Wealth Redistribution and the Income Tax

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INTRODUCTION

This section of the *Howard Law Journal* is devoted to the question of wealth redistribution. The section on wealth redistribution contains five views of the United States tax system. This article asks how the tax system can stand against increasing income and wealth inequality.

Part I of this article presents evidence of the increasing trend towards inequality in both income and wealth that has occurred since the Reagan administration (1981-1989). Part II discusses whether social welfare payments lighten this otherwise growing income and wealth inequality. Part II also discusses the view, expressed by Adam Smith (the father of capitalism), that social welfare programs are created and maintained in order to protect social inequality rather than to redistribute wealth.

In Parts III and IV, the article discusses two ways the present federal tax system is meant to redistribute wealth: progressive rates and the Earned Income Tax Credit. These two Parts conclude that progressive rates essentially deliver greater public relations than true wealth redistribution and that the Earned Income Tax Credit is an inappropriate way of providing cash assistance to the working poor.

In Parts V and VI, the article discusses a wealth tax as an alternative wealth redistribution device. Part V discusses the general redistribution influences of a wealth tax given the large gaps in wealth within the United States and the constitutional issues with a federal wealth tax. Part VI looks at a wealth tax through the lens of black reparations.

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The article then concludes with the observation that the present federal income tax has lost whatever redistributive properties it once had and that a wealth tax would deliver more wealth redistribution than the present progressive income tax.

I. THE TREND TOWARD INEQUALITY

The phrase "wealth redistribution" tends to evoke images that contradict reality. Rather than unwashed hordes tearing at Marie Antoinette's silk gown, the expression "wealth redistribution" more accurately describes a flow of assets up from the poor to the rich.

Evidence abounds for viewing wealth redistribution as welfare for the rich. The Troubled Asset Relief Program is only the most recent confirmation of the phenomenon.[1] As taxes from truck drivers and teachers went to bail out American International Group (A.I.G.) and Goldman Sachs, twenty-five hedge fund managers received more in combined annual salary than the gross domestic product of Costa Rica, Iceland, Jordan, or Uruguay.[2]

Upward wealth distribution is ubiquitous. The great transfer of wealth through colonialism and slavery from Africa and Asia to Europe shapes today's world,[3] as do the massive land transfers from Native Americans to various European powers and then to the United States from the fifteenth century onward.[4]

1. The Emergency Economic Stabilization (EESA) Act of 2008, Pub. L. No. 110-343, 122 Stat. 3765-3807 (2008) (to be codified at 12 U.S.C. §§ 5201-02, 5211) (The Troubled Assets Relief Program (TARP) was established under the EESA).

2. BENJAMIN I. PAGE & LAWRENCE R. JACOBS, CLASS WAR? WHAT AMERICANS REALLY THINK ABOUT ECONOMIC INEQUALITY 5 (2009).

3. *See generally* WALTER RODNEY, HOW EUROPE UNDERDEVELOPED AFRICA (2001 ed., E. Afr. Educ. Publishers reprint 2009) (1974) (showing the consistent taking of wealth from the African continent over several centuries). *See also* THE AMERICAN ECONOMIC HISTORY READER: DOCUMENTS AND READINGS 119-58 (John W. Malsberger & James N. Marshall eds., 2009) (discussing the economics of slavery); James A. Quirin, *Origins of Global Wealth Disparities: A World History Case Study*, *in* RACE AND WEALTH DISPARITIES: A MULTIDISCIPLINARY DISCOURSE 1-10 (Beverly I. Moran ed., 2008) (describing the decline of Asia and Africa).

4. *See* Trina Williams Shanks, *The Homestead Act: A Major Asset-Building Policy in American History*, *in* INCLUSION IN THE AMERICAN DREAM: ASSETS, POVERTY, AND PUBLIC POLICY (Michael Sherraden ed., 2005) (explaining how blacks were denied access to homesteads under the Homestead Act); *see also* Sheryll D. Cashin, *Drifting Apart: How Wealth and Race Segregation Are Reshaping the American Dream*, 47 VILL. L. REV. 595 (2002); Nancy A. Denton, *Role of Residential Segregation in Promoting and Maintaining Inequality in Wealth and Property*, 34 IND. L. REV. 1199 (2001) (updating the results presented in DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 105 (1993), and THOMAS M. SHAPIRO, THE HIDDEN COST OF BEING AFRICAN AMERICAN: HOW WEALTH PERPETUATES INEQUALITY (2004)); Thomas M. Shapiro, *Race, Homeownership, and Wealth*, 20 WASH. U. J.L. & POL'Y 53 (2006).

Since the Reagan administration, upward wealth distribution has accelerated in the United States resulting in increasing inequality of both income and wealth.[5] The growth of inequality since the 1980s is particularly shocking because, from the turn of the century and until the Reagan administration, the United States and Western Europe experienced small but stable declines in wealth and income inequality.[6] Now, three decades after the Reagan Revolution, the United States enjoys both growing poverty and a shrinking middle class.[7]

The concept of upward wealth distribution does not come from Karl Marx. Rather, the observation that "the rich get richer" comes from Adam Smith, also known as "the father of capitalism": "Wherever there is great property, there is great inequality. For one very rich man, there must be at least five hundred poor, and the affluence of the few supposes the indigence of the many."[8] Yet, despite forces that trend toward income and wealth concentration, Part II discusses government counter-forces to upward distribution.

II. AGAINST INCREASING INEQUALITY: COUNTER-FORCES TO DISTRIBUTION UP

Smith observed that great wealth creates great inequality. Smith also asserted that government actively protects the rich from the poor, thereby supporting income and wealth inequities:

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5. *See, e.g.*, EDWARD N. WOLFF, TOP HEAVY: THE INCREASING INEQUALITY OF WEALTH IN AMERICA AND WHAT CAN BE DONE ABOUT IT 11-16, 19-23 (Expanded Updated ed., The New Press 2002) (1995) (pages 11 through 16 describe the shift in income and wealth in the 1980s and 1990s, and pages 19 to 23 discuss race aspects of wealth distribution). For a comprehensive discussion of race and wealth in the United States, see MELVIN L. OLIVER AND THOMAS M. SHAPIRO, BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY (2d ed. 2006).

6. *See* Edward N. Wolff and Marcia Marley, *Introduction* to INTERNATIONAL COMPARISONS OF THE DISTRIBUTION OF HOUSEHOLD WEALTH 1 (Edward N. Wolff ed., 1987) [hereinafter INTERNATIONAL COMPARISONS]; Anthony F. Shorrocks, *UK Wealth Distribution: Current Evidence and Future Prospects*, *in* INTERNATIONAL COMPARISONS, *supra*, at 20-50; James D. Smith, *Recent Trends in the Distribution of Wealth in the US: Data, Research Problems, and Prospects*, *in* INTERNATIONAL COMPARISONS, *supra*, at 72-90; Roland Spant, *Wealth Distribution in Sweden: 1920-1983*, *in* INTERNATIONAL COMPARISONS, *supra*, at 51-71.

7. *See* Jacob S. Hacker, *The Risky Outlook for Middle-Class America*, *in* ENDING POVERTY IN AMERICA: HOW TO RESTORE THE AMERICAN DREAM 66-76 (John Edwards, Marion Crain, & Arne L. Kalleberg eds., 2007); Elizabeth Warren, *The Vanishing Middle Class*, *in* ENDING POVERTY IN AMERICA: HOW TO RESTORE THE AMERICAN DREAM, *supra*, at 38-52. For a discussion on *Reaganomics*, see THE AMERICAN ECONOMIC HISTORY READER, *supra* note 3, at 476-500.

8. ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS, VOL. II, WN V.i.b.2 (R. H. Campbell & A. S. Skinner eds., Glasgow Edition of the Works and Correspondence of Adam Smith, Indianapolis: Liberty Fund 1981) (1776).

> The affluence of the rich excites the indignation of the poor, who are often both driven by want, and prompted by envy, to invade his possessions. It is only under the shelter of the civil magistrate that the owner of that valuable property, which is acquired by the labour of many years, or perhaps of many successive generations, can sleep a single night in security. He is at all times surrounded by unknown enemies, whom, though he never provoked, he can never appease, and from whose injustice he can be protected only by the powerful arm of the civil magistrate continually held up to chastise it.[9]

A counter to the idea of government as an instrument of upward distribution is the idea of government as a downward redistributor through benefits like public schools and welfare. Again, Smith suggests a different intent behind these programs. While some see public benefits as downward redistributions, Smith understands these same public benefits as ensuring an upward concentration of wealth. Along with the civil magistrate, Smith identifies welfare and public education as ways that government protects the wealthy against the poor:

> The state . . . derives no inconsiderable advantage from . . . instruction [of the working classes]. The more they are instructed the less liable they are to the delusions of enthusiasm and superstition, which, among ignorant nations, frequently occasion the most dreadful disorders. An instructed and intelligent people, besides, are always more decent and orderly than an ignorant and stupid one. They feel themselves, each individually, more respectable and more likely to obtain the respect of their lawful superiors, and they are therefore more disposed to respect those superiors.[10]

In this quote, Smith demonstrates his understanding of how public benefits enforce wealth and income inequities upward. Yet even if we accept Smith's proposition that public benefits do not redistribute wealth downward, there are other aspects of government that seem directly dedicated to downward redistribution—in particular, the federal income tax system and its progressive rates.

III. DOWNWARD WEALTH REDISTRIBUTION: THE FEDERAL INCOME TAX SYSTEM AND ITS PROGRESSIVE RATES

From its inception to date, the federal income tax has contained

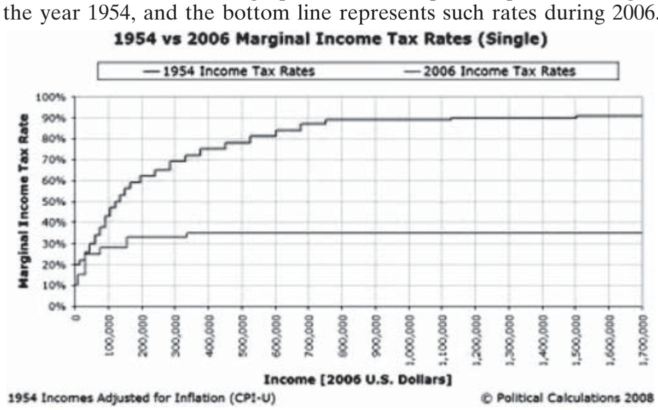
9. *Id.*
10. *Id.* at WN V.i.f.61.

progressive rates;[11] yet there is no common agreement on their purpose.[12] One widely criticized justification for progressive rates is their

11. Progressive rates occur when those who earn more pay a higher marginal rate of tax. For example: a rate of 10% on the first $100 and 25% on the next $100 produces a total tax of $35 on $200 for a marginal rate of 17.5%. With respect to the federal income tax on individuals, the 1954 Code delineated a progressive tax with twenty-four income brackets applying to tax rates ranging from 20% to 91%. I.R.C. § 1(a) (1954).
Rates of tax on individuals (1954) indicates:

If the taxable income is:	The tax is:
Not over $2000	20% of the taxable income
Over $2,000 but not over $4000	$400, plus 22% of excess over $2,000
Over $4,000 but not over $6,000	$840, plus 26% of excess over $4,000
Over $6,000 but not over $8,000	$1,360, plus 30% of excess over $6,000
Over $8,000 but not over $10,000	$1,960, plus 34% of excess over $8,000
Over $10,000 but not over $12,000	$2,640, plus 38% of excess over $10,000
Over $12,000 but not over $14,000	$3,400, plus 43% of excess over $14,000
Over $14,000 but not over $16,000	$4,260, plus 47% of excess over $14,000
Over $16,000 but not over $18,000	$5,200, plus 50% of excess over $16,000
Over $18,000 but not over $20,000	$6,200, plus 53% of excess over $18,000
Over $20,000 but not over $22,000	$7,260, plus 56% of excess over $20,000
Over $22,000 but not over $26,000	$8,380, plus 50% of excess over $22,000
Over $26,000 but not over $32,000	$14,460, plus 65% of excess over $32,000
Over $38,000 but not over $44,000	$18,360, plus 69% of excess over $38,000
Over $44,000 but not over $50,000	$22,500, plus 72% of excess over $44,000
Over $50,000 but not over $60,000	$26,820, plus 75% of excess over $50,000
Over $60,000 but not over $70,000	$34,320, plus 78% of excess over $60,000
Over $70,000 but not over $80,000	$42,120, plus 81% of excess over $70,000
Over $80,000 but not over $90,000	$50,220, plus 84% of excess over $80,000
Over $90,000 but not over $100,000	$58,620, plus 87% of excess over $90,000
Over $100,000 but not over $150,000	$67,320, plus 89% of excess over $100,000
Over $150,000 but not over $200,000	$111,820, plus 90% of excess over $150,000
Over $200,000	$156,820, plus 91% of excess over $200,000

After adjusting the 1954 income bracket thresholds for inflation, 2006 income tax rates are shown to be generally much lower than they were in 1954, with the general exception of those earning between $30,650 and $45,113 in constant 2006 U.S. dollars, whose statutory tax rates are only slightly lower than in 1954. In the graph below, the top line represents marginal income tax rates during the year 1954, and the bottom line represents such rates during 2006.



