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An Examination of Tax Law and Supply-Side Economics: Creed of Greed or Opportunity for All

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AN EXAMINATION OF TAX LAW AND SUPPLY-SIDE ECONOMICS: CREED OF GREED OR OPPORTUNITY FOR ALL?

I. INTRODUCTION

Since American Patriots proclaimed their opposition to the oppressive colonial rule of King George III with the rallying cry of "no taxation without representation,"[1] the debate over taxation, in whatever form and in the fullness of time, has run like a thread from revolutionary times to the present.[2] Indeed, this debate is often characterized by radically different views[3] of the role of taxation in a civilized society.[4]

In the twentieth century, the philosophies of Franklin D. Roosevelt and Ronald W. Reagan aptly demonstrate this polemic.[5] President Roosevelt, perhaps the greatest figure in American politics in the twentieth century, believed that taxes were the unavoidable price one must pay to live in a free society.[6] Building from this rather uncontroversial

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1. RUSSELL KIRK, THE ROOTS OF AMERICAN ORDER 323-24 (1974).

2. The debate over the proper role of taxation is not, of course, limited to the American Revolution. For some philosophical and practical criticism see ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS, (R. H. Campbell et al. eds., 1976) (1776); GEORGE WASHINGTON, THE WASHINGTON PAPERS: BASIC SELECTIONS FROM THE PUBLIC AND PRIVATE WRITINGS OF GEORGE WASHINGTON, (Saul K. Padover ed., 1955).

3. *See generally* Marjorie E. Kornhauser, *The Rhetoric of the Anti-Progressive Income Tax Movement: A Typical Male Reaction* 86 Mich. L. Rev. 465 (1987) (discussing progressive tax schemes and alternatives).

4. For example, in 1787, a minority of twenty-one members of the Pennsylvanian Convention which opposed that state's ratification of the new Constitution expressed their concern over the ability of the central government to lay and collect taxes.

> The power of direct taxation will further apply to every individual, as congress may tax land, cattle, trades, occupations, etc. in any amount, and every object of internal taxation is of that nature, that however oppressive, the people will have but this alternative, except to pay the tax, or let their property be taken, for all the resistance will be in vain. The standing army and select militia would enforce the collection.

THE ADDRESS AND REASONS OF DISSENT OF THE MINORITY OF THE CONVENTION OF PENNSYLVANIA TO THEIR CONSTITUENTS (December 18, 1787), *reprinted in* THE ANTI-FEDERALIST PAPERS AND THE CONSTITUTIONAL CONVENTION DEBATES 252-53 (Ralph Ketchum ed., 1986). The Pennsylvania Convention voted 46 to 23 to ratify the new constitution on December 12, 1787. *Id.* at 237.

5. RICHARD HOFSTADTER, THE AMERICAN POLITICAL TRADITION AND THE MEN WHO MADE IT 411-456 (Vintage Books 1989) (1948); EDWIN MEESE III, WITH REAGAN: THE INSIDE STORY 117-162 (1992).

6. In a 1936 campaign address, President Roosevelt shared his grand vision of the tax code:

> In 1776 the fight was for democracy in taxation. In 1936 that is still the fight. Mr. Justice Oliver Wendell Holmes once said: "Taxes are the price we pay for civilized society." One sure way to determine the social conscience of a Government is to examine the way taxes are collected and how they are spent. And one sure way to determine the social conscience of an individual is to get his tax-reaction. Taxes, after all, are the dues we pay for the privileges of membership in an organized society.

Franklin D. Roosevelt, Campaign Address at Worcester, Mass. (October 21, 1936), *in* 5 THE PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT 522, 523 (Samuel I. Rosenman ed., 1938).

position, Roosevelt framed the parameters of American political discourse for the next sixty years.[7]

On the other hand, President Reagan, a Republican, while considering the essential, and obvious, continuity of taxation—which is, of course, that government must have means by which to raise revenue[8] —nevertheless saw the issue rather differently. President Reagan believed, first and foremost, that tax revenue belonged to the people and that the federal government exists for the people. As such, the people ought to keep more of their money and the government ought to receive less. President Reagan sought to empower citizens and not the government.[9]

Though the philosophies forwarded by Reagan and Roosevelt are separated by over four decades, it would not be an exaggeration to maintain, in the fullest philosophical view, that both philosophies continue to be harmonious with the broad spectrum of political thinking in their respective parties.[10] This article contours the philosophical and practical public policy of the above-outlined debate by scrutinizing tax law in the 1920s and by tracing the idea and practice of tax cuts into the 1960s and 1980s. By elucidating the general macroeconomic effects of taxation in terms of distribution of the tax burden, receipts to the Treasury, investment and economic growth, this article will provide an economic and public policy framework through which the current political and economic debate over tax reform can be appropriately viewed.

It is important to note, given its colossal size, that an intricate and exhaustive dissection of the *Internal Revenue Code* will not be

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7. Ronald Reagan, who voted for President Roosevelt four times, himself has conceded as much. RONALD REAGAN, AN AMERICAN LIFE 66-67, 316 (1990).

8. HENRY HAZLITT, ECONOMICS IN ONE LESSON 39 (1946).

9. President Reagan drove this point home forcefully in an address to business and government leaders on June 11, 1981:

> Now, it's that simple. Our opponents want more money from your family budgets so they can spend it on the federal budget and make it remain high. Maybe it's time that you and millions like you remind them of a few simple facts. It's your money, not theirs. You earned it. They didn't. You have every right to keep a bigger share than you've been allowed to keep for a great many years now. When they insist we can't reduce taxes and spending and balance the budget too, one six word answer will do: "Yes, we can. And yes, we will."
>
> For too long, government has stood in the way of what our people earn, no matter how hard they try. It's almost become economics without a soul. And that's why the ultimate goal in everything that we're trying to do is to give this economy back to the American people.

RONALD W. REAGAN, RONALD REAGAN: THE WISDOM AND HUMOR OF THE GREAT COMMUNICATOR 78 (Frederick J. Ryan Jr. ed., 1995).

10. This statement is not intended to represent, in anyway, that every single member of the Republican Party and Democratic Party are entirely united in supporting these particular views. Rather, it is offered as a statement of general philosophical principle in each party.

provided;[11] it would indeed be an accomplishment of Herculean proportion, given the space constraints of this article, to provide anything more than a cursory view of this vital, but enormously complex, area of the law. The objective of this article is rather more humble: to strip away political rhetoric from the field of tax law to provide, through the framework of a public policy debate, a lucid view of the objectives of contemporary tax law. As such, two objectives can be properly achieved. First, a long and popularly held, yet perhaps cynical, belief, well stated by Justice James C. McReynolds, that "[l]ogic and taxation are not always the best friends"[12] may finally be controverted. The second, and perhaps more important objective is to demonstrate a serious practical contradiction in the "progressive"[13] consideration of taxation and, by extension, thereby demonstrate the policy alternative offered by an inclusive pro-growth approach to tax law and economics.[14]

The doctrinaire left, or those advocating a more "progressive" approach to politics and economics, face a dilemma created largely by the rigidity of their own rhetoric, and a failure to recognize the apparent incongruence of two main tenets of liberal thinking. The first tenet is that the left wishes to maximize the resources available to the federal government to promote "investment" in people.[15] President Clinton emphasized this view in his February 17, 1993, address before a joint session of Congress, stating, "I believe Government must do more."[16] The second core belief is that a large disparity in wealth, between rich and poor, is morally wrong within a progressive social democracy[17] and

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11. Indeed, the *Internal Revenue Code* spans some 1,378 pages and the five volume companion set entitled the *Federal Tax Regulations 1994*, runs some 6,439 pages. ROBERT E. HALL & ALVIN RABUSHKA, THE FLAT TAX 5 (2d ed. 1995).

12. Sonneborn Bros. v. Cureton, 262 U.S. 506, 522 (1923) (McReynolds, J., concurring).

13. Though one can certainly disagree with the use of this word to describe leftist philosophy, it is offered here in its commonly understood meaning.

14. MILTON FRIEDMAN & ROSE FRIEDMAN, FREE TO CHOOSE: A PERSONAL STATEMENT 306-07 (First Harvest / HBJ ed. 1990); DICK ARMEY, THE FREEDOM REVOLUTION 149-92 (1995).

15. *See* BILL CLINTON & ALBERT GORE, PUTTING PEOPLE FIRST: HOW WE CAN ALL CHANGE AMERICA 126-28 (1992) (outlining some of Governor Clinton's more traditional Democratic policy investments: guaranteed health care, increasing the minimum wage, family and medical leave, life-time training, adult literacy programs, unemployment benefit extensions, non-college training programs, etc.). *See generally* ECONOMIC REPORT OF THE PRESIDENT: TRANSMITTED TO CONGRESS FEBRUARY 1994 , H. Doc. No. 103-178m 103d Cong., 2d Sess. (1994) [hereinafter 1994 ECONOMIC REPORT] (outlining the Clinton Administration's policy objectives for the nation's future).

16. William J. Clinton, Address Before a Joint Session of Congress on Administration Goals, *in* 1 PUB. PAPERS, 1993, at 113, 114 (1994) .

17. Robert Kuttner, *Real Class War*, WASH. POST NAT'L WKLY ED. July 31 - Aug. 6, 1995, at 5.

it is, therefore, the federal government's responsibility to promote egalitarianism[18] through a highly progressive tax system.[19]

Theoretically, equality is achieved quite simply—tax the wealthy[20] and redistribute that income through federally administered social programs to the poor or less fortunate.[21] Yet, herein lies the contradiction: Higher tax rates on wealthy Americans reduce taxable revenue for the government and provide a disincentive to investment and economic growth.[22] Put another way, "[h]igh tax rates represent a drag on the economy."[23] Indeed, the inability of leftist philosophical thinking to reconcile these conflicting ideas, a commitment to income equality,[24]

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18. Aleksandras Shtromas, one of the former Soviet Union's leading legal scholars, articulated his view of social-democratic egalitarianism noting that:

> Even a social-democratic welfare state is a variety of socialism, as it is nothing more than a watered-down concept of public ownership of the means of production or, more exactly, the primary stage of that ownership, when the state, on behalf of the public, confiscates the "excessive" wealth of those who are better off and distributes it to those who are less well off.

Aleksandras Shtromas, *The Inevitable Collapse of Socialism, in* THE GLOBAL FAILURE OF SOCIALISM 73 (1992).

19. Professor Marjorie Kornhauser provided a useful account of this view: "Other views of humanity, such as the feminist vision, see people as interrelated and therefore support and even mandate some progressivity." Kornhauser, *supra* note 3, at 518. She further stated:

> I believe the choice should be progressivity with its vision of consideration for others and its sense of common humanity rather than proportionality and its narrow vision of the self-interested man. Although we may be self-interested, our selves are inextricably tied to others about whom we care. It is difficult to be a hermit these days, and even if we could be, few of us would so choose.

