The common practice among the Old Order Amish was to write "Religious Objector" or "Conscientious Objector" in the blank for the social security number on the annual income tax form. An Old Order Amish bishop in south-central Pennsylvania indicated, to the contrary, that they paid into "social security" until the 1961 moratorium declared by the Commissioner of Internal Revenue pending a court decision or legislation on the issue of the applicability of OASI to the Amish. After the moratorium, the Old Order Amish, and members of other more traditional Amish and Mennonite groups, stopped ceasing paying into the social security program.

Since the 1965 exemption of members of religious groups who are conscientiously opposed to accepting benefits under the social security system, the Old Order Amish, with some exceptions, have availed themselves of this relief from payment of social security

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24 Hereinafter abbreviated OASI.
25 A statement on methodology used in obtaining opinions of Plain People is included supra, note 3.
27 Interview with Bennie A. Yoder, Old Order Amish Bishop, near Salisbury, Pa., Dec. 27, 1965.
28 In addition to a memorandum sent by the IRS Collection Division to the Central and Mid-Atlantic Regions soon after the moratorium was agreed to by the Commissioner of Internal Revenue on Sept. 12, 1961, the official moratorium order was contained in an IRS Manual Supplement issued by the Director of the IRS Collection Division to all field offices Feb. 27, 1963.
taxes. The Beachy Amish are divided on this question, and most of the conservative Mennonites follow the Old Order Amish position of favoring exemption. Members of the Mennonite church will not seek to become exempt.30

An Internal Revenue representative recalled that in the past some of the Plain People have refused to pay into "social security," but changed their minds when they became eligible for benefits, and made the back payments in order to collect the monthly checks.31 Under the rules for becoming exempt from payment of social security taxes, one is prohibited from later accepting benefits.32

With the diversification of occupation, additional problems arise concerning social security. Many businesses, especially as they become larger, require the hiring of employees. Since most wage-earners in the United States are covered by the Old-Age and Survivors Insurance, both the employer and employee face the problem of participation in the system. This can be difficult for members of the denominations who oppose government insurance. As the proportion of members of plain denominations in non-farm work increases, the ability of the group to assist the needy in its midst decreases, as does the capability of the individual to support himself in adverse times.

Some employers and employees avoid paying into OASI by having the payment for services made directly by customers to the employees.33 Farm owners have been advised that they may give control of part of their farm to their hired men, so that the hired man will avoid being an employee and thus subject to paying into social security. As an example, a farmer may give the hired hand complete control over three cows and over their feeding, so that he may receive the money paid by a dairy for their milk.34 The farm owner also thereby avoids making the employer's share of the OASI payment.

30 Interview with J. Ward Shank, supra note 3. This in itself does not mean that all of these members will accept benefits.
31 Interview, supra note 26.
32 INT. REV. CODE of 1954, § 1402 (b).
34 Hershey, Amish Social Security News, The Budget (Sugarcreek, Ohio), Oct. 14, 1965, at 5, col. 7. This problem is especially applicable to the Amish, since they usually hire only fellow Amishmen as workers, because they feel outsiders do not know enough about farming and will not work hard enough. J. HOSTETTER, supra note 11, at 92. This scheme could, however, be questioned by the Internal Revenue Service as not being an "arm's length" transaction because it might be held to have no business purpose other than tax avoidance.
The Old Order Amish and Old Order Mennonites oppose exempting wage earners from social security payments. Nearly half of the Beachy Amish and over half of the more conservative Mennonite respondents believed that the exemption should be extended to individuals who work for others.36

Many social security provisions did not apply to the more traditional Amish and Mennonites. The applicability of the Act is divided into two considerations: the payment of contributions and the receiving of benefits under the various programs. The public assistance and unemployment compensation plans did not require contributions from the worker. Most of the wage-earners among the very conservative Amish and Mennonites were included in the exempt categories of unemployment insurance, such as farm or domestic workers, or workers in businesses with less than four employees. Many of the members of these denominations were self-employed, principally farmers, so that they did not have to pay the employer's contribution under Old-Age and Survivors Insurance.