Personal Income Taxes: 1954 vs. Today, http://politicalcalculations.blogspot.com/2008/04/personal-income-taxes-1954-vs-today.html (Apr. 8, 2008, 6:36 AM).

12. *See* Walter Blum & Harry Kalven, The Uneasy Case for Progressive Taxation (1953); *see also* Marjorie E. Kornhauser, *The Morality of Money: American Attitudes To-*

contribution to downward wealth redistribution.[13] For its critics, progressive rates provide unnecessary downward redistribution in an already economically open society where individual work, rather than government intervention, is meant to reduce inequalities.[14] But are progressive rates effective wealth redistributors; i.e. do the federal income tax's progressive rates redistribute wealth downward?

On paper, progressive rates can appear dramatic. At times, the highest marginal rate has risen to 90% of taxable income.[15] Working solely from the statute as written, progressive rates seem ideal for downward wealth redistribution; but the dramatic appearance of rates on paper are just part of the story.[16]

Progressive rates are applied to ordinary income, including income from wages, but a lower rate applies to income from the sale of capital assets, such as stocks, bonds, and real estate. Progressive rates are more public than real because as income and wealth rises, sources of taxable income shift from wages to capital gains.[17] This shift in the source of income moves most wealthy people out of the high progressive rates on ordinary income and into the lower tax rates on capital gains.[18] The result is that, as income rises, tax rates actually fall.

Ironically, the only time that rates on capital gains equaled the rates for other types of income was during the Reagan administration.[19] In all other eras, the federal income tax system reduced rates

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ward Wealth and the Income Tax, 70 IND. L.J. 119 (1995); James R. Repetti, *Democracy, Taxes, and Wealth*, 76 N.Y.U. L. REV. 825 (2001).

13. *See* sources cited *supra* note 12.

14. *See* BLUM & KALVEN, *supra* note 12.

15. *See* The Tax Foundation, *Federal Individual Income Tax Rates History Income Years 1913-2009* (Dec. 31, 2009), http://www.taxfoundation.org/publications/show/151.html#fed_individual_rate_history-20091231 (noting with a specified year the last law passed to change rates); *see also* Martin Feldstein, *The Effect of Marginal Tax Rates on Taxable Income: A Panel Study of the 1986 Tax Reform Act*, 103 J. POL. ECON. 551, 552 (1995) (The 1986 legislation reduced the tax rates for high-income individuals: the marginal rate fell from 50% to 28%, resulting in a 44% raise in the marginal net-of tax income per dollar of pretax income); The Tax Policy Center, *Historical Highest Marginal Income Tax Rates, 1913-2009*, http://www.taxpolicycenter.org/taxfacts/Content/PDF/toprate_historical.pdf (showing a simplified listing).

16. *See* I.R.C. § 1 (1986) as well as the version of the section contained in the 1954 I.R.C., *supra* note 11.

17. INTERNATIONAL COMPARISONS, *supra* note 6.

18. *See* Beverly I. Moran, *Income Tax Rhetoric (or Why Do We Want Tax Reform?)*, 1992 WIS. L. REV. 2063 (1992).

19. *See* CONG. RESEARCH SERV., CAPITAL GAINS TAX RATES AND REVENUES, RS20250 (2007), *available at* http://www.wikileaks.ca/leak/crs/RS20250.pdf; I.R.C. § 1(c)(3) (1986). Unmarried individuals (other than surviving spouses and heads of households) delineates the rates as:

for capital gains.[20] Even the extreme rates of the Eisenhower Administration (1953-1961) did not necessarily redistribute income because of the countervailing influence of the significantly reduced capital gains rates.[21]

Further, even if federal income tax rates are progressive, progressivity in the federal income tax is counterbalanced by regressive state and federal taxes.[22] Thus, although the federal income tax's progressive rates might appear to redistribute wealth downward, the capital gains rate and other tax benefits reserved to capital such as the deferral of tax on appreciation until realization, combined throughout the twentieth century to make progressive marginal rates more imagined than real. In the twenty-first century, the still extant Bush administration (2001-2009) tax cuts have even more dramatically changed the incidence of progressivity.

In the present economy, increased inequality combined with the Bush administration's tax cuts for the wealthy have turned progressive rates on their head. The shift is so significant that Warren Buffet publicly challenged a crowd of 400 billionaires to reveal if any one paid a higher marginal tax rate than his own cleaning lady.[23] Buffet reported

If taxable income is:	The tax is:
Not over $2,300	No tax
Over $2,300 but not over $3,400	11% of the excess over $2,300
Over $3,400 but not over $4,400	$121, plus 12% of the excess over $3,400
Over $6,500 but not over $10,500	$535, plus 15% of the excess over $6,500
Over $8,500 but not over $10,800	$835, plus 16% of the excess over $8,500
Over $10,800 but not over $12,900	$1,203, plus 18% of the excess over $10,800
Over $12,900 but not over $15,000	$1,581, plus 20% of the excess over $12,900
Over $15,000 but not over $18,200	$2,001, plus 23% of the excess over $15,000
Over $18,200 but not over $23,500	$2,737, plus 26% of the excess over $18,200
Over $23,500 but not over $28,800	$4,115, plus 30% of the excess over $23,500
Over $28,800 but not over $34,100	$5,705, plus 34% of the excess over $28,800
Over $34,100 but not over $41,500	$7,507, plus 38% of the excess over $34,100
Over $41,500 but not over $55,300	$10,319, plus 42% of the excess over $41,500
Over $55,300 but not over $81,800	$16,115, plus 42% of the excess over $55,300
Over $81,800	$28,835, plus 50% of the excess over $81,800

20. *See* U.S. Dep't of the Treasury, Capital Gains and Taxes Paid on Capital Gains for Returns with Positive Net Capital Gains, *1954-2006* (2004), http://www.treas.gov/offices/tax-policy/library/capgain1-2008b.pdf; *see also* Citizens for Tax Justice, *Top Federal Income Tax Rates on Regular Income and Capital Gains Since 1916* (2004), http://www.ctj.org/pdf/regcg.pdf.

21. *See* Citizens for Tax Justice, *supra* note 20.

22. *See* David Brunori, *The Limits of Justice: The Struggle for Tax Justice in the States*, *in* Tax Justice: The Ongoing Debate 193, 193-219 (Joseph Thorndike & Dennis Ventry Jr. eds., 2002).

