

**REFORMING RETIREMENT SYSTEMS:
WHY THE FRENCH HAVE SUCCEEDED WHEN AMERICANS HAVE
NOT***

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I. INTRODUCTION

As life expectancy increases² and the baby boom generation approaches retirement age,³ retirement systems throughout the Western world are facing financing difficulties.⁴ In recent years, many European countries, including France,⁵ Italy,⁶ Sweden,⁷ Switzerland,⁸ and Germany,⁹ have amended their retirement systems

* At the time this article went to press, President Bush was displaying commitment to the reform of Social Security, but it was not clear whether that commitment would be enough for his reform effort to succeed. If the reform efforts fail, it will not be due to any lack of political commitment. Rather, the failure will likely arise from the fact that the American Social Security system faces a long-term, not a short-term, deficit, and the keystone of President Bush's reform plan, individual accounts, would do nothing to resolve Social Security's funding difficulties.

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2. See BOARD OF TRUSTEES OF FED. OLD-AGE AND SURVIVORS INS. AND DISABILITY TR. FUNDS, 2004 ANNUAL REPORT 82 tbl.V(A)(3) (showing life expectancy for sixty-five year old American men increased from 11.9 years in 1940 to 16.0 years in 2003 and from 13.4 years in 1940 to 19.0 years in 2003 for sixty-five year old women); CONSEIL D'ORIENTATION DES RETRAITES, RETRAITES: RENOUVELER LE CONTRAT SOCIAL ENTRE LES GÉNÉRATIONS, ORIENTATIONS, ET DÉBATS 24 (2001), available at <http://www.cor-retraites.fr/article25.html> (last visited Apr. 19, 2005) (showing life expectancy in France for 60 year old men increasing from 15.4 years in 1950 to 20.2 years in 2000) [hereinafter CONSEIL D'ORIENTATION DES RETRAITES].

3. The eldest of the baby boom generation will reach 62, the earliest eligibility age for social security retirement benefits, in 2008. See U.S. GEN. ACCT. OFF., SOCIAL SECURITY: DIFFERENT APPROACHES FOR ADDRESSING PROGRAM SOLVENCY 20 (1998).

4. See Kathryn L. Moore, *The Best of Times and the Worst of Times: Lessons from Recent Reforms of the French Retirement System*, 29 GA. J. INT'L & COMP. L. 441, 444 n.7 (2001).

5. Law No. 2003-775 of Aug. 21, 2003, J.O., Aug. 22, 2003, p.14310 (Fr.).

6. See, e.g., PIERRE-ALAIN GRECIANO, LES RETRAITES EN FRANCE: QUEL AVENIR 223-32 (2002) (discussing recent reforms to Italian retirement system).

7. See, e.g., John Turner, *Individual Pension Accounts: The Innovative Swedish Reform*, 65 OHIO ST. L. J. 27 (2004) (discussing the 1999 reform of the Swedish retirement system).

to address these funding difficulties.¹⁰ Despite years of debate,¹¹ however, the American Social Security system¹² has not been changed in any significant way since 1983.¹³

In order to understand why the American Social Security system has been so resistant to change while the retirement systems in other countries have been amended, this Article analyzes why one country, France, was able to reform its retirement system significantly in 2003. The Article begins by briefly describing the French retirement system prior to 2003. It then provides an overview of the most significant changes wrought by the reform enacted in 2003. It then analyses why, after years of inaction and failed attempts to reform the French retirement system, the government succeeded in reforming the retirement system in 2003. Finally, it considers why the United States, after years of debate, has not enacted any major

8. See, e.g., GIULIANO BONOLI, THE POLITICS OF PENSION REFORM: INSTITUTIONS AND POLICY CHANGE IN WESTERN EUROPE 86-117 (2000) (discussing 1999 reform of Swiss retirement system).

9. See, e.g., GRECIANO, *supra* note 6, at 220-23 (discussing recent reforms to German retirement system).

10. This is not to suggest, however, that European countries have resolved all of the financial difficulties faced by their retirement systems as a result of the aging of their populations. Indeed, the retirement systems in many European countries continue to face long-term financing difficulties. See *European Union Must Undertake Radical Pension Reform*, *Group Says*, 31 BNA Pension & Benefits Rep. 1665, 1665 (2004).

The European Union must undertake radical reform of its pension system, raise the retirement age, reduce budget deficits, promote citizen savings, enhance labor mobility, boost economic productivity and allow more immigration if it is to avert a looming fiscal crisis in the coming decades due to low birth rates and an ageing population, the European Banking Federation said July 29.

Id.

11. Cf. Fay Lomax Cook & Lawrence R. Jacobs, *Assessing Assumptions about Americans' Attitudes Toward Social Security: Popular Claims Meet Hard Data*, in THE FUTURE OF SOCIAL INSURANCE: INCREMENTAL ACTION OR FUNDAMENTAL REFORM 82, 92 (Peter Edelman et al. eds., 2002) (noting that "[b]etween January 1993 and December 1999, Congress held 40 hearings that focused at least in part on the privatization of Social Security.")

12. For purposes of this Article, the term Social Security is used to refer to cash benefits provided by the United States' Old-Age, Survivors' and Disability Insurance program. See Kathryn L. Moore, *Privatization of Social Security: Misguided Reform*, 71 TEMP. L. REV. 131, 131 n.2 (1998) (citing authorities showing that this is the generally accepted meaning of the term in the United States).

13. See Social Security Amendments of 1983, Pub. L. No. 98-21, 97 Stat. 65 (1983). There have been modest amendments to the Social Security system since 1983. See, e.g., Senior Citizens' Freedom to Work Act of 2000, Pub. L. No. 106-182, 114 Stat. 198 (2000) (eliminating the retirement earnings test for beneficiaries at or above the normal retirement age). Congress, however, has not substantially amended the program in order to address its long-term funding deficit since 1983.

reform of its Social Security system in the last twenty years.

II. BRIEF OVERVIEW OF THE FRENCH RETIREMENT SYSTEM PRIOR TO THE 2003 REFORM

France, like the United States, provides retirement income principally through a three tier system. The three tiers in the two countries, however, differ. In France, the three tiers consist of (1) mandatory base regimes, (2) mandatory complementary retirement regimes, and (3) optional supplemental retirement plans.¹⁴ In the United States, in contrast, the three tiers consist of (1) a mandatory base regime, (2) optional employer-sponsored pensions, and (3) individual savings.¹⁵ This section will briefly describe each of the three tiers of the French retirement system prior to the 2003 reform and explain how they resemble and differ from their American counterparts.

A. The First Tier

In the United States, the first tier of the retirement system consists of a single mandatory base regime, Social Security, which covers about 96 percent of the American workforce.¹⁶ In France, in contrast, there are more than 125 different mandatory base regimes that are typically divided into four different categories: (1) the general regime, (2) the special regimes, (3) the agricultural regime,¹⁷ and (4) the regimes for non-agricultural, non-wage earners (that is, the self-employed).¹⁸ The

14. See JEAN-PAUL GALLAS & NICOLAS CORATO, VOS RETRAITES APRÈS LA RÉFORME 17 (2003); GRECIANO, *supra* note 6, at 25.

15. See Christopher Bone, *An Actuarial Perspective on How Social Security Reform Could Influence Employer-Sponsored Pensions*, in PROSPECTS FOR SOCIAL SECURITY REFORM 333, 333 (Olivia S. Mitchell et al. eds., 1999) (describing the American retirement system as a three-legged stool consisting of Social Security, employer-sponsored retirement plans, and individual savings). Of course, retirement income in France can be supplemented by individual savings, which is sometimes referred to as the fourth tier of the French retirement system. See Philippe Laigre & Pierre Mascomere, *La Retraite Supplémentaire*, LIAISONS SOCIALES, Nov. 1995, at 10.

16. SOCIAL SECURITY ADMINISTRATION, ANNUAL STATISTICAL SUPPLEMENT 11 (2002).

17. Historically, the agricultural regime was an independent regime. Now, however, it is aligned with the general regime so that it provides the same benefits as the general regime and is financially integrated with the general regime. Accordingly, some commentators and experts do not separate the agricultural regime from the general regime in describing the base regimes. See, e.g., CONSEIL D'ORIENTATION DES RETRAITES, *supra* note 2, at 51-52.

18. See, e.g., OBSERVATOIRE DES RETRAITES, RETIREMENT PENSIONS: A STATISTICAL ANALYSIS 4 (2003), available at <http://www.observatoire-retraites.org/versionanglaise/letters/lorc3eng.pdf> (last visited Apr. 19, 2005); GALLAS &

general regime is by far the most important in terms of coverage. It covers virtually all wage earners in the private sector, or about 67 percent of the French workforce.¹⁹ The 120 or so special regimes, covering about 20 percent of the French workforce (principally public sector employees), are the next most significant.²⁰ About 10 percent of the French workforce is affiliated with one of the five non-agricultural, non-wage earner regimes²¹ while the remaining 3 percent of the workforce is affiliated with the agricultural regime.²²

Like the American Social Security system,²³ the mandatory base regimes in France are typically defined benefit plans funded principally on a pay-as-you-go basis. The benefit formulas, however, differ significantly from regime to regime. Until the 2003 reform, the special regimes were typically the most generous while the non-agricultural, non-wage earner regimes were the least generous, and the general regime fell somewhere in the middle.²⁴

The general regime's benefit formula is often described as providing an annual pension (P) equal to (S.A.M.) x (t) x (d/D), where S.A.M. = average annual salary, t = rate, d = duration of participation in the general regime, and D = maximum duration of participation taken into account.²⁵ The special regimes generally take the same factors in account in calculating retirement benefits, but define them quite differently.²⁶ Finally, the non-agricultural, non-wage earner regimes tend to use very

CORATO, *supra* note 14, at 20; BONOLI, *supra* note 8, at 127.

19. *Cf.* GRECIANO, *supra* note 6, at 27 tbl.1 (showing that as of July 1, 2000, 15,413,792 out of the 23,053,055 individuals who contributed to a first tier regime contributed to the general regime).

20. *Cf. id.* (showing that as of July 1, 2000, 4,664,260 out of the 23,053,055 individuals who contributed to a first tier regime contributed to one of the special regimes).

21. *Cf. id.* (showing that as of July 1, 2000, 2,301,825 out of the 23,053,055 individuals who contributed to a first tier regime contributed to one of the non-agricultural non-wage earner regimes).

22. *Cf. id.* (showing that as of July 1, 2000, 673,178 out of the 23,053,055 individuals who contributed to a first tier regime contributed to the agricultural regime).

23. For a general overview of the American Social Security system's funding and benefit formula, see Kathryn L. Moore, *Redistribution Under the Current American Social Security System*, 61 U. PITT. L. REV. 955, 983-90 (2000).

24. *See* Didier Blanchet & Florence Legros, *France: The Difficult Path to Consensual Reforms*, in SOCIAL SECURITY PENSION REFORM IN EUROPE 109, 111-13 (Martin Feldstein & Horst Siebert eds., 2002).

25. *See, e.g.*, Pierre Mayeur, *La loi du 21 août 2003*, REGARDS SUR L'ACTUALITÉ 6, 13 (2003); JEAN-JACQUES DUPEYROUX, DROIT DE LA SÉCURITÉ SOCIALE 472 (13th ed., 1998); Emmanuelle Walraet & Ronan Mahieu, *Simulating Retirement Behavior: The Case of France*, in INTERNATIONAL SOCIAL SECURITY, PHASE 3 (Jonathan Gruber & David A. Wise eds., forthcoming publication) (manuscript at 4, on file with author).

26. The special regime formula can be described in one of two ways:

1) 2 percent x years of service (capped at 37.5) x final gross salary (excluding bonuses), or

different factors to calculate benefits.

Both the general regime and the special regimes for civil servants and military personnel, the most significant of the special regimes,²⁷ base benefits on wages. Specifically, the general regime bases benefits on average annual salary, defined as the average of the retiree's highest 25 years of earnings.²⁸ The special regimes for civil servants and military personnel, in contrast, base benefits on final salary, defined as the retiree's final six month's of pay.²⁹ Because wages tend to increase over time, the wage factor of the special regimes' benefit formula tends to be much more generous than that of the general regime.³⁰

As noted above, the second element of the benefit formula is the rate. For purposes of the general regime, the rate is capped at 50 percent and is generally a function of the age at which the retiree begins to collect benefits and the amount of time the retiree contributes to the general regime. Generally, an individual may retire

2) .75 (rate) x (years of service (capped at 37.5)/total years of service taken into account (37.5)) x final gross salary (excluding bonuses).

Compare OBSERVATOIRE DES RETRAITES, ANALYSE DE LA LOI 2003-775 DU 21 AOÛT 2003 PORTANT RÉFORME DES RETRAITES 2, available at http://www.observatoire-retraites.org/observatoire/rubriques/dossiers/project_loi/analyse.htm (last visited Apr. 12, 2005) [hereinafter ANALYSE DE LA LOI] with C. DES PENSIONS CIV. ET MILITAIRES art. 13 (effective prior to Jan. 1, 2004) (Fr.) (describing the benefit formula in the first way) and Walraet & Mahieu, *supra* note 25, at 6 (describing the benefit formula in the second way). The advantage of the first formula is that it is easier to understand. The benefit of the second formula is that it makes it easier to compare the special regime formula with that of the general regime. For this reason, this section will focus on the second formula.

27. Although there are more than 120 different special regimes, only about 15 accept new participants. See DUPEYROUX, *supra* note 25, at 791 & n.4. Moreover, the benefit formulas and management of these special regimes are generally similar. See GRECIANO, *supra* note 6, at 35; GALLAS & CORATO, *supra* note 14, at 73. Thus, in discussing the special regimes, this section will focus on the special regimes for civil servants and military personnel because they are the most significant in terms of coverage (they cover about half of all special regime participants) and are reasonably representative of the terms of most of the other special regimes. For a more detailed description of some of the other special regimes, see GRECIANO, *supra* note 6, at 35-43.

28. For retirees reaching age 60 before January 1, 1994, the average annual salary is based on the retiree's highest 10 years of earnings. In 1993, the general regime was amended to increase the number of years taken into account by one year each year until it reaches 25 in 2008. See CONSEIL D'ORIENTATION DES RETRAITES, *supra* note 2, at 55.

29. See CONSEIL D'ORIENTATION DES RETRAITES, *supra* note 2, at 55. For these purposes, final salary excludes bonuses, which on average represent about 15 percent of total net income (and up to 50 percent of net income for some categories of civil servants). See Walraet & Mahieu, *supra* note 25, at 6.