Id. at 523. Moreover, it is something less than controversial to suggest that these two views are subscribed to by the American left. *See* CLINTON & GORE, *supra* note 15, at 217-232. *See also* ROBERT LEKACHMAN, GREED IS NOT ENOUGH: REAGANOMICS 191-208 (1982). Interestingly, there is some dissent on the left concerning the utility of traditional political and legal labels and solutions particularly with respect to traditional minority communities. Richard Delgado offers the "dialogic-community strand of communitarian social-welfare" policy theory as a third-way. Richard Delgado, *Zero-Based Racial Politics: An Evaluation of Three Best-Case Arguments on Behalf of the NonWhite Underclass*, 78 GEO. L.J. 1929, 1931-32 (1990). Moreover, this argument is certainly not confined to the United States, York University Professor Michael Mandel provides a helpful, though brief, account of income disparity in Canada and its negative effect on social justice in that country. MICHAEL MANDEL, THE CHARTER OF RIGHTS AND THE LEGALIZATION OF POLITICS IN CANADA 239-247 (1989).

20. Admittedly, there are different views of how much one must earn to qualify as "wealthy." Under President Clinton's Omnibus Budget Reconciliation Act of 1993, the change in statutory marginal tax rates are as follows: married individuals earning between $140,000 and $250,000 saw their marginal rate go from 31% to 36%, and those earning over $250,000 saw their marginal rate rise from 31% to 39.6%. 1994 ECONOMIC REPORT, *supra* note 15, at 34. Prior to the November 1994 elections, New York State, under Governor Cuomo, had a somewhat different view of what constituted "wealthy" as a married couple making only $26,000 paid the top state income tax rate of 7.875%. David Frum, *Killing the Goose*, FORBES MAGAZINE, Jan. 31, 1994, at 70, 72.

21. For an exposition of the essential theoretical foundation of this notion see THOMAS SOWELL, MARXISM: PHILOSOPHY AND ECONOMICS 143-163 (1985) and THOMAS SOWELL, THE VISION OF THE ANOINTED: SELF-CONGRATULATION AS A BASIS FOR SOCIAL POLICY (1995).

22. *See generally* ROBERT J. BARTLEY, THE SEVEN FAT YEARS AND HOW TO DO IT AGAIN 87-102 (1992) (discussing economic plans of late 1970s and early 1980s).

23. RICHARD B. MCKENZIE, WHAT WENT RIGHT IN THE 1980S 382 (1994).

24. Kuttner, *supra* note 17, at 5.

and the need for ever-growing fiscal resources for so-called market correction[25] and social engineering,[26] ensures the liberal elite will continue to lurch and stumble in every direction—attempting to achieve both, while achieving neither.[27] This truism, the effect of the income tax law on economic decision-making, is either not understood, or is simply ignored by those on the left who prefer to engage in divisive class warfare by promoting the politics of envy[28] rather than attempting to put partisan rhetoric aside to ensure stable economic growth and increased economic opportunity for all.[29]

Appropriately, former United States Representative and Secretary of Housing and Urban Development under President Bush, Jack Kemp, the modern prophet of supply-side economics,[30] clearly illustrated the incontrovertible effect of higher tax rates when he stated that, "[i]t is safe to predict that people will buy less, earn less and invest less as the result of higher taxes. Businesses will pay and hire less. The economy will shrink, as will tax revenues—and the deficit will soar."[31] This is the essential point that will be demonstrated in this article through a specific evaluation of tax law in the 1920s and a more general policy discussion of its effect on selected subsequent administrations.

II. THE HISTORY OF FEDERAL INCOME TAXES FROM THE CIVIL WAR TO THE 1920s

While tariffs on imported goods had long been an important source of revenue for the Treasury,[32] the establishment of the first federal income tax during the Civil War[33] brought the issue of federal taxation to the forefront of American law and the American polity.[34] For the first time, the federal government of the United States was forced to turn to income taxes to raise revenue for the war effort.[35]

25. F. A. HAYEK, THE FATAL CONCEIT 66-88 (W. W. Bartley III ed., 1991) (1988).

26. *See* A DICTIONARY OF CONSERVATIVE & LIBERTARIAN THOUGHT 159-160 (Nigel Ashford & Stephen Davies eds., 1991).

27. WILLIAM J. BENNETT, THE DE-VALUING OF AMERICA: THE FIGHT FOR OUR CULTURE AND OUR CHILDREN 26-30 (1992).

28. Kuttner, *supra* note 17, at 5.

29. Ronald Reagan, *Regulatory Chokehold: Hurry Up and Wait*, WALL STREET JOURNAL July 8, 1993, at A12.

30. Jack Kemp, *Foreword* to EDWIN S. RUBINSTEIN, THE RIGHT DATA at xv, xv-xvii (1994); WILLIAM F. BUCKLEY JR., HAPPY DAYS WERE HERE AGAIN 457-459 (1993).

31. Jack Kemp, *Tax Increase is No Way to Restore the Economy*, BUFFALO NEWS, Aug. 4, 1993, at B3.

32. A helpful historical analysis of tariff reform in President Polk's Administration is offered in 3 PAUL H. BERGERON, THE PRESIDENCY OF JAMES K. POLK 185-90 (1987).

33. LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 494 (1973).

34. For a more in-depth treatment of this period see RANDOLPH E. PAUL, TAXATION IN THE UNITED STATES 3-109 which outlines the early period of taxation in the United States.

35. As noted legal historian Lawrence M. Friedman observed:

After the Civil War, the income tax was repealed, though not forgotten, as a means to raise revenue.[36] The income tax was not absent for long, however. In 1894, during the administration of President Grover Cleveland, "[a] tax of 2 percent was imposed on individual incomes over $4,000 and on the entire income of business corporations."[37] Although the 1894 federal income tax was largely modeled after the 1864 tax statute,[38] its constitutionality was challenged in *Pollock v. Farmers Loan & Trust Co.*[39] The Supreme Court, in a five-to-four decision, eventually ruled, after a rehearing, that a tax on underlying real property interests, such as interest, dividends, and rents violated the prohibition on unapportioned "direct" taxes in the Constitution.[40] In other words, all direct taxes, in order to be constitutional, must be levied among the states in proportion to their population.[41]

This intervention by the Supreme Court, prohibiting a federal income tax, forced the hand of Congress. If the income tax was to be employed as a tool by which to raise revenue for the Federal Treasury,

> Events thus forced the government's hand. Lincoln turned to an income tax. The tax, first imposed in 1862, and amended in 1864, was mildly progressive; in its later revision, its top bracket was 10 percent. The government also imposed a death tax, and new or bigger excises on all sorts of services and goods: beer, public utilities, advertisements, perfumes, playing cards, slaughtered cattle, and railroads, for example. Despite some unfairness and bungling, these taxes brought in a great deal of money. In fiscal 1866, more than $300,000,000 was collected.

FRIEDMAN, *supra* note 33, at 494-95.

36. WILLIAM A. KLEIN & JOSEPH BANKMAN, FEDERAL INCOME TAXATION 5 (10th ed. 1994).

37. *Id.*

38. *Id.*

39. 157 U.S. 429, *reh'g granted*, 158 U.S. 601 (1895). The Supreme Court split evenly on the question and the Court granted a rehearing.

40. Pollock v. Farmers Loan & Trust Co., 158 U.S. 601, 637 (1895). The Constitution's prohibition of unapportioned taxes reads: "No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken." U.S. CONST. art. I, § 9, cl. 4.

41. Loren P. Beth has offered a more extensive analysis:

> In the initial decision, the Supreme Court separated the law into three parts, deciding each by a different vote. First, the Court held unanimously that a tax on income from state and municipal bonds was essentially a tax on the state itself, violating the principle of state sovereignty. Next, the Court, in an opinion by Chief Justice Melville Fuller, ruled that a tax on income from real property was a direct tax. The Court split 6 to 2, with Justices Edward D. White and John Marshall Harlan dissenting. Third, the Court divided equally, Justice Howell Jackson being absent, on the question whether the general tax on private and corporate incomes was also a direct tax. Evidence suggests that Justices Henry B. Brown and George Shiras joined White and Harlan in believing the tax constitutional. Thus, a major part of the tax law was left standing.
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> This situation pleased no one, and the Court immediately agreed to a rehearing on the issue of taxing general income. The terminally ill Jackson struggled to Washington undoubtedly hoping that his vote would settle the question in favor of the tax's validity. But though Jackson voted to support the tax, another justice (probably Shiras) changed position, producing a 5-to-4 vote invalidating the entire tax law because it was a direct tax that had to be apportioned among the states according to their populations.

Loren P. Beth, *Pollock v. Farmers Loan & Trust Co.*, *in* THE OXFORD COMPANION TO THE SUPREME COURT OF THE UNITED STATES 634, 655 (Kermit L. Hall et al. eds., 1992).

Congress would be compelled to amend the Constitution.[42] This process began on July 12, 1909, when Congress passed the Sixteenth Amendment[43] and was completed on February 29, 1913, when the States ratified the Sixteenth Amendment.[44] Congress now had wide discretion in the field of taxation, though at first it showed significant restraint.[45]

However, with the entry of the United States into World War I on April 7, 1917,[46] the previous restraint shown by the federal government in not raising taxes disappeared as the fiscal needs of the federal government increased dramatically in order to fund the war effort.[47] The United States had to shift both industry and government onto a war footing. After a relatively brief involvement in the war, the end of the great European conflict[48] brought the difficult domestic challenge of dismantling the war economy to a new President. When Warren G. Harding was sworn in as President on March 4, 1921, he boldly pledged to "strike at war taxation"[49] and "for lightened tax burdens."[50]

III. THE DEBATE OVER THE GENERAL LEGISLATIVE LANDSCAPE OF TAX POLICY IN THE 1920s

In order to make good on his bold agenda for the United States, President Harding appointed Andrew Mellon as Secretary of the Treasury. This appointment, in 1921, marked the beginning, according to leftist scholarship, of the 1920s concupiscent love of wealth through speculation, which eventually resulted in the disastrous Great Depression.[51] This period, moreover, was marked by gross inequalities exacerbated by the government,[52] and in particular by Mellon's taxation

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42. Jay M. Howard, Note, *When Two Tax Theories Collide: A Look at the History and Future of Progressive and Proportionate Personal Income Taxation*, 32 WASHBURN L.J. 43, 47 (1992).

43. U.S. CONST. amend. XVI specifically provides that: "The Congress shall have the power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

44. HALL & RABUSHKA, *supra* note 11, at 20.

45. To this end, "only 0.4 percent of the population filed tax returns in 1913. The personal exemptions eliminated more than 99 percent of all individuals from the tax net." *Id.* at 21.

46. PAUL, *supra* note 34, at 113.

47. *Id.* at 110-23, 282, 296, 395, 511.