Self-employed farmers were first included in the compulsory coverage of OASI in the 1955 tax year.38 The compulsory OASI coverage could not be avoided at the option of the individual. Therefore, it was necessary to seek an exemption from the program in order to avoid participation. Since 1955, the Old Order Amish and related groups have been increasingly active in their opposition to being included in the Old-Age and Survivors Insurance program.

In seeking a change in the compulsory OASI coverage for self-employed farmers, the Amish used various methods to obtain results. They circulated petitions for their members to sign and submitted the petitions to members of Congress. They came to Washington and personally appealed to members of Congress and to representatives of executive departments. One of their members asked for relief from the Judiciary in an appearance before a United States District Court on the question of the constitutionality of the social security program, as it applied to the Old Order Amish.37

Prior to the passage of the amendments to the Social Security Act,38 extending coverage to self-employed farmers, the Old Order

35 "Respondents" refers to individuals answering a questionnaire sent to selected plain communities throughout the United States, supra note 3.
Amish made plans for exemption to members of Congress. After the passage of this extension of social security on August 20, 1954,\textsuperscript{39} they began a fairly regular pattern of petitioning and personal appeals to officials of the executive branch and to members of Congress and congressional committees. Seven Amish bishops presented a petition for exemption, signed by 18,996 Old Order members in thirteen states, to a Social Security Administration official and to members of Congress on May 26, 1955.\textsuperscript{40} The Amish churchmen voiced a willingness to make payments into the Old-Age and Survivors Insurance program, even though they would not apply for benefits under the program. Their intention was to remove the "temptation" of receiving governmental support from their children and grandchildren. They wished to continue the tradition of supporting their own needy.\textsuperscript{41} The Social Security Administration official indicated that this was the first request for exemption from social security benefits in the twenty-year history of the program.\textsuperscript{42}

A Pennsylvania congressman\textsuperscript{43} immediately introduced the first of a series of bills sponsored by him, which would exempt the Amish from participating in Old-Age and Survivors Insurance on the grounds of conscience. He gave several precedents for the exemption; including the exemption from military service for conscientious objectors, the exclusion from sitting on a murder trial jury because of opposition to capital punishment, and similar exemptions from social security coverage for doctors, lawyers, and clergyman.\textsuperscript{44} The proposed amendments to the social security bills would have freed individuals, on grounds of conscience, from both paying into and receiving benefits.

Efforts by the Old Order Amish to obtain an exemption increased after the fall of 1958 when the Internal Revenue Service began filing liens on the farm animals and other assets of the Amish in Ohio. The Internal Revenue Service filed the liens because many of the Amish farmers refused to make the Old-Age and Sur-
vivors Insurance payments that became mandatory for self-employed farmers, beginning with the 1955 tax year. Meetings between Amish leaders and the revenue officers led to compliance by a portion of the Plain People. A number of the farmers would cooperate in no way however, with the Internal Revenue Service.45

The levying on and seizure of farm animals, especially horses, by the Internal Revenue Service, caused particular opposition from the Plain People and provoked outsiders to come to their defense. On October 8, 1958, government officers seized twenty-nine horses and cows in eastern Ohio. Non-Amish buyers obtained the animals at a public sale in Canton, Ohio, and resold them to the original owners.46

Newspaper editors, members of Congress,47 and individual citizens48 protested the taking and selling of the horses of the Amish. Horses are extremely important to this group of Plain People because these animals are their sole means of transportation, and provide the power for operating farm machinery. The Farmer's Voice, a monthly newspaper in Wooster, Ohio, objected to the allegedly forceful and stealthy manner in which the revenue officers took some of the animals. The officers unhitched a team of horses from a wheat drill that was being operated in a field at the time.49 The same newspaper commented upon the fact that less than one day's notice had been given before a farmer's horses were taken.50