23. *See* Tom Bawden, *Buffett Blasts System that Lets Him Pay Less Tax than Secretary*, The Times (London), June 28, 2007, at Business 56, *available at* http://www.timesonline.co.uk/tol/money/tax/article1996735.ece?print=yes; Tomoeh Murakami Tse, *Buffett Slams Tax System Disparities*, Wash. Post, June 27, 2007, at D3, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2007/06/27/AR2007062700097.html.

his own marginal rate as a little over 17% while his receptionist and cleaning lady each topped out at a 30% marginal rate.[24]

At least for the time being, the statutory progressive tax rates in the federal income tax are not achieving wealth redistribution down; but does redistribution lie somewhere else in the Internal Revenue Code? Perhaps the answer lies with the Earned Income Tax Credit.

IV. WEALTH REDISTRIBUTION DOWN? THE FEDERAL INCOME TAX SYSTEM AND THE EARNED INCOME TAX CREDIT

When George McGovern ran for president, he was widely mocked for the "negative income tax" he proposed in order to distribute cash to the working poor.[25] Yet, twenty years later, McGovern's acolyte, President Bill Clinton, reintroduced the negative income tax through the renamed Earned Income Tax Credit.[26]

When President Clinton (1993-2001) entered office he was faced with tremendous pressure to adopt "workfare,"[27] a program first introduced in Wisconsin that tied welfare payments to work.[28] Presi-

24. *See* Matthew Miller, *Me and My Secretary*, FORBES, Nov. 26, 2007, at 42-44, *available at* http://members.forbes.com/2007/1126/042b; *see also Warren Buffett's Tax Rate Is Lower than His Secretary's* (Tom Brokaw interviews Warren Buffett), http://www.youtube.com/watch?v=Cu5B-2LoC4s or http://www.youtube.com/watch?v=3z_UrOKtjHk.

25. *See* 118 CONG. REC. S5626, S5628 (daily ed. Apr. 7, 1972) (statement of Sen. McGovern), *reprinted in* Wassily Leontief & George McGovern, *George McGovern: On Taxing & Redistribution of Income*, N.Y. REV. OF BOOKS, May 4, 1972, at 7-11; Boris I. Bittker, *Income Tax "Loopholes" and Political Rhetoric*, 71 MICH. L. REV. 1099, 1123-26 (1973); *From McGovern: A New Blueprint for Taxes, Welfare*, U.S. NEWS & WORLD REP., Sept. 11, 1972, at 39-41; William F. Buckley Jr., *McGovern's War on Wealth*, NAT'L REV., Oct. 13, 1972, at 1149; Leonard Silk, *McGovern Tax Proposal*, N.Y. TIMES, June 28, 1972, at 63.

26. I.R.C. § 32 provides that a taxpayer's Earned Income Tax Credit will equal a specified percentage of the taxpayer's earned income up to a maximum dollar amount. The earned income tax credit (EITC) was introduced under President Gerald Ford, and increased under Presidents Carter, Reagan, and Bush. Under President Clinton through the Omnibus Reconciliation Act of 1993, the maximum EITC payment increased over $1000 to $2,528. In 1995, this went up to $3,110, and in 1996 the maximum EITC one could receive increased to $3,556. Also introduced in 1994 was an EITC payment for a single person with no dependents. *See* Jennifer Bird-Pollan, *Who's Afraid of Redistribution? An Analysis of the Earned Income Tax Credit*, 74 MO. L. REV. 251 (2009), *available at* http://law.missouri.edu/lawreview/docs/74-2/Bird-Pollan.pdf (providing a brief history of the EITC and working through the mechanics of the credit); Jonathan Barry Forman, *Earned Income Credit, in* ENCYCLOPEDIA OF TAXATION AND TAX POLICY 99 (1999), *available at* http://www.taxpolicycenter.org/UploadedPDF/1000524.pdf. For a discussion of the earned income tax credit as a part of welfare reform, see JOEL F. HANDLER & YEHESKEL HASENFELD, BLAME WELFARE: IGNORE POVERTY AND INEQUALITY (2007).

27. *See* HANDLER & HASSENFELD, *supra* note 26, at 150-85, 282-315; Rupert Cornwell, *Clinton Aims to Slash Welfare*, THE INDEPENDENT, LONDON (UK), May 20, 1996, at 11.

28. Governor Tommy Thompson signed Wisconsin Works, or W-2, into law on April 25, 1996. *See* Tommy Thompson, W-2, WISCONSIN WORKS (1996), *available at* http://content.

dent Clinton built the idea of work driving welfare reform into a bipartisan consensus to provide cash assistance to working families through the Earned Income Tax Credit.[29] The Earned Income Tax Credit is now the largest cash assistance program for the able bodied in the United States.[30]

As a wealth redistribution device, the Earned Income Tax Credit's main advantage over traditional welfare was its status as hidden cash assistance. So long as it remained buried in the tax code, the Earned Income Tax Credit avoided political controversy.[31] Stanley Surrey described this phenomenon many years earlier in his pioneering work on the tax expenditure budget.[32] Surrey understood that politicians use the federal income tax as a way of hiding programs that they believe cannot stand the light of public scrutiny.[33]

Tellingly, Surrey's primary examples of tax-driven hidden government expenditures all achieved upward wealth distribution. For example, Surrey often employed the home mortgage interest deduction in his work; he explained that the deduction subsidizes home ownership for the wealthy at many times the rate that it subsidizes the poor.[34] Surrey's point was that Representatives and Senators could never publically cast votes for direct government expenditures that subsidize millionaires while doing little for working people. But these same Congressmen could vote for complicated tax regimes that accomplished the same wealth concentrating purpose without challenge because the complicated tax code allows benefits to the wealthy to hide in plain sight.[35]

The Earned Income Tax Credit enjoyed the cover of tax complication until the heat of the last presidential election. In response to then-candidate Obama's claim that he would reduce taxes for 95% of Americans, Republicans and conservatives caught hold of the Earned

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wisconsinhistory.org/cdm4/document.php?CISOROOT=/tp&CISOPTR=49223&CISOSHOW=49207.

29. *See* Handler & Hasenfeld, *supra* note 26, at 81-89.

30. *See id.* at 81.

31. *See id.*

32. *See, e.g.*, Stanley S. Surrey, *Federal Income Tax Reform: The Varied Approaches Necessary to Replace Tax Expenditures with Direct Governmental Assistance*, 84 Harv. L. Rev. 352 (1970).

33. *See id.*

34. *See* Stanley S. Surrey, Pathways to Tax Reform: The Concept of Tax Expenditure 134-36 (1973); *see also* Brian H. Jenn, *The Case for Tax Credits*, 61 Tax L. 549, 556-57 (2008) (using the example of the mortgage interest deduction to two taxpayers with equal mortgage interest expense but different tax rates to show the deductions are inequitable).