48. For further reading see HENRY KISSINGER, DIPLOMACY 201-65 (1994) which discusses the outbreak of the First World War, its execution, and the difficult aftermath.

49. WARREN G. HARDING, Inaugural Address, March 4, 1921 *in* INAUGURAL ADDRESSES OF THE PRESIDENTS OF THE UNITED STATES: FROM GEORGE WASHINGTON 1789 TO GEORGE BUSH 1989, at 241 (Bicentennial ed., 1989).

50. *Id.* at 242.

51. *See generally* JOHN K. GALBRAITH, MONEY: WHENCE IT CAME, WHERE IT WENT 183-85 (1975). A sharply contrasting view considering the causes of the Great Depression is offered in FRIEDMAN & FRIEDMAN, *supra* note 14, at 70-90.

52. Robert S. McElvaine, commenting on the growing disparity in America, said:

> Prosperity was shared by fairly large segments–although certainly not all–of the populace, but in very unequal portions. The rich were getting richer at a much more

theory with its penchant for the wealthy.[53] The conventional view of Secretary Mellon's accomplishments, or lack thereof, at the Department of the Treasury from 1921 to 1932, seems to be one of rather extreme derision.[54] This school of thought has characterized the Mellon tenure as years of greed, marked by salacious policies that shifted the tax burden from the wealthy to the poor.[55] Mellon, these historians maintained, established duplicitous tax policies which favored the rich and big business while masquerading as a "helping hand for the common man."[56] This section will address and refute this demonstrably fallacious depiction of Secretary Mellon's policies at the Department of the Treasury. It is resolved to defend Secretary Mellon's tax philosophy on the grounds that it did not shift the tax burden from the wealthy to the poor. This article will demonstrate that quite the opposite was true.[57] By the end of Secretary Mellon's purposeful tenure at the Department of the Treasury, the United State's tax code was far more egalitarian than it had been before.[58] The federal government's revenue was up, the national debt was down, the poor and middle class were paying less and *a fortiori* equitably, and wealthy Americans were shouldering a significantly larger share of the tax burden than ever before.[59]

> rapid rate than the poor were becoming less poor. Government policies during the twenties were designed to achieve just this end. . . . And Mellon's tax cuts for the wealthy helped to aggravate the gross disparity in income levels.

Robert S. McElvaine, *Who was Roaring in the Twenties? Origins of the Great Depression*, *in* CONFLICT AND CONSENSUS IN MODERN AMERICAN HISTORY 300, 305 (Allen F. Davis & Harold D. Woodman eds., 7th ed. 1988).

53. JOHN KENNETH GALBRAITH, A JOURNEY THROUGH ECONOMIC TIME A FIRSTHAND VIEW 51 (1994).

54. James T. Patterson outlined this *vox populi*:

> Mellon, who headed the Department of the Treasury until 1932, was the high priest of business-orientated welfare capitalism-the J.P. Morgan of the "new era". Like Morgan, he was domineering and certain that big businessmen could curb "wasteful" competition and promote the capitalist utopia. It followed, Mellon believed, that government must intervene to assist people who had capital. So throughout the 1920s he labored—usually successfully—to cut taxes on the rich and on corporations. These policies widened the gulf between the rich and the poor, concentrated capital in relatively few hands, and did nothing to broaden consuming power, so necessary to sustain prosperity.

JAMES T. PATTERSON, AMERICA IN THE TWENTIETH CENTURY 175 (1976).

55. *See generally* Marjorie E. Kornhauser, *The Morality of Money: American Attitudes Toward Wealth and the Income Tax*, 70 IND. L.J. 119 (1994) (discussing income tax policies in the United States).

56. *See* GEORGE BROWN TINDALL, AMERICA: A NARRATIVE HISTORY 1075 (2d ed., 1988) (stating the "Mellon insisted that [tax reductions] should go mainly to the rich").

57. *See generally* BURTON W. FOLSOM, JR., THE MYTH OF THE ROBBER BARONS 103-20 (1991) (describing Mellon as "one of the most misunderstood men in American history" and explaining his tax plans).

58. EDWIN S. RUBENSTEIN, THE RIGHT DATA 334 (1994).

59. *Id.*

The debate, among the historical clerisy, in a historagraphical context, over the implementation of the "Mellon plan,"[60] is not simply limited to the 1920s. The principle Secretary Mellon applied runs like thread throughout history from Augustus to 17th and 18th century Britain to the United States in the 1980s.[61] The sacrosanct principle of the Mellon plan, stated rather baldly, is when taxation is excessive, the taxpayer will find ways to avoid payment.[62] In other words, when taxes are reduced, investment in productive enterprises increases, government revenue is raised, economic growth increases, and the opportunity for prosperity is enhanced.[63] In Andrew Mellon's view, when faced with excessive taxation, investors will shift capital from productive enterprises into tax-exempt securities or other alternatives that can avoid the realization of taxable income. This socialist abstraction serves neither the private sector nor the government[64] as it suffocates both economic growth for the nation and revenue growth for the government.[65]

The ideological basis of the Mellon plan continues to exert considerable influence on those truly interested in pro-growth tax cuts.[66] As will be expanded upon later in this article, this core philosophy, which can be loosely termed as supply-side economics,[67] became the catalyst for not only the income-tax reduction initiatives of President Kennedy,[68] President Reagan,[69] and the 104th Congress,[70] but has also found itself

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60. This term will refer to Andrew Mellon's tax reduction philosophy he implemented while Secretary of the Treasury from 1921 to 1932. For further reading see BARTLEY, *supra* note 22, at 18, 73, 76, 89, 170, 235.

61. *See* Charles Adams, *Beware of the Ides of April: High Taxes–And the Decline and Fall of Practically Everybody*, POLICY REVIEW, Spring 1994, at 48-53. *See also* SMITH, *supra* note 2.

62. *See generally* MEESE, *supra* note 5, at 133-147.

63. *Id.*

64. JACK KEMP, REVIVING THE AMERICAN DREAM 11 (1994).

65. In Andrew Mellon's words:

> The history of taxation shows that taxes which are inherently excessive are not paid. The high rates inevitably put pressure upon the taxpayer to withdraw his capital from productive business and invest it in tax-exempt securities or to find other lawful methods of avoiding the realization of taxable income. The result is that the sources of taxation are drying up; wealth is failing to carry its share of the tax burden; and capital is being diverted into channels which yield neither revenue to the Government nor profit to the people.

ANDREW MELLON, TAXATION: THE PEOPLES BUSINESS 13 (1924).

66. PAUL CRAIG ROBERTS, THE SUPPLY-SIDE REVOLUTION: AN INSIDER'S ACCOUNT OF POLICYMAKING IN WASHINGTON 76 (1984); *see also* Steve Forbes, Address to the National Federation of Independent Business, Washington, D.C., Oct. 23, 1995.

67. *See generally* ROBERT L. HEILBRONER & LESTER C. THUROW, ECONOMICS EXPLAINED 112-114 (updated ed. 1987); ROBERTS, *supra* note 66.

68. Although President Kennedy was assassinated in 1963, his tax proposal was submitted by Lyndon Johnson, largely unchanged, to Congress in 1964. *See* HALL & RABUSHKA, *supra* note 11, at 43; *see also* JAMES N. GIGLIO, THE PRESIDENCY OF JOHN F. KENNEDY 135-139 (1991).

69. DAVID MERVIN, RONALD REAGAN & THE AMERICAN PRESIDENCY 110-149 (1990).

70. CONTRACT WITH AMERICA: THE BOLD PLAN BY REP. NEWT GINGRICH, REP. DICK ARMEY AND THE HOUSE REPUBLICANS TO CHANGE THE NATION 125-41 (Ed Gillespie & Bob Schellhas eds., 1994).

emulated, though certainly to different degrees, throughout many parts of the world.[71]

The question of Secretary Mellon's policies has clearly demarcated two main groups of historians and legal scholars: Conservatives, those who largely accept Mellon's taxation philosophy as sound; and liberals,[72] those who largely reject Mellon's taxation philosophy as unsound and regressive.[73]

Before outlining the argument against the Mellon plan, it is important, in the interests of providing the full political landscape of the times, to elaborate somewhat upon Secretary Mellon's principle legislative opposition, the Progressives.[74] With the ratification of the Sixteenth Amendment to the Constitution in 1913,[75] granting Congress sweeping powers to lay and collect taxes on incomes, Progressives sought to reshape the federal government's role in the United States. During the so-called Progressive period, from about 1900 to about 1920, the Progressive votaries—including Senators Robert M. LaFollette of Wisconsin, George W. Norris of Nebraska, and James Couzens of Michigan—

71. PAUL JOHNSON, MODERN TIMES: THE WORLD FROM THE TWENTIES TO THE NINETIES 697-98 (rev. ed. 1992); HENRY R. NAU, THE MYTH OF AMERICA'S DECLINE: LEADING THE WORLD ECONOMY INTO THE 1990S, at 230-234 (1990); HENRY MILNER, SWEDEN: SOCIAL DEMOCRACY IN PRACTICE 65 (1989); Paul Craig Roberts, *The World Knows That Reaganomics Was Right*, BUS. WK. Sept. 27, 1993, at 22. Another excellent international example of increased reliance on free market capitalism and individual economic liberty is the Chilean reform process began in 1974, which, though not without some setbacks, continues to this day. *See* Pamela Normann, *Chile: A Status Report on Privatization*, BUS. AM., May 18, 1992, at 19. Perhaps the most celebrated international example of this type of tax reform philosophy, broadly speaking, is the United Kingdom under Prime Minister Thatcher. The 1979 budget contained:

> [A] cut in the basic rate of income tax from 33 percent to 30 percent (with the highest cut from 83 to 60 percent), tax allowances increased by 9 percent above the rate of inflation, and the introduction of a new, unified rate of VAT at 15 percent.
>
> Apart from the budget's big income tax cuts, however, we were able to reduce or remove the controls on a number areas of economic life.

MARGARET THATCHER, THE DOWNING STREET YEARS 43 (1993).

72. I will use the terms liberal, leftist, critical analysis, and revisionist historians interchangeably.

73. While I realize the injustice of so broadly categorizing two such diverse groups of historians and legal scholars, I must ask the reader for indulgence. For the purpose of simplicity, one must have terms with which the critical analysis can be categorized. Please accept these terms in this light. The term conservative is offered in the sense of the 19th century classical liberalism. This area of scholarship tends to employ the individual as its unit of analysis. *See* FRIEDRICH A. HAYEK, THE ROAD TO SERFDOM (1944); FRIEDMAN & FRIEDMAN, *supra* note 14; HAYEK, *supra* note 25. The term liberal is utilized in the tradition of those who tend to employ a more group-based unit of analysis. In addition, this area of scholarship argues that government has a legitimate function in redistributing wealth in order to close inequalities and provide for meaningful "social justice." *See* Kornhauser, *supra* note 55, at 119; *see also* GALBRAITH, *supra* note 51.