The Wall Street Journal editor decried the "growing emphasis in our security," and maintained that it is wrong for collective secur-

47 Bills introduced by members of Congress will be considered infra.
48 One sale of horses was picketed by women with signs proclaiming that "This is communism in action," and "Thou shalt not steal." The Farmer's Voice, supra note 45.
49 Id.
50 Id. In the same issue the editor alleged that the action by the Internal Revenue Service violated numerous provisions of the Bill of Rights of the United States Constitution, including the free exercise of religion, obtaining property without a search warrant, appearance before a grand jury, double jeopardy, eminent domain, public trial, confronting accusers, securing services of an attorney, and protection from excessive fines. The editor further objected to the action taken on the grounds that the federal government is inferior to the states and the people under the provisions of articles IX and X of the Bill of Rights. She protested that the principle of separation of powers is violated by consolidating executive, legislative, and judicial prerogatives in the "Social Security Bureau," and that the executive ruling, under which the farm property was levied upon, had the force of law, which Congress alone should have the power to enact.
ity to be emphasized to the extent that individual rights of the Amish are disregarded. The loss of individual freedom limits the freedom of all. "Security without freedom" was described as "history's bitterest jest." The editor emphasized that payment of the tax by the Amish would be an admission that the group did not have a responsibility for its aged. This denial of responsibility would be a violation of one of their major religious principles.51

The Commissioner of Internal Revenue defended the action taken by revenue officers in the instances where the Amish refused to make social security payments.52 He commented that the Internal Revenue Service had the responsibility to administer the tax legislation "conscientiously and impartially" among all individuals covered by the tax that had been imposed. The Amish were not exempt from payment, so the Internal Revenue Service could not excuse them from compliance.53

In recognition that the religious views of the Amish might cause them to refrain from payment of the tax, revenue officers talked with them in an effort to persuade them to comply. Many of the Amish voluntarily paid the tax, but, with regard to those who refused, the officers started enforcement procedures provided by law. The national office of the Internal Revenue Service issued no special instructions concerning enforcement procedures, but rather the officers in the field instituted the proceedings, particularly in the Cleveland, Pittsburgh, and Philadelphia districts, where there are large Amish populations. These enforcement measures did not attract much attention until the spring of 1961, when revenue officers seized and sold horses of a Pennsylvania farmer.54

The farmer was a member of the Amish settlement near New Wilmington, Pennsylvania, and had a farm of over one hundred acres, on which he had milk cows and raised grain and hay crops. According to statements made at a later hearing, the farmer paid his income tax but refused to make social security payments as a self-employed farmer. He would not appear when he was subpoenaed to give information concerning his income before a revenue officer. United States marshals brought him into a hearing before the Chief Judge of the District Court for the Western District of

51 Nov. 4, 1958, at 8, cols. 1-2.
53 Id.
54 Id. Mr. Caplin did not mention the considerable outcry regarding the seizure and sale of farm animals in Ohio.
Pennsylvania, in Pittsburgh, on August 25, 1960. The defendant, who was not represented by legal counsel, said that although he paid income tax when the amount of income warranted it, he could not pay insurance or "social security." The Court obtained a promise from the defendant to produce records and give information regarding income to the revenue officer on the day after the hearing.

The Court was concerned that there might be a violation of the farmer's rights under the Constitution. The Judge questioned whether it was constitutional or democratic to require Amishmen to pay into the social security program, when such payments would be a violation of a religious tenet of the group. A second concern of the Court was that, by ordering the defendant to give information to the revenue officer, it might be requiring him to incriminate himself in violation of his rights under the Fifth Amendment of the Constitution.

In considerations of these prospects, the Chief Judge requested that the Assistant United States Attorney submit a brief on the question of whether there had been a judicial determination that a religious objector was required to make such a payment. The Chief Judge also required that no levy be made against the defendant's property without notifying the District Court beforehand. The matter was continued for thirty days, at the end of which time the Chief Judge extracted a promise from the defendant that he would appear, if requested. The Judge also told the defendant that if his property was levied upon without notice to the Judge he should come and see the Judge for assistance.

