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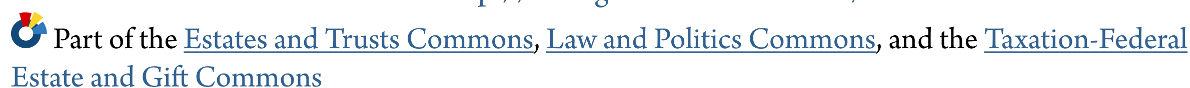
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“DEATH TAX” POLITICS

MICHAEL J. GRAETZ*

Abstract: In his Keynote Address *“Death Tax” Politics* at the October 2, 2015 Boston College Law School and American College of Trust and Estate Counsel Symposium, *The Centennial of the Estate and Gift Tax: Perspectives and Recommendations*, Michael Graetz describes the fight over the repeal of the estate tax and its current diminished state. Graetz argues that the political battle over the repeal of the estate tax reflects a fundamental challenge to our nation’s progressive tax system. This Address concludes that a revitalized estate tax is important for managing the national debt and reducing massive inequalities in wealth.

INTRODUCTION

What I will say today is largely based on my book with Yale political scientist Ian Shapiro, *Death by a Thousand Cuts: The Fight Over Taxing Inherited Wealth*, and the events since 2010.[1] Our book reveals—with far greater texture and nuance than I will be able to describe today—the drama and the politics of the bizarre 2001 repeal of the estate tax that was delayed and then effective only for one year in 2010.

Taxes on inherited wealth have an ancient pedigree. Historians claim that Egypt imposed a tax on death-time transfers of wealth as early as 700 B.C. and that such a tax was levied in ancient Rome by Augustus Caesar. Beginning in 1797, our federal government began imposing such taxes in a variety of forms to fund wartime government revenue needs. Through the nineteenth century, these taxes were routinely repealed after the wartime exigencies had passed.

The modern estate tax dates from 1916, when it was enacted to fund the first World War. Then, the exemption was $50,000, which based on the Consumer Price Index, would be over $1 million now. But if one looks instead to GDP per capita as a measure of relative wealth, that number translates to nearly $5 million today, pretty close to where the exemption currently stands. The top tax rate started off small at 10%, but that did not last long. By the 1920s, it reached 40%, despite the efforts of Treasury Secretary Andrew Mellon to re-

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[1] MICHAEL J. GRAETZ & IAN SHAPIRO, DEATH BY A THOUSAND CUTS: THE FIGHT OVER TAXING INHERITED WEALTH (2005); *see also* Michael J. Graetz, The Lloyd Leva Plaine Distinguished Lecture: The Politics and Policy of the Estate Tax—Past, Present and Future, *in* 45 HECKERLING INSTITUTE ON ESTATE PLANNING (2011).

peal the levy. In 1926, the rate was cut to 20%, but by 1934 it was raised to 60% and was raised again in 1935 to 70%. The top bracket then did not hit, however, until estates reached $50 million—more than $1 billion today.

During the 1940s, to finance the second World War, Congress increased the top rate to 77% and set the exemption at $60,000—where those numbers stood for nearly thirty-five years. By 1975, however, the inflation of the 1970s had eroded the exemption's value so that—instead of the 1% or 2% of decedents who had typically paid the tax each year—the tax hit 6.5% of that year's decedents and was estimated to apply to more than 10% in the next few years.