74. *See* TINDALL, *supra* note 56, at 940-979 (discussing progressivism).

75. U.S. CONST. amend. XVI.

believed the federal government ought to play proactive role[76] in closing the gaps of social and economic inequality in America.[77]

The Progressive's dream, for an interventionist federal government,[78] came to be largely realized under President Wilson's war preparedness program in 1916 and, more significantly, with the United States entrance in the First World War in 1917.[79] To finance these programs, President Wilson, rejecting his previously held Jeffersonian view of the role of government,[80] appealed to Congress to boost the income tax rate and expand the federal government's regulatory jurisdiction.[81] The federal government not only raised the personal and

76. According to David J. Rothman:

> To realize the promise of American life, the public sector would have to dominate the private sector. The state, not the individual, would define the common good and see it to its fulfillment. In short, the major tenet of Progressive thought was that only the state could make the individual free. Only the enlarged authority of the government could satisfy the particular needs of all the citizens.

David J. Rothman, *The State as Parent*, *in* CONFLICT AND CONSENSUS, *supra* note 52, at 259, 261-62.

77. It must also be said that there existed some important Republican opposition to the policies of Secretary Mellon. GEORGE W. NORRIS, FIGHTING LIBERAL 245, 286-288 (1945).

78. LOUIS FILLER, DICTIONARY OF AMERICAN CONSERVATISM 261 (1987).

79. Howard, *supra* note 42, at 49.

80. Arthur M. Schlesinger, Jr., THE AGE OF ROOSEVELT: THE CRISIS OF THE OLD ORDER, 1919-1933, at 40 (1957).

81. FOLSOM, *supra* note 57, at 107.

corporate tax rates, but also set price controls,[82] controlled industrial production, and ballooned the national debt.[83]

The stage was set then for an ideological clash at the end of the First World War. Three successive Republican administrations, those of Warren Harding, Calvin Coolidge, and, to a lesser extent, Herbert Hoover,[84] provided the backdrop for the political contest between the Progressives, who did not want to see their war time gains rolled back, and the Conservatives who, in terms of taxation and regulatory burden, wanted a rapid dismantling of "war socialism."[85]

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82. The January 14, 1994 edition of the WALL STREET JOURNAL contained a valuable contemporary criticism, signed by 562 economists, of governmental price controls in the context of President Clinton's 1993 Health Security Act. The article reads:

> Dear President Clinton:
>
> Price controls produce shortages, black markets and reduced quality. This has been the universal experience in the 4,000 years that governments have tried to artificially hold prices down using regulations.
>
> You insist that your health care plan avoids price controls. We respectfully disagree. Your plan sets the fees charged by doctors and hospitals, caps annual spending on health care, limits insurance premiums, and imposes price limitations on new and existing drugs.
>
> In countries that have imposed these types of regulations, patients face delays of months and years for surgery, government bureaucrats decide treatment options instead of doctors or patients, and innovations in medical techniques and pharmaceuticals are dramatically reduced. . . .
>
> In the 1970s, government tried to regulate the price of simple homogenous product, gasoline. The result was a social and economic disaster. People were forced to waste hours waiting in lines to purchase gasoline. Long waits for surgery and other medical care will have far more serious consequences.
>
> Caps, fee schedules and other government regulations may appear to reduce medical spending, but such gains are illusory. We will instead end up with lower-quality medical care, reduced medical innovation, and expensive new bureaucracies to monitor compliance. These controls will hurt people, and they will damage the economy. We urge you to remove price controls, in any form, from your health care plan.

Dear Mr. President . . . , WALL ST. J., Jan. 14, 1994, at A10.

83. Burton Folsom Jr. outlined some of the measures passed by Congress:

> [When] the U. S. entered the First World War: expenses soared to the highest levels in U. S. history; massive government programs bought food, weapons, and equipment for America and her allies. The government also set prices and wages, and controlled production of scores of industries. Wilson used the income tax to raise much of the money needed to wage war: rates started at 4 percent and soared to 77 percent on top incomes. Corporate taxes rose to 18 percent. Most Americans were willing to sacrifice for this emergency and paid over $7 billion in taxes[, however] . . . the national debt had skyrocketed from $1.5 billion in 1916 to $24 billion in 1919.

FOLSOM, *supra* note 57, at 107.

84. FORREST MCDONALD, A CONSTITUTIONAL HISTORY OF THE UNITED STATES 177-185 (2d ed. 1986).

85. *See* TINDALL, *supra* note 56, at 1020-22 (discussing transition from wartime to peacetime).

IV. CRITICISM OF SECRETARY MELLON'S TAX REFORM PLAN

As a beginning, this section will focus on the criticism of Secretary Mellon's tax reduction plan.[86] The case against Mellon's tax cuts is premised upon considering the general fairness of the Revenue Acts of 1921,[87] 1924,[88] and 1926,[89] respectively.[90] Fulminators of the Mellon plan maintained that the tax cut favored the rich at the expense of the poor and the middle class.[91] The "trickle-down"[92] effect, they noted, never "trickled-down."[93]

Clearly, as the argument goes, Mellon's tax policies figured prominently in this gross disparity, "[t]he reduction of taxation for the rich and the transfer of as much of the burden as possible to the middle and lower incomes was a matter of principle with Mellon, and not merely self-interest."[94] Upon confirmation, Mellon urged Congress to pass *The Revenue Act of 1921*, which contained two key provisions.[95] First, Mellon proposed "the outright repeal of the excess profits tax,"[96] and second, "an immediate reduction of the maximum surtax rate from 65 per cent to 40 per cent, with an ultimate goal of only 33 per cent. This would leave unchanged the taxes on income below $66,000."[97] Senator

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86. *See* RUBINSTEIN, *supra* note 58, at 334 (showing effect of Mellon tax cut).

87. According to Christopher Frenze, the Revenue Act of 1921, H.R. 8245 was reported favorably by the House Committee on Ways and Means on August 16, 1921, and passed by the House of Representatives on August 20, 1921. The measure was also favorably reported by the Senate Committee on Finance on August 20, 1921, and was passed by the Senate on November 7, 1921. After Congress issued and passed a conference committee report, President Harding signed the Act into law on November 23, 1921. STAFF OF JOINT ECONOMIC COMM., 97TH CONG., 2D SESS., THE MELLON AND KENNEDY TAX CUTS: A REVIEW AND ANALYSIS 6 (Christopher Frenze) (Comm. Print 1982) [hereinafter Frenze].

88. The Revenue Act of 1924, H.R. 6715 was favorably reported out of the House Committee on Ways and Means on February 11, 1924, and was passed by the House of Representatives on February 29, 1924. It was favorably reported out of the Senate Committee on Finance on April 10, 1924, and was then passed by the Senate on May 10, 1924. A conference committee report was issued and passed by Congress and it was then signed into law on June 2, 1924, by President Coolidge. *Id.* at 9.

89. The Revenue Act of 1926, H.R. 1 was favorably reported out of the House Committee on Ways and Means on December 7, 1925, and passed by the House of Representatives on December 18, 1925. The Senate committee on Finance favorably reported the measure on January 20, 1926, which was then passed by the Senate on February 12, 1926. A conference report was issued and passed by Congress, and the measure was signed into law on February 26, 1926, by President Coolidge. *Id.* at 11.

90. *See generally* Kornhauser, *supra* note 55, at 144-54 (discussing taxation during the 1920s).

91. *Id.*

92. JOHN KENNETH GALBRAITH, ECONOMICS PEACE AND LAUGHTER 15-19 (1971) (outlining Galbraith's suspicion of the reduction of taxes for the express purpose of expanding production and employment).

93. Kornhauser, *supra* note 55, at 149 (explaining the view of some Democrats during the 1920s that tax cuts for the wealthy does not mean that prosperity will "ooze" to those earning less).

94. JOHN D. HICKS, REPUBLICAN ASCENDANCY, 1921-1933, at 53 (1960).

95. *Id.*

96. *Id.*

97. *Id.*

Norris, a prominent Progressive from Nebraska, dourly condemned Mellon for advocating tax policies that benefitted the Secretary personally, stating, "Mr. Mellon himself gets a larger personal reduction than the aggregate of practically all the taxpayers in the state of Nebraska."[98] The Democratic minority opinion of the Ways and Means Committee assertively condemned the Mellon-inspired *Revenue Act of 1921, H.R. 8245*.[99]

Despite the death of President Harding on August 2, 1923,[100] Secretary Mellon continued his "solicitude for [the] rich,"[101] under the new Coolidge administration, without hesitation. Supplementary, William Allen White, in his book *A Puritan in Babylon*, posited that Mellon's influence within the Oval Office had increased with the Coolidge Presidency, such that "so completely did Andrew Mellon dominate the White House in the days when the Coolidge administration was at its zenith that it would be fair to call the administration the reign of Coolidge and Mellon."[102]

Ergo, cognizant of his enormous influence in the White House, Secretary Mellon submitted his 1924 tax proposals. Mellon strongly backed this legislative package with two significant exceptions; he opposed an increase in estate taxes and excise taxes.[103] Despite Mellon's "one-sidedness," Congress passed most of his plan, including the opposed punitive estate and excise tax propositions.[104] The Republicans

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98. THOMAS B. SILVER, COOLIDGE AND THE HISTORIANS 111 (1982).

99. Frenze, *supra* note 87, at 7.

> "Why in the name of right and justice should these big profiteering corporations and the millionaires and multimillionaires who filled their rapacious maw with these fabulous billions of blood money be relieved of taxation .... Not one of them made a sacrifice, braved a danger, endured a hardship financially ... but was millions richer after the war .... It would be a thousand times better to keep the excess profits tax and high surtaxes on under the existing law and relieve altogether the more than 4,000,000 of our less fortunate citizens ...."

Id. (quoting H.R. REP. No. 350, 67th Cong., 1st Sess., pt. 2, at 4-5 (1921)).

100. THE ALMANAC OF AMERICAN HISTORY 444 (Arthur M. Schlesinger et al. eds., rev. ed. 1993).

101. MARK H. LEFF, THE LIMITS OF SYMBOLIC REFORM: THE NEW DEAL AND TAXATION, 1933-1939, at 49 (1984).

102. WILLIAM ALLEN WHITE, A PURITAN IN BABYLON 251 (1938).

103. John F. Witte opined on Mellon's recommendations:

> Consistent with the slogan that "big business was in the saddle" following the 1924 elections, Mellon's proposals reflected the antagonism of business interests .... Mellon proposed abolishing the gift tax immediately and the estate tax over several years and lowering the surtax from 40 to 20 percent. ... His other major proposal, to drop excise taxes on automobiles, entertainment, admissions, and jewelry, was of course viewed favorably by affected industries and high-income consumers....
>
> ... However, the Mellon program appeared to be a little too one-sided for even this conservative Congress.

JOHN F. WITTE, THE POLITICS AND DEVELOPMENT OF THE FEDERAL INCOME TAX 94 (1985).

104. *Id.*

and Democrats agreed, in the *Revenue Act of 1924, H.R. 6715*, "to a 50 percent reduction in rates and, more importantly, an increase in the credit allowed for payment of state inheritance taxes from the current 25 to 80 percent."[105] Yet again, continuing in the same ideological vein, these measures, the estate tax reduction and credits, benefitted only the wealthy.[106] Clearly, one could argue this was an example "of Secretary Mellon's handsome tax refunds"[107] for wealthy Americans, with little thought for the disadvantaged.[108]

The *Revenue Act of 1926, H.R. 1* revealed, according to revisionist historians, yet another lugubrious example of Secretary Mellon's attempt to expunge any vestigial taxation obstacles that stood in the way of the rich acquiring and maintaining wealth.[109] Mellon wanted nothing less than the wholesale shifting of the federal tax burden from those of means to low-income groups.[110] The Act, which was signed into law on February 26, 1926, "extended further benefits to high-income groups by lowering estate taxes and repealing the gift tax."[111] Mellon considered the Act to be a more thorough tax reform bill: nominal tax rates were slashed, surtaxes were cut, personal exemptions were boosted, federal credit for state inheritance taxes was increased, the gift tax was repealed, and the corporate capital stock tax was abolished along with various other nuisance taxes.[112] Moreover, Secretary Mellon was not satis-

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105. *Id.*

106. Kornhauser, *supra* note 55, at 153-54.

107. HOFSTADTER, *supra* note 5, at 399.

108. TINDALL, *supra* note 56, at 1075.

109. *See id.* (discussing tax policy under Mellon).

110. JOHN M. BLUM ET AL., THE NATIONAL EXPERIENCE: A HISTORY OF THE UNITED STATES 598 (1963).

> Mellon worked unceasingly to cut federal expenditures. Expenses had to be cut if he was to achieve his collary purpose: the reduction of taxes, especially taxes on men of means. It was better, he argued, to place the burden of taxes on low income groups. . . . A share of the tax-free profits of the rich, Mellon reassured the country, would ultimately trickle down to the middle and lower-income groups in the form of salaries and wages.

Id.

111. TINDALL, *supra* note 56, at 1075.

112. Frenze, *supra* note 87, at 11.

> H.R. 1 represented Mellon's idea of a thorough tax reform; he considered the two previous acts compromises. . . .
>
> In addition, H.R. 1 sharply chopped surtax rates, especially at the higher bracket levels. Again, as in the 1924 act, the redefinition and consolidation of the income classes reduced some marginal rates even more. The maximum surtax rate was lowered from 40 percent on net income over $500,000 to 20 percent on net income over $100,000. Thus the combined normal and surtax maximum marginal rate was pared 45.6 percent, from 46 percent to 25 percent.
>
> The act also increased the estate tax exemption from $50,000 to $100,000, and cut the top rate in half, from 40 percent to 20 percent. The maximum Federal tax credit for State inheritance taxes paid was increased from 25 percent to 80 percent. Furthermore,

fied simply with tax reduction targeted at the wealthy;[113] he was also guilty of malversation. Secretary Mellon lavished credits, abatements, and cash refunds on his own companies and supporters of Republican politics.[114]

The left's case rebuking Secretary Mellon's tax policies, executed under the leadership of Presidents Warren Harding, Calvin Coolidge, and Herbert Hoover, was fashioned upon one indispensable point: Andrew Mellon willfully contrived taxation laws that favored those of wealth over the middle-class and poor.[115] Indeed, even when faced with the onset of the Great Depression, Mellon lead a faction in the Hoover Cabinet that argued the Depression would *actually* re-invigorate American capitalism.[116] Consequently, the years 1921 to 1932 saw changes in the federal income tax burden largely benefiting the wealthy and privileged with

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> a special 25 percent top estate tax rate was made retroactive to June 2, 1924. The gift tax was repealed. Several nuisance taxes were also cut and the corporate capital stock tax abolished. Excise taxes on mahjongg sets, cameras, tires, and the use of U.S. built boats, as well as other items, were removed. Occupational taxes on brokers and various proprietors were nullified.

Id.

113. FOLSOM, *supra* note 57, at 120 (quoting IRWIN UNGER, THESE UNITED STATES: THE QUESTIONS OF OUR PAST 676 (4th ed., 1989)).

> Like most business people and many politicians of this era, Mellon believed that the nation's well-being depended on the proper climate for business investment and incentive. Convinced that the high corporate and personal income taxes . . . were hampering enterprise, he persuaded Congress to eliminate the wartime excess-profits tax and to reduce income tax rates at the upper levels while leaving those at the bottom untouched. Between 1920 and 1929 Mellon won further victories for his drive to shift the tax burden onto the backs of the middle and wage-earning classes.

Id.

114. According to Arthur Schlesinger Jr.:

> Nor was tax reduction Mellon's only resource. What he could not reduce, he could often refund–a process which had the advantage of taking place behind closed doors. Not until Garner forced the revelation of the figures in 1930 did the country know what Mellon had done. In his first eight years at the Treasury, the Secretary dispensed $3.5 billion in the shape of cash refunds, credits, and abatements . . . . Several million dollars went to Mellon's own companies; other millions, as Garner took pleasure in pointing out, went where they promised to do the most good to the Republican party.

ARTHUR M. SCHLESINGER, JR., THE AGE OF ROOSEVELT: THE CRISIS OF THE OLD ORDER, 1913-1933, at 62-63 (1957).

115. TINDALL, *supra* note 56, at 1075.

116. EUGENE LYONS, HERBERT HOOVER: A BIOGRAPHY 245 (1964).

> One school–a majority in political life generally but a minority in the Cabinet–was typified by Andrew Mellon, the Administration's first Secretary of the Treasury. It has been called Social Darwinist, committed to the survival of the fittest. . . .
>
> Those who thought like Mellon felt that after a runaway boom a sobering bust was not entirely evil. They held that it performed painful but needful services in liquidating swollen prices and wages, inflated real estate values and a gambling psychology; that if not artificially restrained, it would eliminate incompetents, misfits, parasites. There was, indeed, a touch of American puritanism in their view, in that it countenanced punishment for the wicked and prescribed a new austerity.

Id.

only limited tax relief directed toward lower-income groups.[117] A contemporary of Secretary Mellon, Democratic leader in the House John Lance Garner, characterized the 1920s' tax policies in an interesting manner when he promulgated "that the Mellon plan had, 'for its sole purpose the reduction of the larger taxpayers at the expense of the smaller taxpayer.'"[118]

V. A DEFENSE OF SECRETARY MELLON'S TAX POLICIES

This portion of the article surveys the conservative historian's interpretation of Secretary Mellon's taxation policies. The conservative position can be summarized into two main elements. First, by employing the basic truth recognized so eloquently by President Kennedy some forty years later,[119] the three tax acts framed by Secretary Mellon in 1921, 1924, and 1926,[120] decreased the tax burden on the lower and middle income groups by shifting the tax burden to the wealthiest of Americans.[121] Second, at the same time revenue increased for the federal government, state revenue in the form of estate taxes was protected and the federal debt was paid down by over a third in ten years.[122]

During the closing years of the First World War, there was a growing realization in the Treasury Department that heavy war surtaxes were driving capital away from productive enterprises where it could be taxed toward tax-free municipal and state bonds.[123] President Woodrow Wilson's Treasury Secretary, David Houston, considered this a serious problem for the United States. Secretary Houston was concerned about not only excessive surtaxes, but also their effect on foreign trade[124] and capital formation.[125]

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117. TINDALL, *supra* note 56, at 1075.

118. FOLSOM, *supra* note 57, at 116.

119. President Kennedy in a speech before the Economic Club of New York in 1962 said: "It is a paradoxical truth that tax rates are too high today and tax revenues are too low and the soundest way to raise revenues in the long run is to cut rates now." KEMP, *supra* note 64, at 10.

120. Frenze, *supra* note 87, at 6-11 (referring to The Revenue Act of 1921, H.R. 8245, The Revenue Act of 1924, H.R. 6715, and The Revenue Act of 1926, H.R. 1, respectively).

121. BARTLEY, *supra* note 22, at 73.

122. ROBERTS, *supra* note 66, at 76.

123. FOLSOM, *supra* note 57, at 108-09.

124. For further treatment of the topic of international trade generally, see Professor and Minister for Economics in the German Federal Republic LUDWIG ERHARD, GERMANY'S COMEBACK IN THE WORLD MARKET (Herbert Gross ed. & W.H. Johnson trans., 1954).

125. Frenze, *supra* note 87, at 3.

> "Since the adoption of the heavy war surtaxes in the revenue act of 1917, the Treasury has repeatedly called attention to the fact that these surtaxes are excessive; that they have passed the point of maximum productivity and are rapidly driving the wealthier taxpayers to transfer their investments into the thousands of millions of tax-free securities which compete so disastrously with the industrial and railroad securities upon the ready purchase of which the development of industry and the expansion of foreign trade inti

Indeed, in 1916 the number of individuals reporting an income of over $300,000 was 1,296 with an aggregate net income of $992,972,986. By 1921, the number of Americans reporting incomes of over $300,000 had dropped to 246, with the aggregate net income falling to only $153,534,305.[126] At the same time those with incomes of over $300,000 saw their contribution as a percentage of the total surtax collected fall from 66.8% in 1916 to only 20.6% in 1921.[127] Therefore, despite tax rates rising from 4% to 73% on high income earners, the wealthy were shouldering less of the tax burden in 1921 than they had been in 1916. It was this predicament which Andrew Mellon confronted upon arriving in Washington.

Mellon *ab initio* realized the high income tax rates "were the chief parasites draining the lifeblood of the American economy."[128] Despite the hortatory arguments of the Progressives, demanding so-called "fairness" in the tax system, the high tax rates were simply not achieving their objective. Secretary Mellon phrased the dilemma aptly:

> The high rates inevitably put pressure upon the taxpayer to withdraw his capital from productive business and invest it in tax-exempt securities . . . . The result is that the sources of taxation are drying up; wealth is failing to carry its share of the tax burden; and capital is being diverted into channels which yield neither revenue to the Government nor profit to the people.[129]

Consequently, the Secretary then set about restructuring the tax system with a broad four-point plan. First, he sought to cut the top marginal rate to 25% from 73%.[130] Second, Mellon wanted to cut taxes on low incomes in 1921; "the existing rates were 4 percent on those incomes of $4000 or less, and 8 percent on incomes over $4000. Mellon wanted to cut these rates from 4 to 3% and from 8 to 6%."[131] Moreover, "he also suggested an income-tax credit of 25 percent on earned income—that is, income earned by wages would be taxed less than income earned through investments. Mellon also proposed a repeal of the federal taxes on telegrams, telephones, and movie tickets."[132] Third, he

mately depend."