Interval Revenue officers levied upon the defendant's horses and, on April 18, 1961, seized three horses, while the defendant was working them in a field. The defendant had been singled out because he was "one of the more aggressive, unco-operative taxpayers." The time of the year, plowing time, and the reliance of the

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57 Id. at 17.
58 Id. at 38.
59 Id.
60 Id. at 37.
61 Id. at 35.
Amish upon horses for farm work and transportation, increased the public outcry against the action. The horses were sold at public auction, and a remainder of $37.89 was paid to the defendant after the social security payments owed by him and expenses for insuring stabling, feeding, and selling the horses were deducted.\(^6\)

The defendant and several Amish bishops consulted with Shepherd Kole, a New York attorney, who had rendered services to the Amish in a prior school dispute. Kole suggested to the Amish that a suit be instituted in the nature of a petition to establish a right under the First Amendment freedom of religion provision.\(^6\) The idea of the petition was advanced, rather than an ordinary suit at law, because the Amish do not believe in going to court to settle their problems, or even in defending themselves in court if they are sued. Another basis for the petition was that the Amish did not wish to have the money returned, because they considered it to have been taken from them against their will.\(^6\) Further, the Amish had traditionally used the petition throughout their history to obtain relief from wrongs which they felt had been committed upon them.\(^6\)

Public pressure mounted for the settlement of the issue. The Amish began taking their money from banks in order to prevent the revenue officers from levying upon it. The bankers added their voices to the general clamor of those who felt the rights of the Plain People were being violated.\(^6\) Amish income tax payments were reported to have decreased by thirteen per cent.\(^6\)

Because of these pressures, fifty Amish leaders from several states and their attorney met in September, 1961, with Commissioner Caplin and other staff members of the Internal Revenue Service, in an effort to settle the matter. Several interested members of Congress attended. According to the attorney for the Amish, the Internal Revenue representatives offered a compromise solution. The Government would collect the money from the Amish as a type of enforced saving. The same amount of money that was

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\(^6\) The horses brought $460 at auction; Byler owed $308.96 in payments; and expenses were $113.15. Liens had been placed by government officers against Byler's horses in 1959. Id.

\(^6\) Speech by Shepard Kole, supra note 11.

\(^6\) Id.

\(^6\) Id.

\(^6\) Id.

\(^6\) Id.
disseminated by the Amish at the proper time established by law. The Amish refused to accept this compromise.68

The attorney for the Amish proposed a solution to the problem. He suggested that the claim of the Amishman for the return of taxes obtained by the sale of his horses, be presented immediately to the Internal Revenue Service. He further suggested that the Commissioner deny the claim immediately so the case could be taken directly to court. At the time of the conference, groups other than the Amish were beginning to question whether they should pay their social security tax. During the time the case was before the court, one of the several Amish exemption bills pending in Congress might be enacted and solve the problem. During the judicial proceedings, the Internal Revenue Service would not collect forceably any social security payments from the Amish.69

The Commissioner agreed to this moratorium70 on collecting payments from the Amish, and to the suit over the payment that had been obtained from the sale of the Amishman's horses.71 In April, 1962, the Amishman brought suit in the United States District Court for the Western District of Pennsylvania.72 The action was for the recovery of §214.43, the self-employment OASI payments they had made through forced sale of their horses, for the years 1956 through 1958. The United States Attorney made a motion for judgment on the pleadings, and the plaintiffs moved for summary judgment.73 The plaintiffs dismissed their suit, however, on January 21, 1963, just before the case was to come to trial.