I. The Origins of the Fight to Repeal the Estate Tax

After three decades of neglect, the Tax Reform Act of 1976 adopted a series of changes intended to return to about two percent those affected by the tax and to move toward a more structurally coherent tax, typically to be imposed once a generation without huge disparities due to decedents' patterns of lifetime giving. The 1976 legislation unified the gift and estate tax rate schedules, created one lifetime exemption level, expanded the marital deduction, and established a new tax on generation-skipping trusts. While the 1976 changes were expected to lose revenue in the short run, principally due to the increase in the size of tax-exempt estates from $60,000 to more than $175,000, this loss was to be offset in the long run by the new generation-skipping tax and the enactment of a carryover of basis for assets transferred at death. That carryover basis provision, however, never came into effect, having been delayed in 1978 and repealed in 1980 due to a combination of technical glitches and remarkably effective opposition—of which the most amusing were the testimony of former Harvard Law School Dean and Solicitor General Erwin Griswold about the difficulties of knowing the basis of each of the stamps in the extensive stamp collection he had accumulated since childhood, and the often hilarious lecturing of the Ways and Means Committee by a pig farmer about the difficulties of knowing the basis of each of his baby pigs.

Not only did Congress repeal the carryover basis, but after Ronald Reagan took office in 1981, it phased in a further increase in the exemption level to $600,000 by 1987 (ten times its 1975 level), reduced the top rate from 70% to 50%, eliminated all limitations on the marital deduction, and increased from $3000 to $10,000 the amount which could be transferred annually to any donee free of gift tax. Shortly thereafter, I overheard a well-known New York City estate planner respond to a client's anxious inquiry about what the lawyer might do to minimize the estate taxes of the client's ninety-year-old widowed mother who had a very large fortune, composed of portfolio securities, cash, and extremely valuable art. The lawyer thought quietly for some time, running through his bag of estate-planning tricks, when all of a sudden with a gleam in

his eye, he looked up and said calmly, "Marry her." (If something like that were to happen this year, the lawyer could tell a client in similar circumstances to go to the nearest public hospital and marry a poor dying person for his or her new, portable $5.5 million estate tax exemption.)

All in, the 1981 changes reduced the estate tax base by about seventy percent, reduced the take of the tax to about one-third of what would have been collected if the 1976 structure had remained in place, and, most importantly, began a transformation of the politics of taxing large inheritances that, two decades later, would produce legislation to repeal the tax altogether. What had happened to make such dramatic change possible?

First, inflation raged, simultaneously eroding the real value of the exemption and increasing property prices at a pace that—despite the 1976 increase in the exemption—made the tax a threat to many more Americans. This same inflation had swelled government coffers through both income tax bracket creep and increased property taxes. In California, the combination of rising taxes and government budget surpluses had already transformed tax policy and politics. On June 6, 1978, Californians turned American tax politics upside down by enacting the state constitutional amendment known as Proposition 13. In addition to limiting that state's property taxes, the anti-tax movement that would soon become the linchpin of the Republican coalition had found its voice. Republicans had discovered the glue that would hold its social and economic conservatives together. Years later, Grover Norquist, President of Americans for Tax Reform, famous for gathering legislators' pledges never to vote for any tax increase and the movement's most clamorous guru, would say, "You win on the tax issue, you win all issues."

As this audience knows well, Proposition 13 stimulated similar amendments across the land. And in 1982, in a stunning vote, sixty-four percent of Californians voted to abolish that state's inheritance tax, paid by only a tiny minority. By the late 1980s, a band of creative pioneers started a movement to repeal the federal estate tax.

II. Repeal Advocates Go to Washington

Washington insiders thought they were a joke. After all, why would anyone imagine that a tax paid by only two percent of the wealthiest Americans could be abolished? When the repeal movement began, the Democrats had been firmly in control of the House of Representatives for a generation and showed no sign of losing their majority. The last time the modern estate tax had been seriously challenged was in 1925–26. Then, Republicans controlled the White House and both Houses of Congress—and repeal had failed. To anyone who noticed the early advocates of estate tax repeal at all, they seemed eccentric, if not quixotic.

