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Barry L. Isaacs

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Do We Want a Wealth Tax in America?

Barry L. Isaacs*

The author examines the arguments for and against a tax on individual's wealth, and concludes that the economic and administrative detriments of such a tax would outweigh the benefits.

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I. Introduction

The idea of instituting a wealth[1] tax in America, whereby an annual tax is imposed on the entire value of an individual's assets less his liabilities, has hitherto received little serious discussion in this country.[2] This neglect may be changing, however, particularly in the light of its adoption in such diverse countries as Switzerland, India, Sweden, Columbia, Ceylon, Pakistan, Japan,[3] Germany, Denmark, and Luxembourg.[4] In addition, the present governments of England and France have also expressed considerable interest in the idea, with the expectation that such a tax will be introduced quite soon.[5]

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* Member of the Illinois and Missouri Bars.

1. "Everyone has a notion, sufficiently correct for common purposes, of what is meant by wealth." J.S. Mill, Principles of Political Economy 1 (7th ed. 1871). "We really, and justly, look upon a person as possessing the advantage of wealth, not in proportion to the useful and agreeable things of which he is in the actual enjoyment, but to his command over the general fund of things useful and agreeable; the power he possesses of providing for any exigency, or obtaining any object of desire." *Id.* at 4.

2. W. Vickrey, Agenda for Progressive Taxation 366 (1947). *See also* R. Goode, The Individual Income Tax 11-57 (rev. ed. 1976).

3. Japan adopted a net wealth tax in 1950 but repealed it in 1953. Tanabe, *The Taxation of Net Wealth*, 14 International Monetary Fund Staff Papers 124.

4. *Id.*

5. *See* Wealth Tax, Cmnd. No. 5704 (1974); Select Committee on a Wealth Tax, Session 1974-75, H.C. Jour. 696, I to IV (Nov. 1975); Prest, *The Select Committee on a Wealth Tax,*

The 1976 primary race in New York for the Democratic nomination for the United States Senate saw, perhaps for the first time, a prominent American seeking high office making an explicit issue of the present distribution of wealth in America and advocating the introduction of a net worth or wealth tax. Ramsey Clark, former Attorney General of the United States during the Johnson administration, charged that the present tax structure facilitates the "economic royalism" of the very rich at the expense of the lower and middle income groups. He declared that "economic justice" required the leveling of America's wealthiest families through taxation so that the vast economic power of this group would be prevented from perpetuating itself from generation to generation.[6] Clark was narrowly defeated for the Democratic nomination for the Senate, and thus, for the moment at least, public discourse on this issue on a national level has subsided.

It is the purpose of this paper to evaluate the Clark proposal and to examine critically the various issues which would necessarily arise by the adoption of any such recommendation. It will be assumed for the purpose of this discussion that, given the unlikelihood that our present tax system would ever be replaced in toto by any other tax system (whether a wealth tax, expenditure tax,[7] accession tax,[8] or whatever) analysis should be limited to the possibility of adopting a wealth tax scheme *in addition to* our present estate, gift, and income tax structure.[9]

II. THE CLARK PROPOSAL

The rationale for a wealth tax is based on the judgment that our estate and gift tax laws have wholly failed in their purpose insofar as they have been unable to reduce or even check extraordinary concentrations of wealth. It is asserted that .5% of all Americans from 1953 to the present have consistently owned between 20% and 22% of all the nation's privately held assets,[10] and that even if

1976 BRIT. TAX. REV. 7; Barron's Nov. 1, 1976 at 4. The Barron's article indicates that some of the ardour for the wealth tax may now be waning in both countries. It is also noted that among the eight European countries that have a wealth tax, only Sweden and Denmark have a capital gains tax.

6. