

THE ONE-HUNDREDTH ANNIVERSARY OF THE FEDERAL ESTATE TAX: IT'S TIME TO RENEW OUR VOWS

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Abstract: The approaching one-hundredth anniversary of the federal estate tax is an opportune time to revisit its historical origins, its role in our government and society through the years, and its current and future place in our fiscal firmament. This Article argues that the reasons behind the enactment of the estate tax in 1916—to raise revenue during a time of war, enhance the progressivity of the tax system, and curb concentrations of wealth—are even more compelling in 2016. As a result, this Article argues that revitalization of the estate tax should be a central tax reform plank of the new administration in 2017.

INTRODUCTION

September 8, 2016 will mark the one-hundredth anniversary of the federal estate tax.¹ As with many longstanding marriages, America's commitment to the estate tax has waxed and waned through the years. Our ardor built slowly, growing from the honeymoon period (impacting less than 1% of decedents with an inflation-adjusted² exemption of around \$1 million and a 10% top rate on estates over \$100 million, raising less than 1% of all federal tax revenues)³ to a mid-marriage peak (impacting more than 7% of decedents with a \$350,000 exemption and a 77% top rate on estates over \$160 million, raising nearly 10% of all federal tax revenues).⁴ But our passion has steadily cooled since then, culminating in a one-year trial separa-

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¹ Revenue Act of 1916, Pub. L. No. 64-271, 39 Stat. 756.

² All exemption and top bracket amounts in this Introduction are converted to 2015 dollars using the Bureau of Labor Statistics' CPI (Consumer Price Index) Inflation Calculator as of September 1, 2015. *CPI Inflation Calculator*, BUREAU LAB. STAT., http://www.bls.gov/data/inflation_calculator.htm [<https://perma.cc/N9ZP-HHYN>].

³ See Darien B. Jacobson et al., *The Estate Tax: Ninety Years and Counting*, 27 STAT. INCOME BULL. 118, 122, 125 (2007), <http://www.irs.gov/pub/irs-soi/07sumbul.pdf> [<https://perma.cc/TXJ3-RDQ9>] (providing data on estate tax exemptions and tax rates since 1916).

⁴ *Id.*

tion in 2010⁵ and today's withered estate tax (impacting less than 0.2% of decedents with a \$5.4 million exemption and a 40% top rate on estates over \$6.4 million, raising less than 0.6% of all federal tax revenues).⁶

Yet the initial reasons for our commitment to the estate tax—to raise revenue during a time of war, enhance the progressivity of the tax system, and curb concentrations of wealth⁷—are even more compelling today than they were in 1916. This Article argues that we should rededicate ourselves to the vibrant estate tax of our youth.⁸

Part I traces the war-driven origins of an estate tax that made significant contributions to the nation's fiscal health for generations, until the evisceration of the tax in the twenty-first century despite unprecedented revenue needs and mounting threats posed by radical Islamic terrorism. Part II charts the reduced progressivity of America's tax system and increased income inequality while the estate tax has been largely defanged. Part III documents the nation's growing wealth inequality and proposes reforms to restore the estate tax to its rightful role in helping to curb excessive concentrations of wealth. The Article concludes that a revitalized estate tax provides a surer path to raising revenue, enhancing tax progressivity, and checking wealth concentration than more fundamental tax reform ideas that are unlikely to emerge from the political gridlock in Washington, D.C.

I. RAISING REVENUE

Three times in its early history, the United States turned to various taxes on transfers of wealth at death when faced with revenue needs from war (or threats of war), and then repealed the taxes when the wars (or threats of war) ended.⁹ In 1797, the federal government imposed a stamp tax on vari-

⁵ Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, § 301, 124 Stat. 3296, 3300–01; Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, § 501, 115 Stat. 38, 69.

⁶ See OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, FISCAL YEAR 2016 HISTORICAL TABLES, BUDGET OF THE U.S. GOVERNMENT 41–52 & tbls.2.4 & 2.5 (2016), <https://www.whitehouse.gov/sites/default/files/omb/budget/fy2016/assets/hist.pdf> [<https://perma.cc/B34S-Y894>] (compiling information and estimates on social insurance and retirement receipts, excise taxes, and other receipts from 1940 to 2020); CHYE-CHING HUANG & BRANDON DEBOT, CTR. ON BUDGET & POL'Y PRIORITIES, TEN FACTS YOU SHOULD KNOW ABOUT THE FEDERAL ESTATE TAX 1–2 (2015), <http://www.cbpp.org/sites/default/files/atoms/files/1-8-15tax.pdf> [<https://perma.cc/RBD5-8H3R>] (discussing the low number of estates that face an estate tax each year).

⁷ See, e.g., Michael J. Graetz, *To Praise the Estate Tax, Not to Bury It*, 93 YALE L.J. 259, 269–73 (1983) (analyzing the role and significance of the estate tax); James R. Repetti, *The Case for the Estate and Gift Tax*, 86 TAX NOTES 1493, 1494–1500 (2000) (critiquing the use and objectives of transfer taxes).

⁸ Cf. *Proverbs* 5:18 (“[M]ay you rejoice in the wife of your youth.”); *Malachi* 2:15 (“[D]o not be unfaithful to the wife of your youth.”).

⁹ See JOINT COMM. ON TAX'N, JCX-52-15, HISTORY, PRESENT LAW, AND ANALYSIS OF THE FEDERAL WEALTH TRANSFER TAX SYSTEM 4–6 (2015), <https://www.jct.gov/publications.html>?

ous aspects of a decedent's estate to help finance a threatened war with France,¹⁰ and repealed the tax in 1802.¹¹ In 1862, the government imposed an inheritance tax to help finance the Civil War,¹² and repealed the tax in 1870.¹³ In 1898, the government imposed an estate tax to help finance the Spanish-American War,¹⁴ and repealed the tax in 1902.¹⁵ In 1916, the federal government enacted the current estate tax to help finance World War I.¹⁶

In its first twenty-five years, the estate tax's contribution to the federal fisc gyrated between 1% and 10% of overall tax revenues, due to a frequently changing top rate (from 10% to 77%). Despite this, a relatively stable exemption (from \$40,000 to \$100,000) limited the impact of the estate tax to roughly 0.5% to 1.5% of adults who died during this period. The 1940s ushered in a sustained stretch in which the estate tax produced between 1% and 2% of federal tax revenues, due to a relatively stable top bracket (77% to 70%, with each decline accompanied by a corresponding reduction in the amount at which the lowered rate kicked in (from \$10 million to \$3 million)). But a stagnant exemption (\$60,000) for over thirty years was eroded by inflation, resulting in the percentage of adults who died subject to the estate tax nearing 8% in the mid-1970s.

The Economic Recovery Tax Act of 1981¹⁷ and the Economic Growth and Tax Relief Reconciliation Act of 2001 (the "2001 Act") kept estate tax contributions at between 1% and 2% of federal tax revenues through the mid-2000s, despite a reduction in the top bracket (from 70% to 45% in 2007) and an increase in the exemption (from \$175,000 to \$2 million). The fulfillment of the 2001 Act and the passage of the Tax Relief, Unemploy-

func=startdown&id=4744 [https://perma.cc/EG9M-F5GD] [hereinafter FEDERAL WEALTH TRANSFER TAX SYSTEM] (discussing the history of the U.S. wealth transfer tax system); PAUL R. MCDANIEL ET AL., *FEDERAL WEALTH TRANSFER TAXATION* 3–5 (7th ed. 2015) (same); Jeffrey A. Cooper, *Ghosts of 1932: The Lost History of Estate and Gift Taxation*, 9 FLA. TAX REV. 875, 881–82 (2010) (providing an overview of the early history of estate and gift taxes); Louis Eisenstein, *The Rise and Decline of the Estate Tax*, 11 TAX L. REV. 223, 224–30 (1955) (reviewing the history of the estate tax). For an extensive discussion of American taxation during times of war, see generally STEVEN A. BANK ET AL., *WAR AND TAXES* (2008).

¹⁰ An Act Laying Duties on Stamped Vellum, Parchment, and Paper, ch. 11, 1 Stat. 527 (1797).

¹¹ An Act to Repeal the Internal Taxes, ch. 19, § 1, 2 Stat. 148, 148 (1802).

¹² An Act to Provide Internal Revenue to Support the Government and to Pay Interest on the Public Debt, ch. 119, 12 Stat. 432, 438 (1862).

¹³ An Act to Reduce Duties on Imports, and to Reduce Internal Taxes, and for Other Purposes, ch. 315, § 36, 17 Stat. 230, 256 (1872); An Act to Reduce Internal Taxes, and for Other Purposes, ch. 255, § 1, 16 Stat. 256, 256 (1870).

¹⁴ An Act to Provide Ways and Means to Meet War Expenditures, and for Other Purposes, ch. 448, § 29, 30 Stat. 230, 464–65 (1898).

¹⁵ An Act to Repeal War-Revenue Taxation, and for Other Purposes, Pub. L. No. 57-67, ch. 500, 32 Stat. 96 (1902).

¹⁶ Revenue Act § 1, 39 Stat. at 756.

¹⁷ Economic Recovery Tax Act of 1981, Pub. L. No. 97-34, 95 Stat. 172.

ment Insurance Reauthorization, and Job Creation Act of 2010 (the “2010 Act”) increased the exemption, first to \$3.5 million and then to an inflation-adjusted \$5 million (following 2010’s one-year estate tax repeal). They also reduced the top rate from 45%—first to 35% and then partially reinstated to 40%. This left the estate tax in its current tattered state, raising historically low amounts of federal tax revenue (0.6%) and reaching historically low numbers of decedents (0.2%).

Table 1.¹⁸

Percentage of Adult Decedents Subject to Estate Tax, Exemption, Top Rate, Revenue, and Percentage of All Federal Revenues, Selected Years, 1917–2015					
Year	% Deaths	Exemption (2015 Dollars)	Top Rate (Amount 2015 Dollars)	Revenue (2015 Dollars)	% Revenue
1917	0.8%	50,000 (925,000)	10% (109 million)	6 million (112 million)	0.6%
1921	0.9%	50,000 (675,000)	25% (133 million)	154 million (2 billion)	2.8%
1931	0.9%	100,000 (1.6 million)	20% (157 million)	48 million (754 million)	1.6%
1941	1.1%	100,000 (1.6 million)	77% (162 million)	403 million (6.5 billion)	4.6%
1951	1.5%	60,000 (550,000)	77% (92 million)	708 million (6.5 billion)	1.4%
1961	3.7%	60,000 (475,000)	77% (80 million)	1.9 billion (15.2 billion)	2.0%
1971	6.5%	60,000 (350,000)	77% (59 million)	3.7 billion (21.8 billion)	2.0%
1981	1.8%	175,000 (450,000)	70% (13 million)	6.8 billion (17.9 billion)	1.1%
1991	1.3%	600,000 (1.1 million)	55% (5 million)	11.1 billion (19.3 billion)	1.1%
2001	2.1%	675,000 (900,000)	55% (4 million)	28.4 billion (38.3 billion)	1.4%
2011	0.1%	5 million (5.4 million)	35% (6.4 million)	7.4 billion (7.9 billion)	0.3%
2015	0.2%	5.4 million	40% (6.4 million)	19.8 billion (est.)	0.6%

Along with Joseph Bankman, this author recently argued that “the federal budget imbalance, caused by the failure of both political parties to raise the tax revenues needed to fund the nation’s spending priorities, is unsustainable and threatens our nation’s future.”¹⁹ Updated economic data paint an equally bleak fiscal picture.²⁰

¹⁸ See INTERNAL REVENUE SERV., STATISTICS OF INCOME BULLETIN HISTORICAL TABLE 17, <http://www.irs.gov/uac/SOI-Tax-Stats---Historical-Table-17> [https://perma.cc/4YDY-PQQ7] (select “Historical Table 17”); FEDERAL WEALTH TRANSFER TAX SYSTEM, *supra* note 9, at 25, 28 tbls.2 & 3; OFFICE OF MGMT. & BUDGET, *supra* note 6; HUANG & DEBOT, *supra* note 6, at 2; Jacobson et al., *supra* note 3, at 122, 125; David Joulfaian, The Federal Estate Tax: History, Law, and Economics 2-6 to 2-7 (June 2013) (unpublished manuscript), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1579829 [https://perma.cc/FCT7-6GM5].

¹⁹ Joseph Bankman & Paul L. Caron, *California Dreamin’: Tax Scholarship in a Time of Fiscal Crisis*, 48 U.C. DAVIS L. REV. 405, 405 (2014).

²⁰ For the 2014 data, see *id.* at 406.

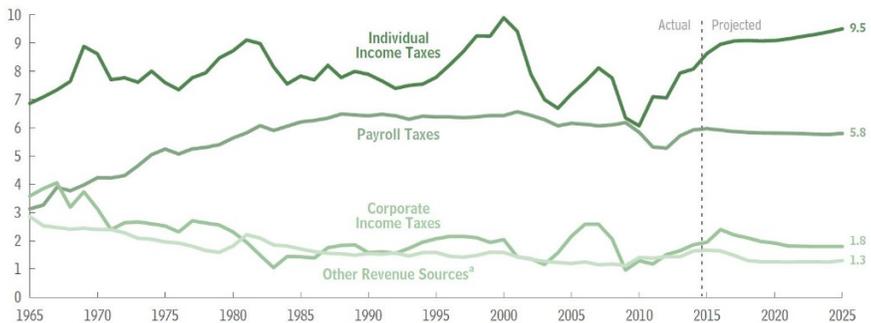
As demonstrated in Charts 1 and 2 below, over the past fifty years, federal spending has averaged 20.1% of gross domestic product (“GDP”) while federal revenues have averaged 17.4% of GDP.²¹ This 2.7 percentage point gap between spending and revenues has produced \$18.2 trillion of federal debt held by the public. This constitutes 74% of GDP—the highest in our history, except for a brief period (1944–1950) around World War II, and double the percentage at the end of 2008, as illustrated in Chart 3 below.²²

Chart 1.²³

Revenues, by Major Source

Over the next decade, individual income taxes will increase at a faster rate than other taxes primarily because of real bracket creep, which occurs when income grows faster than inflation and more income is pushed into higher tax brackets.

Percentage of Gross Domestic Product



Source: Congressional Budget Office.

- a. Excise taxes, remittances from the Federal Reserve to the Treasury, customs duties, estate and gift taxes, and miscellaneous fees and fines.

²¹ CONG. BUDGET OFFICE, AN UPDATE TO THE BUDGET AND ECONOMIC OUTLOOK: 2015 TO 2025, at 75 fig.1-2, 82 fig.1-5 (2015), https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/50724-Update-OneColumn_0.pdf [<https://perma.cc/ZW6J-RLEC>] [hereinafter CBO, AN UPDATE TO THE BUDGET OUTLOOK]; CONG. BUDGET OFFICE, THE 2015 LONG-TERM BUDGET OUTLOOK 12 fig.1-2, 22 fig.1-4 (2015), <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/50250-LongTermBudgetOutlook-4.pdf> [<https://perma.cc/J8FB-LBV2>] [hereinafter CBO, 2015 BUDGET OUTLOOK].

²² CBO, AN UPDATE TO THE BUDGET OUTLOOK, *supra* note 21, at 71 fig.1; CBO, 2015 BUDGET OUTLOOK, *supra* note 21, at 11 fig.1-1.

²³ CBO, AN UPDATE TO THE BUDGET OUTLOOK, *supra* note 21, at 75 fig.1-2, 82 fig.1-5.

Chart 2.²⁴

Total Revenues and Outlays

Projected deficits in CBO's baseline remain about the same for the next several years but then increase as mandatory spending and interest payments rise while revenues remain essentially steady relative to gross domestic product.

Percentage of Gross Domestic Product

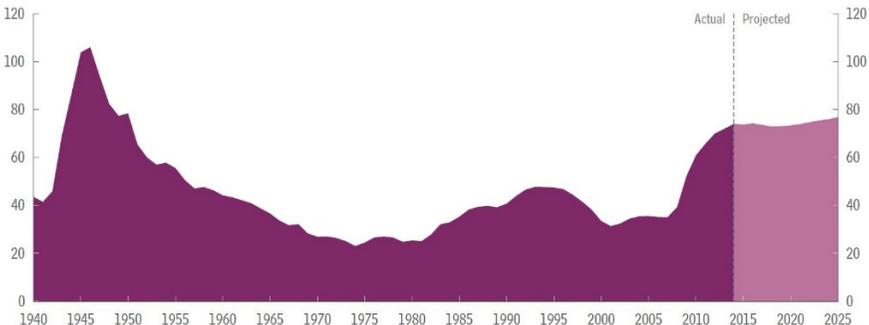


Source: Congressional Budget Office.

Chart 3.²⁵

Federal Debt Held by the Public

Percentage of Gross Domestic Product



Source: Congressional Budget Office.

Absent structural changes in the nation’s spending and tax laws, the fiscal future is even bleaker: the latest Congressional Budget Office (“CBO”) projections state that the spending/revenue shortfall will grow from 2.4 percentage points in 2015 (20.6% spending, 18.2% revenues) to 3.5 percentage points in 2021–2025 (21.7% spending, 18.2% revenues), increasing the public debt to 77% of GDP.²⁶ Moreover, the CBO’s projec-

²⁴ *Id.* at 75 fig.1-2.

²⁵ *Id.* at 71 fig.1.

²⁶ *Id.* at 69 tbl.1, 70 tbl.2. This author and Bankman noted that “[a]lthough there is no ironclad rule about the precise level of debt that will lead to national economic calamity, virtually all econ-

tions almost certainly understate the fiscal crisis facing the nation due to various “heroic” assumptions about spending and tax policies, “as well as demographic and economic trends, that are unlikely to occur.”²⁷

The evisceration of the estate tax has thus occurred at a time of acute need for additional federal revenues. Indeed, it is especially ironic that a tax born out of fiscal demands during times of war has withered while the nation confronts radical Islamic terrorism and other threats around the world. As one commentator has observed, “The total lesson of the life of the estate tax is this: a tax must have a revenue raising rationale if it is going to endure the changing moods of national social policies.”²⁸

In its current state, the estate tax is projected to raise less than \$250 billion over the 2016–2025 period.²⁹ Of course, that is not an insignificant sum.³⁰ But restoring the estate tax’s historic role in the federal tax system would increase that number to \$500 billion to \$1 trillion.³¹ Such a restoration is necessary not only to help reverse the erosion in our revenue base but also to help reverse the lost progressivity in the tax system and the increased concentrations of wealth that have occurred over the past several decades.

omists agree that an ever-increasing debt-to-GDP ratio on autopilot, without regard to pressing national priorities . . . threatens future prosperity.” Bankman & Caron, *supra* note 19, at 406–07 (footnote omitted).

²⁷ Bankman & Caron, *supra* note 19, at 407.

²⁸ David Frederick, *Historical Lessons from the Life and Death of the Federal Estate Tax*, 49 AM. J. LEGAL HIST. 197, 213 (2007).

²⁹ CONG. BUDGET OFFICE, REVENUES PROJECTED IN CBO’S AUGUST 2015 BASELINE (2015), <https://www.cbo.gov/sites/default/files/51118-2015-08-BudgetProjections.xlsx> [<https://perma.cc/G76R-8KCV>] (within spreadsheet, select worksheet titled “9. Revenue Projections”).

³⁰ HUANG & DEBOT, *supra* note 6, at 5 (noting that the revenue to be raised by the estate tax over this ten-year period is “significantly more than the federal government will spend on the Food and Drug Administration, the Centers for Disease Control and Prevention, and the Environmental Protection Agency combined”).

³¹ The United States is not alone in its decreased reliance on the estate tax as a source of revenue. The percentage of estate, inheritance, and gift taxes of total revenues in the Organisation for Economic Co-Operation and Development (“OECD”) countries has declined from an average of 1.1% in 1965 to 0.4% in 2013 (the latest year for which complete data are available). ORG. FOR ECON. CO-OPERATION & DEV., REVENUE STATISTICS—COMPARATIVE TABLES, <https://stats.oecd.org/Index.aspx?DataSetCode=REV#> [<https://perma.cc/8BEB-KYXS>] (next to “Government” select “Total”; next to “Tax” select “4300 Estate, inheritance and gift taxes”; next to “Variable” select “Tax revenue as % of total taxation”). The only OECD countries that raise a larger share of their revenues from estate, inheritance, and gift taxes than the United States (0.6% in 2014) are Belgium (1.6% in 2014), Korea (1.3% in 2014), Japan (1.1% in 2013), France (1.1% in 2014), Spain (0.8% in 2014), Netherlands (0.7% in 2013), and United Kingdom (0.7% in 2014). *Id.* Eleven countries (Portugal, 2004; Slovak Republic, 2004; Sweden, 2004; Russia, 2005; Hungary, 2006; Singapore, 2008; Austria, 2008; Lichtenstein, 2011; Brunei, 2013; Czech Republic, 2014; Norway, 2014) and two tax jurisdictions (Macau, 2001; Hong Kong, 2006) have repealed their estate taxes since 2000. ALAN COLE, TAX FOUND., ESTATE AND INHERITANCE TAXES AROUND THE WORLD 5–6 (2015), http://taxfoundation.org/sites/taxfoundation.org/files/docs/TaxFoundation_FF458.pdf [<https://perma.cc/63JS-552C>].

II. ENHANCING THE PROGRESSIVITY OF THE TAX SYSTEM

James Repetti and this author recently chronicled the growing income inequality in America.³² That article noted that “[t]he adverse effects of inequality are especially pernicious because they persist across generations.”³³ It also reviewed the numerous studies that unanimously conclude that inequality retards economic growth.³⁴ Updated data show worsening inequality.³⁵

Thomas Piketty and Emmanuel Saez have documented the distribution of income in the United States since 1913.³⁶ Eric Kades has combined the income shares of the top 1% and the top 10% from the Piketty-Saez data (see Chart 4 below), demonstrating that these groups received smaller income shares in the 1940s through the 1970s compared with prior and subsequent periods.

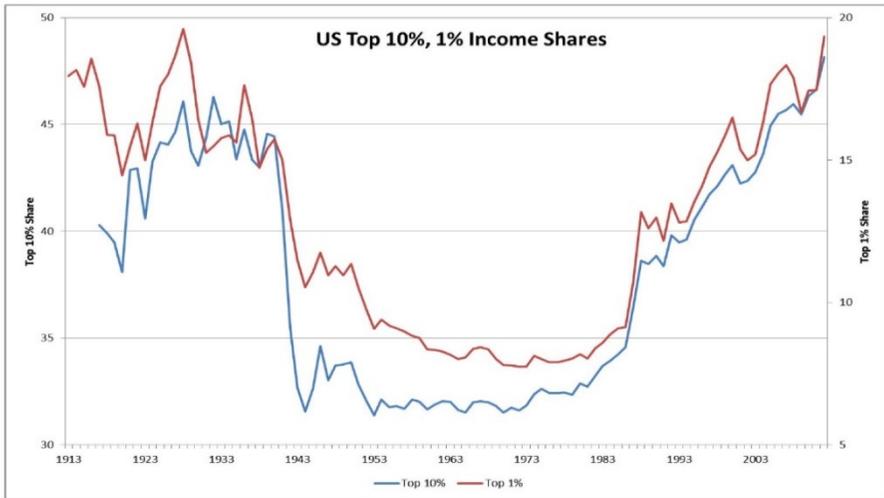
³² Paul L. Caron & James R. Repetti, *Occupy the Tax Code: Using the Estate Tax to Reduce Inequality and Spur Economic Growth*, 40 PEPP. L. REV. 1255, 1257–59 (2013). This article outlines the adverse societal consequences of growing inequality, including worsening life expectancy, math abilities and literacy, infant mortality, homicides, imprisonment, teenage births, level of trust, obesity, mental illness (including drug and alcohol addiction), and social mobility. *Id.* at 1260–62.

³³ *Id.* at 1262.

³⁴ *Id.* at 1264–74; see also James R. Repetti, *Democracy and Opportunity: A New Paradigm in Tax Equity*, 61 VAND. L. REV. 1129, 1150 (2008) (mentioning data indicating inequality is linked to an increase in economic costs due to a decline in public health); James R. Repetti, *Democracy, Taxes, and Wealth*, 76 N.Y.U. L. REV. 825, 836–49 (2001) (analyzing studies on the economic and political impact of wealth concentration).

³⁵ For the 2013 data, see Caron & Repetti, *supra* note 32, at 1257–59.

³⁶ Thomas Piketty & Emmanuel Saez, *Income Inequality in the United States, 1913–1998*, 118 Q.J. ECON. 1, 4–35 (2003); Emmanuel Saez, *Striking It Richer: The Evolution of Top Incomes in the United States (Updated with 2014 Preliminary Estimates)* 4–6 (June 25, 2015) (unpublished manuscript), <http://eml.berkeley.edu/~saez/saez-UStopincomes-2014.pdf> [<https://perma.cc/HQF5-UHKV>] [hereinafter Saez June 2015 Manuscript].

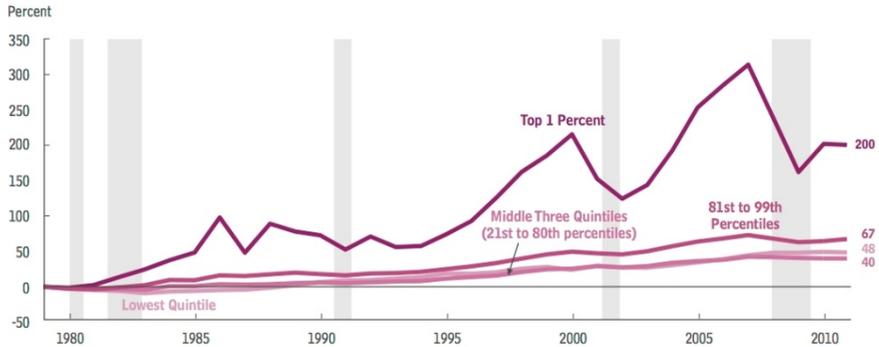
Chart 4.³⁷

The CBO reported last year that for the 1979–2011 period, after-tax inflation-adjusted household income of the top 1% of households grew 200%, the next 19% grew 67%, the middle 60% grew 48%, and the bottom 20% grew 40% (see Chart 5 below).

³⁷ Eric Kades, *Giving Credit Where Credit Is Due: Reducing Inequality with a Progressive State Tax Credit* (forthcoming 2016) (manuscript at 7 fig.1) (on file with author). Kades further documents the “explosion” of income inequality since 1980:

[S]omething (or perhaps a number of things) happened around 1980. In the preceding decades, incomes of the poor (10th [percentile]), the middle class (50th [percentile]), and the upper middle class (90th [percentile]) evolved similarly if not in perfect lock-step. Since 1980, however, fortunes of the classes have diverged: poor and middle class households have experienced little if any income growth while wealthier Americans have enjoyed robust and consistent increases.

Id. (manuscript at 8).

Chart 5.³⁸
Cumulative Growth in Average Inflation-Adjusted After-Tax Income, by Before-Tax Income Group, 1979 to 2011


Source: Congressional Budget Office.

The CBO chronicled the growing inequality during this period using the Gini index³⁹:

As the distributions of income have shifted over time, so has the degree of inequality in market income, before-tax income, and after-tax income. A standard measure of income inequality is the Gini index, which summarizes an entire distribution in a single number that ranges from zero to one. A value of zero means that income is distributed equally among all income groups, while a value of one indicates that all of the income is received by the

³⁸ CONG. BUDGET OFFICE, THE DISTRIBUTION OF HOUSEHOLD INCOME AND FEDERAL TAXES, 2011, at 24 fig.13 (2014), <https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/reports/49440-Distribution-of-Income-and-Taxes.pdf> [<https://perma.cc/JCL7-CHLR>] [hereinafter CBO, HOUSEHOLD INCOME AND FEDERAL TAXES].

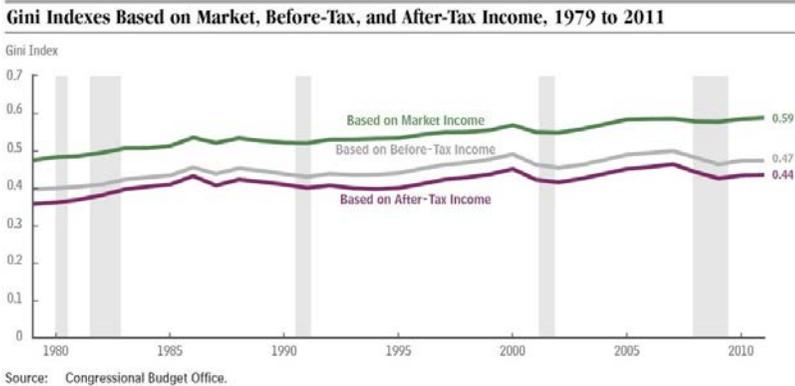
³⁹ For a discussion of the Gini index and other measures of inequality, see EDWARD D. KLEINBARD, WE ARE BETTER THAN THIS: HOW GOVERNMENT SHOULD SPEND OUR MONEY 83–91 (2015).

highest-income group and none is received by any of the lower-income groups. Inequality of all three measures of income increased between 1979 and 2011, according to CBO's estimates⁴⁰

Saez reports that the top 1% has captured a majority of the income gains over the past twenty-two years.⁴¹ Over the entire period, 55% of the income gains went to the top 1%, who experienced 80% income growth (compared to 10.8% income growth of the bottom 99%).⁴² During the Clinton economic expansion (1993–2000), 45% of the income gains went to the top 1%, who experienced 98.7% income growth (compared to 20.3% of the bottom 99%).⁴³ During the Bush economic expansion (2002–2007), 65% of the income gains went to the top 1%, who experienced 61.8% income growth (compared to 6.8% income growth of the bottom 99%).⁴⁴ During the Obama economic expansion (2009–2014), 58% of the income gains went to the top 1%, who experienced 27.1% income growth (compared to 4.3% income growth of the bottom 99%).⁴⁵

To be sure, during the two economic recessions in this period (2000–2002 and 2007–2009), 57% and 49%, respectively, of the income losses were borne by the top 1%,⁴⁶ who experienced 30.8% and 36.3% income

⁴⁰ CBO, HOUSEHOLD INCOME AND FEDERAL TAXES, *supra* note 38, at 25.
Chart 6.



Id. at 26 fig.14; see also Richard M. Bird & Eric M. Zolt, *Taxation and Inequality in Canada and the United States: Two Stories or One?*, 52 OSGOODE HALL L.J. 401, 410–11 (2015) (explaining how the Gini coefficient is calculated and providing data on how taxes and transfers affect income inequality).

⁴¹ Saez June 2015 Manuscript, *supra* note 36, at 7 tbl.1.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

losses, respectively (compared to the respective 6.5% and 11.6% income losses of the bottom 99%).⁴⁷ But the outsized share of the income gains the top 1% enjoyed during the predominant expansionary economy of the past twenty-two years more than made up for the similarly outsized share of losses borne by the top 1% during the briefer recessionary periods.⁴⁸

Table 2.⁴⁹

Real Income Growth by Groups, 1993–2014				
	Average Incomes Real Growth	Top 1% Incomes Real Growth	Bottom 99% Incomes Real Growth	% Growth or Loss Captured by Top 1%
Full Period 1993–2014	20.6%	80.0%	10.8%	55%
Clinton Expansion 1993–2000	31.5%	98.7%	20.3%	45%
Recession 2000–2002	(11.7%)	(30.8%)	(6.5%)	57%
Bush Expansion 2002–2007	16.1%	61.8%	6.8%	65%
Recession 2007–2009	(17.4%)	(36.3%)	(11.6%)	49%
Obama Expansion 2009–2014	8.4%	27.1%	4.3%	58%

The weakening of the estate tax thus has coincided with historic reductions in the progressivity of the tax system. Indeed, Piketty and Saez have fingered the decline in the estate tax as one of two primary causes of the reduced progressivity of the tax system since 1960.⁵⁰ The recent legislative changes to raise income taxes on high-income Americans—the 39.6% top income tax bracket, 3.8% net investment income tax, 20% capital gains tax rate, and phase-out of itemized deductions—have begun to redistribute

⁴⁷ *Id.*

⁴⁸ Saez concludes:

The labor market has been creating much more inequality over the last thirty years, with the very top earners capturing a large fraction of macroeconomic productivity gains. A number of factors may help explain this increase in inequality, not only underlying technological changes but also the retreat of institutions developed during the New Deal and World War II—such as progressive tax policies, powerful unions, corporate provision of health and retirement benefits, and changing social norms regarding pay inequality. We need to decide as a society whether this increase in income inequality is efficient and acceptable and, if not, what mix of institutional and tax reforms should be developed to counter it.

Id. at 5–6.

⁴⁹ *Id.* at 7 tbl.1.

⁵⁰ Thomas Piketty & Emmanuel Saez, *How Progressive is the U.S. Federal Tax System? A Historical and International Perspective*, 21 J. ECON. PERSP. 3, 12 (2007).

some of the tax burden.⁵¹ There is, of course, much more that could (and should) be done on the income tax front to restore progressivity to the tax system, whether in the form of broad structural changes⁵² or reform targeted at the top of the income scale, such as modifications in the tax treatment of private equity returns.⁵³

But whatever the fate of the income tax reform battle, revitalization of the estate tax needs to be on the front lines of the broader tax reform war. There is compelling evidence that the estate tax is more efficient than the income tax because it has a less harmful effect on savings.⁵⁴ With the nation mired in the slowest post-recession recovery since the 1930s, the estate tax

⁵¹ INTERNAL REVENUE SERV., DEP'T OF THE TREASURY, PUB. NO. 1034, INDIVIDUAL INCOME TAX RETURNS 2013, at 21–22, 195 (2015), <https://www.irs.gov/pub/irs-soi/13inalcr.pdf> [<https://perma.cc/SM2S-P3VP>]; Scott Greenberg, *Here's How Much Taxes on the Rich Rose in 2013*, TAX FOUND. TAX POL'Y BLOG (Aug. 27, 2015), <http://taxfoundation.org/blog/here-s-how-much-taxes-rich-rose-2013> [<https://perma.cc/8BYZ-RRVS>] (noting that effective tax rates fell from 4.4% in 2012 to 4.3% in 2013 for taxpayers with adjusted gross incomes (“AGI”) under \$50,000; were flat for taxpayers with AGIs between \$50,000–\$100,000 (8.7%) and \$100,000–\$200,000 (12.6%); and increased for taxpayers with AGIs between \$200,000–\$500,000 (from 19.5% to 19.6%), \$500,000–\$1,000,000 (from 23.9% to 25.8%), \$1,000,000–\$2,000,000 (from 24.5% to 28.6%), \$2,000,000–\$5,000,000 (from 24.2% to 29.5%), \$5,000,000–\$10,000,000 (from 23.3% to 29.3%), and over \$10,000,000 (from 19.8% to 26.1%)).

⁵² See, e.g., KLEINBARD, *supra* note 39, at 377–402 (discussing tax reform through implementing what Edward Kleinbard calls the “Better Base Case”); Michael J. Graetz, *The Tax Reform Road Not Taken—Yet*, 67 NAT'L TAX J. 419, 424–32 (2014) (proposing implementation of value added taxes to the U.S. tax regime in a detailed four-component plan); Daniel N. Shaviro, *1986-Style Tax Reform: A Good Idea Whose Time Has Passed*, 131 TAX NOTES 817, 819–42 (2011) (arguing the Tax Reform Act of 1986 is “no longer appropriate” today).

⁵³ See generally Karen C. Burke, *The Sound and Fury of Carried Interest Reform*, 1 COLUM. J. TAX L. 1 (2010) (“[A] better approach may be to treat a service partner’s profits share entirely as ordinary income even if implicit salary is reinvested in the partnership’s business.”); Heather M. Field, *The Real Problem with Carried Interests*, 65 HASTINGS L.J. 405 (2014) (examining reforms that “are responsive to the root of . . . hostility [towards carried interests]”); Victor Fleischer, *Two and Twenty: Taxing Partnership Profits in Private Equity Funds*, 83 N.Y.U. L. REV. 1 (2008) (offering a series of reform alternatives); Chris William Sanchirico, *The Tax Advantage to Paying Private Equity Fund Managers with Profit Shares: What Is It? Why Is It Bad?*, 75 U. CHI. L. REV. 1071 (2008) (clarifying “the precise nature of the tax advantage for service-compensatory profit interests” and “apprais[ing] several of the key normative assertions that underlie calls for reform”); David A. Weisbach, *The Taxation of Carried Interests in Private Equity*, 94 VA. L. REV. 715 (2008) (evaluating “the tax treatment of carried interests in private equity”); Gregg D. Polsky, *A Compendium of Private Equity Tax Games* (University of North Carolina Legal Studies Research Paper No. 2524593, Nov. 14, 2014), <http://ssrn.com/abstract=2524593> [<https://perma.cc/7KV4-4Z67>] (analyzing “tax strategies, lawful and unlawful, used by private equity firms to minimize taxes”).

⁵⁴ Caron & Repetti, *supra* note 32, at 1280–89. The authors argued that (1) the event that triggers estate tax liability—death—is ignored by taxpayers during the period of life in which they are likely to be most productive, *id.* at 1285–86; and (2) the expected value of the estate tax’s effective rate is quite low during the period of life in which most taxpayers create wealth, *id.* at 1286–88.

should be enlisted to begin to put our fiscal house in order and stem the growth of income inequality in America.⁵⁵

III. CURBING CONCENTRATIONS OF WEALTH

Wealth is even more concentrated than income at the high end, in the United States and around the world.⁵⁶ As noted above, the author and Repetti recently traced the growing wealth inequality in America in the 1983–2010 period,⁵⁷ focusing (as do others⁵⁸) on the expanding wealth chasm between the top 1% and the bottom 99%. In a 2015 essay⁵⁹ on Piketty’s best-selling book, *Capital in the Twenty-First Century*,⁶⁰ this author argued that new inequality research has shifted the focus of high-end wealth concentration from the top 1% to the top 0.1% (and even the top 0.01%).⁶¹ Since then, Saez and Gabriel Zucman have updated their data on wealth inequality in the United States.⁶² Saez and Zucman separately break out the wealth shares of the top 1%, 0.1%, and 0.01% since 1913.⁶³ They report

⁵⁵ Among the thirty-four OECD countries, the United States has one of the highest levels of income inequality. *See infra* note 68. It has the fourth-highest Gini index (0.401 in 2013 compared to a 0.32 OECD average), behind only Turkey (0.402 in 2012), Mexico (0.457 in 2012), and Chile (0.503 in 2011). ORG. FOR ECON. CO-OPERATION & DEV., INCOME DISTRIBUTION AND POVERTY, <https://stats.oecd.org/Index.aspx?DataSetCode=IDD> [<https://perma.cc/XN83-R42S>] (next to “Measure” select “Gini (disposable income, post taxes and transfers)”; next to “Age group” select “Total population”). The United States also has the third highest ratio of the income of the top 10% versus the income of the bottom 10% (18.8 in 2013 compare to a 9.6 OECD average), behind only Mexico (25.1 in 2012) and Chile (26.5 in 2011). *Id.* (next to “Measure” select “S90/S10 disposable income decile share”; next to “Age group” select “Total population”).

⁵⁶ *See, e.g.*, ORG. FOR ECON. CO-OPERATION & DEV., IN IT TOGETHER: WHY LESS INEQUALITY BENEFITS ALL 34–35 (2015), http://www.keepeek.com/Digital-Asset-Management/oecd/employment/in-it-together-why-less-inequality-benefits-all_9789264235120-en [<https://perma.cc/K77Q-AEQT>] (showing compiled OECD data on wealth disparities in several OECD member countries).

⁵⁷ Caron & Repetti, *supra* note 32, at 1259–60.

⁵⁸ *See, e.g.*, Edward N. Wolff, *The Asset Price Meltdown and the Wealth of the Middle Class* 5–7 (Nat’l Bureau of Econ. Research, Working Paper No. 18,559, 2012), <http://www.nber.org/papers/w18559.pdf> [<https://perma.cc/E95U-QXBK>].

⁵⁹ Paul L. Caron, *Thomas Piketty and Inequality: Legal Causes and Tax Solutions*, 64 EMORY L.J. ONLINE 2073 (2015), <http://law.emory.edu/elj/elj-online/volume-64/responses/piketty-and-inequality.html> [<https://perma.cc/HZX3-E5Q4>].

⁶⁰ THOMAS PIKETTY, *CAPITAL IN THE TWENTY-FIRST CENTURY* (Arthur Goldhammer trans., 2014).

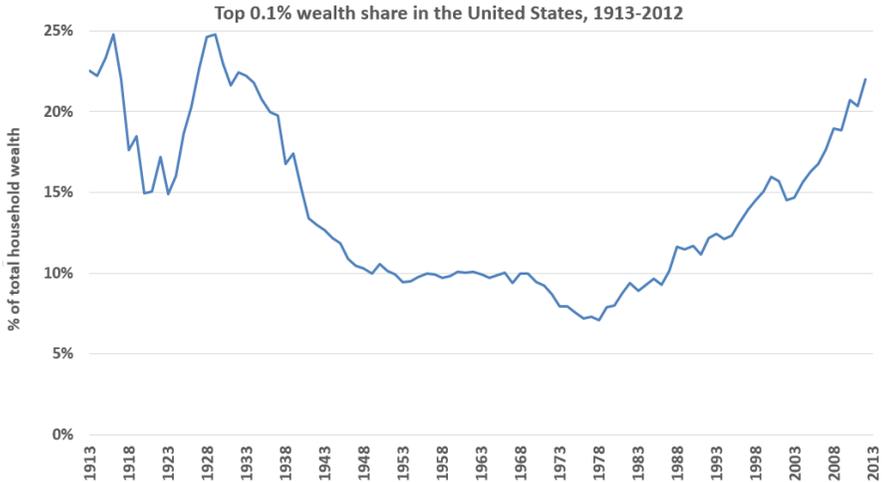
⁶¹ Caron, *supra* note 59, at 2076–79.

⁶² Emmanuel Saez & Gabriel Zucman, *Wealth Inequality in the United States Since 1913: Evidence from Capitalized Income Tax Data*, 131 Q.J. ECON. (forthcoming 2016), <http://gabriel-zucman.eu/files/SaezZucman2016QJE.pdf> [<https://perma.cc/3P6B-3YL6>] [hereinafter Saez & Zucman October 2015 Manuscript].

⁶³ *Id.* In 2012, the number of families, wealth thresholds, average wealth, and wealth shares of these wealth groups in the United States were as follows:

that the wealth share of the top 0.1% (see Chart 7 below) rose from 7% in 1978 to 22% in 2012—a level almost as high as in 1929 (24.8%)⁶⁴:

Chart 7.⁶⁵



Saez and Zucman decompose the top 1% into four groups: top 1% to 0.5%, top 0.5% to 0.1%, top 0.1% to 0.01%, and top 0.01% (see Chart 8 below).⁶⁶ Matt O'Brien⁶⁷ used the Saez-Zucman data to illustrate the enormous share of the wealth gains since 1980 captured by the top 0.01% (+8.6%), followed by the declining shares of the gains enjoyed by the next two groups (top 0.1% to 0.01% (+5.4%) and top 1% to 0.1% (+3.5%)), with

Table 3.

Thresholds and Average Wealth in Top Wealth Groups, 2012				
Group	No. of Families	Wealth Threshold	Avg. Wealth	Wealth Share
Top 1%	1,607,000	\$3,960,000	\$13,840,000	41.8%
Top 0.1%	160,700	\$20,600,000	\$72,800,000	22.0%
Top 0.01%	16,070	\$111,000,000	\$371,000,000	11.2%

Id. (manuscript at 42 tbl.1).

⁶⁴ *Id.* (manuscript at 1).

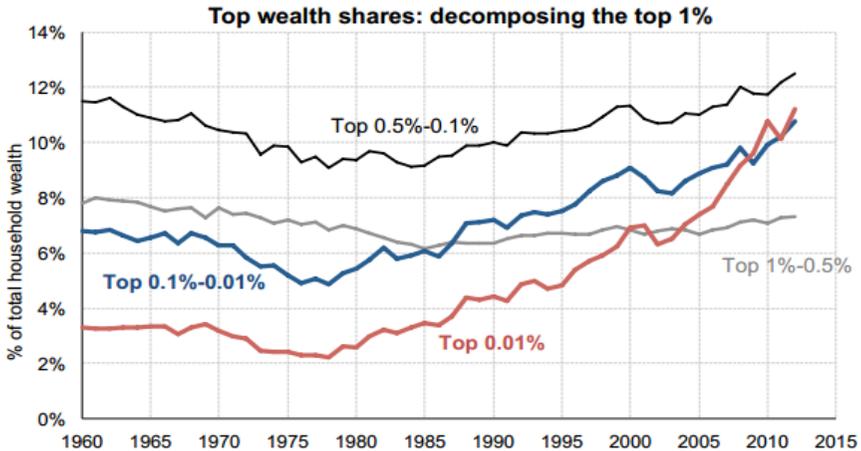
⁶⁵ *Id.* (manuscript at 43 fig.1).

⁶⁶ Emmanuel Saez & Gabriel Zucman, *Wealth Inequality in the United States Since 1913*, 131 Q.J. ECON. (forthcoming 2016), <http://eml.berkeley.edu/~saez/SaezZucman14slides.pdf> [<https://perma.cc/XV39-XA7Q>] [hereinafter Saez & Zucman Supplemental Data] (providing supplemental data; scroll down to slide titled “Surge in top wealth shares concentrated in top 0.1%”).

⁶⁷ Matt O'Brien, *The Bottom 90 Percent Are Poorer Today Than They Were in 1987*, WASH. POST: WONKBLOG (Oct. 22, 2014), <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/10/22/the-bottom-90-percent-are-poorer-today-than-they-were-in-1987> [<https://perma.cc/638T-ZSEK>].

the final two groups suffering losses in their wealth shares (top 10% to 1% (-7.4%) and bottom 90% (-10.4%)).⁶⁸

Chart 8.⁶⁹



The estate tax is an ideal vehicle⁷⁰ to curb concentrations of wealth among the top 1% (1.6 million families), top 0.1% (160,000 families), and

⁶⁸ Among the thirty-four OECD countries, the United States has the highest level of wealth inequality, as measured by the amount of wealth owned by the top 1% (36.6%, compared to the 18% OECD average), 5% (63.3%, compared to the 37% OECD average), and 10% (76.4%, compared to the 50% OECD average) of wealthiest households. ORG. FOR ECON. CO-OPERATION & DEV., WEALTH, <http://stats.oecd.org/Index.aspx?DataSetCode=WEALTH> [https://perma.cc/NS7V-TUZS] (on sidebar select “by country-WEALTH INEQUITY”; next to “Variable” select “Share top 1%”; next to “Variable” select “Share top 5%”; next to “Variable” select “Share top 10%”); Fabrice Murin & Marco Mira d’Ercole, *Household Wealth Inequality Across OECD Countries: New OECD Evidence*, 21 OECD STAT. BRIEF, no. 21, June 2015, at 1, 4, <http://www.oecd.org/social/household-wealth-inequality-across-OECD-countries-OECDsb21.pdf> [https://perma.cc/KQ3C-UQ3T].

⁶⁹ Saez & Zucman Supplemental Data, *supra* note 66 (scroll down to slide titled “Surge in top wealth shares concentrated in top 0.1%”)

⁷⁰ This Article does not address the scholarly debate over the desirability of replacing the federal estate tax with a federal inheritance tax. *See generally* Anne L. Alstott, *Equal Opportunity and Inheritance Taxation*, 121 HARV. L. REV. 469 (2007) (concluding “the present estate tax and major proposals for inheritance taxation only weakly track the equal opportunity principle”); Anne L. Alstott, Commentary, *Family Values, Inheritance Law, and Inheritance Taxation*, 63 TAX L. REV. 123 (2009) (identifying “three ideals of the family” and discussing their “distinctive implications for the terms of inheritance law and the specific legal details of inheritance taxation”); Aviva Aron-Dine, Commentary, *Trade-offs in Choosing Between an Estate Tax and an Inheritance Tax*, 63 TAX L. REV. 265 (2009) (commenting on Lily Batchelder’s article, which favors an inheritance tax over an estate tax); Lily L. Batchelder, *What Should Society Expect from Heirs? The Case for a Comprehensive Inheritance Tax*, 63 TAX L. REV. 1 (2009) (analyzing advantages of implementing an inheritance tax instead of an estate tax); Wendy Gerzog, *What’s Wrong with a Federal Inheritance Tax?*, 49 REAL PROP. TR. & EST. L.J. 163 (2014) (identifying and critiquing the U.S. and international inheritance tax systems by “using the current . . . federal transfer tax system as a benchmark”); David Joulfaian, Commentary, *Replacing the Estate Tax with an Inheritance Tax: A*

top 0.01% (16,000 families).⁷¹ Even though Congress has long since plugged many of the estate tax loopholes⁷² highlighted by George Cooper in his seminal *Voluntary Tax* article,⁷³ some continue to question the continued viability of the estate tax.⁷⁴

Repetti and the present author previously argued that the estate tax is more effective than commonly thought in breaking up dynastic wealth⁷⁵ and proposed five reforms to shore up the estate tax:⁷⁶ (1) disallow minority

Re-Examination, 63 TAX L. REV. 209 (2009) (commenting on Batchelder's and James Hines's articles by discussing estate tax as a deferred income tax and a transfer tax); Louis Kaplow, *On the Taxation of Private Transfers*, 63 TAX L. REV. 159, 178 (2009) (discussing reforming the transfer tax system by replacing it with an inheritance tax); Michael Udell, Commentary, *Wealth Transfer Taxes: Benefits, Burdens, and Bases*, 63 TAX L. REV. 215 (2009) (commenting on Batchelder's argument and Hines's counterpoint on transfer tax reform by implementing inheritance tax). There has been a pronounced shift from estate taxes to inheritance taxes in OECD countries. ORG. FOR ECON. CO-OPERATION & DEV., *supra* note 56, at 49.

⁷¹ This author previously argued that Piketty's proposed global wealth tax is not the optimum redistribution vehicle and concurred with Bankman and Daniel Shaviro that "Piketty's wealth tax would be unconstitutional and thus should not be the focus of efforts to remedy inequality through the tax code." Caron, *supra* note 59, at 2080–81 & n.43 (citing Joseph Bankman & Daniel Shaviro, *Piketty in America: A Tale of Two Literatures*, 68 TAX L. REV. 453 (2015)).

⁷² Paul L. Caron & James R. Repetti, *The Estate Tax Non-Gap: Why Repeal a "Voluntary" Tax?*, 20 STAN. L. & POL'Y REV. 153, 159–62 (2009).

⁷³ George Cooper, *A Voluntary Tax? New Perspectives on Sophisticated Estate Tax Avoidance*, 77 COLUM. L. REV. 161 (1977).