There were several important early advocates for repeal. But in the interest of time, let me describe only one—one who provided crucial resources, organizational skill, and the wherewithal to persevere over time: a Californian, Pat Soldano. A small, well-groomed woman in her fifties with bright blue eyes and glossy painted nails, Soldano had her own inspiring personal stories to add to the cause by the 1990s. She began managing the assets of Frederick Field, the heir to the Marshall Field's department store fortune, in 1980. After that she added a select number of wealthy families to her portfolio, establishing family offices for them, managing their investments, and doing their accounting and tax planning. In 1987, Soldano established a family office for California's Brown family, whose wealth came from oil and gas properties. Families such as the Plimptons of New Jersey, the Mars family, the Gallos, and the heirs to the Campbell's soup and Krystal fast-food fortunes, all contributed money to Soldano's efforts to eliminate the estate tax.

The families Soldano represented have battled long and hard to get Washington to reduce their estate tax liability. The Gallos, for example, invested heavily in contributions to politicians of both political parties throughout the years while seeking—with some notable successes—special estate tax treatment.

In the movement's early days, Soldano's efforts weren't nearly as elaborate or well organized as they soon became. She was a political innocent in the early 1990s, when she first started visiting the nation's capital from Orange County. "I didn't even know how to meet a staff person," she told us. Soldano gives the impression she relied on the comfort of strangers.

She hired the Patton Boggs law firm of legendary lobbying prowess to help her meet people and strategize about repealing the estate tax. "People don't always take calls from California," Soldano said. Thanks to her wealthy clients, Soldano had the financial resources to get attention in Washington, but money only buys access—not guaranteed results. In 1992, when Soldano first began her lobbying efforts, repeal was an exceedingly low-odds proposition. Patton Boggs's competitors in town regarded success as so unlikely that they often joked that the firm was taking Soldano's money for unbelievably expensive guided tours of the nation's capital.

Precisely because the odds were stacked so heavily against them, the early repeal advocates had to ready themselves to be effective should the political climate change. They had to think creatively about unlikely bedfellows who might be induced to support their cause. In this respect, Soldano and her compatriot Frank Blethen, who owns the *Seattle Times*, were true visionaries. They understood from the beginning that success would depend on divorcing estate tax repeal from other conservative agendas: it had to appeal to a variety of non-traditional Republican constituencies. For example, realizing that first-generation minority business owners would be vulnerable to the tax, Soldano

and Blethen began courting their support. She talked to the Black Chamber of Commerce and other minority groups, and also reached out to gays and lesbians through opinion pieces pointing out how the lack of a marital deduction then compounded their potential estate tax liability. Perhaps Soldano's most natural sell was to a group that could intimately relate to her—female business owners. Mobilizing women, minorities, gays, and lesbians required that estate tax repeal not become sullied by association with other controversial political agendas. Affirmative action, abortion, social programs, gay marriage, child care—these were all off limits for what had to be, and had to be seen as, a single-issue campaign.

Soldano and Blethen also knew that any coalition to repeal the estate tax would lose if it was seen as a tool of the ultra-wealthy. Popular support could be garnered only if the public could empathize with ordinary people who had worked hard all their lives to build a nest egg about to be smashed at their death by a voracious federal government. The working rich, not the idle rich, had to become the poster children of the movement. Soldano and her allies worked hard to ensure that the public would see the estate tax as a small-and medium-sized business issue.

Here is one example of their creativity. On the morning of February 1, 1995, in the cavernous hearing room of the House Ways and Means Committee, an elegant, eighty-three-year-old, African-American tree farmer from Montrose, Mississippi, moved into the witness chair. Chester Thigpen was a grandchild of slaves. He had come to Washington to urge these lawmakers to exempt most family businesses from the estate tax. He began to speak softly, but with conviction. "Estate taxes matter not just to lawyers, doctors, and businessmen, but to people like [my wife] Rosett and me," he said. "We were both born on land that is now part of our tree farm. I can remember plowing behind a mule for my uncle who owned it before me. My dream then was to own land."

"Back when I started," he continued, "the estate tax applied to only one estate in sixty. Today it applies to one in twenty—including mine. I wonder if I would be able to achieve my dream if I were starting out today," he said. The farm "made it possible for us to leave a legacy that makes me very proud: beautiful forests and ponds that can live on for many, many years after my wife and I pass on," he said.

