



PUNISHMENT BY THE “PRINCIPLE”

By Michael J. Carroll

I read that the government is taking Social Security money, \$150 million last year, from people who failed to pay off student loans. Social Security is money people receive because they are old, disabled or both. Pardon my Jimmy Stewart reaction, but it just does not seem right to me to kick someone when they are down - old or disabled.

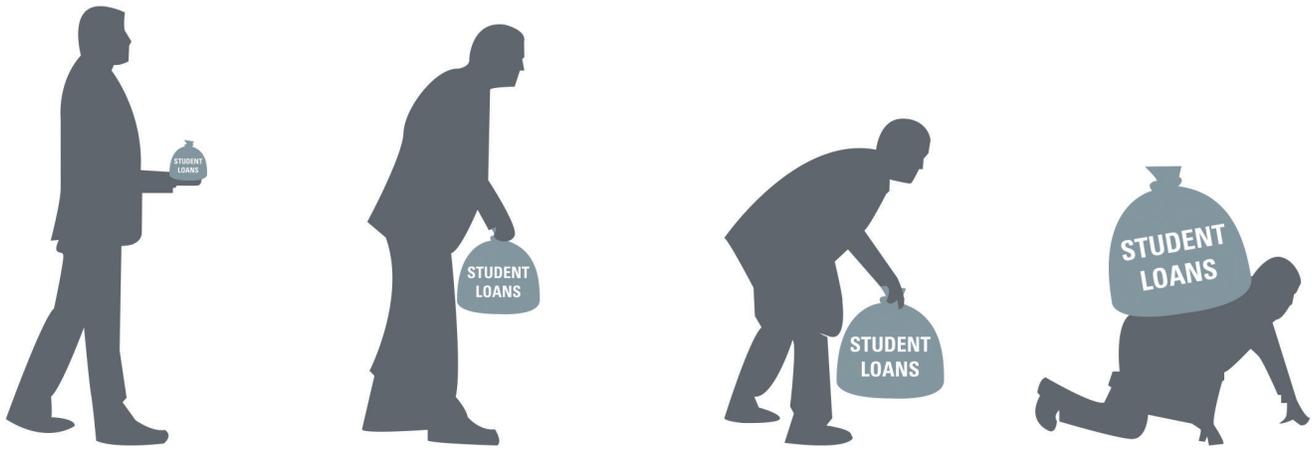
It does seem to me that student loans are not exactly like other loans and Social Security money is not just like other money. The loan is not for a vacation or a fancy new car. It is borrowing for a chance to better yourself, to improve your circumstances to get along in life. Sometimes it is borrowing to pay a fly-by-night, flim-flam school that gives nothing in educational or occupational value in return for the money.

Social Security money is supposed to protect you from poverty, from falling off the edge, when you are old or disabled.

I am all for people paying their debts. I paid student loans myself for almost 20 years. I started paying after college in the early 1970s. I paused paying for a couple of years of studying

and more borrowing in law school, then finished paying them off by the early 1990s. I went to work for legal aid and never hit the legal financial jackpot. That was my choice and I would make it again if I were starting out today. Unfortunately, it would be a lot harder to live with that choice now. The tuition is much higher and the debt amounts and payment terms are more onerous.

Paying back what I borrowed was not always easy. When I made \$6,000 a year after college and paid \$50 a month, I missed the money. The same was true after law school when I made \$11,000 and paid \$150 a month on the loans. Paying barred fancy vacations and expensive new cars. Paying competed with all the other starting-out-in-life bills.



But when I see what is happening to students today, I feel lucky. Too many young people leave college buried in debt. In 2013, the average student loan debt for undergraduates was nearly \$30,000. That might not even be the full picture because it may fail to count all private loans. The Pennsylvania average was even higher.

Graduates who try to strengthen their job chances with graduate and professional schools get buried deeper. If they run into bad luck in life, employment-wise or otherwise, there is no easy way out, sometimes no way out at all. Now they may also have to face old age in poverty.

Bankruptcy for student loans is distasteful to some, maybe most distasteful to those driven to consider it. The bankruptcy option has been greatly reduced for consumers in general. For student loan borrowers, it has just about been eliminated.

In my borrowing days, you could file bankruptcy fairly easily, wash away the student loan debt and get a fresh financial start. Bit by bit Congress chipped away at that right, first by imposing a five-year waiting period before discharging the debt, then raising it to seven years, and then eliminating the right to discharge entirely unless the debtor could show undue hardship (11 USC 523(a)(8)). Most U.S. Circuit Courts of Appeal, including the Third Circuit, adopted a harsh test for undue hardship, created when a debtor could still discharge after five years. The test requires the debtor to show that it is unlikely income will ever increase, and that the debtor made a good faith effort to pay.

The Department of Education has made things even tougher by hiring a “servicer” to fight every case to the hilt. This discourages many, maybe most from even trying. A debtor who could afford a lawyer to fight the servicer would probably be judged to have too much money to show undue hardship.

When bankruptcy was an option it held out a little temptation for me in tough times but never enough to do it. Maybe it

was my Depression, World War II Era parents perched on my shoulder, or the thought of running into a small town banker who I might have trouble looking in the eye.

Probably the biggest reason for not filing bankruptcy was that I never really had it all that bad in the worst times and things gradually got better. I cannot say the same for many young people these days who are crushed by and buried in debt, debt that may limit their choices about having kids or buying houses for years, and now may limit their retirement.

Things got better for me over time. My loans were fixed in amount and monthly payment. They carried a low, subsidized interest rate, something I did not appreciate fully until I saw today’s students forced into less favorable loans.

Maybe student loan borrowers should try to incorporate themselves and go bankrupt like presidential aspirants who easily file multiple bankruptcies for their corporations without penalty or stigma. Student borrowers might breathe new meaning into the politician’s cynical phrase “corporations are people too.”

Seizing Social Security money is all the more egregious because of the way wealth has been moving in this country: upward to a smaller and smaller group of Americans.

We have to take another look at student loans for the sake of young people studying and trying to get going in life, for the people finishing up their work lives and for the sake of us all.

People need to be responsible. People should work, pay what they owe when possible and not squander the resources of society. But we have to be fair and sensible too. Burying the young in a lifetime of debt with no escape and impoverishing the old is neither fair nor sensible.

It’s just not right. ■

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