30. Indeed, most of the other special regimes are even more generous than the special regimes for civil servants and base benefits on the final month of pay (including some bonuses). CONSEIL D'ORIENTATION DES RETRAITES, *supra* note 2, at 55.

at age 60 and receive benefits at the full rate of 50 percent under the general regime if the individual contributed to the general regime for at least 40 years.³¹ In the alternative, individuals are eligible for benefits at the full rate of 50 percent regardless of the number of years of participation if they wait to retire until age 65.³² For individuals who elect to retire before they are eligible for the full rate, the rate is generally decreased by 2.5% for each missing quarter of participation.³³ For purposes of the special regimes for civil servants and military personnel, participants earn benefits at the rate of two percent per year for up to 37 ½ years of service.³⁴ Thus, if an individual participates in the special regimes for 37 ½ years, the participant is entitled to a benefit of seventy-five percent of final salary. There is no adjustment for age and thus the benefit is not reduced if the participant begins to collect benefits before age sixty-five (so long as the participant has at least 37 ½ years of service).³⁵

The final element of the general regime formula is the ratio of the duration of participation in the general regime (capped at 150 quarters) to the maximum number of quarters of participation taken into account (150). Thus, if an individual contributes to the general regime for less than 150 quarters, the individual's retirement benefit will be reduced. As noted above, participants in the special regimes for civil servants and military personnel earn benefits at the rate of 2% per year. If an individual participates in the special regimes for less than 37 ½ years, the participant's benefit will be less than 75 percent of final salary.³⁶ In addition, an individual must contribute to the special regimes for at least 15 years in order to be eligible to receive benefits.³⁷

31. The 1993 reform not only amended the definition of average annual salary for purposes of the general regime, but also gradually increased the number of years of participation required to receive benefits at the full rate of 50 percent at age 60. Retirees reaching age 60 prior to January 1, 1994, are entitled to begin collecting benefits at age 60 at the maximum rate of 50 percent after 37.5 years of participation. For retirees reaching age 60 on or after January 1, 1994, the number of years required for benefits at the maximum rate gradually increased to 40 beginning in 2003. Mayeur, *supra* note 25, at 6-7.

32. See DUPEYROUX, *supra* note 25, at 474; WALRAET & MAHIEU, *supra* note 25, at 4.

33. See Jacques Bichot, *Les rachats d'annuités autorisés par la loi du 21 août 2003: un bel exemple d'effet Matthieu*, DROIT SOCIAL, Apr. 2004, at 408, 409. The missing quarters are based on the lesser of the number of quarters required until the individual reaches age 65 or the number of quarters required for the full rate at age 60 (160 quarters as of 2008).

34. Mayeur, *supra* note 25, at 12. If a participant retires with less than 37.5 years of service, then the participant's benefit will be necessarily be less than 75 percent pursuant to the benefit formula. *Id.*

35. See *id.*; CONSEIL D'ORIENTATION DES RETRAITES, *supra* note 2, at 55; GRECIANO, *supra* note 6, at 37; Walraet & Mahieu, *supra* note 25, at 6.

36. See Walraet & Mahieu, *supra* note 25, at 6.

37. C. DES PENSIONS CIV. ET MILITAIRE DE RETRAITE art. L(4) (Fr.). Individuals who have participated less than 15 years are covered by the general regime and a special mandatory complementary retirement regime for civil servants, IRCANTEC. See GALLAS & CORATO, *supra* note 14, at 74; GRECIANO, *supra* note 6, at 37.

The agricultural regime and a couple of the non-agricultural non-wage earner regimes are aligned with the general regime so that they have almost identical benefit formulas.³⁸ The remaining non-agricultural non-wage earner regimes, however, have very different benefit formulas. For example, the regime for the liberal professions bases benefits on a percentage of the AVTS (a minimum old age benefit).³⁹

B. The Second Tier

The second tier of the French retirement system, the mandatory complementary retirement regimes, has no analog in the United States. The mandatory complementary retirement regimes are typically funded principally on a pay-as-you go basis and distribute benefits through a points system, sort of pay-as-you go defined contribution plans. Throughout their working lives, participants accumulate points in proportion to their contributions. Their pension benefits are then based on their total accumulated points multiplied by the value of a point, which is fixed each year.⁴⁰

There are seven different mandatory complementary retirement regimes. The two most significant are ARRCO and AGIRC,⁴¹ which cover most private sector employees.⁴² In addition, most participants in the non-agricultural non-wage earner base regimes are covered by separate mandatory complementary retirement regimes.⁴³ Most special regime participants, however, are not covered by a mandatory complementary regime.⁴⁴ Instead, the special regimes typically provide such generous benefits that the special regime benefits are about equal to or may even exceed the combined benefits private sector employees receive from the general

38. See CONSEIL D'ORIENTATION DES RETRAITES, *supra* note 2, at 51-52 (noting that agricultural regime, regime for craftsmen, and regime for industrialists and merchants are aligned with general regime); DUPEYROUX, *supra* note 25, at 471.

39. See GRECIANO, *supra* note 6, at 49.

40. See Moore, *supra* note 4, at 459-67 (describing the two principal mandatory complementary regimes, ARRCO and AGIRC, in greater detail); See also GRECIANO, *supra* note 6, at 51-60 (describing second tier in more detail).

41. Cf. DUPEYROUX, *supra* note 25, at 973, 986, 988 & n.4 (including IRCANTEC, a mandatory complementary retirement regime for contract employee of the public and parapublic sector who are also covered by the general regime, as one of the three principal mandatory complementary retirement regimes).

42. See OBSERVATOIRE DES RETRAITES, *supra* note 18, at 4. ARRCO and AGRIC also cover agricultural employees covered by the agricultural regime. *Id.*

43. See *id.*

44. See GRECIANO, *supra* note 6, at 51 (noting that with a few exceptions, public sector employees do not participate in a complementary regime because their base benefits are judged to be sufficient).

regime and ARRCO and AGIRC.⁴⁵

C. The Third Tier

The third tier of the French retirement system consists of optional supplementary occupational plans. Like American employer-sponsored pension plans, optional supplementary occupational plans are usually pre-funded, receive favorable tax treatment, and are offered by individual employers.⁴⁶ The principal difference between optional supplementary occupational plans in France and employer-sponsored plans in the United States is the role they play in the retirement system. In the United States, about half of the workforce participates in an employer-sponsored pension plan,⁴⁷ and these plans hold over four trillion dollars in assets.⁴⁸ In France, in contrast, employer-sponsored pre-funded plans have played a negligible role in the retirement system,⁴⁹ although in recent years the French have seriously debated expanding the role of private pensions.⁵⁰

III. OVERVIEW OF THE 2003 REFORM

Prior to the summer of 2003, the French retirement system faced serious

45. See Anne Lavigne, *Pension Funds in France: Still a Dead End?*, 28 THE GENEVA PAPERS ON RISK AND INSURANCE 127, 146 (2003); GRECIANO, *supra* note 6, at 27; Jean-Luc Gréau, *Fonds de pension: les grandes illusions*, LE DÉBAT, Sept.-Oct. 1998, at 18, 21.

46. See Moore, *supra* note 4, at 469-71 (describing supplementary occupational plans in detail); GRECIANO, *supra* note 6, at 60-68; FRANÇOIS CHARPENTIER, RETRAITES ET FONDS DE PENSION: L'ÉTAT DE LA QUESTION EN FRANCE ET À L'ÉTRANGER 264-335 (3d ed. 1997).

47. See PATRICK J. PURCELL, RETIREMENT SAVINGS AND HOUSEHOLD WEALTH IN 2000: A SUMMARY OF RECENT DATA, at CRS-3 (Congressional Research Service, 2003).

48. PENSION AND WELFARE BENEFITS ADMIN., U.S. DEP'T OF LABOR, NO. 12, PRIVATE PENSION PLAN BULLETIN: ABSTRACT OF 1999 FORM 5500 ANNUAL REPORTS 11 tbl. A5 (2004), available at <http://www.dol.gov/ebsa/PDF/1999pensionplanbulletin.pdf> (last visited Apr. 18, 2005).

49. "According to survey data by INSEE [National Institute of Statistics and Economic Studies] in 2000, 12 per cent [sic] of French households have voluntary retirement savings through complementary collective pension schemes." Lavigne, *supra* note 45, at 132; see also INTERNATIONAL LABOUR OFFICE, SOCIAL SECURITY: A NEW CONSENSUS 87 tbl.5.2 (2001), available at <http://www.ilo.org/public/English/protection/socsec/download/aconsens.pdf> (last visited Apr. 18, 2005) (showing that pension assets represent 3 percent of GNP in France compared to 66 percent of GNP in the United States); CHARPENTIER, *supra* note 46, at 255-56 & tbl.1 (noting that in 1995, the first two tiers of French retirement system paid about 900 billion francs in benefits compared to the third of the French retirement system which only collected about 10 billion francs in contributions).

50. See Kathryn L. Moore, *Lessons from the French Funding Debate*, 65 OHIO ST. L.J. 5, 12-20 (2004) (discussing this debate).

short-term as well as long-term funding difficulties. The Pension Stewardship Council predicted that by 2020 benefits from the general regime would exceed contributions by over 10 billion Euros⁵¹ and benefits under the special regimes for civil servants and military personnel would exceed contributions by over 20 billion Euros.⁵² The Pension Stewardship Council further predicted that by 2040, general regime benefits would exceed general regime contributions by 40 to 50 billion Euros and benefits under the special regimes for civil servants and military personnel would exceed contributions by almost 40 billion Euros.⁵³

In order to address these looming deficits, the French government enacted its most recent reform of the French retirement system in the summer of 2003.⁵⁴ The reform is noteworthy for its breadth. In the past, most reforms have addressed relatively narrow segments of the French retirement system. For example, in 1993, the French legislature enacted a significant reform of the first tier general regime for private sector employees.⁵⁵ In 1995, the French government tried to reform the first tier special regimes for public employees.⁵⁶ In 1997, the French legislature sought to expand the "third tier" of the French retirement system by creating retirement savings plans (*plans d'épargne retraite*), which were quite similar to American 401(k) plans.⁵⁷

Unlike the preceding reforms, the 2003 reform touched a wide variety of elements of the French retirement system. It affected not only the first tier general regime for private sector employees but also the most significant special regimes, the special regimes for civil servants and military personnel.⁵⁸ It created a new second

51. The Pension Stewardship Council used two different sets of actuarial assumptions to assess the general regime. Under one set of assumptions, general regime benefits were expected to exceed general regime contributions by 10.9 million Euros by 2020. Under the other set of assumptions, the gap was predicted to be 15.2 million Euros. CONSEIL D'ORIENTATION DES RETRAITES, *supra* note 2, at 131.

52. *Id.*

53. *Id.* In 1999, a reserve was established to help address the general regime's long-term funding deficit. See Law No. 98-1194 of Dec. 1998 art.2, J.O., Dec. 27, 1998, p. 19646 (Fr.). Contributions to the reserve plus earnings on those contributions are expected to reach 1 trillion Euros in 2020 when it will begin to be drawn down to help finance benefits between 2020 and 2040. CONSEIL D'ORIENTATION DES RETRAITES, *supra* note 2, at 133-34. The reserve may cover as much as half of the financing deficit between 2020 and 2040. *Id.* at 134.

54. Law No. 2003-775 of Aug. 21, 2003, J.O., Aug. 22, 2003, p.14310 (Fr.). See Moore, *supra* note 50, at 12-20 (discussing past reforms of the French retirement system); see also Moore, *supra* note 4, at 475-83.

55. Law No. 93-936 of July 22, 1993, J.O., July 23, 1993, p. 10374 (Fr.).

56. For a brief description of then-Prime Minister Alain Juppé's failed efforts to reform the special regimes in 1995, see discussion *infra* Part IV.B.

57. Law No. 97-277 of Mar. 25, 1997, J.O., Mar. 26, 1997, p. 4657 (Fr.). The decrees required to give effect to the legislation, however, were never promulgated, and the law was eventually abrogated. See Lavigne, *supra* note 45, at 128; Moore, *supra* note 4, at 472.

58. Law No. 2003-775 of Aug. 21, 2003 art. 21-80.

tier mandatory complementary retirement regime for shopkeepers and industrialists.⁵⁹

Finally, it expanded the third tier of the French retirement system by introducing a new retirement savings vehicle (*le plan parternarial d'épargne salariale volontaire pour la retraite*).⁶⁰

The only significant element of the French retirement system that the 2003 reform did not touch was the special regimes for employees in publicly-owned companies such as railway workers (*SNCF*), Paris transport employees (*RATP*), and power utility workers (*EDF-GDF*). The official explanation offered for their exclusion was that because the rules for these special regimes are fixed by decree rather than law, the primary responsibility for reform of these regimes should come from the enterprise rather than the National Assembly.⁶¹ Cynics, however, contend that the reform specifically excluded these special regimes because the employees of these publicly-owned companies were particularly powerful in striking against the proposed reform in 1995, and the government sought to eliminate their ability to derail the proposed reform by excluding them from the reform.⁶² Regardless of the government's motive, the General Confederation of Labor (*Confédération générale du travail* (CGT)) called on these employees to strike against the proposed reform, and they did in fact participate in the demonstrations despite the fact that the reform did not concern them.⁶³

59. *Id.* art. 108-09.

60. *Id.* art. 109. Originally, the Fillon plan also introduced a new retirement savings plan (*le plan d'épargne pour la retraite*) that was similar, but not identical to the retirement savings plans introduced by the Thomas law. See MINISTÈRE DES AFFAIRES SOCIALES, DU TRAVAIL ET DE LA SOLIDARITÉ, RÉPUBLIQUE FRANÇAIS, PROJET DE LOI PORTANT RÉFORME DES RETRAITES art. 79, NOR: SOCX030005L/B1 (2003), available at http://www.fonction-publique.retraites.gouv.fr/data/Public/documents/retraites_pjl.pdf (last visited Apr. 19, 2005). That plan, however, was replaced with an individual retirement savings plan (*le plan d'épargne individuel pour la retraite*) that is provided on an individual rather than a collective basis. See Loi no. 2003-775, Art 108. See also EUROPEAN INDUSTRIAL RELATIONS OBSERVATORY ONLINE, PENSION REFORM ADOPTED, available at <http://www.eiro.eurofound.ie/print/2003/09/feature/fr0309103f.html> (last visited Apr. 17, 2005) [hereinafter, EIRONLINE, PENSION REFORM ADOPTED].

61. See Mayeur, *supra* note 25, at 7; M. Jean-Pierre Raffarin, Discours du Premier Ministre au Conseil économique et social, in AUX SOURCES DE LA LOI: RÉFORME DES RETRAITES, Oct. 2003, at 5, 10 (author's translation) [hereinafter Discours de Raffarin]; cf. Hervé Nathan, *Les retraites parachevés: Vote solennel de la loi ce matin. Les principaux points du texte*, LIBÉRATION, July 24, 2003, at 12 (François Chérèque, head of the CFTD, said that the government was wise to treat the general problem and not include the special regimes but that someday the beneficiaries of these regimes must open the debate to guarantee the future of their retirement system).