68 Id.
69 Id.
70 supra note 28.
71 Attorney Kole told the Commissioner that the Amish would not abide by the decision of the court if it was not in their favor. Id.
73 In its Brief in Support of Defendant's Motion for Judgment on the Pleadings, id., Dec. 1962, the Government argued, citing statutes and prior rulings, that the social security laws are constitutional; the plaintiffs come under the provisions of the laws and are not exempt by any legislation; the compulsory social insurance contributions are taxes for the general welfare; liability for the payment of these taxes is not dependent upon the collection of benefits; and freedom of religion under the first amendment is not violated by the enforcement of a statute, which is not directed toward a particular religious group, or which is a "reasonable nondiscriminatory regulation of conduct by governmental authority to preserve peace, tranquility and a sound economic order." (Quoting U.S. v. Kissinger, 250 F.2d 940, 943 (3d Cir. 1958) cert. denied, 356 U.S. 958 (1958).
The pressure mounted for executive or congressional exemption of the Old Order Amish from the Old-Age and Survivors Insurance. Eleven Old Order Amish leaders met with Health, Education, and Welfare Secretary Abraham A. Ribicoff in the summer of 1961, and requested that they be relieved from participation in the Old-Age program. They presented to him a petition in support of their views. Ribicoff informed the delegation that something should be done to relieve them from participation in the system.  

A review of two of the statements made by the Old Order Amish in favor of their exemption from the social security program will give some idea of the approach taken by the Amish leaders in attempting to reach their goal. The first statement was a pamphlet entitled “Our Religious Convictions Against Social Security” which was circulated among the Amish people and Washington officials.

After expressing appreciation for the religious liberties, such as exemption from military service and freedom of conscience, which have been extended to their members in the United States, the Amish affirmed their belief in a Supreme Being and in the United States Constitution. They considered the Social Security Act and OASI to be an abridgement of their religious freedom. They stressed, by quoting the Scripture, the belief that their church should help the needy within the group. They considered OASI

Attorney for plaintiffs, in his Brief in Opposition to Defendant’s Motion for Judgment on the Pleadings, argued that the implication of the defendant, that the Amish do not pay their income tax, is untrue as shown by the testimony of the plaintiff at the prior hearing; the Bylers did not disagree with the Government’s contentions that the social security program is constitutional, that “Congress has the power to extend the Social Security Act to the self-employed, except where their religious freedoms are violated,” and that the social security tax is for the general welfare; the relation of payments to benefits need not be considered, because the Bylers may not make payments or take benefits, under their religious views; first amendment freedoms stand in a preferred position; any restriction upon the first amendment freedoms must be justified by a clear public interest, which is threatened by clear and present danger; the exemption of the Amish from the Old-Age and Survivors Insurance would not endanger the program, particularly since physicians, a larger group than the Amish, were exempt and did not apparently harm the insurance system; and Kissinger, cited by the Government, did not apply, because, among other reasons, that case concerned the individual conscience of a single individual, while here the question concerns the religious principles of an entire sect.

4 The Budget (Sugarcreek, Ohio), July 6, 1961, at 3, cols. 1 and 2.
5 Voice of the Old Order Amish people of the United States of America in April, 1960.
6 Matt. 6:3-4; I Cor. 10:23; Psa. 37:25; I Thes. 4:11-12 (King James).
to be an infringement upon their responsibilities as a church, and asked that the United States Government officials "prayerfully" consider exempting the Amish from the program.

The Amish also included in the pamphlet a statement, made by Representative Paul B. Dague, (R., Pa.) in support of a bill introduced by him to permit anyone to refuse social security benefits on the grounds of conscientious objection.\(^7\) Congressman Dague included in his statement a prior petition\(^7\) signed by nineteen Old Order Amish bishops in favor of the exemption. This earlier petition included a short review of the establishment in the United States of the freedom of conscience, and the right to express one's opinion in disagreement with others. The Amishmen stated that Old-Age and Survivors Insurance violates their faith and doctrine.

The successive steps leading to the enactment into law of the social security exemption\(^7\) included the combining of provisions from the various exemption bills previously introduced in the Eighty-Sixth and Eighty-Seventh Congresses and the writing of opinions on the appropriateness and the constitutionality of the legislation. The House Ways and Means Committee and the Senate Finance Committee had jurisdiction over bills exempting religious objectors.