Thigpen claimed that his dream was being threatened. "We also want to leave the tree farm in our family. But no matter how hard I work, that depends on you," he explained. "Right now, people tell me my tree farm could be worth more than a million dollars." But, he added ominously, "my children might have to break up the tree farm or sell off timber to pay the estate taxes" when he died.

Then Thigpen came to the punch line, "I am here today to endorse a proposal called the National Family Enterprise Preservation Act which would totally exempt over ninety-eight percent of all family enterprises, not just tree farms, from the federal estate tax." Thigpen had made his family and their tree farm into a symbol of industrious, hardworking, environmentally friendly, minority-owned family businesses around the country that would benefit from estate tax exemption.

Thigpen and his tree farm soon became the epitome of the case for estate tax repeal. His testimony was cycled and recycled. Three years later, in a 1998 report, Congress's Joint Economic Committee used Thigpen's tree farm to illustrate "the burdensome nature of the estate tax" and to argue for its repeal.

In 2003, Thigpen, at age ninety-two, was in Mississippi, virtually incapacitated by a bleeding ulcer that had caused the removal of most of his stomach. As Thigpen's son Roy put it, "He doesn't get out much; he doesn't even have his license anymore." Thigpen's wife Rosett had died four years earlier. Roy said that Thigpen's estate was not taxable, because the value of its assets was, even then, below the minimum threshold where the tax applies. When we asked Roy whether Thigpen wrote his own testimony, Roy gave a hearty laugh and said he thought his father's speech was written by "some professors." But it is far more likely that some astute Washington hand penned Thigpen's testimony.

Chester Thigpen, a rural, African-American descendant of slaves, was a perfect poster child for the repeal campaign. Opponents of repeal now view him as a stalking horse in the debate, a front for wealthy white families who were financing the repeal machine.

The pioneers for repeal of the late 1980s and early 1990s are easily forgotten from the perspective of what the main pro-repeal group, the Family Business Estate Tax Coalition, later became. By 2001, the coalition included over one hundred trade associations and other organizations representing some six million individuals and businesses. It had, by all accounts, run one of the most effective legislative campaigns in recent times—flawless in organization and execution, adept at managing internal tensions, professional in its public relations, and formidable in delivering constituency pressure to key politicians in time for critical votes.

But this juggernaut for repeal was a creature of the last few years before the 2001 legislative victory. As late as 1997, the leaders of the National Federation of Independent Businesses—the single most important coalition member—believed repeal was unrealistic. There was ample time for the Clinton Administration to take repeal off the table by substantially increasing the exemption and providing real relief for farmers and owners of small businesses.

Instead, in the spring of 1997, then Deputy Treasury Secretary Larry Summers insisted publicly that "there is no case other than selfishness" for

cutting the estate tax. Even after the President learned—with shock and dismay—that a majority of the Congressional Black Caucus had voted for a repeal bill in the House, the Clinton Administration chose to ignore the estate tax issue.

And so did others with a real stake in opposing repeal. Labor was preoccupied with attempting to rebuild unions' diminishing ranks and political prowess. Charities, such as universities and museums—which had been estimated to have nearly twenty percent of their bequests at risk if the tax were repealed—were afraid to speak up against repeal out of fear of alienating key donors and board members. After the 2001 Act passed, we asked representatives of the life insurance industry, which enjoys substantial revenues from policies purchased due to the tax, why they had been so outmanned. "We were sure Al Gore would win the presidency," they told us. And they sell insurance!

The repeal forces, on the other hand, were well financed, focused, well organized, and remarkably sophisticated. To the great surprise of liberal Democrats, they funded and produced an armful of political polls showing that a large majority of Americans—65% to 70%—favored repealing the "death tax," as they insisted on calling it. How did this happen?