62. Eric Le Boucher, *Tous coupables du blocage*, LE MONDE, June 2, 2003, at 52; cf. François Molho, *Les privilégiés qui ne sont pas (encore) touchés*, 142 CAPITAL 126 (2003) (noting that the government, who well knows these workers' capacity for nuisance and remembers the 1995 strikes, promised that it was not its intention to modify their entitlement).

63. See Marion Nowak, *News From France: Stop the Strikes?*, BONJOUR PARIS, June 16,

In addition to its wide-ranging nature, the 2003 reform is noteworthy for its speed. On January 6, 2003, President Jacques Chirac officially launched the reform,⁶⁴ popularly known as the "Fillon plan,"⁶⁵ after the Minister of Social Affairs François Fillon who was assigned primary responsibility for the reform,⁶⁶ and by August 2003, the Fillon plan was enacted into law and published in the Official Journal.

The law consists of 116 articles.⁶⁷ This section will not attempt to describe each article of the law in great detail.⁶⁸ Instead, it will simply describe the principal provisions of the law.⁶⁹

A. Participation Requirement

The first, and most controversial,⁷⁰ change wrought by the 2003 reform was an increase in the number of years of participation required to receive benefits at the full rate. As noted in the preceding section,⁷¹ prior to the 2003 reform, participants in the general regime were required to contribute to the general regime for forty years in order to be eligible for benefits at the full rate at age sixty while special regime participants were only required to contribute to the special regimes for 37 ½ years in order to be eligible to receive benefits at the full rate.

2003, available at <http://www.bonjourparis.com/articles.php?articleId=618>; Natacha Tatu, "Le Jour où on nous cherchera . . .", LE NOUVEL OBSERVATEUR, June 5-11, 2003, at 56; Le Boucher, *supra* note 62, at 52.

64. M. Jacques Chirac, Allocution du Président de la République À l'occasion des voeux aux forces vives (Jan. 6, 2003), *excerpts reprinted in* AUX SOURCES DE LA LOI: RÉFORME DES RETRAITES, Oct. 2003, at 1-4 (author's translation).

65. See, e.g., Thierry Fabre, *Retraite: ce qui vous attend*, 142 CAPITAL 112, 114 (2003) (referring to the Fillon plan); François Wenz-Dumas, *Retraites: au Sénat, le PS joue le droit; Il exploite une faille sur la pension des fonctionnaires*, LIBERATION, July 5-6, 2003, at 15 (referring to the "Fillon law project").

66. Discours de Raffarin, *supra* note 61, at 5, 12.

67. Law No. 2003-775 of Aug. 21, 2003, J.O., Aug. 22, 2003, p.14310 (Fr.).

68. Nor will the article address the decrees enforcing the law that were promulgated since August 2003.

69. For a more detailed overview of the changes wrought by the 2003 reform, see, for example, Mayeur, *supra* note 25, at 10-32; ANALYSE DE LA LOI, *supra* note 26.

70. François Wenz-Dumas, *Chirac décrète un allongement des retraites; Une session extraordinaire du Parlement pour continuer l'examen du projet*, LIBERATION, June 28-29, 2003, at 14 (describing the provision extending the years of participation required for full benefits for the special regime for civil servants as the provision that put one two million demonstrators on the street in May and June); François Wenz-Dumas, *Le Sénat prend les retraites: L'examen, qui débute aujourd'hui, promet d'être moins long qu'à l'Assemblée*, LIBERATION, July 7, 2003, at 13 (quoting a Senator, who was also a member of the Socialist Party, as saying that they were going to object, above all, to the reform provision extending the years of participation required for full benefits for the special regime for civil servants).

71. See discussion *supra* Part II.A.

The 2003 reform gradually increases the number of years of participation required to receive benefits at the full rate in the special regimes for civil servants and military personnel.⁷² Specifically, it increases the participation requirement by 6 months each year until it reaches 40 in 2008.⁷³ This change, which aligns the participation period in the special regimes for civil servants and military personnel with that of the general regime,⁷⁴ is particularly noteworthy because in 1995 then-Prime Minister Alain Juppé proposed a similar change, but his proposal was abandoned in large part due to massive protests staged by public sector and other workers covered by the special regimes.⁷⁵ In 2003, unions again protested the proposed change⁷⁶ but failed to prevent it.

The 2003 reform did not stop with aligning the special regime's participation requirement with that of the general regime. Instead, it went further and instituted additional increases in both regimes.⁷⁷ Specifically, it provides that beginning in 2009, the participation requirement in both regimes will increase by one quarter a year until it reaches 41 in 2012.⁷⁸ Moreover, beginning in 2016, the participation requirement will increase by one quarter a year until it reaches 42 in 2020.⁷⁹ These increases, however, depend on future employment trends and the financial situation of the retirement regimes.⁸⁰ If unemployment rates remain elevated and companies continue to terminate their older workers,⁸¹ it is unlikely that these increases will be

72. See Law No. 2003-775 of Aug. 21, 2003 art. 5, J.O., Aug. 22, 2003, p.14310 (Fr.).

73. See *id.*; see also ANALYSE DE LA LOI, *supra* note 26.

74. In light of this change, the special regime benefit can no longer be expressed as 2 percent per year x years of service (up to 37.5) x final gross pay (excluding bonuses). Compare note 26, *supra*. Instead, the special regime benefit must now be expressed as .75 percent x (quarters of participation (up to 160)/maximum number of quarters of participation taken into account (160)) x final gross pay (excluding bonuses). See Law No. 2003-775 of Aug. 21, 2005 art. 51.

75. See Bruno Palier & Giuliano Bonoli, *La montée en puissance des fonds de pension: Une lecture comparative des réformes des systèmes de retraite, entre modèle global et cheminements nationaux*, 4 L'ANNÉE DE LA RÉGULATION 210, 227 (2000); Giuliano Bonoli, *Pension Politics in France: Patterns of Co-Operation and Conflict in Two Recent Reforms*, 20 W. EUR. POL. 111 (1997).

76. For descriptions of the protests, see, e.g., Vaiju Naravane, *Raffarin unmoved as strike continues*, THE HINDU, June 12, 2003, available at <http://www.hinduonnet.com/thehindu/2003/06/12/stories/2003061204671400.htm> (last visited Apr. 15, 2005); Jean-Marie Godard, *New Strikes Loom Over Government's Pension Reform Plans*, INTERNAT'L HERALD TRIB., May 26, 2003; Charles Bremner, *France Halted by Union Protest Over Pension Plan*, THE TIMES (LONDON), May 14, 2003.

77. The changes also apply to the other base regimes that are aligned with the general regime. See Law No. 2003-775 of Aug. 21, 2003 art. 5(V), J.O., Aug. 22, 2003, p.14310 (Fr.).

78. See *id.* art. 5(III).

79. See *id.* art. 5(V).

80. See *id.*

81. For a discussion of the low employment rate of older workers in France, see, for example, Xavier Gaullier, *La réforme des retraites et les entreprises: quelles fins de carrière?*,

implemented.⁸²

B. Ratio of Participation Requirement

As described in the preceding section,⁸³ the third element of the general regime formula is the ratio of the duration of participation in the general regime (capped at 150 quarters) to the maximum number of quarters of participation taken into account (150). Thus, if an individual contributes to the general regime for less than 150 quarters, the individual's retirement benefit will be reduced. The 2003 reform gradually increases the number of quarters of participation taken into account for these purposes to 160 so that by 2008, an individual's benefit will be reduced if the individual contributes to the general regime for less than 160 quarters.⁸⁴ Similarly, if a participant in the special regimes for civil servants and military personnel contributes to the special regimes for less than 160 quarters, that participant's retirement benefit will also be reduced.⁸⁵

C. Reduction for Early Retirement

As discussed in the preceding section, the general regime benefit rate for individuals who retire before age sixty-five with less than 160 quarters of participation is reduced by 2.5% for each missing quarter. The 2003 reform gradually reduces this penalty from 2.5% per quarter or 10% per year to 5% per year.⁸⁶

Prior to the 2003 reform, there was no such reduction for early retirees under the special regimes. The 2003 reform gradually introduces a five percent per year reduction for retirees who retire early under the special regimes for civil servants and military personnel.⁸⁷

D. Delayed Retirement Credit

DROIT SOCIAL, June 2004, at 64 (noting that in France, the employment rate of 55 to 64 year olds is only 32 percent).

82. See Mayeur, *supra* note 25, at 16; Caroline Brizard, *Le sort des retraites dans le projet: Les sacrifices que demande Fillon*, LE NOUVEL OBSERVATEUR, May 29-June 4, 2003, at 52.

83. See discussion *supra* Part II.A.

84. See Law No. 2003-775 of Aug. 21, 2003 art. 22, J.O., Aug. 22, 2003, p.14310 (Fr.).

85. *Id.* art. 51.

86. See Bichot, *supra* note 33, at 409; Brizard, *supra* note 82, at 52; Mayeur, *supra* note 25, at 14. Although this provision is frequently discussed as part of the 2003 law, it was not actually part of the law itself but was put into effect by a decree entered February 13, 2003. See Bichot, *supra* note 33 (citing décret no. 2004-144 du 13 février 2004).

87. Law No. 2003-775 of Aug. 21, 2003 art. 51.

Prior to 2003, neither the general regime nor the special regimes provided individuals with any incentive to delay retirement beyond the date at which they were entitled to full retirement benefits (age 60 with 40 years of service for purposes of the general regime or 37.5 years of service for purposes of the special regimes). The 2003 law introduces a delayed retirement credit for both regimes. Specifically, for purposes of the general regime, individuals entitled to benefits at the full rate of 50%⁸⁸ who continue to work beyond age 60 will earn an additional .75% per quarter or 3% per year until they reach age 65.⁸⁹ Similarly, for purposes of the special regimes for civil servants and military personnel, individuals with full careers⁹⁰ who continue to work beyond age 60 will earn an additional .75% per quarter or 3% per year for up to five years.⁹¹ This was one of a number of measures of the 2003 reform that was explicitly intended to encourage French workers to extend their working lives and combat France's perennial unemployment problem.⁹²

E. Early Retirement for Individuals who Began to Work at Very Young Age

Prior to 2003, individuals could not begin to receive benefits from the general regime until they reached age 60. The 2003 reform authorizes participants who begin to work at a very young age to begin receiving retirement benefits from the general regime at a younger age if their working careers are sufficiently long.⁹³ Specifically, individuals who begin to work at age 14 or 15 and contribute to the

88. Currently individuals must work for 40 years in order to receive benefits at the full rate of 50 percent. The number of years of service required to receive benefits at the full rate is gradually increased from 40 years to 41 and later 42 years. *See supra* pg. 262.

89. Law No. 2003-775 of Aug. 21, 2003 art. 25; ANALYSE DE LA LOI, *supra* note 26, at 3. Individuals who continue to work beyond age 65 will only accumulate additional retirement benefits if they have less than 40 years of service and thus have their benefits reduced under the third element of the benefit formula (duration of participation in the general regime/total participation taken into account (40 years)). *See id.*

90. A full career will gradually increase from 37.5 years to 40 years beginning in 2004. In addition, a full career is scheduled to later increase to 41 and ultimately 42 years. *See supra* pg. 262.

91. Law No. 2003-775 of Aug. 21, 2003 art. 51, J.O., Aug. 22, 2003, p.14310 (Fr.).

92. For additional changes that are intended to foster employment for individuals over the age of 55, see Mayeur, *supra* note 25, at 19; EUROPEAN INDUSTRIAL RELATIONS OBSERVATORY ON-LINE, GOVERNMENT'S PENSION REFORM TAKES SHAPE, *available at* <http://ww.eiro.eurofound.ie/print/2003/05/feature/fr0305103f.html> (last visited Apr. 1, 2005).

93. Law No. 2003-775 of Aug. 21, 2003 art. 23. The 2003 law does not establish the specific parameters for eligibility for early retirement benefits, but instead provides that the rules are to be established by decree. *Id.* It also provides that the decree is to establish rules pursuant to which credit for national service may be awarded. *Id.* It is estimated that the provision may affect 270,000 people and could cost between 600 and 700 million Euros over a 10-year period. EIRONLINE, PENSION REFORM ADOPTED, *supra* note 60.

general regime for 42 years may be entitled to begin to receive benefits at age 56 or 57.⁹⁴ Individuals who begin their careers at age 14 or 15 and contribute to the general regime for 41 years may be entitled to begin to receive benefits at age 58.⁹⁵ Finally, participants who begin their careers at age 16 and contribute to the general regime for 40 years may be entitled to begin to receive benefits at age 59.⁹⁶ This provision, like the increase in the minimum benefit discussed below,⁹⁷ is viewed as a reaffirmation of the principal of solidarity in the French retirement system,⁹⁸ and owes much to the efforts of François Chérèque, the leader of the French Democratic Confederation of Labor (*Confédération française démocratique du travail* (CFDT)), one of France's leading trade union federations, in the unions' negotiations with the French government.⁹⁹

F. Indexing

Prior to 2003, benefits under the general regime were indexed to changes in prices while benefits under the special regimes were indexed to changes in wages. The 2003 reform provides that benefits under both the general regime¹⁰⁰ and the regimes for civil servants and military personnel¹⁰¹ are to be indexed to changes in prices.

G. Retirement Benefits while Employed

Prior to the 2003 reform, individuals could receive both wages and benefits

94. See ANALYSE DE LA LOI, *supra* note 26 (noting that May 14 and May 15 guidance suggested that the decrees would contain the rules identified in the text). See also BRUNO PALIER, LA RÉFORME DES RETRAITES 108 (2004) (noting that the 2003 reform announced that individuals having contributed to the general regime for more than 40 years before age 60 and having begun work between ages 14 and 16 would be entitled to begin to receive benefits at age 58).

95. ANALYSE DE LA LOI, *supra* note 26.

96. *Id.*

97. See *infra* pg. 266.

98. Mayeur, *supra* note 25, at 20.

99. Prior to the negotiations with the trade unions, the government proposed to limit the early retirement benefit to individuals who began their careers at age 14 or 15 and would have only permitted them to retire at ages 58 or 59. See *id.* As a result of its negotiations with François Chérèque, the French government lowered the retirement age and extended the benefit to individuals who began their careers at age 16. See *Les concessions de Fillon*, LE NOUVEL OBSERVATEUR, at 68, 68.