Id. (quoting ANNUAL REPORT OF THE SECRETARY OF THE TREASURY ON THE STATE OF FINANCES FOR THE FISCAL YEAR ENDED JUNE 30, 1920, H.R. DOC. NO. 1036, 66th Cong., 3d Sess. 36 (1921)).

126. MELLON, *supra* note 65, at 74.
127. *Id.* at 75-76.
128. FOLSOM, *supra* note 57, at 108.
129. MELLON, *supra* note 65, at 13.
130. BARTLEY, *supra* note 22, at 73.
131. FOLSOM, *supra* note 57, at 112.
132. *Id.*

called for a reduction in the federal estate tax.[133] Fourth and finally, he set about improving efficiency in government.[134] Implementation of this four point plan, Mellon argued, would, "lift the country out of recession, decrease the attractiveness of tax shelters, and ultimately increase revenue to the Treasury."[135]

Contained in the *Revenue Act of 1921*, in addition to the cut in the top tax rates, were several provisions that were completely ignored in the revisionist scholarship heretofore examined. The first was an increase in the corporate income tax rate from 10% to 12.5%.[136] The Act also increased the personal exemption, increased the tax credit for dependents, and eliminated the bottom surtax bracket.[137] The net result of the act was far different than the Ways and Means Democrats claimed it would be.[138] Indeed, the effect was exactly opposite to the Democrats cursory assertions.[139] Clearly, Secretary Mellon's tax proposal was something less than simply, "a windfall for the rich."[140] One finds that this was true throughout the 1920s, the rich paid more tax under the Mellon plan than they had under a so-called "progressive" tax system.[141]

With respect to the *Revenue Act of 1924*, what historians John Witte and Richard Hofstadter failed to mention was that the Coolidge and

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133. *Id.* at 113.

134. *Id.*

135. Frenze, *supra* note 87, at 1.

136. *Id.* at 6. As Christopher Frenze noted:

> The act increased the personal exemption from the previous $2,000 to $2,500 for married couples with joint income less than $5,000. It also doubled the credit for dependents from $200 to $400 . . . .
>
> In addition, the act simplified the law by eliminating the bottom surtax bracket ($5,000-$6,000), thus raising the surtax exemption to $6,000.

Id.

137. *Id.*

138. *Id.* at 7.

139. *Id.*

> The harsh criticism of the Act as a giveaway to the rich was not to be borne out by the facts. Between 1921 and 1922 individual income taxes paid by the very wealthy [annual income over $50,000] increased over 40 percent, from $318 million to $446 million. Moreover, their share of the total individual tax burden rose 18 percent, from 44 percent to 51.8 percent. Meanwhile, the proportion of income taxes paid by those making under $5,000 slipped from 12.9 percent to 11.1 percent. Total individual tax revenues increased about 20 percent, from $719 million to $861 million in 1922.

Id. (footnote omitted).

140. Frenze, *supra* note 87, at 7.

141. FOLSOM, *supra* note 57, at 103-04. This point has been further bolstered by Robert E. Hall and Alvin Rabushka. *See* HALL & RABUSHKA, *supra* note 11, at 42. From 1921 to 1926 as a group, those earning less than $10,000 saw tax revenues collected from them fall by 79%. *Id.* Those earning from $10,000 to $25,000 saw tax revenues collected from them fall by 43%. *Id.* Those earning between $25,000 and $50,000 saw tax revenues collected from them rise by 1%. *Id.* Those earning between $50,000 and $100,00 saw tax revenues collected from them rise by 23%. *Id.* Those making over $100,000 saw tax revenues collected from them riseby 86%. *Id.*

Mellon tax cuts called for "a reduction of the normal rates by 25 percent for *all* taxpayers, rich and poor. It was for this reason, among others, that the tax bill was widely supported among all categories of taxpayers and in all sections of the country."[142] Further, one can infer, from the Secretary's statements in 1924, that he believed that the tax burden ought to fall upon those most able to bear it when he stated that, "[i]n making its recommendations, the Treasury has been guided by the necessity first, of providing a sufficient income for the government; second, of lightening the tax burden, so far as possible, on those least able to bear it."[143] As well, John Witte's specious contention, outlined previously, concerning the 1924 Revenue Act is extremely puzzling. Witte claimed that Mellon's proposals "to drop excise taxes on automobiles, entertainment, admissions, and jewelry, was. . . viewed favorably by" the wealthy.[144] Mr. Witte was either being disingenuous, or has a rather tenuous grip on basic economics. Excise taxes are perhaps the most regressive taxes possible because these consumption taxes always hit those least able to pay the hardest.[145] Therefore, dropping excise taxes, in virtually any circumstance, does little to help the wealthy, but rather significantly benefits those in the middle and lower income brackets.[146]

The 1926 Revenue Act, and Mellon's tax policy in general, has been subjected to considerable condemnation by critics.[147] Revisionists have jejunely claimed that Mellon shifted the tax burden from the wealthy, to the middle and wage earning classes. This criticism notwithstanding, statistical evidence collected from that period directly contradicted the revisionist contention that Mellon's policies favored the wealthy.[148] Therefore, not only were the wealthy paying more under the

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142. SILVER, *supra* note 98, at 106.

143. *Id.* at 108 (citation omitted).

144. WITTE, *supra* note 102, at 94.

145. BRADLEY R. SCHILLER, THE MACRO ECONOMY TODAY 74-75 (5th ed. 1991).

146. *Id.*

147. HOFSTADTER, *supra* note 5, at 399.

148. FOLSOM, *supra* note 57, at 112. This point was also clearly illustrated by the research of Christopher Frenze:

> The tax revenue derived from the very wealthy under the provisions of the 1926 act (calendar years 1925-26) increased substantially over 1924. Individual income tax revenues increased $30 million overall between 1924 and 1925, with the share paid by the very wealthy increasing 7 percent to almost 70 percent. Curiously, about the same amount of revenue was collected for 1926; but the proportion paid by the very wealthy increased again in 1927 to 72.8 percent. Furthermore, the percentage of tax revenues paid by those with incomes in excess of $1 million jumped from 6.7 percent in 1924 to . . . 11.2 percent in 1926.

Frenze, *supra* note 87, at 11-12.

Mellon plan,[149] but the proportion of individual income taxes paid by those earning under $5,000 dropped precipitously.[150]

The third part of Secretary Mellon's broad strategy was the reduction of federal estate taxes.[151] This was premised upon two main points. First, he believed that high inheritance taxes, like high income taxes, tempted the wealthy to transfer assets before they died, thereby depriving the government of any revenue.[152] Second, and more importantly, Mellon realized that estate taxes were an important source of revenue for state governments.[153] Consequently, any rise in federal estate taxes would reduce revenue for the states, as Mellon noted "the estate tax furnishes but a slight portion of the revenues to the Federal Government but it supplies a large and important part of the State revenues."[154] It is clear, then, from the Secretary's statement that he opposed the federal estate tax, not to placate the wealthy but rather, because he did not wish to deprive the states of an important source of revenue.[155]

The fourth part of Mellon's plan focused upon efficiency in government by targeting revenue at government programs rather than interest on the national debt[156] Andrew Mellon was deeply disturbed by the debt the United States had accumulated as a result of the First World War.[157] He sought, therefore, to reduce the national debt.[158] Mellon achieved some success to that end and as Claude Fuess noted, "[i]t is worth noting that the interest-bearing national debt at the close of 1926 stood at $19,300,000,000 as compared with $26,300,000,000 in 1919. . . An accomplishment regarded in those times as worthy of high praise."[159] By the close of the 1920s, 36% of the national debt had been paid off.[160]

The conservative case vindicating Secretary Mellon's tax policies at the Department of the Treasury has been fashioned upon five rather elementary points. First, under the Mellon plan of large tax cuts, the wealthy shouldered considerably more of the income tax burden than ever before.[161] Second, the poor paid progressively less tax under the

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149. ROBERTS, *supra* note 66, at 76.

150. Frenze, *supra* note 87, at 12. "This income class paid 6.76 percent of 1924 income taxes, 1.89 percent of 1925 taxes, 1.82 percent of 1926 taxes, and 1.42 percent in 1927." *Id.*

151. FOLSOM, *supra* note 58, at 113.

152. WILLIAM H. ANDERSON, TAXATION AND THE AMERICAN ECONOMY 251-52 (1968).

153. FOLSOM, *supra* note 57, at 113.

154. MELLON, *supra* note 65, at 124.

155. FOLSOM, *supra* note 57, at 113.

156. *Id.*

157. *Id.*

158. *Id.*

159. CLAUDE M. FUESS, CALVIN COOLIDGE: THE MAN FROM VERMONT 382 (1940).

160. PAUL CRAIG ROBERTS, THE SUPPLY-SIDE REVOLUTION 76 (1984).

161. RUBENSTEIN, *supra* note 58, at 334.

Mellon plan.[162] Third, the above income tax cuts were achieved while at the same time increasing the Treasury Department's overall revenue.[163] Fourth, Mellon protected an important source of state revenue by reducing the federal estate tax.[164] Fifth, and finally, all of the above were achieved while the United States paid down over a third of its national debt over an approximate ten year period[165] and experienced tremendous economic growth.[166]

The debate over Andrew Mellon's tenure at the Department of the Treasury is part of a much broader ideological debate. One school of thought contends, irrespective of this particular debate over the policies of Secretary Mellon, that tax rates ought to remain high on the wealthy as a matter of socialist redistributionism, a form of social justice if you will.[167] The opposing school of thought maintains that a free society ought to minimize coercion[168] in order to maximize individual freedom and liberty.[169] Resolution of the policy debate over tax law in the 1920s and its ramifications can be a constructive step in that direction. Andrew Mellon, fittingly, framed this debate on his terms, stating "[t]axation should not be used as a field for socialistic experiment, or a club to punish success, but as a means of raising revenue to support the government," he continued noting that,"[t]he enemies of the income tax are not those seeking to reduce its excessive rates but those who insist that the high rates, which have proven economically incorrect, will remain."[170]

162. FOLSOM, *supra* note 57, at 112-113.

163. RUBENSTEIN, *supra* note 58, at 334 (citing the Internal Revenue Service, *Statistics of Income–1921-1925: Individual Income Tax Returns;* Tax Foundation).