First, the American public has been unrealistically optimistic about their relative and absolute economic circumstances. They have underestimated the levels of inequality, overestimated their own wealth compared to others, and exaggerated their likelihood of moving up significantly and getting rich. A *Time* and CNN poll taken in 2000 revealed that 39% of Americans believed that they either were already in the top 1% of wealth or "soon" would be. This is truly a great country.

Second, the pro-repeal forces were smart enough to design polls simply asking the question: "Do you favor or oppose repeal?"—never giving even a hint that repealing the tax might someday cause other taxes to rise or spending on popular programs, such as Medicare or education, to decline. Faced with a stand-alone question about repealing or keeping any tax, a majority of Americans would no doubt favor repeal.

Remember also the economic and federal budget context when repeal was enacted. Federal Reserve Chairman Allen Greenspan in January 2001 famously told the Senate Budget Committee that the budget surpluses facing the U.S. government were so large that it would soon have to buy private assets because all of the debt of the federal government would be paid off. He suggested that the government might even have to buy corporate stock, an idea he abhorred. The good news is that that problem has now been solved.

The repeal forces were enormously successful at creating a compelling narrative against the tax. A good narrative includes a moral with heroes and villains—especially when it is intended to move people to action. This is why a compelling narrative so often trumps even a well-supported argument in Con-

gress. The repeal forces effectively marshaled personal stories in support of specific moral principles. The stories conveyed the values of asceticism, thrift, and hard work. They merged capitalist economics with Protestant ethics. Small business owners, family farmers, first-generation entrepreneurs—the hard-working folks who comprise the grass-tops in local communities—all combine success with virtue. The wan smile on Chester Thigpen's weathered face lends credence to his "everyman" image, and being African-American ices the cake. Pat Soldano frequently repeated the heart-wrenching story of her client family's double dose of fatal cancer—compounded for years by heartless IRS estate tax auditors.

Death is the great leveler. Everyone knows they might be struck down tomorrow. By calling the estate tax the "death tax" and placing the undertaker and the tax collector side by side, the repeal coalition made the IRS the avaricious beneficiary of personal tragedy. Even the travails of the very wealthy took on a universal hue.

And this was not all. Despite considerable evidence that much inherited wealth escapes income taxation, repealers claimed that the death tax created unfair "double taxation." So what if it does? Double and even triple taxation are everywhere. Our salaries are taxed by the wage tax to finance Social Security, another wage tax to finance Medicare, by both state and federal income taxes, and again by sales taxes when we spend whatever is left. But, the double tax argument captured one key player in this drama: George W. Bush. Whenever his advisers suggested to him in 2001 that he settle for a higher estate exemption and lower rates, he responded that the only cure for such an unfair "double tax" was to eliminate it.

On the other side, those who fought to retain the tax relied instead on economic arguments that the tax had little or no detrimental effects on the economy and on their oft-repeated argument that it only burdened the richest one or two percent of Americans. They made William Gates, Sr. the most visible opponent of repeal. Gates does not come across as inauthentic or insincere, but as the father of the world's richest man, who in his retirement can now spread his son's largesse around the world, he can scarcely be described as a sympathetic figure to whom ordinary Americans can relate. Repeal proponents had no difficulty labeling him a "limousine liberal," most obviously because he has no estate tax problem, and everyone knows it. His son already has the dough. The advocates for wealth transfer taxes failed to understand the political power of storytelling long after Ronald Reagan had turned it into an art form.

What might they have done? Andrew Carnegie, whom many considered a traitor to his class when he pushed for a death tax in 1889, showed the way. He contended that "of all the forms of taxation," a progressive tax on transfers at death "seems the wisest." This self-made man thought that his fellow million-

aires who wanted to leave "great fortunes to their children" did not recognize the dangerous implications of such inheritances.

There is considerable truth to Andrew Carnegie's concern that substantial inheritances tempt their recipients to lead less useful lives. People who receive large inheritances are about four times more likely to drop out of the labor force than those who inherit only small amounts.