100. Law No. 2003-775 of Aug. 21, 2003 art. 27, J.O., Aug. 22, 2003, p.14310 (Fr.)

101. *Id.* art. 51 (amending art. L(16)).

from the general regime so long as they worked for a new employer.¹⁰² Prior to the 2003 reform, the special regimes similarly did not impose any limitations on individuals earning both wages and a pension other than prohibiting individuals from returning to work for their last employer.¹⁰³

The 2003 reform provides that individuals can now receive both wages and a pension from the general regime so long as their wages plus pension benefit do not exceed their last wage earned before retirement.¹⁰⁴ In addition, the 2003 reform authorizes retirees to return to work for their former employer beginning six months after retirement.¹⁰⁵ With respect to the special regimes for civil servants and military personnel, the 2003 reform provides that retired civil servants can be re-employed in civil service, but their wage may be no more than one-third of their pension.¹⁰⁶ This limitation, however, does not apply to retirees who reach the applicable statutory retirement age before 2004.¹⁰⁷

H. Minimum Retirement Benefit

Prior to 2003, the general regime provided very low wage earners with a minimum retirement benefit (*minimum contributif*) that was designed to insure that individuals who contributed to the general regime were entitled to a greater retirement benefit than the minimum old age benefit (*minimum veillesse*) available to all individuals over the age of sixty-five regardless of whether they ever contributed to any retirement plan.¹⁰⁸ The amount of the minimum retirement benefit was fixed by decree and revalued each year at the same time and at the same rate as the minimum old age benefit.¹⁰⁹ Individuals who contributed to the general regime for a full 150 quarters (37 ½ years) were entitled to the full minimum benefit while the minimum benefit for workers who contributed for fewer quarters was reduced proportionally.¹¹⁰

Just as the 2003 reform increases the number of years required for a participant to receive full benefits under the general regime from 150 quarters to 160 quarters,¹¹¹ the 2003 reform gradually increases to 160 the number of quarters required for a worker to be entitled to receive the full minimum retirement benefit.¹¹²

102. ANALYSE DE LA LOI, *supra* note 26, at 6.

103. *Id.*

104. Law No. 2003-775 of Aug. 21, 2003 art. 15; Mayeur, *supra* note 25, at 19; ANALYSE DE LA LOI, *supra* note 26, at 6.

105. Law No. 2003-775 of Aug. 21, 2003 art. 15; Mayeur, *supra* note 25, at 19; ANALYSE DE LA LOI, *supra* note 26, at 6.

106. Law No. 2003-775 of Aug. 21, 2003 art. 64.

107. *Id.*

108. DUPEYROUX, *supra* note 25, at 476, 1131-35.

109. ANALYSE DE LA LOI, *supra* note 26, at 8 of 13.

110. *Id.*

111. *See* discussion *supra* Part III.B.

112. Law No. 2003-775 of Aug. 21, 2003 art. 5, J.O., Aug. 22, 2003, p.14310 (Fr.).

In making this adjustment, however, the 2003 reform assures that minimum retirement benefit (including benefits from the mandatory complementary retirement regime, ARRCO) for workers with complete careers (that is, workers who have contributed long enough to receive benefits at the full rate) should be equal to at least 85 percent of the minimum wage by 2008.¹¹³ Studies showed that absent reform, the replacement rate would have decreased from 81 percent of the minimum wage to 70 percent by 2020.¹¹⁴ As noted above,¹¹⁵ this provision is viewed as a reaffirmation of the principal of solidarity and owes much to François Chérèque's efforts.¹¹⁶

Prior to 2003, the special regimes for civil servants and military personnel also provided a minimum retirement benefit.¹¹⁷ The 2003 reform also modifies the minimum retirement benefit under the special regimes for civil workers and military personnel to reflect the increased number of quarters of participation required for benefits at the full rate and increases the minimum retirement benefit by five percent.¹¹⁸

I. Funded Savings Plans

Although the provisions regarding funded savings plans received little public attention during the debate on the 2003 plan, the 2003 reform also includes a couple of significant provisions affecting the third tier of the French retirement system. First, the 2003 reform creates a new kind of individual retirement savings plan (*le plan d'épargne individuel pour la retraite*).¹¹⁹ This "new individual savings plan is an

113. Law No. 2003-775 of Aug. 21, 2003 art. 4. The law cannot and does not guarantee the total amount of the minimum retirement benefit because it depends on both the minimum benefit provided by the general regime and the benefit provided by the second tier complementary retirement regime, ARRCO, which is governed by the social partners and not by the French legislature. See Mayeur, *supra* note 25, at 20. Instead, the law establishes this as a socio-political objective, but in its negotiations with the social partners, the government promised to increase the *minimum contributif* by three percent in three stages between 2003 and 2008. *Id.* at 21.

114. Mayeur, *supra* note 25, at 20; CONSEIL D'ORIENTATION DES RETRAITES, *supra* note 2, at 136.

115. See *supra* pg. 265.

116. The original proposal only promised minimum wage workers with full careers a benefit equal to 75 percent of the minimum wage. See Raffarin "ferme mais pas fermé," *les négociations reprennent*, LIBERATION, May 15, 2003, available at <http://www.liberation.fr/page.php?Article=110708> (last visited Apr. 19, 2005).

117. *Id.*

118. ANALYSE DE LA LOI, *supra* note 26, at 8.

119. Law no. 2003-775 of Aug. 21, 2003 art. 108, J.O., Aug. 22, 2003, p.14310 (Fr.). Originally, the Fillon plan introduced a pension savings plan (*plan d'épargne pour la retraite*), which was collective and thus could have opened the way for pension funds. The savings plan that was ultimately enacted, however, is provided on an individual rather than a collective

insurance contract that [permits workers] to accumulate assets for the purchase of an annuity."¹²⁰ Workers may contribute up to ten percent of income, capped at 24,000 Euros (about US \$30,000), on a tax favored basis.¹²¹ Distributions from the annuity are subject to personal income tax.¹²²

The 2003 reform also introduced another new savings vehicle, the voluntary employee pension savings plan (*plan parternarial d'épargne salarial volontaire pour la retraite*).¹²³ This new savings vehicle replaces the voluntary salary savings plan (*plan parternarial d'épargne salarial volontaire*) that was created in 2001 to encourage short- to medium-term savings.¹²⁴ Unlike the old voluntary salary savings plan which required savings for a ten-year period, the new voluntary employee pension savings plan extends the contribution period up to retirement.¹²⁵ Participants can choose to receive their benefits in the form of a lump sum or annuity, and both employee and optional employer contributions are eligible for favorable tax treatment.¹²⁶

J. Summary

The 2003 reform has been described as the most significant reform of the French retirement system since the creation of the system in 1945.¹²⁷ It touches almost every element of the retirement system, from amending the first tier general regime and special regimes for civil servants and military personnel to creating a new second tier mandatory complementary retirement regime for shopkeepers to creating a

basis. Cf. EIRONLINE, PENSION REFORM ADOPTED, *supra* note 60. Arguably, this new individual savings vehicle expands the fourth tier of the French retirement system, individual savings, rather than the third tier because it is provided on an individual rather than a collective basis.

120. SOC. SEC. ADMIN., INTERNATIONAL UPDATE: RECENT DEVELOPMENTS IN FOREIGN PUBLIC AND PRIVATE PENSIONS 1 (2004), *available at* http://www.ssa.gov/policy/docs/progdsc/intl_update/2004-01/2004-01.pdf (last visited Apr. 16, 2005).

121. *Id.*

122. *Id.*

123. Law No. 2003-775 of Aug. 21, 2003 art. 109.

124. *See* Moore, *supra* note 50, at 18-20 (discussing the voluntary salary savings plans created in 2001).

125. SOC. SEC. ADMIN., *supra* note 120, at 1.

126. *Id.*

127. *See* BLOOMBERG, *France to Extend Contribution Period in Face of Deficit*, Apr. 25, 2003, *available at* http://quote.bloomberg.com/apps/news?pid=10000085&refer=europe&sid=aAj2U88XB_GE# (noting that Social and Labor Affairs Minister Francois Fillon described the reform as the most significant since the creation of the system in 1945); GALLAS & CORATO, *supra* note 14, at v (describing the reform as equally significant).

new third tier savings vehicle, the voluntary employee pension savings plan.

Although the reform is significant and far-reaching, it is not revolutionary. It steadfastly retains the basic pay-as-you go structure of the French retirement system. Indeed, the first article of the first title of the law states that “the Nation solemnly reaffirms its choice of a pay-as-you go retirement system which is at the heart of the social compact between generations.”¹²⁸

Because the reform was enacted in large part to address the system's looming deficits, it contains a number of benefit reduction measures. For example, the most significant, and controversial, element of the reform reduces benefits by increasing the number of years of participation required to receive full benefits.

The reform, however, is not limited to benefit reductions. Indeed, it contains some benefit enhancements. For example, it creates delayed retirement credits to provide workers with an incentive to delay retirement and thus help resolve the country's perennial unemployment problem. The reform also includes an early retirement benefit for workers who begin their careers at a very young age; this change is viewed as a reaffirmation of the principal of solidarity which lies at the very heart of the French retirement system.¹²⁹ Solidarity is similar to the American concept of “social adequacy”¹³⁰ and assures that participants receive a minimum level of benefits regardless of their contributions to the system and necessarily entails some degree of redistribution.¹³¹

Overall, the 2003 reform is a comprehensive and complex piece of legislative. Although it is unlikely to resolve all of the system's funding difficulties¹³² or be the final reform of the French retirement system,¹³³ it is a significant reform that should do much to reduce the system's funding difficulties.

128. Law No. 2003-775 of Aug. 21, 2003 art. I, J.O., Aug. 22, 2003, p. 14310 (Fr.) (author's translation).

129. See SOC. SEC. CODE art. L(111-1) (Fr.) (stating that “the French social security organization is founded on the principal of national solidarity.”)

130. See ROBERT J. MYERS, SOCIAL SECURITY 10 (4th ed. 1993) (noting that social adequacy means that all participants should be provided a certain standard of living regardless of their level of contributions).

131. See Moore, *supra* note 4, at 446 (discussing in greater detail the concept of solidarity in the French retirement system).

132. See Gérard Cornilleau & Henri Sterkyniak, *La réforme des retraites de 2003, bilan et perspective*, DROIT SOCIAL, Nov. 2003, at 932, 937 (noting that the 2003 reform should resolve almost all of the system's deficit through 2020 and most of the deficit through 2040 if, but only if, the unemployment rate decreases to 5 percent and the average retirement age increases from 57½ years to 62½ years).

133. See Yannick Moreau, *La réforme des retraites du 21 août 2003: une étape importante dans un processus de long terme*, DROIT SOCIAL, Nov. 2003, at 909 (contending that the 2003 reform is unlikely to resolve all of the system's financial difficulties but is an important step in a long-term process).

IV. WHY THE 2003 REFORM SUCCEEDED

President Chirac and Prime Minister Raffarin were not the first government officials to recognize the need to reform the French retirement system. In the decade between 1993, when the French legislature made some significant reforms to the general regime,¹³⁴ and 2003, the French government commissioned a series of studies, each of which recommended that the French retirement system be reformed.¹³⁵ In addition, twice during this decade, the French government undertook, but ultimately failed, to reform the French retirement system.¹³⁶ This section considers why the 2003 reform succeeded after these years of failed reform attempts and inaction.

A. Public Education

In the years leading up to the 2003 reform, the French government published a number of official studies, each of which outlined the then-present financial situation of the French retirement system and its need for reform.¹³⁷ These studies did not simply sit on governmental bookshelves gathering dust. Instead, they were widely reported in the public press,¹³⁸ and some were even made available to the general public on the Internet.¹³⁹ As a result of this public education, by May 2003, a majority of French citizens believed that reform of the retirement system was “both inevitable and long overdue”¹⁴⁰ and the figures were no longer in dispute.¹⁴¹ The

134. See Law No. 93-936 of July 22, 1993, J.O., July 23, 1993, p.10374 (Fr.). See also Moore, *supra* note 4 (discussing the reforms to the general regime in 1993).

135. See, e.g., CONSEIL D'ORIENTATION DES RETRAITES, *supra* note 2; DOMINIQUE TADDÉI, JEAN-MICHEL CHARPIN & OLIVIER DAVANNE, RETRAITES CHOISIES ET PROGRESSIVES (2000); JEAN-MICHEL CHARPIN, L'AVENIR DE NOS RETRAITES (1999).

136. In 1995, then-Prime Minister Alain Juppe tried, but failed, to reform the special regimes. See xx *infra* pg. 272 and Moore, *supra* note 4, at 456-57. In 1997, the French legislature sought to expand the third tier of the French retirement system by creating retirement savings plans (*plans d'épargne retraite*) but the law was officially abrogated in 2002. See Lavigne, *supra* note 45, at 128; Moore, *supra* note 4, at 471-72.

137. See *supra* note 135.

138. See, e.g., Fabre, *supra* note 65, at 114 (discussing the report by the COR (*Conseil d'orientation des retraites*)); Matthieu, *Retraites: l'info et l'intox*, LE NOUVEL OBSERVATEUR, June 5-11, 2003, at 52 (discussing statistics set forth in same report).

139. See, e.g., CONSEIL D'ORIENTATION DES RETRAITES, PREMIER RAPPORT DU CONSEIL D'ORIENTATION DES RETRAITES (2001), available at <http://www.cor-retraites.fr/article25.html> (last visited Apr. 19, 2005).

140. Bruce Crumley, *Season of the Strike*, 161 TIME EUROPE, May 19, 2003, available at http://www.time.com/time/Europe/magazine/article/0,13005,901030519_450946,00.html (last visited Apr. 17, 2005); see also *Un Entretien Avec Alain Touraine, En France, on ne sait toujours pas négocier*, LA VIE, June 12, 2003, at 33 (stating that everyone recognizes the need to harmonize the retirement systems); Mayeur, *supra* note 25, at 9 (noting that the

means of reform, rather than the need for reform, was the only remaining issue.¹⁴²

In outlining the proposed reform in February 2003, Prime Minister Raffarin declared that providing the general public with information on possible solutions was the government's first responsibility.¹⁴³ The French government sought to provide this education, and influence public opinion, in a number of ways. First, it established an Internet site devoted strictly to reform of the French retirement system.¹⁴⁴ In addition, in June 2003, Prime Minister Raffarin sent each French citizen a letter accompanied by a pamphlet entitled, "A reform for the future of our retirements: The principal dispositions of the law project."¹⁴⁵ The pamphlet provided a general description of the proposed reform, cited statistics showing the need for reform, and concluded with a special phone number to which individual inquiries regarding the proposed law could be directed.¹⁴⁶

This public education appears to have played a key role in the success of the 2003 reform by garnering sufficient public support to permit the legislature to enact the reform despite the objections of the socialist party and a number of trade union federations.¹⁴⁷

"diagnostics" regarding the challenges of financing the retirement system had long been posed and was no longer contested); François Darras, *Gouvernement Raffarin: Les Raisons d'une Dégringolade Annoncée*, MARIANNE, May 19-25, 2003, at 15, 16 (declaring that the government had succeeded at convincing the public of the absolute need for a reform though not necessarily the reform it proposed).

141. Fabre, *supra* note 65, at 114 (declaring that the numbers are indisputable, if the French retirement system is left in its current state it will explode). See also Brice Teinturier, *Les Français et la réforme des retraites*, REVUE POLITIQUE ET PARLEMENTAIRE, Mar./Apr. 2003, at 88, 88-89 (noting that according to a March 2003 poll, 71 percent of the respondents that financing the French retirement system was a grave problem that urgently need to be addressed).

142. For a description of alternative means of reform, see *Cinq filons délaissés par Fillon*, LIBERATION, May 15, 2003, available at <http://www.libe.com/page.php?Article=110660> (last visited Apr. 19, 2005).

143. Discours de Raffarin, *supra* note 61, at 12.

144. See RÉPUBLIQUE FRANÇAISE, SITE D'INFORMATION SUR L'AVENIR DES RETRAITES, at <http://www.retraites.gouv.fr/> (last visited Apr. 19, 2005).

145. RÉPUBLIQUE FRANÇAISE, UNE RÉFORME POUR L'AVENIR DE NOS RETRAITES: LES PRINCIPALES DISPOSITIONS DU PROJET DE LOI; see Nowak, *supra* note 63 (noting that the letters and pamphlets were beginning to arrive in homes on June 16).

146. Cécil Chaptal, *Un numéro indigo pour communiquer sur la réforme: Des retraités et des jurists répondent aux questions des salariés*, LIBERATION, June 20, 2003, at 14 (noting that a retired marine officer who helps answer the phones declared that they did create publicity for the government but simply provided information).

147. Cf. Raymond Soubie, *Pour la poursuite des réformes*, LIASONS SOCIALES, Oct. 2003, at 90 (contending that one of the three reasons why the 2003 reform succeeded was that the subject was prepared and publicized for more than ten years). See also Claire Guélaud and Philippe Le Coeur, *Le gouvernement a renoncé à une réforme globale de la santé*, LE MONDE, July 11, 2003, at 6 (noting that debate in order to educate was of primary importance in the

B. Consultation with Trade Union Federations

In 1995, then-Prime Minister Alain Juppé proposed to reform the special regimes in a manner similar to that enacted in the 2003 reform. Specifically, he proposed, among other things,¹⁴⁸ to increase the number of years of participation required for retirement at the full rate from 37 ½ years to forty years and to base benefits on the best twenty-five (rather than ten years) of salary.¹⁴⁹

This proposed reform met with fierce public opposition. A rail strike virtually paralyzed the country's railway system for three weeks. The rail workers were quickly joined by post office employees, teachers, and other civil servants who demonstrated daily in Paris and other cities. At the peak of demonstrations, two million people were reported to have taken to the streets, and sizeable losses to the French economy were reported. Unable - or unwilling - to reach an agreement with the trade union federations, Alain Juppé quickly decided to abandon his proposed plan to reform the special regimes.¹⁵⁰

Like the 1995 proposed reform, the 2003 plan was met with public demonstrations and strikes.¹⁵¹ In contrast to 1995, however, the strikes and demonstrations in 2003 failed to derail the proposed reform. This difference appears to be attributable to two key factors. First, the French government made a sustained effort to consult and negotiate with the trade union organizations.¹⁵² Second, the French government in fact reached an agreement with two trade union federations, the French Democratic Confederation of Labor (*Confédération française démocratique du travail* (CFDT)), and the French Confederation of Professional and Managerial Staff - General Confederation of Profession and Managerial Staff (*Confédération française de l'encadrement - Confédération général des cadres* (CFE-CGC)).¹⁵³

proposed reform of the health system just as it was of critical importance before reform of the retirement system).

148. The proposed reform also included reforms to the country's health insurance system that were gradually implemented throughout 1996 and 1997. Bonoli, *supra* note 75, at 120-21.

149. Palier & Bonoli, *supra* note 75, at 227; Bruno Palier, *A 'Liberal' Dynamic in the Transformation of the French Social Welfare System*, in *SOCIAL INSURANCE IN EUROPE* 84, 104 (Jochen Clasen ed., 1997).

150. Bonoli, *supra* note 75, at 111.

151. See, e.g., *Le paysage syndical remodelé par deux mois défilés*, LIBÉRATION, June 20, 2003, available at <http://www.liberation.fr/page.php?Article=119170> (describing the conflict between the trade union federations and the government as intense as that in 1995); Darras, *supra* note 140, at 15, 16 (declaring that if you believe the polls, the social movement of May 2003 is even more popular than that of November-December 1995).

152. Indeed, Ernest-Antoine Seillière, president of the employer organization Medef, described the government's successful method of reform as consisting of "concentration, consultation, and negotiation," Rémis Barroux & Jean-Michel Bezat, *M. Seillière: "Un vent de réforme souffle, mais pas assez fort."* LE MONDE, July 2, 2003, at 8.

153. See *infra* pp. 275-276.

Commentators attribute the failure of the 1995 reform in part to the government's failure to negotiate with the country's trade union federations prior to introducing the reform.¹⁵⁴ The government developed that reform proposal in secret and sought to force the country's social partners to accept the proposal without debate or negotiation. (In France, employer organizations and trade union organizations are commonly referred to as the "social partners."¹⁵⁵) In 2003, in contrast, the government developed its reform through a very public process of "debate, consultation, and negotiation,"¹⁵⁶ and sought to work with the social partners throughout the process.¹⁵⁷

Indeed, in launching the reform on January 6, 2003, President Jacques Chirac expressly referred to the role the social partners should play in the reform: "I am waiting for the social partners, and especially the enterprises, to play a leading role in resolving this problem."¹⁵⁸ The social partners were happy to oblige with seven trade union organizations¹⁵⁹ signing a joint statement on pensions setting forth seven objectives in negotiating reform the same day that President Jacques Chirac announced the 2003 reform.¹⁶⁰

On February 1, 2003, the trade union federations called for a joint demonstration to encourage the government to take their demands into account in the reform.¹⁶¹ Between 250,000 and 500,000 people participated in these

154. Palier & Bonoli, *supra* note 75, at 227; Bonoli, *supra* note 75, at 120.

155. See Daniel Béland & Patrik Marier, THE POLITICS OF PROTEST AVOIDANCE: POLICY WINDOWS, LABOR MOBILIZATION, AND PENSION REFORM IN FRANCE 2 (SEDAP Res. Paper No. 114, 2004).

156. Cf. Mayeur, *supra* note 25, at 6 (noting that this is the first economic or social reform to ever be the subject of such a phase of debate, concertation, and negotiation).

157. In discussing their joint efforts, terms such as consultation were frequently. Fillon, however, steadfastly refused to use the term "negotiation" in connection with the role of the trade union federations in the reform of the retirement system. See Guélaud & Le Coeur, *supra* note 147, at 6 (noting the government's use of the term "negotiation" in connection with proposed reform of the health system in contrast to Fillon's refusal to use the term in connection with reform of the retirement system).

158. Chirac, *supra* note 64, at 1.

159. The seven trade union organizations were the CFDT, General Confederation of Labor (*Confédération générale du travail, CGT*) French Christian Workers' Confederation (*Confédération française des travailleurs chrétiens, CFTC*), CFE-CGC, General Confederation of Labor-Force ouvrière (*Confédération générale du travail - Force ouvrière, CGT-FO*), National Federation of Independent Unions (*Union nationale des unions autonomes, UNSA*), and United Union Federation (*Fédération syndicale unitaire, FSU*). These seven trade union organizations are represented on the Pensions Stewardship Council (*Conseil d'orientation des retraites*). EUROPEAN INDUSTRIAL RELATIONS OBSERVATORY ON-LINE, GOVERNMENT LAUNCHES PENSIONS REFORM, available at <http://www.eiro.eurofound.ie/print/2003/02/feature/fr0302108f.html> (last visited Apr. 6, 2005) [hereinafter EIRONLINE, GOVERNMENT LAUNCHES PENSIONS REFORM].

160. *Id.*

161. *Id.*

demonstrations.¹⁶² Two days later, on February 3, 2003, Prime Minister Jean-Pierre Raffarin outlined the proposed reform process before the Economic and Social Counsel (*Conseil économique et social*),¹⁶³ a consultative body on which trade union federations and employers' organizations are represented.¹⁶⁴ Prime Minister Raffarin described the process as one of information, dialogue, and consultation,¹⁶⁵ and assured the social partners that they would play an important role in the reform process.¹⁶⁶

Social Affairs Minister François Fillon, confirmed that “the unions will not be spectators;”¹⁶⁷ the government will consult with the trade union organizations. Fillon, however, was quick to add that parliament would vote on the reform,¹⁶⁸ noting that “they are two distinct actions.”¹⁶⁹

The government was true to its promise. The government spent the months of February and March fleshing out the principals of reform in consultation with the social partners,¹⁷⁰ including a special consultation with trade union federations representing civil servants.¹⁷¹

Once the basic principals were established, the government again worked with the trade union organizations to develop the specific elements of the law.¹⁷² These negotiations, however, were more contentious. Unable to reach agreement with the trade union federations and in the face of a massive public sector strike on May 13, Social Affairs Minister Fillon declared that “the government was ‘open to more discussions’ to ‘improve’ the reform project, but not to modify its fundamentals.”¹⁷³

162. The government estimated that about 320,000 demonstrators marched in more than 100 towns and cities while organizers contended that closer to 500,000 individuals participated in the demonstrations. See *Half a million march for pension rights across France*, MORNING STAR, Feb. 3, 2003, at 3, available at 2003 WLNR 8435174.

163. Discours de Raffarin, *supra* note 61.

164. EIRONLINE, GOVERNMENT LAUNCHES PENSIONS REFORM, *supra* note 159; Discours de Raffarin, *supra* note 61.

165. Discours de Raffarin, *supra* note 61, at 11.

166. *Id.*

167. EIRONLINE, GOVERNMENT LAUNCHES PENSIONS REFORM, *supra* note 159.

168. *Id.*

169. *Id.*

170. See Béatrice Taupin, *Retraite: le Medef veut 41 ans pour tous*, LE FIGARO, Mar. 21, 2003, available at http://www.lefigaro.fr/eco_monde/20030321.FIG0016.html (noting that Fillon and Delevoe met six times with a representative from each trade union federation and employer organization).

171. Mayeur, *supra* note 25, at 9.

172. *Id.*

173. *Huge labor walkout hits France: Retirement rules at issue*, MIAMI HERALD, May 14, 2003, at 6A, 2003 WL 20215831. See also *Raffarin prône le dialogue, les syndicats se divisent*, LIBERATION, May 14, 2003, available at <http://www.liberation.fr/page.php?Article=110475> (last visited Apr. 19, 2005) (noting that the

On May 14, Fillon, accompanied by Civil Service Minister Jean-Paul Delevoye, met with all of the trade union federations and employer organizations and spent a very long night negotiating with them.¹⁷⁴ At the end of that night of negotiations, Fillon and Delevoye offered 14 amendments to the initial reform proposal,¹⁷⁵ but none of the trade union federations agreed to sign the proposal that day.¹⁷⁶ The following day, on May 15, talks resumed without one trade union federation, the CGT.¹⁷⁷ The CGT is ideologically the furthest left on the political spectrum and is of Communist inspiration.¹⁷⁸ Within a few minutes, the next most left trade union organization, General Confederation of Labor-Force ouvrière (*Confédération générale du travail - Force ouvrière* (CGT-FO)) CGT-FO¹⁷⁹ walked out.¹⁸⁰ By the end of the day, only the two more rightist trade union federations, CFDT,¹⁸¹ and CFE-CGG,¹⁸² and the federation representing managers, the French

areas Raffarin was open to debate included improving benefits for the lowest paid and for those who began work at a very young age and have very long careers).

174. Specifically, they met with the General Confederation of Labour (*Confédération générale du travail*, CGT); the French Democratic Confederation of Labour (*Confédération française démocratique du travail*, CFDT); the General Confederation of Labour-Force ouvrière (*Confédération générale du travail-Force ouvrière*, CGT-FO); the French Christian Workers' Confederation (*Confédération française des travailleurs chrétiens*, CFTC); the French Confederation of Professional and Managerial Staff-General Confederation of Professional and Managerial Staff (*Confédération française de l'encadrement-Confédération générale des cadres*, CFE-CFG); the Movement of French Enterprises (*Mouvement des entreprises de France*, MEDEF); the General Confederation of Small and Medium-sized Enterprises (*Confédération générale des petites et moyennes entreprises*, CGPME); and the Craftwork Employers' Association (*Union professionnelle artisanale*, UPA). EUROPEAN INDUSTRIAL RELATIONS OBSERVATORY ON-LINE, LATEST DEVELOPMENTS IN PENSION REFORM, available at <http://www.eiro.eurofound.ie/print/2003/06/feature/fr0306104f.html> [hereinafter EIRONLINE, LATEST DEVELOPMENTS].

175. EIRONLINE, LATEST DEVELOPMENTS, *supra* note 174; Raffarin "ferme mais pas fermé," *les négociations reprennent*, *supra* note 116. For a description of the fourteen points, see *Les 14 propositions du gouvernement*, LIBERATION, May 15, 2003, available at <http://www.lib.fr/page.php?Article=110719> (last visited Apr. 19, 2005).

176. EIRONLINE, LATEST DEVELOPMENTS, *supra* note 174; Raffarin "ferme mais pas fermé," *les négociations reprennent*, *supra* note 116.

177. EIRONLINE, LATEST DEVELOPMENTS, *supra* note 174; Raffarin "ferme mais pas fermé," *les négociations reprennent*, *supra* note 116.

178. See Bonoli, *supra* note 75, at n.16.

179. See *id.* (noting that CGT-FO "originated from a division within the CGT in 1947 and constitutes its non-Communist component").

180. EIRONLINE, LATEST DEVELOPMENTS, *supra* note 174; Raffarin "ferme mais pas fermé," *les négociations reprennent*, *supra* note 116.

181. See Bonoli, *supra* note 75, at n.16 (noting that the CFDT is of Socialist inspiration and has been much more cooperative with the government than the other trade union federations in recent years).

182. See *id.* (noting that the CFTC is a federation of Catholic unions).

Democratic Confederation of Labor (*Confédération française démocratique du travail* (CFTC))¹⁸³ remained, and ultimately CFDT and CFE-CGC, agreed to the 19 elements of reform proposed by the government.¹⁸⁴

CGT and CGT-FO, which objected to the government's proposed reform, called for strikes and demonstrations throughout the country.¹⁸⁵ Despite these strikes and objections, Fillon declared that the time for negotiations with the trade union organizations had ended and the time for legislative debate had arrived.¹⁸⁶ The government refused to reopen negotiations with the trade union federations, and instead presented its proposal to the Council of Ministers which adopted it on May 28, 2003.¹⁸⁷ Legislative debate then began on June 10, 2003, and continued despite strikes and demonstrations throughout the country through the end of June.¹⁸⁸ On July 24, 2003, the parliament ultimately approved the law, in a form that was substantially similar to the agreement the Raffarin government had reached with CFDT and CFE-CGC.¹⁸⁹

Although the government did not reach an agreement with all of the trade union organizations, its willingness to consult with the trade union federations and its ability to reach an accord with CFDT and CFE-CGC on May 15, 2003, clearly appeared to play a critical role in the reform's ultimate success.¹⁹⁰ Indeed, Prime Minister Raffarin described their support as the key to success.¹⁹¹

183. *See id.*

184. EIRONLINE, LATEST DEVELOPMENTS, *supra* note 174; Mayeur, *supra* note 25, at 9. Three employer groups also supported the reform. *See Signs of End to French Strike Chaos: Two French Unions Have Agreed a Compromise With the Government Over Controversial Pension Reform Plans, Easing the Recent Travel Chaos*, BBC NEWS, May 16, 2003, available at <http://www.bbc.co.uk/2/hi/business/3032899.stm>.

185. *See Le paysage syndical remodelé par deux mois de défilés*, *supra* note 151; *Retraites: le mouvement se durcit dans la région marseillaise*, LIBERATION, June 6, 2003, available at <http://www.liberation.fr/page.php?Article=116045>; *Le ton monte avant la manif de dimanche sur les retraites*, LIBERATION, May 23, 2003, available at <http://www.liberation.fr/page.php?Article=112806>.

186. *Retraites: des centaines de milliers de manifestants dans la rue*, LE MONDE, May 5, 2003, available at <http://www.lemonde.fr/article/0,5987,3224-321508-,00.html>.

187. Mayeur, *supra* note 25, at 10.

188. *See Le paysage syndical remodelé par deux mois de défilés*, *supra* note 151.

189. *See* RÉPUBLIQUE FRANÇAISE, LES RETRAITES, July 30, 2003, available at <http://www.vie-publique.fr/actualite/dossier/retraites1.htm>.

190. *Cf.* Soubie, *supra* note 147, at 90 (contending that one of the three reasons why the 2003 reform succeeded was that two trade union organizations, CFDT and CGC, accepted a compromise).

191. *Un dimanche chez le Premier ministre: Raffarin ne pense pas à la retraite . . .*, LE NOUVEL OBSERVATEUR, May 22-28, 2003, at 66.

C. Political Commitment

Shortly after gaining control of the French legislature in mid-1997, then-Prime Minister Lionel Jospin and his Socialist-led coalition killed¹⁹² the “Thomas law,”¹⁹³ a law which was passed by the previous center-right legislature and created retirement savings plans (*plans d'épargne retraite*) that were quite similar to American 401(k) plans.¹⁹⁴ For the next five years, Jospin and his coalition sponsored a series of official studies on the French retirement system¹⁹⁵ but resolutely refused to put pension reform back on the legislative agenda.¹⁹⁶

In 2002, pension reform rose to the top of the election agenda as the two principal presidential candidates, Jospin and Incumbent President Jacques Chirac, described pension reform as a top national legislative priority.¹⁹⁷ Criticizing Jospin for his failure to reform the country's pension system during his reign,¹⁹⁸ Chirac promoted “the creation of individual, complementary pension funds ‘à la française’” while Jospin vowed to protect the existing pay-as-you-go system.¹⁹⁹

192. The government “killed” the Thomas law by refusing to promulgate the seven decrees required to give effect to the law. See Moore, *supra* note 4, at 472. The law was finally abrogated in 2002. Lavigne, *supra* note 45, at 128; GRECIANO, *supra* note 6, at 185.

193. See Law No. 97-277 of Mar. 25, 1997, J.O., Mar. 26, 1997, p. 4657.

194. See Larry Speer, *Pension Reform Tops French Election Agenda: Capitalization Funds or State-Run System*, PENSION & BENEFITS DAILY, Mar. 29, 2002; Moore, *supra* note 50, at 17 (describing the French retirement savings plan).

195. See, e.g., CONSEIL D'ORIENTATION DES RETRAITES, *supra* note 2; Taddei et al., *supra* note 135; Charpin, *supra* note 135.

196. Speer, *supra* note 194. In the election campaign, Jospin did point out that his government created “a dedicated retirement reserve fund in Sept. 1998 to guarantee the mid-term solvency of the state-run retirement system by wracking up more than \$150 billion in savings by 2020.” *Id.*

197. See Anne Fairise & Marc Landré, *Chirac-Jospin Quasi-consensus sur les dossiers sociaux*, LIASONS SOCIALES, Apr. 2002, at 26, 28 & 32.

198. In France, during periods of co-habitation, that is, periods when the President is from a different party than the majority of the legislators, the Prime Minister, who is a member of the majority party, rather than the President, effectively has the real power over the legislature in France. Thus, although Jacques Chirac was President of France during this period, he had little ability to influence legislation because he was not a member of the Socialist party which controlled the French parliament during this time. Cf. *Chirac's New Man Named*, NEWCASTLE HERALD (NEWCASTLE, AUSTR.), May 8, 2002, at 23 (“Without a victory in the legislative election, Mr Chirac will find his second term reduced to the same powerlessness he suffered during the last five years of ‘cohabitation’ with Mr Jospin's Socialists.”)

199. Speer, *supra* note 194. Interestingly, however, three quarters of the French population saw little difference between the social platforms of these two candidates. See Fairise & Landré, *supra* note 197, at 26.

On April 21, 2002, Jospin suffered a stunning defeat in the first round of the French presidential election as Chirac and Jean-Marie Le Pen, the extreme right wing candidate of the *Front National*, won with 19.88% and 16.86%, respectively, of the vote.²⁰⁰ Jospin's loss is generally attributed more to general dissatisfaction with the mainstream politicians than genuine support for Le Pen and his extreme right wing views,²⁰¹ and thousands of demonstrations denouncing Le Pen and the *Front National* were staged shortly after the first round election.²⁰²

Illustrating that the Le Pen vote was more an indication of voter dissatisfaction with the status quo than genuine support for the extreme right, Jacques Chirac won the second round of the presidential election by a large margin with 82 percent of the vote.²⁰³ Then, cementing Chirac's victory, Chirac's party, *l'Union pour la majorité présidentielle* (UMP), won a landslide victory with 366 of the 577 seats in the French National Assembly going to members of the UMP in the legislative elections in June 2002.²⁰⁴

According to some commentators, France was the last European country to reform its retirement system because past governments were afraid of political crises.²⁰⁵ Such a fear, however, did not reign in the Chirac/Raffarin government. Instead, Chirac, and Raffarin, whom Chirac named as Prime Minister on May 6, 2002,²⁰⁶ took the election victory as a mandate for change, and made a firm commitment to reform the French retirement system. Indeed, rumors circulated at the time that Raffarin had agreed to take the fall for Chirac should the reform fail.

Raffarin announced his intention to reform the French retirement system as early as July 3, 2002. He declared, "Our retirement system is our common good. We must organize ourselves so that the conditions to preserve it are united by the end of the first quarter of 2003."²⁰⁷ True to his campaign promises, President Chirac officially launched reform of the retirement system on January 6, 2003.²⁰⁸

By February 2003, retirement reform was thought to be the issue which

200. See L'ANNÉE POLITIQUE ÉCONOMIQUE ET SOCIALE 2002, at 52, 57. Jospin came in third with 16.18 percent of the vote. *Id.*

201. See Sebastian Rotella, *France gets a jolt from the far right - Fiery Jean-Marie Le Pen earns a spot in May 5 presidential runoff*, STAR-LEDGER (NEWARK N.J.), Apr. 23, 2002, at 2 ("Analysts, however, don't see the breakthrough by Le Pen's National Front party as a groundswell of extremist sentiment as much as a product of protest votes against a stagnant establishment, divisions on the political left, and near-record 28 percent level of voter absenteeism."). See also Jim Wolfreys, *'The Centre Cannot Hold': Fascism, the Left and The Crisis of French Politics*, 95 INTERNAT'L SOCIALISM J. 41 (2002).

202. L'ANNÉE POLITIQUE ÉCONOMIQUE ET SOCIALE 2002, at 61.

203. *Id.* at 65.

204. *Id.* at 78.

205. See *Retraites, un mois pour convaincre*, LA VIE, Apr. 10, 2003, at 24, 27.

206. L'ANNÉE POLITIQUE ÉCONOMIQUE ET SOCIALE 2002, at 65.

207. Mayeur, *supra* note 25, at 9 (quoting Prime Minister Raffarin).

208. See Chirac, *supra* note 64, at 1-4. See also EIRONLINE, GOVERNMENT LAUNCHES PENSIONS REFORM, *supra* note 159.

would define, “domestically at any rate, the success or failure of Jacques Chirac’s second presidential term and Mr. Raffarin’s premiership. ‘If we can’t reform the pensions system in this country, we can’t reform anything,’ a senior member of Mr. Chirac’s UMP party said.”²⁰⁹

Believing that the credibility of the government depended on instituting this reform, Raffarin held firm despite widespread strikes and demonstrations in May and June, 2003.²¹⁰ Prime Minister Raffarin declared, “The street should express itself. . . . But the street doesn’t govern,”²¹¹ and Social Affairs Minister François Fillon said, “We will go to the end of this reform.”²¹² Indeed, Fillon advised a parliamentary session, “There is no alternative to this reform. The government does not stop half way.”²¹³ “There will be neither a retreat, nor report nor a rewriting of the project. I know what is happening in the streets, but like the vast majority of French citizens, I do not understand how they can strike against equity.”²¹⁴

This unassailable commitment to reform clearly appears to have played a critical role in the ultimate success of the retirement reform.²¹⁵ In 2003, the French government proposed three significant social reforms: (1) reform of the retirement system, (2) decentralization of the education system,²¹⁶ and (3) reform of the health care system.²¹⁷ Its credibility, however, only rested on one reform: reform of the retirement system.²¹⁸ Thus, perhaps not surprisingly,²¹⁹ the government put off

209. *French Vow to Defend Gold-Plated Pensions*, INDEP. ON SUNDAY (LONDON), Feb. 2, 2003, at 18; see also Yves Thréard, *Éditorial, Raffarin face aux réactionnaires*, LE FIGARO, May 24-25, 2003, at 24, 24 (contending that the government’s credibility depends on instituting reform).

210. See Nicolas Domenach, *Raffarin s’en va-t-en guerre*, MARIANNE, May 19-25, 2003, at 24, 24 (noting that the Prime Minister said that in order to govern for the duration, the right needs to win a social battle and that he would go to the end); Hervé Algalarrondo, *Quand la “France d’à côté” change la donne; Si Raffarin cède . . .*, LE NOUVEL OBSERVATEUR, May 29-June 4, 2003, at 44, 44 (noting that the government believed that the real risk was to cede to the union federations, not to hold firm against them).

211. Crumley, *supra* note 140.

212. *Fonctionnaires: la colère est-elle justifiée?*, LE FIGARO, May 24-25, 2003, at 1.

213. Kim Housego, *Public Sector Strike Shuts Down France*, MIAMI HERALD LEADER, May 14, 2003, 2003 WL 20215831.

214. Olivier Nouaillas, *Pendant le débat, la crise continue*, LA VIE, June 12, 2003, at 32.

215. Cf. Barroux & Bezat, *supra* note 151, at 8 (noting that Ernest-Antoine Seillière, president of the employer organization Medef, applauded the French government for having - in the first time in decades - sufficient desire to reform to withstand all of the negative reactions, “corpartists,” extremists, and blockages).

216. See, e.g., Jacques Juillard, *L’impossible métier*, LE NOUVEL OBSERVATEUR, at 64 (discussing proposed reform of the education system).

217. See Vanessa Schneider, *Raffarin perd le bénéfice du doute*, LIBERATION, June 17, 2003, available at <http://www.liberation.fr/page.php?Article=118274>.

218. Cf. Christine Monin, *“En France, on ne sait toujours pas négocier,”* LA VIE, June 12, 2003, at 33, 34 (noting that Alain Touraine, a well-known French sociologist, thought that the French government’s credibility depended on reform of the retirement system not its other

reform of the education system and health system²²⁰ but held firm to reform of the retirement system. Its unwavering commitment was rewarded on July 24, 2003, when the National Assembly and the Senate voted in favor of the reform.

D. Summary

Although it is never possible to know exactly why one reform proposal succeeds when another fails, three separate factors point to the success of the 2003 reform. First, the system was facing serious short-term and long-term funding difficulties, and the public was well informed about the funding difficulties as well as the possible means of reform. Second, the government initiated and developed the reform through a very unique and public process of debate, consultation, and negotiation. It intentionally and repeatedly consulted with the trade union organizations and ultimately reached an accord with two trade union federations, CFT and CFE-CGC, prior to introducing the reform before the parliament. Finally, Prime Minister Raffarin was absolutely and incontrovertibly committed to reform. He was willing to stake the credibility of his government on the reform and hold firm despite public protests and demonstrations.²²¹

IV. THE STAGNANT AMERICAN SOCIAL SECURITY SYSTEM

Like France, the United States has long debated reform of its Social Security system. Unlike France, however, the United States has not instituted any significant reform of the American Social Security system since 1983.

Because Congress does not typically negotiate with labor unions before introducing or enacting legislation in the United States, only two of the three reasons pointing to the success of the French reform in 2003 are of relevance in the United States: (1) public education and (2) political commitment. This section analyzes these two factors in the American context to help understand why the American Social Security system has remained unchanged for so long.

proposed reforms).

219. In June 2003, Alain Touraine, a well-known French sociologist prognosticated that the French government would abandon its other reform proposals in favor of reform of the retirement system because its credibility depended on it. *Id.*

220. *Cf.* François Dufay & Étienne Gernelle, *Les Intermittences de la réforme*, LE POINT, July 18, 2003, at 22, 22 (noting that the government was scheduled to consider reform of the education system and retirement system upon return from the summer recess); *See also* Guélaud & Le Coeur, *supra* note 147, at 6 (noting that the French government elected to delay reform of the French health care system).

221. *Cf.* *Les retraites, c'est voté*, LIBERATION, July 25, 2003, at 2 (François Fillon described the reform as the fruit of dialogue, courage, and determination).

A. Public Education

Like the French government, the American government has long studied the American Social Security system and its financing difficulties. For example, each year, the Board of Trustees of the Federal Old-Age and Survivors Insurance and Disability Insurance Trust Funds (“Social Security Trustees”) issues an annual report on Social Security’s financial operations and projections regarding its future financial status.²²² Similarly, the Congressional Budget Office²²³ and the Government Accountability Office²²⁴ regularly study Social Security and its financial status. Moreover, in 2001, President Bush established a bipartisan 16-member commission, called the President’s Commission to Strengthen Social Security, to study and report specific recommendations to reform Social Security. The Commission’s report was released on December 21, 2001.²²⁵

Like the French reports, these American governmental reports do not sit on bookshelves gathering dust. They too are widely reported in the popular press,²²⁶ are readily available on the Internet,²²⁷ and the American government recognizes the

222. For the most recent report, see 2004 ANNUAL REPORT, *supra* note 2.

223. For a recent report, see CONG. BUDGET OFF., THE OUTLOOK FOR SOCIAL SECURITY (2004), available at <http://www.cbo.gov/ftpdocs/55xx/doc5530/06-14-SocialSecurity.pdf>.

224. For a recent study by the General Accountability Office, whose name was changed from the General Accounting Office effective July 7, 2004, see GAO, SOCIAL SECURITY REFORM: ANALYSIS OF A TRUST FUND EXHAUSTION SCENARIO (2003), available at <http://www.gao.gov/newitems/D03907.pdf>.

225. See PRESIDENT’S COMM’N TO STRENGTHEN SOC. SEC., STRENGTHENING SOCIAL SECURITY AND CREATING PERSONAL WEALTH FOR ALL AMERICANS (2001). For a critique of this report see, for example, Colleen E. Medill, *Challenging the Four “Truths” of Personal Social Security Accounts: Evidence of the World of 401(k) Plans*, 81 N.C. L. REV. 901 (2003).

226. See, e.g., *Social Security Report a Hot Issue; Program in Better Financial Shape, CBO Says; Democrats, GOP Debate Need for Major Overhaul*, SEA. TIMES, June 15, 2004, at A7, 2004 WLNR 1793045 (discussing discrepancy between CBO and Social Security Trustees’ reports and President’s Commission’s report); Robert Pear, *More upbeat view on Social Security; System in less trouble than forecast, says Congressional Budget Office*, OAKLAND TRIB., June 15, 2004, (discussing CBO and Social Security Trustees’ reports); Saul Friedman, *Lies calculated to end Social Security*, NEWSDAY, Apr. 3, 2004, at B04, 2004 WLNR 1098791 (discussing Social Security Trustees’ report); Jane Bryant Quinn, *Social Security Isn’t Doomed*, NEWSWEEK, Mar. 29, 2004, at 47.

227. For example, the Social Security Trustees’ report is available on the Social Security Administration’s website, <http://www.ssa.gov/>; the Congressional Budget Office’s reports are available on their website, <http://www.cbo.gov/>; the Government Accountability Office’s reports are on their website, <http://www.gao.gov/>, and the President’s Commission to Strengthen Social Security’s report is available on their website, <http://www.csss.gov/>.

importance of educating the American public about their contents.²²⁸ There is, however, one significant difference between the French reports and the American reports. Prior to the 2003 reform, the French reports showed that the French retirement system was facing serious short term financing difficulties as well as long-range problems. The American reports, in contrast, show that the American Social Security system's short-term financial future is secure, although it faces a long-term deficit.

Specifically, the Social Security Trustees' 2004 Annual Report predicts that contributions to the American Social Security system will exceed benefits paid by the system until 2018.²²⁹ Beginning in 2018, Social Security will need to draw down the assets held in the Social Security Trust Fund in order to pay full benefits, and the Trust Fund will be exhausted by 2042.²³⁰ At that point in time, under present tax rates, contributions will only cover 73 percent of scheduled benefits in 2042 and 68 percent of scheduled benefits in 2078.²³¹

The short-term nature of the French retirement system's funding difficulties led to a widespread consensus that immediate reform was essential.²³² In the United States, in contrast, experts generally believe that Social Security's long-term financing difficulties should be addressed soon rather than later,²³³ but immediate reform is not

228. See, e.g., Michael W. Wyand, *Dialogue on Social Security Reform to Continue This Year, Committee Staff Says*, 31 BNA PENSION & BENEFITS REP. 388, 388 (2004) (noting that Kim Hildred, majority staff director to the House Ways & Means Subcommittee on Social Security said, "it is hoped dialogue on reform will serve to educate the public. Congress especially desires to engage young people on the issue . . .").

229. 2004 ANNUAL REPORT, *supra* note 2, at 8.

230. *Id.* at 10. The Congressional Budget Office, in contrast, predicts that the Social Security Trust Fund will not be exhausted until 2052. See CONG. BUDGET OFF., *supra* note 223.

231. 2004 ANNUAL REPORT, *supra* note 2, at 8.

232. Indeed, even Marc Blondel, leader of Force Ouvrière, the "famously combative leftist union," conceded that there was a need for reform. Crumley, *supra* note 140. He simply objected to the Fillon plan and contended that the pension deficit should have been solved by increasing taxes, "above all on income and capital gains by businesses and the rich." *Id.* See also *Retraites, un mois pour convaincre*, *supra* note 205, at 27 (noting that trade union organizations suggested that the funding deficit be solved by increased taxes).

233. For example, the Social Security Advisory Board, an independent, 7-member bipartisan Advisory Board created to advise the President, Congress, and Social Security Commission on matters related to the Social Security and Supplement Income Programs has said, "Prompt action is essential if we are to restore confidence in the future of Social Security and enable today's workers to plan for a secure retirement." SOC. SEC. ADVISORY BD., ANNUAL REPORT 1 (2002). See also ROBERT M. BALL, INSURING THE ESSENTIALS: BOB BALL ON SOCIAL SECURITY 248 (Thomas N. Bethell ed., 2000) (contending that it is better to take action sooner rather than later); Michael W. Wyand, *Treasury's Snow Says Program Underfunded and Unsustainable*, 31 BNA PENSION & BENEFITS REP. 706, 706 (2004) (noting that Treasury Secretary John Snow has said, "[T]he sooner action is taken, the better for all concerned.' Each year that passes without needed changes to the program makes the ultimate

crucial. Prompt action is preferable because it offers a wider range of possible changes.²³⁴ For example, because benefit cuts usually must be imposed very gradually, benefit cuts are only an option if reform is slowly implemented over time.²³⁵ If reform is delayed too long, options are limited and changes may be dramatic.²³⁶ Nevertheless, there is not the same urgency for reform as there was in France²³⁷ because, unlike the French retirement system, the American Social Security system is currently running a surplus. Indeed, for the next fourteen years, payroll contributions are expected to exceed benefit payments.

B. Political Commitment

Unlike in France, until shortly before this article went to press, neither the President of the United States nor the members of Congress have displayed the political will necessary to amend Social Security. This lack of political will is perhaps most aptly illustrated by the political games played prior to the November 2002 election.²³⁸ That year, Democrats, who generally oppose partial privatization of

resolution more difficult."); Warren Rojas, *Improved Trust Fund Projections Reignite Privatization Debate*, TAX NOTES TODAY, Mar. 27, 2002, at 59-3 available at LEXIS 2002 TNT 59-3 (quoting Treasury Secretary Paul O'Neil: "The earlier action is taken to address this prospect, the easier it will be to strengthen these essential programs for generations to come."). But see Jane Bryant Quinn, *supra* note 226, at 47 ("A few rebels think that everyone is crying wolf: Social Security may not need any fixes at all."); DEAN BAKER & MARK WEISBROT, SOCIAL SECURITY: THE PHONY CRISIS (1999) (contending no reform is needed).

234. See, e.g., *Social Security: Whose Trust Will Be Broken?*, Hearing before the Spec. Comm. on Aging, U. S. Senate, 108th Cong. 3 (2003) (statement of David M. Walker, Comptroller Gen., U.S. GEN. ACCT. OFF.) ("Acting sooner rather than later would clearly help to ease the difficulty of change. . . . Waiting until Social Security faces an immediate solvency crisis will limit the scope of feasible solutions and could reduce the option only to those choices that are the most difficult and dramatic options.").

235. See HENRY J. AARON & ROBERT D. REISCHAUER, COUNTDOWN TO REFORM: THE GREAT SOCIAL SECURITY DEBATE 159 (1998)

236. GEN. ACCT. OFF., SOCIAL SECURITY REFORM: ANALYSIS OF A TRUST FUND EXHAUSTION SCENARIO ILLUSTRATES THE DIFFICULT CHOICES AND THE NEED FOR EARLY ACTION 14 & Fig. 7 (2003) (showing that if nothing is done until 2042, a benefit adjustment of 31 % or a tax adjustment of 46 % would be necessary compared to a benefit adjustment of 13 % and a tax adjustment of 15 % if changes were made in 2003).

237. See, e.g., Robert M. Ball, *How to Fix Social Security? It Doesn't Have to be Hard*, AGING TODAY, Mar.-Apr. 2004, available at http://www.asaging.org/at/at-252/How_To_Fix.cfm (contending that Social Security Trustees' forecasts are no cause for panic and there is ample time to make adjustments).

238. Cf. Warren Rojas, *supra* note 233, at 59-3.

Health and Human Secretary Tommy G. Thompson charged House Minority Leader Richard A. Gephardt with attempting to stir up controversy rather than presenting an alternate solution. "If he were

Social Security,²³⁹ sought to force Republicans to debate partial privatization of Social Security on the House floor.²⁴⁰ Meanwhile, Republicans, who generally and presumably genuinely believe that partial privatization is the remedy to Social Security's woes,²⁴¹ sought to block floor debate on the privatization bills so they would not be on record for having supported them.²⁴²

Specifically, on March 20, 2002, four Democrats²⁴³ who opposed partial

truthfully wanting to do something, he'd sit down with Republicans and have a bipartisan approach to solving the problem. But that's not the intent. . . . It's pure partisan politics being played to try and find an issue for the election."

Id.

239. For these purposes, partial privatization of Social Security refers to proposals that provide that some, but not all, Social Security benefits are to be funded through pre-funded individual accounts. Cf. Patti Mohr, *Shaw Seeks Daschle's Endorsement for Private Accounts*, TAX NOTES TODAY, Jan. 10, 2002, at 7-1 available at LEXIS 2002 TNT 7-1 (noting that Democrats "generally resist a [Republican] plan to create [private] accounts" in Social Security).

240. See Rep. Nancy Pelosi, *Pelosi Release on Improving Widows' Benefits*, TAX NOTES TODAY, May 14, 2002, at 95-17 available at LEXIS 2002 TNT 95-17 ("Democrats have asked repeatedly for the opportunity to debate the Republican privatization plan."); Sen. Tom Daschle & Rep. Richard A. Gephardt, *Gephardt, Daschle Letter on Risks of Social Security Privatization*, TAX NOTES TODAY, Feb. 25, 2002, at 37-64 available at LEXIS 2002 TNT 37-64 ("[W]e believe the American people want and deserve a national dialogue about any plans to privatize Social Security. . . . Again, we urge that the House schedule a full debate on H.R. 3135 including the opportunity for amendment by both parties on Republican efforts to privatize Social Security.").

241. Still believing in the creation of individual accounts but finding the term "privatization" to be a political liability, Republicans began to distance themselves from the term in 2002. They nevertheless remained true to the notion of creating individual accounts as the solution to Social Security's financing difficulties. See, e.g., Rep. E. Clay Shaw, Jr., *Shaw Praise, Criticism of Daschle's Social Security Stance*, TAX NOTES TODAY, July 16, 2002, at 136-23 available at LEXIS 2002 TNT 163-23 (contending that "no Republican plan that has been offered 'privatizes' Social Security. In fact, my plan leaves Social Security totally intact. It also adds the opportunity for workers to choose ownership and control of a personal account while guaranteeing current law benefits regardless of the account's investment performance."). See also Rep. Richard A. Gephardt, *Gephardt Statement Urging Colleagues to Sign Petition to Open Debate on Social Security Privatization*, TAX NOTES TODAY, Oct. 9, 2002, at 196-42 available at LEXIS 2002 TNT 196-42 (declaring that "one Republican pollster presentation advised his clients, don't use the word 'privatize' when you talk about Social Security on the campaign trail. Get a new word, he said: maybe personalize, maybe traumatize. I don't know what the right word is, but it sure isn't privatization.").

242. See Warren Rojas, *House Rejects Permanent Education Tax Cuts, Senate Pension Bill Gains Steam*, TAX NOTES TODAY, Sept. 5, 2002, at 172-1 available at LEXIS 2002 TNT 172-1 (noting that "[b]oth the White House and House GOP leaders have put off their modernization agenda until 2003").

243. The four sponsors were Robert Matsui, Richard Gephardt, Nancy Pelosi, and Charles

privatization of Social Security in general, and the recommendations of President Bush's Commission to Strengthen Social Security in particular, introduced three House bills encapsulating each of the Commission's three recommendations to partially privatize Social Security.²⁴⁴ Then, on May 21, 2002, Democratic Representative Karen L. Thurman, introduced a House Resolution²⁴⁵ resolving to begin immediate debate on these three bills as well as two Republican bills²⁴⁶ providing for partial privatization of Social Security.²⁴⁷ These Democrats did not support the substance of the privatization bills, but simply sought a public debate on privatization.²⁴⁸ Meanwhile, Republicans, who presumably supported the substance of the bills, did not co-sponsor the bills or push for committee consideration or floor debate. Instead, they left them to die on the Committee floor.²⁴⁹ Seeking to force

Rangel.

244. H.R. 4022, 107th Cong. (2002) (enacting Reform Model 1 as set forth in the President's Commission to Strengthen Social Security); H.R. 4023, 107th Cong. (2002) (enacting Reform Model 2 as set forth in the President's Commission to Strengthen Social Security); H.R. 4024, 107th Cong. (2002) (enacting Reform Model 3 as set forth in the President's Commission to Strengthen Social Security).

245. H. Res. 425, 107th Cong. (2002).

246. H.R. 3535, 107th Cong. (2001); H.R. 3497, 107th Cong. (2001).

247. Technically, the resolution required consideration of one of the Republican bills, H.R. 3497, and limited amendments to those of the other Republican bill, the three Democratic bills encapsulating the President's Commission's recommendations, and a Democratic bill, H.R. 4780, which rejects partial privatization of Social Security. See H. Res. 425, 107th Cong., 2d Sess. (2002). Had the resolution required the consideration of more than one bill, a discharge petition could not have been filed on that resolution. See RULES OF THE HOUSE OF REPRESENTATIVES XV(2)(b)(2) (109th Cong. 2005), available at http://www.house.gov/rules/house_rules.htm ("A Member may not file a motion to discharge the Committee on Rules from consideration of a resolution providing for the consideration of more than one public bill or public resolution or admitting or effecting a nongermane amendment to a public bill or public resolution.")

248. See *The Missing Debate*, 148 CONG. REC. H7174, H7175 (Oct. 8, 2002) (statement of Rep. Richard A. Gephardt, House Minority Leader).