In response to a request by the Senate Finance Committee Chairman, the Secretary of Health, Education, and Welfare submitted a report\(^8\) giving the views of the Department concerning the provisions of one of the exemption bills introduced in the Senate.\(^9\) The Secretary recommended that the bill not be enacted and gave numerous objections to it. Voluntary coverage was attacked as undesirable because the individuals who choose to be covered by the system are usually those who expect to obtain the greatest benefits. This places a hardship upon those whose coverage is compulsory. Permitting extensive voluntary Old-Age and Survivors

\(^8\) An Appeal to the Esteemed Members of the Different Branches of Our Government.
Insurance coverage would be detrimental to the major objective of the program, which is prevention of dependency.\(^{82}\)

The Secretary indicated that members of his Department had explained to the Amish bishops that benefits would be paid only to those individuals who applied for them, and that filing an application was voluntary. The Secretary proposed an alternative plan for the Amish. He suggested that special accounts be set up for them, so that they would receive benefits only to the amount they had contributed. The bishops had rejected this plan, because they did not wish members to have the opportunity to continue receiving benefits over the amount each had contributed.\(^{83}\)

In his report, the spokesman for Health, Education, and Welfare raised the problems of other groups demanding exemption from OASI and the demands for exemption from other social security programs. Other sects and organizations, which might not have the sincere religious convictions of the Amish, would request similar treatment, and this would weaken the entire program. There was thought to be no "realistic possibility" of limiting the exemption to the Amish.\(^{84}\)

If the exemption were granted to self-employed persons, it would be only fair to extend the same treatment to wage-earners. The Secretary indicated that this would give rise to various problems, including additional record-keeping by the employer, the necessity of the employer delving into the religious beliefs of his employees, and possible employer discrimination against non-exempt employees, for whom the employer's share of the social security tax would still be owed.\(^{85}\)

The fact that the exemption was irrevocable was considered to be unfair to individuals who might change their minds about participating in the system and to the survivors of the person taking the exemption, who might not be as opposed to receiving OASI benefits.\(^{86}\)

\(^{82}\)Report, at 1.

\(^{83}\)Id., at 2. A similar objection by the Amish would be applicable to the above argument that the members did not have to apply for benefits if they did not wish to do so. Some writers on the Amish have indicated that the Amish leaders feel that, if members have the opportunity to obtain benefits under Social Security, they will be less dependent upon the group. This will lead to a weakening of the sect, as argued infra.

\(^{84}\)Id. at 2-3.

\(^{85}\)Id. at 3.

\(^{86}\)Id.
The final argument made by the Secretary against the Amish exemption bill was that the exemption applied to any self-employment activity of the applicant. Ministers had received an exemption, but only as to amounts received for their work in the church, not to pay obtained from non-church work. The variety in the types of exemptions would complicate the program, it was contended.\textsuperscript{57}

The House Committee on Ways and Means reported out a social security bill in July, 1964, and the House passed the bill,\textsuperscript{88} which included an exemption provision for conscientious objectors. The Senate passed the same bill, but attached a Medicare provision to it before passage. The Senate-House conferees were unable to agree on the inclusion of the health-care provision, but agreed to the Amish exemption feature. In 1965, the House Ways and Means Committee considered social security legislation\textsuperscript{89} in executive session, and the combined decisions of the Committee were embodied in the final bill\textsuperscript{90} in the exemption series. The bill was signed by the President on July 30, 1965, and became Public Law 89-97, the Social Security Amendments of 1965.\textsuperscript{91}

Under the exemption provisions enacted in 1965, an individual may become exempt from social security self-employment taxes if he makes application, in which he waives all social security benefits to which he or any other person is entitled. He must be a member of a recognized religious group and adhere to the teachings of the group. By these teachings, he must be conscientiously opposed to the acceptance of benefits under any private or public insurance plan which makes payments at the time of death, disability, old age, or retirement, or which provides for medical care. The basis is not opposition to payment of taxes, but to receiving benefits.