164. FOLSOM, *supra* note 57, at 113.

165. PAUL CRAIG ROBERTS, THE SUPPLY-SIDE REVOLUTION 76 (1984).

166. ECONOMIC REPORT OF THE PRESIDENT: TRANSMITTED TO CONGRESS JANUARY 1989, at 27, H. Doc. No. 101-02, 101st Cong., 1st Sess. (1989) [hereinafter 1989 ECONOMIC REPORT]. The period from 1920 to 1929 saw the United States gross national product/gross domestic product grow at the average annual rate of 4.3% per year, while Germany and France grew at 4.9%, Japan at 3.4%, Italy at 3.0%, U.K. at 1.9%, and Canada at 4.0%. *Id.* The economic growth, however, is even more impressive if one examines the years 1921 to 1926 where the GNP grew at an annual rate in excess of 8% with prices remaining relatively stable. Frenze, *supra* note 87, at 10, 16. Manufacturing production also saw a dramatic increase from 1921 to 1927, the food industry was up 35%; textiles and apparel up 46%; petroleum and coal up 50%; paper products up 77%; transportation equipment up 80%; chemicals up 93%; primary metals up 100%; and rubber products up 117%. *Id.* Between 1924 and 1925 unemployment dropped 27.3%. *Id.*

167. *See generally* DONALD L. BARLETT AND JAMES B. STEELE, AMERICA: WHAT WENT WRONG? (1992).

168. Coercion in the present circumstance refers directly to excessive compulsory taxation under threat of punishment by law.

169. HAYEK, *supra* note 73, at 17-21.

170. Frenze, *supra* note 87, at 4.

VI. IDEOLOGICAL RAMIFICATIONS OF SECRETARY MELLON'S TAX POLICIES BEYOND THE 1920s

The onset of the Great Depression and the twelve-year "New Deal" Presidency of Franklin D. Roosevelt[171] prompted many observers, on both the ideological right and left, to relegate Mellon's supply-side philosophy to the ash-heap of history.[172] It resurfaced, however, in one of the most unlikely places—the economic program of Democratic President John F. Kennedy.[173]

With respect to domestic economic policy, President Kennedy, in 1962, was concerned about the possibility of the economy slipping into recession and sought to reverse the rather lackluster performance of the stock market.[174] He realized that the traditional Keynesian approach[175] to spur the economy was no longer sufficient.[176] Drawing upon the

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171. HOFSTADTER, *supra* note 5, at 411-445.

172. *See* GALBRAITH, *supra* note 53, at 51-134 (discussing relevant time period).

173. For an account of the intervening years see PAUL, *supra* note 34, at 421-764. *See also* KLEIN & BANKMAN, *supra* note 36, at 8-16.

174. JIM F. HEATH, JOHN F. KENNEDY AND THE BUSINESS COMMUNITY 114-122 (1969).

175. *See generally* JOHN MAYNARD KEYNES, THE GENERAL THEORY OF EMPLOYMENT, INTEREST AND MONEY (1936). William F. Buckley Jr. provided an evaluation of the economic theory of Lord Keynes in general, and John Kenneth Galbraith in particular:

> It is the dawning realization that, under the economics of illusion, pyramid building is becoming a major economic enterprise in America, that has set advanced liberals to finding more persuasive ways to dispose of the time of the textile specialty workers. And their solution–vide Galbraith–is great social enterprises, roads, schools, slum clearance, national parks. The thesis of the Affluent Society is that simple. We have 1) an earned surplus, 2) unemployment, 3) "social imbalance." (i.e., too many cars, not enough roads; too much carbon dioxide, not enough air purification; too many children, not enough classrooms.) So let the government 1) take over the extra money, 2) use it to hire the unemployed, and 3) set them to restoring the social balance, i.e., to building parks, schools, roads.

WILLIAM F. BUCKLEY JR., UP FROM LIBERALISM 227 (1985).

176. President Kennedy has stated:

> The most direct and significant kind of Federal action aiding economic growth is to make possible an increase in private consumption and investment demand–to cut the fetters which hold back private spending. In the past, this could be done in part by the increased use of credit and monetary tools–but our balance of payments situation today places limits on our uses of those tools for expansion. It could also be done by increasing Federal expenditures more rapidly than necessary–but such a course would soon demoralize both the government and the economy. If government is to retain the confidence of the people, it must not spend a penny more than can be justified on the grounds of national need and spent with maximum efficiency.
>
> The final and best means of strengthening demand among consumers and business is to reduce the burden on private income and the deterrents to private initiative which are imposed by our present tax system–and this Administration pledged itself last summer to an across-the-board, top-to-bottom cut in personal and corporate income taxes to be enacted and become effective in 1963.

BRUCE BARTLETT, REAGANOMICS: SUPPLY SIDE ECONOMICS IN ACTION 114-15 (1981) (quoting speech by President John F. Kennedy before the Economic Club of New York on December 14, 1962).

American experience in the 1920s, President Kennedy, in a 1962 speech before the Economic Club of New York, outlined bold new thinking to encourage economic growth, "It is a paradoxical truth that tax rates are too high today and tax revenues are too low and the soundest way to raise revenues in the long run is to cut rates now."[177]

With that rather forceful endorsement of Secretary Mellon's supply-side prescription for an anemic economy, President Kennedy advocated three main proposals to be embodied in law. First, a reduction of individual income tax rates from the range of 20 to 91%, to a range of 14 to 65%. The 14% rate applied to the first $2,000 of taxable income for married persons filing a joint return and to the first $1,000 of taxable income for single taxpayers. Second, President Kennedy proposed a reduction in the corporate tax rate from 52 to 47%. Finally, a revision in the tax treatment of capital gains was proposed by Kennedy.[178] President Kennedy made these proposals fully cognizant of the fact that, "[t]he largest single barrier to . . . a higher rate of economic growth is the unrealistically heavy drag of Federal income taxes on private purchasing power, initiative, and incentive."[179] The Kennedy cuts of 1964 resulted, almost immediately, in rather robust economic growth[180] and increased revenue to the Treasury Department.[181] The nation would have to wait almost two decades for this bold experiment to find itself in favor once again.[182]

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177. Kemp, *supra* note 64, at 10.

178. John F. Kennedy, Special Message to the Congress on Tax Reduction and Reform, *in* PUB. PAPERS, 1963, at 73-92 (1964).

179. HEATH, *supra* note 174, at 118.

180. As illustrated by Victor A. Canto, Douglas H. Joines, and Arthur B. Laffer:

> [U]nemployment declined from 6.7 percent to 3.8 percent and capacity utilization as measured by the Federal Reserve Board increased from 77.3 percent to 91.9 percent. During this period, real GNP grew at an average annual rate of 5.9 percent. The average growth in nominal GNP was 7.5 percent, while federal government expenditures grew at a rate of 6.2 percent. Consequently, the ratio of government expenditures to GNP fell. It thus seems unlikely that the increase in economic activity can be attributed entirely to the stimulus of increased government spending.

Victor A. Canto, et al., *Tax Rates, Factor Employment, and Market Production, in* THE SUPPLY-SIDE EFFECTS OF ECONOMIC POLICY 3, 19 (1981).

181. Frenze, *supra* note 87, at 25 (observing that:

> In this period consumer spending and tax revenues rebounded while productivity growth rose and labor costs decreased. In the meantime, inflation as measured by the GNP price deflator was almost imperceptible, crawling at an annual rate of about 13/4 percent.
>
> . . .
>
> Although the Treasury estimated that the 1962-64 tax legislation would result in revenue losses of $89 billion over a six year period starting in 1963, revenue actually increased $54 billion during this time).

182. For an account of the intervening years, see PAUL, *supra* note 34, at 421-764.

Given the time that has past since the 1980 Presidential election, it is perhaps understandable that one does not immediately recall the stark contrast that was presented to the American people. In the midst of 13% inflation, 21.5% interest rates,[183] falling household income,[184] and an unemployment rate of 7.4%,[185] President Carter lamented that America had, perhaps, lost confidence in itself and that there was a crisis "at the very heart and soul and spirit of our national will."[186] A national "malaise" had set in.[187] President Carter's malaise notwithstanding, Ronald Reagan spoke of an idealism and an optimism rooted in determination, courage and strength—equal to the task of building a greater tomorrow.[188] In order to achieve this renewal, at least in terms of domestic economic policy, Ronald Reagan, understanding the historical importance of this idea,[189] once again resurrected Mellon's supply-side philosophy,[190] as a theme in his election in 1980 and his overwhelming landslide re-election in 1984.[191] President Reagan's tax plan was relatively simple:

> I believed that if we cut tax rates . . . the economy would receive a stimulus that would bring down inflation, unemployment, and interest rates, and there would be such an expansion of economic activity that in the end there would be a net increase in the amount of revenue to finance the important functions of government.[192]

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183. ARMEY, *supra* note 14, at 30.

184. RUBENSTEIN, *supra* note 58, at 204-15.

185. *Id.* at 203.

186. JOHNSON, *supra* note 71, at 697.

187. BARTLEY, *supra* note 22, at 42.

188. RONALD REAGAN, First Inaugural Address, January 20, 1981, *in* INAUGURAL ADDRESSES OF THE PRESIDENTS OF THE UNITED STATES: FROM GEORGE WASHINGTON1789 TO GEORGE BUSH 1989, at 331-37 (Bicentennial ed., 1989).

189. As President Reagan stated:

> When John F. Kennedy's tax program that he recommended and which was not too dissimilar to ours, when it was passed, the same thing happened–more revenues at lower rates. It happened back in Coolidge's administration, and they cut taxes several times in that period. I can show you again where tax increases have resulted in lower revenues for the government because of the harmful effect they have on the economy by reducing incentive and so forth.

REAGAN, *supra* note 9, at 70.

190. During his second Inaugural Address, President Reagan observed that: "The time has come for a new American emancipation–a great national drive to tear down economic barriers and liberate the spirit of enterprise in the most distressed areas of our country. My friends, together we can do this, and do it we must, so help me God." RONALD REAGAN, Second Inaugural Address, January 21, 1985, *in* INAUGURAL ADDRESSES OF THE PRESIDENTS OF THE UNITED STATES: FROM GEORGE WASHINGTON1789 TO GEORGE BUSH 1989, at 341 (Bicentennial ed., 1989).

191. NEWT GINGRICH, TO RENEW AMERICA 235 (1995).

192. REAGAN, *supra* note 7, at 231.

President Reagan's economic plan achieved precisely what it set out to do with one notable exception—the national debt.[193] The Reagan Administration cut marginal tax rates for *all* tax brackets[194] and brought inflation[195] and interest rates under control.[196] The federal government

193. President Reagan has been forthright in accepting his share of responsibility in this area, noting that "on the other side of the ledger, cutting federal spending and balancing the budget, I was less successful than I wanted to be. This was one of my biggest disappointments as president. I just didn't deliver as much to the people as I had promised." *Id.* at 335. *See also* DAVID FRUM, DEAD RIGHT 29 (1994). There is also the question of persistent trade deficits throughout the 1980s. In 1981, the United States ran a trade surplus of six billion dollars that by 1987 had turned into a $144 billion deficit. LESTER THUROW, HEAD TO HEAD: THE COMING ECONOMIC BATTLE AMONG JAPAN, EUROPE, AND AMERICA 231 (1992). However, not all experts are as disturbed about the trade deficit as is Mr. Thurow. Kenichi Ohmae has argued that this worry is greatly misplaced. KENICHI OHMAE, THE BORDERLESS WORLD: POWER AND STRATEGY IN THE INTERLINKED ECONOMY 137-145 (1990).