Since Republicans have failed to put Social Security on the floor, we have mounted a discharge petition to bring up the three plans from the President's commission, all for privatization, so we can have a full and free debate in the highest tradition of democratic governance. In this discharge, we include a resolution of disapproval. This is more than a debate. It is a way for the House to vote up or down on the Republican plan, as well as the congressional plan of the Republicans to privatize Social Security.

Id.; See also Rep. Robert T. Matsui, *Matsui Release on Democrats' Push Privatization Debate*, TAX NOTES TODAY, May 22, 2002, at 100-64 available at LEXIS 2002 TNT 100-64 (noting that "Republican leaders can move these bills at any time. If they do not, after the rule 'ripens' for seven days, Democrats will launch a discharge petition to force the bills to the floor.").

249. Rep. Robert T. Matsui, *Matsui Release on Social Security Debate*, TAX NOTES TODAY, Mar. 14, 2002, at 50-58 available at LEXIS 2002 TNT 50-58 ("Republicans have

debate, though clearly not passage of the partial privatization bills, Representative Thurman then filed a discharge petition on the House Resolution on June 19, 2002.²⁵⁰

Despite sustained efforts,²⁵¹ the Democrats never managed to garner sufficient support for the discharge petition,²⁵² and no bill on partial privatization reached the House floor prior to the 2002 election.

This lack of political will is hardly surprising. Social Security is often described as the third rail of politics: touch it and you die.²⁵³ Indeed, the last time Congress substantially amended Social Security (1983), it faced an imminent funding crisis. Throughout the late 1970s and early 1980s, high inflation combined with high

introduced various privatization bills, but refuse to mark them up in Committee or bring them for a vote.").

250. See *Petition 7*, 148 Cong. Rec. H3826 (June 21, 2002). Cf. 148 Cong. Rec. H667 (Mar. 5, 2002) (statement of House Minority Leader, Richard A. Gephardt).

I want a debate on this issue [privatization of Social Security] before the election, not after the election. If Republicans fail to put Social Security on the floor, I intend to mount a discharge petition to bring up the Presidential commission's plans so that we can have a full and free debate, the House of Representatives at its best.

Id.

251. See, e.g., *The Missing Debate*, *supra* note 248 (statement of rep. Richard A. Gephardt, House Minority Leader) ("I urge my colleagues, sign this petition. Let us have a meaningful Social Security discussion before we go to our districts for the fall election.").

252. See also Rojas, *supra* note 242, at 172 ("House Democrats have been attempting to embarrass Republican leaders all year by pressing for a Social Security floor debate, but have failed to garner the support needed to move the issue into the legislative spotlight."). Under House Rule XV(c), a discharge petition can remove any bill from committee after the bill has been in committee for 30 days, if the discharge petition is signed by a majority of the members of the House. See RULES OF THE HOUSE OF REPRESENTATIVES XV(c) (109th Cong. 2005), available at http://www.house.gov/rules/house_rules.htm. The fact that the discharge petition failed is not surprising. "Of the 371 discharge petitions initiated between 1937 and 1982, only 19 were successful." WILLIAM N. ESKRIDGE, JR. & PHILIP P. FRICKEY, CASES AND MATERIALS ON LEGISLATION: STATUTES AND THE CREATION OF PUBLIC POLICY 12 (1995). For additional discussions of how rarely discharge petitions are successful, see John C. Roberts, *Are Congressional Committees Constitutional?: Radical Textualism, Separation of Powers, and the Enactment Process*, 52 CASE W. RES. L. R. 489, 571 n.229 (2001), and authorities cited therein.

253. See, e.g., Rojas, *supra* note 233, at 59-3 (noting that many refer to Social Security as the "politically dangerous 'third rail'"); John Harrison, *The Fiscal Powers and the 1930s: Entrenchment*, 41 WM. & MARY L. REV. 295, 308 (1999) (stating that "Social Security is the third rail of American politics: Touch it and you die."); Dallas L. Salisbury, *Social Security – Retirees Can't Live Without It, It Can't Survive Without Reform*, BEN. Q., June 22, 1997, at 8 (stating that "Social Security has come to be known as the 'third rail' of politics" because it is the dominant source of income for the retired population); *But see* AARON & REISCHAUER, *supra* note 235, at 189 ("If references to Social Security as the third rail of American politics were once valid, someone has turned off the electricity. Politicians who once said, "Touch it and you die" now seem eager to propose far-reaching changes to the system.").

unemployment had resulted in soaring benefit payments as payroll tax revenues dwindled.²⁵⁴ Indeed, benefit payments had exceeded contributions since 1975, and it was anticipated that, without legislative action, it would no longer be possible for the Social Security program to pay benefits on time beginning in July 1983.²⁵⁵ “An estimated \$150-200 billion in increased revenues or reduced expenditures was needed to restore financial viability through the 1980's.”²⁵⁶ In addition, the Social Security actuaries projected a long-range deficit for the program.²⁵⁷

Faced with this impending crisis, on December 16, 1981, President Reagan created a bipartisan commission, the National Commission on Social Security Reform, to study the short and long-term financial conditions of Social Security and report findings and recommendations to the President and Congress.²⁵⁸ The Commission reported its findings and recommendations to the President and Congress on January 20, 1983,²⁵⁹ and, three months later, President Reagan signed into law, the Social Security Amendments Act of 1983,²⁶⁰ which substantially embodied the Commission’s recommendations.²⁶¹ President Reagan praised the law “as a tribute to bipartisan action and ‘a monument to the spirit of the compassion and commitment that unites us as a people . . . Each of us had to compromise one way or another. But the essence of bipartisanship is to give up a little in order to get a lot.’”²⁶²

The 1983 Act contained 25 different provisions affecting Social Security’s financing.²⁶³ Some of the provisions, such as delaying the July 1983 cost-of-living adjustment (COLA) to January 1984 and shifting future COLAs to a calendar year basis (payable in January, rather than July, of each year)²⁶⁴ were designed to resolve the program's short-term funding crisis. Other provisions, such as a delayed, gradual increase in normal retirement age which only began to go into effect in 2000,²⁶⁵ were intended to address the system's long-term financing difficulties.

The 1983 Act shows that American politicians can come together and make difficult decisions and tradeoffs to address long-range financial difficulties in the

254. Robert M. Ball, *Just a Little Maintenance; We Can Fix Social Security, If We Can Manage the Politics*, WASH. POST, July 18, 2004, at B04.

255. John A. Svahn & Mary Ross, *Social Security Amendments of 1983: Legislative History and Summary of Provisions*, SOC. SEC. BULL., July 1983, at 3, 3.

256. *Id.* at 3.

257. *Id.*

258. See Exec. Order No. 12,335, 46 Fed. Reg. 61,633 (Dec. 18, 1981)

259. See GREENSPAN COMM’N, REPORT OF THE NAT’L COMM. ON SOC. SEC. REFORM (1983).

260. Social Security Amendments of 1983, Pub. L. No. 98-21, 97 Stat. 65 (1983).

261. Svahn & Ross, *supra* note 255, at 4-5 (describing the provisions of the law as enacted and how they differed from the Commission's recommendations).

262. See *id.* at 3 (quoting President Reagan).

263. See Social Security Amendments of 1983, Pub. L. No. 98-21 §§ 101-201 (1983).

264. See *id.* § 111.

265. See *id.* § 201 (gradually increasing the normal retirement age from age 65 to age 67 beginning in 2000).

Social Security program. The fact, however, that it was enacted in the midst of a short-term funding crisis suggests the politicians are much more likely to come together to enact such reform when there is an imminent funding crisis than when the only difficulties are more long-term in nature.

Over the last decade, politicians ranging from Presidents²⁶⁶ to Senators²⁶⁷ to Members of the House of Representatives²⁶⁸ have called for reform of Social Security. Until shortly before this article went to press, no politician in recent years had displayed the political commitment necessary to reform the system.²⁶⁹

266. President George W. Bush, Address Before a Joint Session of the Congress on the State of the Union, (Jan. 21, 2004) available at <http://www.gpoaccess.gov/sou> ("Younger workers should have the opportunity to build a nest egg by saving part of their Social Security taxes in a personal retirement account. We should make the Social Security system a source of ownership for the American people. And we should limit the burden of government on this economy by acting as good stewards of taxpayers' dollars."); President William J. Clinton, Address Before a Joint Session of the Congress on the State of the Union, PUBLIC PAPERS OF THE PRESIDENTS I WILLIAM J. CLINTON 2000-2001 129, 130-31 (Jan. 21, 2004), available at <http://www.gpo.gov/congress/sou/sou00.pdf> ("Beyond paying off the debt, we must ensure that the benefits of debt reduction go to preserving two of the most important guarantees we make to every American, Social Security and Medicare. Tonight I ask you to work with me to make a bipartisan down payment on Social Security reform by crediting the interest savings from debt reduction to the Social Security Trust Fund so that it will be strong and sound for the next 50 years.").

267. Over the last decade, Senators have introduced a multitude of bills that would reform Social Security. See, e.g., Social Security Solvency and Modernization Act of 2003, S. 1878, 108th Cong. (2003); Social Security Protection Act of 2003, S. 439, 108th Cong. (2003); Social Security Preservation Act, S. 5, 107th Cong. (2002).

268. Just as Senators have introduced a multitude of bills over the last decade that would reform Social Security, so too have Members of Congress. See, e.g., Individual Social Security Investment Program Act of 2004, H.R. 4895, 108th Cong. (2004); Social Security Personal Savings Guarantee and Prosperity Act of 2004, H.R. 4851, 108th Cong. (2004); Bipartisan Retirement Security Act of 2004, HR 3821, 108th Cong. (2004); Social Security Savings Act of 2003, H.R. 3177, 108th Cong. (2003); Social Security Solvency Act of 2003, H.R. 3055, 108th Cong. (2003); H.R. 5734, 107th Cong. (2002); Rejecting Social Security Privatization Act of 2002, H.R. 5541, 107th Cong. (2002).

269. See William Neikirk, *Record deficit begins to curb Bush agenda*, CHI. TRIB., Jan. 22, 2004, at 1, available at 2004 WLNR 17852526 (noting that over the last three years Bush has not pushed his partial privatization plan). Cf. David Hess, *Social Security Privatization Bill Introduced, Action Unlikely*, CONG. DAILY, Jan. 21, 2004, available at 2004 WLNR 17661301 (noting that bipartisan group of Representatives saw little likelihood of Congress enacting Social Security reform any time soon. President Bush "must raise the issue during a campaign and win on it to convince Congress to act. [Senate Finance Chairman Grassley stated,] 'There has to be a mandate.'"). Cf. Sen. Don Nickles, *Retiring America: Why the United States Needs a New Kind of Social Security for the New Millennium*, 36 HARV. J. ON LEGIS. 77, 108 (1999) ("[L]awmakers fear modifying [Social Security], reforming it, or even talking about it because of the political risks they associate with such action").

V. CONCLUSION

In 2003, the French retirement system faced serious short and long-term funding difficulties. After years of debate and inaction, the government finally enacted a sweeping reform of the French retirement system in the summer of 2003. This reform is expected to remedy much, though likely not all, of the financing difficulties the retirement system faced. The reform's success appears to be attributable to three significant factors. First, the French retirement system faced very serious short and long-term financing difficulties, and the French public was well informed of these difficulties. Second, the French actively and intentionally negotiated with the French trade union federations in the reform process, a process it described as one of "information, dialogue, and consultation." Finally, Prime Minister Raffarin was firmly and irrevocably committed to reforming the French retirement system and was willing to weather months of public strikes and demonstrations to reach his ultimate goal of reform.

Like France, the American Social Security system faces serious funding difficulties and the American government has long debated reform of its Social Security system. Unlike France, however, the United States has not enacted a major reform of the Social Security system since 1983. Two differences between the United States and France help explain this difference. First, although the American public is well aware of Social Security's financing difficulties, the system's difficulties are long-term in nature rather than short-term like in France. Second, no American politician has yet demonstrated the same level of commitment to reform as Prime Minister Raffarin did in 2003.

In the absence of an immediate funding crisis²⁷⁰ or an unwavering commitment to reform,²⁷¹ reform of the American Social Security system is likely to be a long time in coming,²⁷² especially in these days of federal budget deficits. The

270. Two Democratic Representatives confirmed this view in a meeting before the Internal Foundation of Employee Benefit Plans on May 18, 2004. See Michael Wyand, *Congress Will Only Address Reform When It Becomes a Crisis, Lawmakers Say*, 31 BNA PENSION & BENEFITS REP. 1127, 1127 (2004) (noting that Rep. Rahm Emanuel said "Congress will only address Social Security reform when it becomes a crisis" and Rep. Charles W. Stenholm "agree[s] with Rahm very strongly, until we see the 'whites of their eyes' or until we are absolutely there [a Social Security crisis], you are just not going to see this Congress, this administration, or any Congress or any administration deal with this because it is politically difficult.").

271. Cf. Ball, *supra* note 254, at B04 (declaring that "I know that repairing Social Security is well within our grasp – all we need is the political will").

272. See also Michael W. Wyand, *Groups Offer Reform Proposals Despite Very Little Likelihood of Enactment*, 31 BNA PENSION & BENEFITS REP. 336, 336 (2004) (noting that "[a]t a news conference on Jan. 21 following the President's Jan. 20 address, Reps. Jim Kolbe (R-Ariz.) and Charles W. Stenholm (D-Texas), among others, acknowledged that in all likelihood, 2004 will be limited to debate on reform, but no final legislation").

late 1990s and early 2000s offered the American government a unique opportunity to reform Social Security²⁷³ because the federal government was running a surplus.²⁷⁴ That opportunity, however, was squandered and the federal government is once again running a deficit.²⁷⁵ Despite the incontrovertible need to address Social Security's long-term funding deficit, reform does not appear to be just around the corner.



273. See AARON & REISCHAUER, *supra* note 235, at 158 ("America has a rare opportunity to restore financial balance to the nation's mandatory retirement system and modernize it for the twenty-first century. The economy is strong. Inflation is well controlled. The federal budget is in surplus for the first time in three decades. Demographic pressures are low. . . . These favorable circumstances will not last.").

274. See CONG. U. S. CONG. BUDGET OFF., THE BUDGET AND ECONOMIC OUTLOOK: FISCAL YEARS 2005 TO 2014, at 129 (2004) (showing that the federal government ran a budget surplus from 1998 through 2001 and returned to a deficit in 2002).

275. As of August 5, 2004, the Congressional Budget Office projected a budget deficit of \$422 billion for the fiscal year 2004. CONG. BUDGET OFF., MONTHLY BUDGET REVIEW, at 1, 1 (2004), available at <http://www.cbo.gov/ftpdocs/57xx/doc5721/08-2004-MBR.pdf> (last visited Apr. 18, 2005).