35. *See* Surrey, *supra* note 34.

Income Tax Credit to retort that Obama's promise was false on its face because a large portion of the population was already exempt from federal income taxation.[36]

Perhaps purposefully misunderstanding that even those working people who pay no federal income tax still pay high rates on other state and federal taxes, the Republican party reviled the Earned Income Tax Credit as proof that the poor pay no taxes at all. As a result of the controversy, one great benefit of the Earned Income Tax Credit is lost: its ability to provide cash assistance to the working poor without being tagged as welfare. Instead of a politically neutral way of getting cash to the working poor, what is left of the Earned Income Tax Credit is an exposed and extremely complicated redistribution mechanism that costs too much for the government and the recipient.[37]

Americans often share stories of their fear of the Internal Revenue Service, yet the United States places its most vulnerable citizens into the tax system in order to obtain their basic necessities. People working low paying jobs, with little time off, those who might have health issues, and who certainly have children, are asked to comply with complicated tax rules in order to obtain the benefits of the Earned Income Tax Credit.[38] Furthermore, the burden of complying with the earned income tax credit falls most heavily on minorities and women because they make up the largest segment of the working poor.[39] As a wealth redistribution device, the Earned Income Tax Credit is a failure.

36. *See* Peter Ferrara & Newt Gingrich, *Tax Cuts, Real and Imaginary: Obama's Spending Programs in Disguise*, THE WEEKLY STANDARD, Sept. 15, 2008, at 2, *available at* http://www.weeklystandard.com/Content/Public/Articles/000/000/015/533kqlep.asp?pg=2; *see also* Scott A. Hodge, *Number of Americans Paying Zero Federal Income Tax Grows to 43.4 Million*, FISCAL FACT NO. 54, Mar. 30, 2006, *available at* http://www.taxfoundation.org/files/ff54.pdf (presenting findings of Tax Foundation economists using IRS data to show that forty-one percent of the U.S. population in 2006 would be outside of the federal income tax system).

37. *See, e.g.*, MICHAEL J. GRAETZ, 100 MILLION UNNECESSARY RETURNS: A SIMPLE, FAIR, AND COMPETITIVE TAX PLAN FOR THE UNITED STATES (2009).

38. *See* BARBARA EHRENREICH, NICKEL AND DIMED: ON (NOT) GETTING BY IN AMERICA (2001).

39. *See* CARMEN DENAVAS-WALT, BERNADETTE D. PROCTOR, & JESSICA C. SMITH, U.S. CENSUS BUREAU, INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2008, CURRENT POPULATION REPORTS 60-236 (2009), *available at* http://www.census.gov/prod/2009pubs/p60-236.pdf; *see also* U.S. DEP'T OF LABOR, U.S. BUREAU OF LABOR STATISTICS, A PROFILE OF THE WORKING POOR, 2003 REPORT 983 (2005), http://www.bls.gov/cps/cpswp2003.pdf (using data from the 2004 Annual Social and Economic Supplement to the Current Population Survey (CPS)).

But what other possibilities exist in the federal tax system? Can the federal tax system play a role in downward wealth distribution outside of the Earned Income Tax Credit?

V. DOWNWARD WEALTH REDISTRIBUTION: POSSIBILITIES FOR A WEALTH TAX

The federal tax system focuses on income rather than wealth.[40] The federal government's failure to tax wealth helps increase both income and wealth inequalities because, in the United States, wealth is more unevenly distributed than income.[41] To the extent that wealth is protected from tax, the federal government helps support upward wealth concentration.

In the United States, wealth has race, ethnic, and gender effects. For example, in 2002, the median net worth of non-Hispanic white households was $87,056; for households with a black householder, the median net worth was $5,446; for households with an Asian or Pacific Islander householder, the median net worth was $59,292; and for households with an Hispanic householder, the median net worth was $7,950.[42] Also in 2002, female householders had a median net worth of $20,217, which was 19.8 percent of the married-couple median. Male householders had a median net worth of $23,700 or 23.2 percent of the married couple median.[43] The wealth gaps between groups in the United States are much greater than other gaps between blacks and whites, or males and females, including gaps in education and income.[44] A tax on wealth, rather than income, might help decrease wealth and income inequality by addressing wealth as a foundational part of inequality.[45]

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40. One significant reason is the constitutional prohibition on the federal taxation of wealth. *See* Beverly I. Moran, *Capitalism and the Tax System: A Search for Social Justice*, 61 S.M.U. L. Rev. 337, 366 (2008).

41. *See* Wolff, *supra* note 5; Oliver & Shapiro, *supra* note 5.

42. *See* Alfred O. Gottschaick, *Net Worth and the Assets of Households: 2002: Household Economic Studies*, Current Population Reports 70-115, 13-14 (2008), *available at* http://www.census.gov/prod/2008pubs/p70-115.pdf; *see also* U.S. Census Bureau data and information regarding wealth, http://www.census.gov/hhes/www/wealth/wealth.html (last visited Jan. 27, 2010).

43. *See* Brian G. Raub, *Personal Wealth 2004* (2008), *available at* http://www.irs.gov/pub/irs-soi/08fallbulpw.pdf (indicating that in 2004, the top wealth holders made up only about 1.2 percent of the total U.S. adult population, but held 20.3 percent of the total U.S. net worth); Edward N. Wolff, *Recent Trends in Household Wealth in the United States: Rising Debt and the Middle-Class Squeeze* (2007), http://www.levy.org/pubs/wp_502.pdf.

44. *See, e.g.*, Wolff, *supra* note 5; Moran, *supra* note 40.

45. *See, e.g.*, Wolff, *supra* note 5; Moran, *supra* note 40.

The primary legal roadblock to a federal wealth tax is a constitutional restriction on direct taxes without apportionment that prohibits a wealth tax absent constitutional amendment.[46] The constitutional prohibition on direct taxes is not, however, an insurmountable barrier to a wealth tax. The same constitutional provision was amended in 1913 in order to permit the modern American income tax.[47] One hundred years later, Article 1 § 2 could be amended again in order to permit a federal wealth tax.

The restriction on wealth taxes is achieved by Article 1 § 2 of the Constitution, which requires that direct taxes be apportioned by population.[48] The restriction on direct taxes reflects the eighteenth century American political need to accommodate southern slaveholders.[49]

In the eighteenth century United States, most wealth was held in land or slaves—both easy targets for tax. The wealthiest Americans—those with the largest acreage and slave holdings—resided in states with the lowest white male populations. Their low white male populations, especially in relation to acreage, put these wealthy southern planter states at a numerical disadvantage in the House of Representatives when compared to states with larger white male populations and smaller per capita white male land holdings.[50]

A tax on land and slaves—the most significant forms of eighteenth century American wealth—would have shifted the burden of government away from the highly populated small states of the northeast and toward the slaveholding south with its low white male population. At least two adjustments were placed in the United States Constitution in order to reaffirm southern power in the face of demographic reality:

(1) A modification that counted each slave as three-fifths of a person for purposes of allocating Representatives. This rule increased

46. *See* U.S. CONST. art. I, § 2 ("Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons."); Moran, *supra* note 40.

47. *See* U.S. CONST. amend. XVI ("The Congress shall have 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.").

48. *Id.*

49. *See* Moran, *supra* note 40.

50. *See id.*; *see also* THE AMERICAN ECONOMIC HISTORY READER: DOCUMENTS AND READINGS, *supra* note 3.

the number of Representatives from the southern states thereby giving the South more political power for its white male minority.

(2) A second constitutional modification prohibiting direct taxes without apportionment effectively made both a federal wealth and a federal income tax unconstitutional.[51] This second modification ensured that the federal government could only tax land and slaves on sale, when a transfer tax would avoid the constitutional prohibition against direct taxes without apportionment.[52]

VI. CAN A WEALTH TAX CONTRIBUTE TO REPARATIONS?

Given the racial history of Article 1 § 2 as a means of concentrating power in southern slaveholding elites and the continuing race effects of wealth distribution within the United States, a wealth tax as one way to achieve wealth redistribution fits at least three tax policy concerns:

(1) Because so much of the population has little or no wealth, a wealth tax would exempt a large part of the population from filing, thereby saving the government and the taxpayers a great deal of economic and social cost.[53]

(2) Because wealth and income are so closely associated, a wealth tax would target those most able to pay and most likely to occupy the smallest and most protected part of the population.

(3) Because if we are to believe Adam Smith and other tax benefit theorists, a wealth tax most clearly ties government benefits to the tax, which is a primary goal of taxation.[54]

In addition, a wealth tax could address some lingering race issues in the United States, for example, the question of reparations for slavery.

In the United States, even very mild attempts to make up for slavery can provoke terrifying threats.[55] Although the United States

51. *See generally* ROBIN L. EINHORN, AMERICAN TAXATION, AMERICAN SLAVERY (2006).

52. *See* Moran, *supra* note 40.

53. *See* GRAETZ, *supra* note 37 (noting high cost of up to 100 million unnecessary tax returns); WOLFF, *supra* note 5 (discussing how many people would be exempt from a wealth tax).

54. *See* SMITH, *supra* note 8, at WN V.i.b.2, WN V.i.f .61; Moran, *supra* note 40.

55. *See, e.g.*, E. Gordon Gee, *Carpetbaggery and Conflagration: Vanderbilt University Makes New Enemies of Old Friends*, *in* UNIVERSITY PRESIDENTS AS MORAL LEADERS (David G. Brown ed., 2006) (describing death threats received by the Chancellor and his cabinet as a result of an attempt to change the name of a dormitory from “Confederate Memorial Hall” to “Memorial Hall”).

has sometimes acknowledged responsibility and provided redress,[56] when the subject is American slavery, the topic of reparations raises serious disagreement.[57]

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56. For discussions of reparations to Japanese Americans, see Liann Ebesugawa & Eric K. Yamamoto, *Report on Redress: The Japanese American Internment*, *in* THE HANDBOOK OF REPARATIONS 257-83 (Pablo De Greiff ed., 2006). *See also* ROY L. BROOKS, ATONEMENT AND FORGIVENESS: A NEW MODEL FOR BLACK REPARATIONS 155 (2004); ALFRED L. BROPHY, REPARATIONS PRO & CON 41-44 (2006). *See generally* S. MEGAN BERTHOLD, HARRY H. L. KITANO, & MITCHELL T. MAKI, ACHIEVING THE IMPOSSIBLE DREAM: HOW JAPANESE AMERICANS OBTAINED REDRESS (1999); JUSTICE DELAYED: THE RECORD OF THE JAPANESE AMERICAN INTERNMENT CASES (Peter H. Irons ed., 1989); ERIC K. YAMAMOTO, INTERRACIAL JUSTICE: CONFLICT AND RECONCILIATION IN POST-CIVIL RIGHTS AMERICA (1999); ERIC K. YAMAMOTO ET AL., RACE, RIGHTS, AND REPARATION: LAW AND THE JAPANESE AMERICAN INTERNMENT 390-406 (2001).
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For discussions of Japanese internment during World War II, see generally SCOTT P. CORBETT, QUIET PASSAGES: THE EXCHANGE OF CIVILIANS BETWEEN THE UNITED STATES AND JAPAN DURING THE SECOND WORLD WAR (1987); TETSUDEN KASHIMA, JUDGMENT WITHOUT TRIAL: JAPANESE AMERICAN IMPRISONMENT DURING WORLD WAR II (2003); ERIC L. MULLER, AMERICAN INQUISITION: THE HUNT FOR JAPANESE AMERICAN DISLOYALTY IN WORLD WAR II (2007); KAREN L. RILEY, SCHOOLS BEHIND BARBED WIRE: THE UNTOLD STORY OF WARTIME INTERNMENT AND THE CHILDREN OF ARRESTED ENEMY ALIENS (2002); NATSU TAYLOR SAITO, FROM CHINESE EXCLUSION TO GUANTÁNAMO BAY: PLENARY POWER AND THE PREROGATIVE STATE (2007).

For discussion of reparations and Native Americans, see Nell Jessup Newton, *Indian Claims for Reparations, Compensation, and Restitution in the United States Legal System*, *in* WHEN SORRY ISN'T ENOUGH: THE CONTROVERSY OVER APOLOGIES AND REPARATIONS FOR HUMAN INJUSTICE 261-69 (Roy L. Brooks ed., 1999).