Only real stories showing a distasteful face of tax-free inheritance might have effectively challenged the stories making human the case for repeal. As the country music song says: "You have never seen a hearse with a luggage rack." The estate tax burdens those who would inherit the wealth, not those who produced it. Opponents of estate tax repeal could have produced poster children of their own to accompany their reams of statistics, but they did not.

In our book, Shapiro and I describe numerous potential candidates for this role. We suggested that repeal opponents could have labeled repeal the "Paris Hilton Relief Act," and that caught on, but not until some time after the 2001 Act had been signed into law. People are far less sympathetic to repeal when they view the estate tax as a tax on Paris Hilton, rather than on Conrad Hilton.

As Teddy Roosevelt emphasized when he first proposed an inheritance tax, an economic aristocracy conflicts with American values, and large inheritances undermine our commitment to equality of opportunity. But repeal opponents never talked about that, even though equality of opportunity is the "most distinctive and compelling element of our national ideology."

The important point is that—even though there were generous and sensible permanent compromises providing a higher exemption and lower rates readily available in the late 1990s, again in 2001, and in all the years following until President Barack Obama's election in 2008—the *only* thing that the estate tax opposition forces could all agree on was repeal.

The extremely wealthy families who were financing the repeal movement were most interested in lower rates. In 2006, for example, two nonprofit organizations identified eighteen families financing the repeal effort, including the Gallos, the Mars, and the Waltons, who had an estimated combined net worth of at least $185 billion. The difference in the tax savings between a $3.5 and $10 million exemption is chump change to them, but a ten-percentage-point difference in tax rates is serious money. On the other hand, for most of the small business owners and farmers who served as the face and political force for change, the size of the exemption was the whole ball game: a $5 million per person exemption takes the vast majority of them out from under the tax altogether. So only repeal suited everyone's interests.

And from 2001 until the end of George W. Bush's presidency, the coalition held out for permanent repeal—something it was unable to get. In the hopes of securing outright repeal of the tax, however, they were able to block

any efforts at compromise. Congress was stalemated, at least until Barack Obama took office in January 2009.

III. 2010: THE YEAR WITHOUT AN ESTATE TAX

When 2009 ended, and nothing had happened, pro-repeal forces rejoiced. They viewed abolishing the estate tax even for one year as a victory. So, despite tales of people revising their living wills for their families to take estate tax consequences into account—talk about "death panels"—and folks staying on life support to ring in the New Year, we entered 2010 with the 2001 law still in force.

Casey Johnson, an heir to the Johnson & Johnson fortune, who had lived large through a wild, tabloid-filled life as the fiancée of the C-list television personality, Tila Tequila, was found dead in her West Hollywood home on January 4, 2010. Under California law, even though she had obviously been dead for several days, her date of death was certified as the day her body was found—in the year when the estate tax had disappeared. Halfway across the country in Indianapolis, Indiana, Ruth Lily, a well-known philanthropist and the sole heiress to the founder of Eli Lily & Co., died on December 30, 2009; so her estate, estimated at more than $1 billion, was subject to the tax. Clara Laub, a widow who owned a Fresno, California grape farm worth several million dollars, was diagnosed with advanced cancer in October 2009. She made her grandson tell her every day what day it was. She passed away on New Year's morning, 2010.

2010 became, as Paul Krugman had predicted, the year to throw mama from the train—or at least from her private jet. And a number of billionaires, including Mary Janet Cargill, Houston energy magnate Dan Duncan, California real estate baron Walter Shorenstein, television magnate John Kluge, who was once America's richest man, and New York Yankees owner George Steinbrenner died that year. Roger Milliken, chairman of one of the world's largest textile firms, died on December 30, 2010. The company's Washington lobbyist, Jock Nash, said his timing "was impeccable." The Tax Policy Center estimated that about 25,000 people who would have been subject to the estate tax died in 2010.