⁷⁴ See, e.g., Edward J. McCaffery, *A Progressive's Silver Linings Playbook: Repeal Stepped-up Basis*, 138 TAX NOTES 969, 969–70 (2013) ("It is time to abandon the idea that we will ever see a meaningful tightening or outright appeal of the gift, estate, and generation-skipping taxes."); Edward J. McCaffery, *A Voluntary Tax? Revisited*, 93 NAT'L TAX ASS'N PROC. 268, 268–70 (2000), <http://www.jstor.org/stable/41950617> [<https://perma.cc/MTU2-7DD5>] ("The estate tax has become even more voluntary since the time Cooper's book appeared."); Edward J. McCaffery, *Distracted from Distraction by Distraction: Reimagining Estate Tax Reform*, 40 PEPP. L. REV. 1235, 1235–37, 1245–50 (2013) (expressing disappointment in the lack of progress of estate tax reform); Edward J. McCaffery, Essay, *The Dirty Little Secret of (Estate) Tax Reform*, 65 STAN. L. REV. ONLINE 21, 21 (2012), <https://www.stanfordlawreview.org/online/dirty-little-secret-estate-tax-reform> [<https://perma.cc/D6BG-LKTR>] (stating that Congress knows and accepts the flaws of the estate tax system).

⁷⁵ Caron & Repetti, *supra* note 32, at 1278–80 (stating that the largest estates (\$20+ million) in 2007–2011 transferred between 27.83% and 40.99% of gross estate to either charity or the federal government and paid an effective estate tax rate of between 35.08% and 42.67%); Caron & Repetti, *supra* note 72, at 162–66 (stating that the largest estates (\$20+ million) in 2002–2006 transferred between 27.64% and 39.69% of gross estate to either charity or the federal government and paid an effective estate tax rate of between 38.06% and 43.99%).

⁷⁶ Paul L. Caron & James R. Repetti, *Revitalizing the Estate Tax: 5 Easy Pieces*, 142 TAX NOTES 1231, 1232–40 (2014). The authors concluded:

In recent years, Congress has not attended to new avenues of estate and gift tax avoidance. Like Jack Nicholson returning home to his dying father in *Five Easy Pieces*, if Cooper returned home to the estate and gift taxes of 2014, he would find them in need of major surgery to ensure their survival. These "five easy pieces" of estate and gift tax reform are offered here as initial steps to restore the estate and gift taxes to health.

discounts in certain circumstances;⁷⁷ (2) maintain parity between the unified credit exemption amounts for the estate and gift taxes;⁷⁸ (3) return to the \$3.5 million exemption, increase the maximum rate to 45%, and limit the generation-skipping transfer tax exemption to transfers occurring within fifty years;⁷⁹ (4) restrict the ability of gifts made in trust to qualify for the gift tax annual exclusion;⁸⁰ and (5) impose a lifetime cap on the amount that can be contributed to a grantor-retained annuity trust.⁸¹ To more directly address growing concentrations of wealth at the high end, the author proposes adding a sixth reform: returning to the graduated estate tax rate tables in force for most of our history, with higher rates applied to amounts in excess of the exemption amount (an inflation-adjusted \$5 million under current law or the \$3.5 million exemption reform).

For most of its existence, the estate tax deployed multiple rate brackets, with top rates as high as 77%⁸² applied to estates over \$150 million in inflation-adjusted terms.⁸³ Due to the 2010 Act's retention of the existing tax rate schedule despite the increase in the exemption amount, only the first \$1 million of a taxable estate is taxed at the graduated rate tables at an effective rate of approximately 35%, with amounts in excess of \$1 million taxed at the 40% rate. We should replace our virtually flat estate tax with a graduated one, with higher rates applied to larger estates.

One possibility is the Responsible Estate Tax Act introduced by U.S. Senator Bernie Sanders.⁸⁴ Senator Sanders's bill also returns to the \$3.5 million exemption⁸⁵ and increases the rate to 45% on taxable estates in excess of this amount.⁸⁶ He introduces two additional brackets—50% on

Id. at 1241.

⁷⁷ *Id.* at 1232–35.

⁷⁸ *Id.* at 1235–36.

⁷⁹ *Id.* at 1236–39.

⁸⁰ *Id.* at 1239.

⁸¹ *Id.* at 1240–41.

⁸² Indeed, the top rate was 60% or higher for fifty years (1934–1983). Joulfaian, *supra* note 18, at 2-6 to 2-7; see Jacobson et al., *supra* note 3, at 122.

⁸³ See *supra* note 18 and accompanying text (Table 1).

⁸⁴ Responsible Estate Tax Act, S. 1677, 114th Cong. (2015).

⁸⁵ Robert Reich, Chancellor's Professor of Public Policy at the University of California at Berkeley and former Secretary of Labor in the Clinton Administration, would go further and reduce the exemption to \$1.75 million. Robert Reich, *Raise the Estate Tax on the Very Rich*, ROBERTREICH.ORG (June 4, 2015), <http://robertreich.org/post/120693077100> [https://perma.cc/JE29-3W4T]; see also Matthew Yglesias, *Beyond the Laffer Curve—The Case for Confiscatory Taxation*, VOX (Apr. 18, 2014, 2:30 PM), <http://www.vox.com/2014/4/18/5620702/case-for-confiscatory-taxation> [https://perma.cc/T4N2-AZY6] (noting that 90% tax on estates over \$10 million “would probably raise very little revenue . . . but it would help break the doom loop of oligarchy whereby concentrated wealth breeds political power breeds greater concentration of wealth”).

⁸⁶ President Obama's latest proposal to reduce the exemption to \$3.5 million and increase the top rate to 45% (along with other related changes) was projected to raise \$189 billion from 2017–2025. DEPT. OF THE TREASURY, GENERAL EXPLANATIONS OF THE ADMINISTRATION'S FISCAL

amounts between \$10 million and \$50 million, and 55% on amounts in excess of \$50 million—as well as a 10% surtax on amounts in excess of \$500 million.⁸⁷

CONCLUSION

As we prepare to celebrate the one-hundredth anniversary of the estate tax, we should remember why we first embraced it. After test driving taxes on the transfers of wealth at death during three times of war in our early history, we took the plunge during World War I to raise revenue, enhance tax progressivity, and check wealth concentration. Yet we have dithered⁸⁸ and allowed our attention to the estate tax to stray over the past few decades. Not surprisingly, we now face unprecedented fiscal and equality challenges. There is no shortage of tax reform ideas to begin to address these concerns. But given today's political gridlock in Washington, D.C., perhaps we should try to breathe new life into a tried and true tax before succumbing to a siren song that may be beyond our grasp.

YEAR 2016 REVENUE PROPOSALS 193–94, 297 (2015), <https://www.treasury.gov/resource-center/tax-policy/Documents/General-Explanations-FY2016.pdf> [<https://perma.cc/5FR8-QK37>].

⁸⁷ *Id.*; see also SENATE BUDGET COMM., FACT SHEET: THE RESPONSIBLE ESTATE TAX ACT 1–2 (2015), http://www.budget.senate.gov/democratic/public/_cache/files/afd23c35-ea6f-4c29-9563-5e9c544fe4ae/responsible-estate-tax-act-summary.pdf [<https://perma.cc/V74Z-9HLT>] (providing information on the Responsible Estate Tax Act); Ashlea Ebeling, *Bernie Sanders Calls for 65% Top Estate Tax Rate*, FORBES (June 25, 2015, 12:56 PM), <http://www.forbes.com/sites/ashleaebeling/2015/06/25/bernie-sanders-calls-for-65-top-estate-tax-rate> [<https://perma.cc/LW4U-UM8G>] (discussing Senator Sanders's bill, which would increase estate tax brackets and close loopholes). Senator Sanders's bill also adopts versions of the four other reform ideas outlined above. See *supra* notes 78–81 and accompanying text.

⁸⁸ See generally Paul L. Caron, Tepoel Lecture and Keynote Address: The Costs of Estate Tax Dithering (Apr. 10, 2010), in 43 CREIGHTON L. REV. 637 (2010) (looking at Congress's continual failure to enact a new estate tax law).