He must never have received or have been entitled to any of these insurance benefits. He must give evidence of his member-

\textsuperscript{57} Id.
\textsuperscript{90} H. R. 6675, 89th Cong., 1st Sess. (1965), introduced by Committee Chairman Mills.
ship in the sect and of his adherence to the tenets of the sect. The religious group must have been in existence continuously since December 31, 1950. The religious group must make provision for its dependent members, which the Secretary of Health, Education, and Welfare deems reasonable, taking into consideration their general standard of living.

Any self-employed person, not only farmers, may be exempt if he meets the qualifications and applies. There is no blanket exemption for members of an entire religious group, but, rather, each individual must apply for himself. Upon application, the individual may receive a refund of all self-employment social security payment made since December 31, 1950. The application for exemption is made to the Internal Revenue Service, through its District Director. The exemption remains in effect until the individual or his religious group ceases to meet the requirements for exemption. The statements made in the application form are "declared" to be true and correct. This is in the nature of an affirmation, rather than an affidavit, which would have to be sworn to. Swearing to an affidavit would be a violation of the Amish objection to swearing oaths.

Members of Congress had requested the opinion of legal counsel in the drafting of the exemption legislation. The major question was the constitutionality of exempting members of religious groups from the Old-Age and Survivors Insurance program. In answer to requests by members of Congress, the staff of the Joint Committee on Internal Revenue Taxation, and the General Counsel of the Treasury prepared memoranda on the constitutional issues involved in the exemption.

The Joint Committee staff and the General Counsel of the Treasury both advised that the exemption provisions were constitutional. The Joint Committee report considered the exemption proper under the requirements of the uniformity and due process clauses of the Constitution. The General Counsel thought the

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99 Prevention of dependency is the primary objective of the Social Security program. Report, at 1.
90 Form 4029, August, 1965, U.S. Treas. Dept., I.R.S.
94 Colin F. Stams, Chief of Staff, Joint Committee on Internal Revenue Taxation, to Senator Joseph S. Clark (D., Pa.), Nov. 9, 1962; G. d'Andelo Belin, General Counsel of the Treasury, Aug. 6, 1964. The Berlin opinion was prepared at the request of Representative Richard Schweiker (R., Pa.). [This opinion herinafter cited as Belin.]
exemption to be valid under the free exercise of religion and establishment of religion clauses of the first amendment, in addition to agreeing with the conclusions of the Joint Committee report.

In the memoranda, it was pointed out that the requirement of uniformity of taxation, included in the listings of the powers of Congress, has been interpreted to mean geographical uniformity only. The exemption applies uniformly throughout the United States, so would not be a violation of the uniformity provision.

Although the exemption must be reasonable under the fifth amendment due process clause, the Supreme Court has permitted Congress wide discretion in the classifications established for exemption from taxation. The distinctions in classifying various groups for the payment of varying amounts of taxes, and for exempting particular classes, must be grounded upon policy considerations and practical convenience.

The Treasury Department General Counsel considered the question of whether the social security exemption would be constitutional under the first amendment provisions that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . ." The courts upheld the freeing of conscientious objectors from military service in the First World War and after the Second World War. The courts permitted aliens, who were conscientious objectors, to become naturalized citizens and allowed special tax treatment for religious groups.

The Supreme Court required one state to permit a Seventh-Day Adventist to receive unemployment benefits, though offered a job entailing work on Saturday, which she refused due to religious

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95 U.S. Const. art. I, § 8, "[B]ut all Duties, Imposts and Excises shall be uniform throughout the United States. . . ."