Everyone here knows how the most recent chapter in this saga has turned out. The tax deal that President Obama reached with Congress in December 2010 reinstated a unified estate and gift tax for 2011 and 2012 with a $5 million exemption and a 35% top rate. Estates of those who died in 2010 were permitted to elect between applying the carryover basis rule, which allowed appreciation to be taxed, if sold, at a top rate of 15%—raised in 2013 to 23.8%—or the 2011 estate tax rules, with the $5 million exemption and 35%

rate. For large estates, the lower capital gains percent rate, of course, dominated.

The transfer tax exemption not only was made portable between spouses in the 2010 legislation, but none of the tightening provisions that had been floated in Congress, such as new limitations on grantor-retained annuity trusts and curbs on valuation discounts, were included in the new law. The 2010 Act also created a unique year-end estate-planning opportunity for tax-free generation-skipping transfers and distributions from existing generation-skipping trusts to grandchildren or to trusts for even more remote generations. Billions of dollars of assets were removed from future estate taxes through such transfers—I know of more than $1 billion in New York City alone.

IV. The Uncertain Future of the Estate Tax

So what does this history portend for the future? As the late, great Yogi Berra famously remarked, "Predictions are very difficult—especially with respect to the future."

But it is hard to believe that any circumstance will arise that would result in a reduction in the $5 million exemption level. Portability is also here to stay. The rate structure, on the other hand, seems much more vulnerable to future changes; after all, the rate of tax on large estates has gone up and down over the years. Some proponents of taxing large accumulations of wealth may push to transform the current tax into an inheritance or accessions tax on recipients, or alternatively, to tax large bequests as income to recipients to better align the structure of the tax with those it actually burdens. Such an effort would change both the narrative about the tax and its politics. Most importantly, it would be a mistake to believe that the tax's opponents have given up on repeal, even though the tax now applies only to a tiny fraction of Americans who die in any year—the wealthiest 0.2%.

Every Republican candidate running for President as of today supports estate tax repeal. It is an article of faith in that party. On April 15, 2015—for the first time in a decade, but surely not the last time this decade—the House voted 240–179, mostly along party lines, to repeal the estate tax. The Joint Committee on Taxation estimated that repeal would reduce revenues by $14.6 billion in 2016 and $269 billion over ten years. Only a tiny fraction of that cost would go to the "family farmers, ranchers and small-business owners" who former Speaker of the House John Boehner said "work tirelessly to create jobs in our communities, put food on our tables, and, God willing, have something to pass on to their children and grandchildren. Taking away that opportunity with a massive death tax bill," he added, "is simply wrong."

Surprisingly, Jeb Bush urged that the estate tax be replaced with a carryover basis for estates with appreciation in their assets in excess of the current

estate tax exemption of about $5.5 million. President Obama has also proposed eliminating the step-up in basis at death, but he urged that change while keeping the current estate tax in place.

When you think seriously about the appropriate future of wealth transfer taxes, rather than the past, two fundamental facts loom large. First, our nation has never in modern times faced such an ongoing long-term imbalance between the levels of federal spending and revenues. Our federal debt as a percentage of our economic output is greater than it has been at any time since the end of World War II. And then we had all the money: Europe and Japan were in shambles, and China was entering into a dark communist era. Our economy was poised to grow for decades at an unprecedented pace. And our government owed ninety-eight percent of the money it had borrowed to finance the war to Americans.

The Congressional Budget Office projects that in less than a decade our national debt will exceed $21 trillion—equal to nearly three-quarters of our economic output—with about half owed to foreigners, many of whom we cannot count as friends. If we are able to borrow at a five percent interest rate, interest on the federal debt alone will cost us more than $1 trillion per year. The nation's financial situation is projected to get even gloomier in the longer term.