57. For discussions of objections to the modern black reparations movement, see, for example, Robert K. Fulliwinder, *The Case for Reparations*, and Stephen Kirshner, *The Case Against Reparations*, *both in* REPARATIONS FOR SLAVERY: A READER, 141-50, 151-62 (Ronald P. Salzberger & Mary C. Turck eds., 2004); JUAN WILLIAMS, ENOUGH: THE PHONY LEADERS, DEAD-END MOVEMENTS, AND CULTURE OF FAILURE THAT ARE UNDERMINING BLACK AMERICA—AND WHAT WE CAN DO ABOUT IT 67-85 (2006) (listing several objections to the black reparations movement, including that the movement is not serious in either a political or a cultural sense); Alfred L. Brophy, *Reconsidering Reparations*, 81 IND. L.J. 811, 814-18 (2006) (criticizing Eric A. Posner & Adrian Vermuele, *Reparations for Slavery and Other Historical Injustices*, 103 COLUM. L. REV. 689, 747 (2003) for using a too narrowly drawn definition of reparations). *See generally* Roy L. BROOKS, *supra* note 56, at 180-206 (listing objections to black reparations, including African involvement with the slave trade, the universal acceptance of slavery during the nineteenth century, that reparations unfairly penalize white Americans whose families immigrated after the Civil War, the absence of slaves to compensate because all the slaves are dead, that reparations is just an even more illegitimate form of affirmative action, that white soldiers paid reparations for the entire nation by their deaths in the Civil War, that slavery gave present day black Americans the opportunity to live in a prosperous country, that class based reparations are more universal and fair, that blacks need to contribute to racial reconciliation, that there is so much mixed blood in the United States that everyone would be entitled to reparations, and that the amount of reparations is impossible to calculate); ALFRED L. BROPHY, REPARATIONS PRO & CON 76 (2006) (listing objections to reparations in addition to those listed by Brooks, including: only a small minority of whites ever owned slaves, black reparations are based on race and not injury, blacks owe a greater debt to the United States than the country owes to blacks, reparations are just disguised separatism); Louis Kaplow & Steven Shavell, *Fairness Versus Welfare*, 114 HARV. L. REV. 967 (2001); Eric A. Posner & Adrian Vermeule, *Reparations for Slavery and Other Historical Injustices*, 103 COLUM. L. REV. 689, 747 (2003) (criticizing current writings on reparations as based on large-scale abstractions about justice and injustice).

There is no doubt that slavery betrayed American political ideals by denying millions of people the ability to obtain wealth and confer that wealth to future generations.[58] These restrictions on the ability to accumulate and pass on wealth did not end with slavery. Instead, a series of government programs reinforced the wealth disparities between those citizens that arrived by migration and those who arrived in chains.[59] In addition to the other government programs that helped

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For a history of some of the calls for black reparations over the last thirty years, see generally BORIS I. BITTKER, THE CASE FOR BLACK REPARATIONS (2003); RANDALL ROBINSON, THE DEBT: WHAT AMERICA OWES TO BLACKS (2000); John Torpey, *Legalism and Its Discontents: The Case of Reparations for Black Americans*, *in* THE LIMITS OF LAW 75-108 (Austin Sarat, Lawrence Douglas, & Martha Merrill Umphrey eds., 2005); *Bridging the Color Line: The Power of African-American Reparations to Redirect America's Future*, 115 HARV. L. REV. 1689, 1696-99 (2002); Rhonda V. Magee, *The Master's Tools, From the Bottom Up: Responses to African American Reparations Theory in Mainstream and Outsider Remedies Discourse*, 79 VA. L. REV. 863, 876-92 (1993); Vincene Verdun, *If the Shoe Fits, Wear It: An Analysis of Reparations to African Americans*, 67 TUL. L. REV. 597, 612-44 (1993); Robert Westley, *Many Billions Gone: Is it Time to Reconsider the Case for Black Reparations?*, 40 B.C. L. REV. 429 (1998).

58. For a discussion of the impact on modern law of the creation of people as property, see, for example, Patricia Williams, *Fetal Fictions: An Exploration of Property Archetypes in Racial and Gendered Contexts*, 42 FLA. L. REV. 81, 88 (1990). *See generally* Patricia J. Williams, *On Being the Object of Property*, 14 SIGNS J. WOMEN CULTURE & SOC'Y 5 (1988).

59. In the context of social security, see Marc Linder, *Farm Workers and the Fair Labor Standards Act: Racial Discrimination in the New Deal*, 65 TEX. L. REV. 1335, 1337-38 (1987) (noting that legislative history of the Social Security Act shows that blacks were deliberately excluded from benefits under the domestic and farm worker provisions, and that even blacks that were eligible for Social Security assistance received significantly lower benefits than whites). *See also* MEIZHU LUI ET AL., THE COLOR OF WEALTH: THE STORY BEHIND THE U.S. RACIAL WEALTH DIVIDE 73-130 (2006) (discussing the historical events that have led to black wealth inequality in America including slavery, blacks' inaccessibility to New Deal programs, and other state-sponsored discrimination in the areas of employment and housing); MARY POOLE, THE SEGREGATED ORIGINS OF SOCIAL SECURITY: AFRICAN AMERICANS AND THE WELFARE STATE 174-87 (2006).

For a discussion of the role of the federal government in denying black Americans access to wealth in housing, see, for example, MASSEY & DENTON, *supra* note 4. *See generally* William J. Collins & Robert A. Margo, *Racial Differences in Wealth: A Brief Historical Overview*, and Elizabeth Kirkland & Sheila R. Peters, *Location, Location, Location: Residential Segregation and Wealth Disparity*, *both in* RACE AND WEALTH DISPARITIES: A MULTIDISCIPLINARY DISCOURSE, 11-22; 23-40 (Beverly I. Moran ed., 2008).

For racist policies in education meant to perpetuate a black underclass, see, for example, Reavis Mitchell & Roland Mitchell, *History and Education: Mining the Gap: Historically Black Colleges as Centers of Excellence for Engaging Disparities in Race and Wealth*, *in* RACE AND WEALTH DISPARITIES IN THE UNITED STATES: A MULTIDISCIPLINARY DISCOURSE, 82-109 (Beverly I. Moran ed., 2008).

For general discussions of the wealth gap between blacks and whites in the United States, see, for example, DALTON CONLEY, BEING BLACK LIVING IN THE RED: RACE, WEALTH & SOCIAL POLICY IN AMERICA 55-81 (1999); Chuck Collins, Betsy Leondar-Wright, & Holly Sklar, SHIFTING FORTUNES: THE PERILS OF THE GROWING AMERICAN WEALTH GAP (1999); OLIVER & SHAPIRO, *supra* note 5, at 100-10; Francine D. Blau & John W. Graham, *Black White Differences in Wealth and Asset Composition*, 105 Q.J. ECON. 321, 337 (1990) (noting the large differences in wealth acquisition that cannot be explained by income, education, region, or marriage).

maintain the wealth gap that began with slavery, we can add our decision to tax income instead of wealth.