194. Spencer Abraham, *A Pro-Growth Tax Plan,* WALL ST. J., May 20, 1996, at A14.

> Newly elected President Ronald Reagan cut tax rates across the board by 25%. Mr. Reagan could have cut taxes in any number of ways, but he chose reducing marginal tax rates because he understood that it was not enough just to lower the tax burden. The marginal tax rate—assessed on the next dollar earned—is the rate that influences whether a worker works overtime or goes home for the day. It is this tax rate that determines whether Americans save and invest their income or spend it. A tax cut that does not affect marginal incentives may stimulate some additional spending, which will give the economy a temporary boost. But it does nothing to encourage additional saving, investment or production.

Id. See also HALL & RABUSHKA, *supra* note 11, at 44-45. For further reading on the economic effect of the three principle tax acts of the 1980s, specifically The Economic Tax Act of 1981 (ERTA), The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), and the Tax Reform Act of 1986 (TRA), see the 1994 ECONOMIC REPORT, *supra* note 15, at 87-90, and the 1989 ECONOMIC REPORT, *supra* note 166, at 86-94.

195. *See* PAUL KRUGMAN, THE AGE OF DIMINISHED EXPECTATIONS: U.S. ECONOMIC POLICY IN THE 1990S, at 2 (1990) (using chart to illustrate).

196. MCKENZIE, *supra* note 23, at 292-306.

was also downsized.[197] Economic growth,[198] productivity,[199] and enhanced wage growth[200] all saw tremendous gains. The deficit was eventually brought under control,[201] and America was put back to work.[202] Moreover, Reagan's administration policy, in the fullness of

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197. ARMEY, *supra* note 14, at 35-36.

> President Reagan fired 14.2 percent of the federal regulatory "work" force and reduced the number of regulations (measured in pages in the Federal Register) by 38.7 percent. Just as cutting taxes makes people free to spend their own money, cutting regulations makes people free to conduct their own affairs, and in both cases Reagan was led by his understanding that freedom works.

Id. See also REGULATION AND THE REAGAN ERA: POLITICS, BUREAUCRACY AND THE PUBLIC INTEREST (Roger E. Meiners & Bruce Yandle eds., 1989).

198. Lawrence Kudlow has illustrated:

> The Bush-Clinton economic recovery cycle is vastly inferior to the economy's performance under Reagan. At a comparable stage, roughly three-and-a-half years from the recession trough, the current jobs expansion of 5.8 million looks anemic compared to Reagan's 10.4 million. Non-farm payrolls in this cycle have increased at an annual rate of 1.5 percent, compared to 3.2 percent under Reagan. Overall real GDP growth in the current recovery cycle is 2.9 percent a year, compared with Reagan's 4.9 per cent.
>
> . . . [T]otal workers' compensation, which includes both wages and benefits [adjusted for inflation] . . . increased at a 1.6 percent annual rate during the early Reagan recovery and by just 0.7 percent yearly during the Bush-Clinton cycle.
>
> Reagan's personal income, business, and capital-gains tax cuts created a tremendous 7.6 percent annual growth in net new business formations, compared to the Bush-Clinton record of 4.3 percent.

Lawrence Kudlow, *There They Go Again*, NATIONAL REV. Nov. 7, 1994, at 28, 28-30. Senator Spencer Abraham agreed:

> The Reagan tax cut, once fully phased in, worked. In 1984, real GDP growth reached 6.8%–the highest single year growth rate since 1951. In President Reagan's second term, growth averaged 3.4% a year—well above the 2.5% per year average of the last three years, which President Clinton erroneously calls the best in three decades.

Abraham, *supra* note 193, at A14.

199. BARTLEY, *supra* note 22, at 4. "[T]he output of an hour of American labor, grew by 10.6 percent, though it had previously been stagnant for a decade." *Id.*

200. Lawrence Kudlow, *It's Capital Formation, Stupid*, WALL ST. J., Dec. 17, 1992, at A18. "From 1983 to 1989 real after-tax income rose more than 12% for the average of all Americans. The greatest gains in income in the 1980s were generated by women. On average, the wages earned by women rose 11% to relative men's wages." *Id.* This is in sharp contrast to the higher taxes and lack of wage growth during President Clinton's tenure:

> Since 1992, taxes paid by individuals have gone up 25.3% while real median family incomes have remained unchanged . . . .
>
> President Clinton's 1993 tax increase has raised federal receipts from 19.2% of GDP in President Bush's last year to 20.4% of GDP in 1995—the second highest level in U.S. history.

Abraham, *supra* note 194, at A-14.

201. 1989 ECONOMIC REPORT, *supra* note 166, at 8. "We have also made progress in reining in government expenditures, but much still needs to be done. We have reduced the rate of growth of Federal spending, and over the past 5 years government spending as a percent of GNP has fallen from 25.1 to 23.2 percent." *Id.*

202. BARTLEY, *supra* note 22, at 4.

> Manufacturing production grew even faster than GNP, rising by 48 percent over the expansion . . . . [G]ross private investment grew by 32 percent, in line with GNP. And just as a demographic surge reached working age, enough jobs were created to boost civilian employment by 19.5 percent. Between 1982 and 1990, the U. S. economy added

time, resulted in increased Federal tax revenue[203] and a more equitable tax burden.[204] Furthermore, an environment through which employment opportunity for minorities could flourish[205] was encouraged. Finally, and perhaps most importantly, the Reagan tax cuts brought

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18.4 million jobs.

Id.

203. RUBENSTEIN, *supra* note 58, at 344. Federal tax revenues one year prior to the Reagan Administration were $517 billion, by 1988 federal tax revenues had exploded to $909 billion. *Id.* Even so, the Reagan Administration's federal tax burden as percent of GDP was 18.7% compared to the Carter Administration's 19.4% and the Clinton Administration's 19.6%. *Id.* at 346. Moreover, Thomas Sowell has exploded the myth that the Reagan tax cuts caused the large budget deficits in the 1980s. *See* SOWELL, *supra* note 21, at 82-83. He points out that increased spending, not lower rev-enues were the cause of the budget deficits:

> Contrary to the notion that deficits have resulted from reduced tax receipts by the federal government, those receipts in fact reached new record highs during the Reagan administration. Every year of the administration saw the federal government collect more money than in any year of any previous administration in history. . . . The idea that tax cuts–for the rich or otherwise–were responsible for the deficit flies in the face of these easily obtainable statistics.

Id. at 82-83 (footnotes omitted).

President Clinton does not share Professor Sowell's common sense view, stating: "No one seriously disputes the fact that a major cause of the Federal deficit being as big as it is, is that there was a huge cut in income taxes on upper income people." William J. Clinton, Interview with the Wisconsin Media, *in* 1 PUB. PAPERS, 1993, at 1123, 1128 (1994).

204. The assertion that the Reagan tax cuts benefited only the wealthy and shifted the tax burden from the rich to those less able to pay is perhaps the most popular myth of the 1980s. President Clinton strongly believes that the wealthy did not pay their "fair share" during the 1980s. William J. Clinton, Address Before a Joint Session of Congress on Administration Goals, *in* 1 PUB. PAPERS, 1993, at 120 (1994); William J. Clinton, Remarks to the Community in Charleston, West Virginia, *in* 2 PUB. PAPERS, 1993, at 1350, 1351-52 (1994). President Clinton's rhetoric notwithstanding, the 1980s actually saw the tax burden become much more equitable, in 1981 the wealthiest top 1% paid 17.6 percent of total federal income taxes, by 1988 the top 1% was paying 27.5 percent of total federal income taxes. RUBENSTEIN, *supra* note 58, at 241. Therefore, not only did the wealthy pay more, but Americans experienced tremendous upward income mobility in the 1980s. As Dick Armey has commented:

> From 1979 to 1988, 85.8 percent of the folks in the lowest quintile [income group] moved into a higher group. Meanwhile, 60 percent of those in the second quintile moved up. About 47 percent of those who began the eighties at the middle moved into a higher quintile. As for fifth, richest quintile, 35 percent moved *downward*. Among the richest 1 percent of the population, over half moved down. All told, a person in the poorest income group in 1979 was more likely to end the decade in the richest quintile than to remain at the bottom.

ARMEY, *supra* note 14, at 38. Putting statistical evidence aside for the moment, it is difficult to see even the so-called "fairness" of the progressive tax system. For example, there are two taxpayers, one is a steel-worker making $30,000 a year and the other is a steel company executive making $300,000. While the executive makes ten times the salary of the steel worker, her tax bill, all other factors remaining constant, will be well over ten times that of the steel worker. If fairness, rather than punishment, was the goal of our tax code should not the executive's tax bill be only ten times greater than the steel workers?

205. 1989 ECONOMIC REPORT, *supra* note 166, at 7.

> While civilian employment has increased by more than 17 percent, Hispanic employment has grown by more than 45 percent, black employment by nearly 30 percent, and female employment by more than 20 percent . . . the jobs created are good ones; over 90 percent of the new jobs are full-time, and over 85 percent of these full-time jobs are in occupations in which average annual salaries exceed $20,000.

Id.

about the longest peacetime economic expansion in American History.[206]

When viewed in this light, the supply-side cuts of Secretary Andrew Mellon, as incorporated by President Reagan and President Kennedy, achieved what they claimed: increased economic growth, a more equitable tax burden, higher revenues, and lower unemployment. It would appear, however, that President Clinton[207] and those in public office lead astray by the siren song of redistributionism[208] will continue to ignore the positive economic effects of supply-side tax cuts in the name of having the wealthy pay their fair share.[209]

America is not well served by a philosophy that demands redistributionism and a President that practices the politics of division. Our national conversation must turn away from envy and the sophists who preach "fairness." Only by rejecting these falsehoods can we, as a nation, ensure constructive opportunity for all. To this end, President Reagan's remarks are instructive in illustrating the eternal truth of this idea, "My friends, history is clear: Lower tax rates mean greater freedom, and whenever we lower rates, our entire nation is better off."[210]

G. Marc Worthy

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206. Kemp, *supra* note 64, at 1-16.

207. *See* BOB WOODWARD, THE AGENDA: INSIDE THE CLINTON WHITE HOUSE 25-26 (1994) (discussing Clinton's stance on Reagan's economic policies).

208. *See* John R. Kasich, *On the Cutting Edge: The House GOP Alternative to Clinton's Budget*, POLICY REV., Summer 1993, at 23-28.

209. William J. Clinton, Interview with the Wisconsin Media, *in* 1 PUB. PAPERS, 1993, at 445, 1127-28 (1994).

210. REAGAN, *supra* note 9, at 68.