If we fail to get control of the federal budget, rising interest costs will gobble up an ever-larger share of the federal budget. Public debt will decrease the value of the dollar and lead to challenges to its role as the world's reserve currency. Over time, growing national debt increases the risks of substantially higher interest rates, inflation, and another financial crisis. It may ultimately threaten the living standards of the American people.

Second, as Thomas Piketty made famous, the distribution of income growth over the past four decades has been highly skewed in favor of those at the very top. The share of income earned by the top 1% of earners is now more highly concentrated than it has been at any time since the gilded age of the 1920s, and the share of income earned by the top 0.1% is greater than it ever was. Wealth is even more unequally distributed than income. The wealthiest 1% of the population owns more than 40% of the wealth.

The estate tax now contributes less than one percent of federal revenues. But it is, and long has been, the most progressive tax we have, and the revenue it yields is not chump change: it is enough to pay for about three-quarters of the annual expenditures of the Department of Homeland Security.

Nevertheless, you should resist the temptation to view the 2001 repeal of the estate tax as an isolated political event, or simply a unique perfect storm. Rather, the outcome of this contest over the taxation of inherited wealth marks a larger shift in our nation's politics. Make no mistake; the death tax repeal effort is a critical piece of an attack on the very idea of progressive taxation in America.

The temporary estate tax repeal in 2010 and that year's political deal ratify the much broader success of a conservative Republican wing that has been attacking progressive taxation and pushing its anti-tax agenda over the past three decades. Neither the fight over the estate tax, nor the larger debate about progressive taxation, is anywhere close to being over. If the estate tax repeal story has any lessons at all to offer, it signals that we ignore the early signs of such movements at our own risk—and the risk of the very principles of tax justice we must protect. The anti-tax side has learned well that aiming high, carrying on relentlessly despite setbacks, and building momentum inside the beltway and throughout the country can lead to great payoffs.

And they have had one last thing that their opponents have lacked: money, money, money—a lot of money to spread around on their side. The big-money families have been mindful that success depended on repeal's retaining its populist hue, so they have stayed in the background, but the money from ultra-rich supporters was crucial to funding the repeal effort. Given the billions of dollars at stake for these wealthy families, this was a tiny investment that even now has paid an enormous dividend.

As Grover Norquist has said, "[E]verybody who ever wrote a $1000 check to a Democratic Senator pays the death tax." And given the extraordinary costs of running political campaigns today, it takes a boatload of $1000 contributions to fund House and Senate contests. Each election, the quest for contributions intensifies.

As a nice counterpoint to the vast sums of money contributed to members of the tax-writing committees of Congress and the huge quantities of pork they dispense, consider the following comments concerning the retirement of George Lefcoe from the Los Angeles County Department of Regional Planning. He said that he might have made a mistake in retiring before, not after, Christmas. "I really missed the cards from engineers I never met, the wine and cheese from development companies I never heard of, and especially, the HoneyBaked Ham from, of all places, Forest Lawn [a well-known Los Angeles mortuary and cemetery]—even though the company was never an applicant before the Commission when I was there," said Lefcoe.

"But because I missed them is why I think it was a good idea I resigned," he added. "I do not think it is wise to stay in public office too long." He used the ham from Forest Lawn as an illustration. "My first Christmas as a Commissioner, when I received the ham," he said, "I tried to return it at once. Although, for the record, I did not, because no one at Forest Lawn seemed authorized to accept hams—not even for burial. My guess is that no one of the many public servants who had received the hams had ever tried to return it."

"When I received another ham the next Christmas, I gave it to some worthy charity," Lefcoe continued. "The next year some worthy friends were having a party, so I gave it to them. The next year I had a party and we enjoyed the

ham," he recalled. "In the fifth year, around the tenth of December, I began wondering, where is my ham? Why is it so late?" Lefcoe sighed and laughed. "So much for the corruption of public officials," he said. "It was then I thought it was time to retire, although it took me two more hams and three years to finally do it."

That is an example more members of Congress should follow.