Our federal tax laws continue to exacerbate the wrong started in slavery in a number of ways:

- First, by confiscating a portion of the earnings that could otherwise go towards accumulating wealth, the federal tax laws make it harder for each generation to make up for past lost opportunities.
- Second, government programs that created wealth for whites added to the black/white wealth gap.[60]
- Third, by treating income from wealth much more favorably than earned income, the current income tax system has skewed the progressive rates.[61]

Thus, the federal income tax both shelters wealth for the already rich and attacks the means of obtaining wealth for those without. At least some of the objections to reparations and the flaws in our federal tax system are answered with a wealth tax.

A wealth tax eliminates the special benefits that the Internal Revenue Code now confers on property and its owners.[62] Thus, the great gap in wealth between blacks and whites (and males and females) no longer acts through the tax system as a way of protecting white wealth to the detriment of blacks or male wealth to the detriment of females. Instead, a wealth tax places the tax burden directly where Smith would recommend; that is, on the greatest beneficiary of government largesse: the property owner.

Next, any exemption for the lowest amounts of wealth within a wealth tax would excuse a large portion of the black population from taxation. As a result, the exemption would provide a period for blacks to build up their wealth base after centuries of restrictions on black wealth accumulation.[63]

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60. *See* sources cited *supra* notes 57 and 59.

61. Such rules as deferring the unrealized gains in wealth, often allowing those unrealized gains to completely escape tax through the date of death basis rules of I.R.C. § 1014, and taxing the income flowing from wealth at less than half the maximum rates for earned income, I.R.C. § 1(h), have all led Warren Buffet (reportedly the third richest man on earth) to ask why he pays a lower tax rate than his secretary. *See* Martin J. McMahon, Jr., *The Matthew Effect and Federal Taxation*, 45 B.C. L. Rev. 993 (2004), 105 Tax Notes 1383 (2004); Beverly I. Moran & William Whitford, *A Black Critique of the Internal Revenue Code*, 1996 Wis. L. Rev. 751-820 (1996) (discussing ways that the benefits for wealth create greater tax liabilities for black taxpayers); Tom Bawden, *Buffet Blasts System that Lets Him Pay Less than His Secretary*, Times of London, June 28, 2007, at 1.

62. *See, e.g.*, Moran & Whitford, *supra* note 61.

63. For general information about the growing gap between the rich and the poor in the United States based on income, see, for example, Congressional Budget Office, Histori-

Although government was a main force in stripping blacks of their wealth for the past four centuries, government was (and is) ironically also the cause of black wealth. For example, the Civil War Amendments and the Civil Rights Laws are real sources of black wealth.[64] Without those government actions, blacks would have less wealth than they do today, no matter how disproportionate that wealth is in contrast to their white counterparts. With a wealth tax, blacks pay the tax that is most closely associated with the benefits that government conferred on them while also receiving the lower tax bills that come from the recognition that lower wealth rates are a result of government action against them.

CONCLUSION

The last thirty years have seen increasing wealth and income inequality. At the same time, the last eight years of tax reform have eroded the federal income tax system's ability to stand against inequality through progressive rates. The one weapon left in the tax system's arsenal for promoting wealth redistribution is the Earned Income Tax Credit. Although it is now the largest cash assistance pro-

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CAL EFFECTIVE TAX RATES 1979 TO 2005, at 6-7 (2007), http://www.cbo.gov/ftpdocs/88xx/doc8885/12-11-HistoricalTaxRates.pdf (showing that incomes of the top one percent of Americans from 2003 to 2005 exceeded the total income of the poorest twenty percent of Americans); CHUCK COLLINS & FELICE YESKEL, ECONOMIC APARTHEID IN AMERICA 39-67 (2000); UNITED FOR A FAIR ECONOMY, BORN ON THIRD BASE: THE SOURCE OF WEALTH OF THE 1997 FORBES 400, *available at* http://www.faireconomy.org/press_room/1997/born_on_third_base_sources_of_wealth_of_1997_forbes_400.

For specific information on the larger wealth gap between blacks and whites in the United States, see generally CONLEY, *supra* note 59; OLIVER & SHAPIRO, *supra* note 5, at 100-10; Collins & Margo, *supra* note 59.

64. *See* U.S. CONST. amend. XIII, § 1 ("Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States . . . ."); U.S. CONST. amend. XIV, § 1 ("All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States . . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."); U.S. CONST. amend. XV, § 1 ("The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."); *see also* Civil Rights Act of 1866, ch. 31, 14 Stat. 27; Civil Rights Act of 1957, Pub. L. No. 85-315, 71 Stat. 634 (codified at 42 U.S.C. § 1971); Civil Rights Act of 1960, Pub. L. No. 86-449, 74 Stat. 86 (codified at 42 U.S.C. § 1971); Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified at 42 U.S.C. § 2000); Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 73 (codified at 42 U.S.C. § 3601); Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071; Voting Rights Act Amendments of 1970, Pub. L. No. 91-285, 84 Stat. 314 (codified at 42 U.S.C. § 1971); Voting Rights Act Amendments of 1982, Pub. L. No. 97-205, 96 Stat. 131 (codified at 42 U.S.C. § 1971); Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (codified at 42 U.S.C. §§ 1971, 1973 *et seq.*).

gram for the working poor in the United States, the Earned Income Tax Credit is not well suited to assisting people in need. Middle and upper income people find the tax system difficult to deal with, despite access to professional help. Yet, the United States asks people most at risk and with the least access to professional advice to navigate the tax system in order to obtain basic subsistence.

A more efficient way to use the tax system as a wealth redistribution device is to tax wealth directly. The largest inequity in the United States is wealth, not income or education. Wealth is also one of the most salient predictors of future success. Tellingly, wealth is also highly predicted by race and gender. The association of wealth and race is not accidental. Rather, it is the result of a long string of government policies, many of which were explicitly based on race. Even the present constitutional restrictions on the federal government's ability to tax wealth have their origin in the desire to protect slavery and the southern plantation class.

Given the increasing inequality of income and wealth within the United States; the present inability of the federal income tax system to effectively stand against increasing inequality; the importance of wealth to well being; and the past race history and present race effects of much of the United States increasing income and wealth inequality, a wealth tax is a more efficient means of wealth redistribution within the tax system. A wealth tax has several advantages over our present system including: (1) fewer tax returns, because such a large portion of the United States population has no wealth and would be exempt from filing; (2) a closer association of taxes paid with benefits received because such a large portion of the cost of government goes towards the protection of wealth; and (3) a wealth tax would target those with the greatest ability to pay, primarily because income is so tied to wealth.

Finally, because American history shows that wealth is so tied to race, a wealth tax would have an interesting reparations effect. Those who were once treated as property would receive the necessary breathing room to develop wealth and fulfill the American dream.