97 C. Stam, supra note 94.


100 Girouard v. United States, 328 U.S. 61 (1946).

101 Swallow v. United States, 323 F.2d 97 (10th Cir. 1963). The releasing of public school children to attend religious instructions off school grounds, upheld in Zorach v. Clauson, 343 U.S. 306 (1952), was also included in the opinion to support the propriety of the siding in the free exercise of religion.
beliefs.\textsuperscript{102} The Court held the provision in the state unemployment statute, requiring an individual to be available for work on Saturday in order to obtain benefits, to be a restriction upon the free exercise of religion of the individual. The court found that permitting the Seventh-Day Adventists to receive unemployment benefits did not constitute involvement of a religion with a secular institution, and so did not violate the establishment clause.\textsuperscript{103}

The Treasury Department opinion contained the conclusion that the social security exemption aids the free exercise of religion, because it removes a restriction placed upon the religion by a specific governmental provision. The exemption is not a requirement that a specific religion be practiced by others outside the religious group, and so is not a violation of the establishment clause of the first amendment.\textsuperscript{104}

In reviewing the various types of limitations which would have to be placed upon those qualifying for the social security exemption, the General Counsel of the Treasury considered as constitutional, the requirements of membership in a sect, and the sect's providing for its own needy. These conditions would probably be considered to be necessary and proper public policy considerations, and so would be reasonable constitutional conditions for establishing the exemption.\textsuperscript{105} The limitation of the exemption to religious groups in existence prior to a specific cut-off date was thought to be less reasonable than a requirement which had a specific relationship to the public policy established in the exemption. The requirement that the sect show that it had taken care of its own over a certain number of years would probably be more acceptable.\textsuperscript{106}

\textsuperscript{103} Id.
\textsuperscript{104} See In Re Jenison, 374 U.S. 14 (1963), in which the Supreme Court held that a person, whose religious beliefs prohibited him from judging others, should be excused from jury service. Since the Court permits the exemption of individuals from the "highest duties of citizens," the Court would probably hold that Congress could properly permit a lesser exemption, such as the exemption from social security.
\textsuperscript{105} Belin, supra note 94, at 20.
\textsuperscript{106} Id. at 21. Belin rejected the limitation of the exemption to the Old Order Amish only, to the exclusion of other groups with the same religious objections to social security, because it would be inconsistent with congressional policy of removing "the Government coercion of belief which constitutes the free exercise of religion," and would probably be a preference of a religious group in violation of the establishment clause. Id. at 19. The limitation to sects, in which the
From this and related study of the Plain People and the social security issue, it can be seen that a minority group can obtain relief from governmental restrictions which violate the religious and other principles of the group. It is especially significant that relief was obtained in this instance by sects that have not participated actively in the political processes of this nation, even to the extent of refusing to vote except in isolated instances.

Because of this inexperience in political activity, the perception of the bishops, even with the assistance of legal counsel, in contacting the appropriate governmental officials was remarkable. The use of the proper methods to effect a statutory change was also noteworthy.

The question arises as to whether other minorities could obtain relief of a corresponding nature through appeals to members of the legislative and executive branches of the national government. The sect leaders may have had an advantage in that their demands had a religious basis which attracted the attention of Senators, Representatives, and executive branch personnel. On the negative side, the bishops represented a body of individuals small in number who did not vote and would not be active otherwise on behalf of any political party.

While the religious tenets of the sects were important as justification for the passage of the exemption legislation, the issue of individual freedom also apparently carried great weight with the governmental officeholders.

The enactment of the 1965 exemption provided at least a partial solution to the social security conflict between Old Order Amish and other plain sects, and the Federal Government. The exemption applied to self-employed members of religious sects which were in existence since 1950 and which had a record of taking care of their own needy. Since most of the members of Amish and similar groups are self-employed farmers, most, if they choose, may be relieved from participation in the social security program.

only occupation was farming, was rejected also because some of the Amish permit other trades. Id. at 21. The limitation suggested was to sects "established in farming communities for religious reasons," in addition to the requirements of objecting to insurance and taking care of the needy of the sect. The requirement of farming communities was considered proper because the farming community sect could identify and provide for needy members more adequately than groups in a mobile urban setting. The limitation would tend to exclude sects from organizing to obtain the exemption from social security, because it would be unlikely that a sect would or could be established in a farming community. Id. at 22-23.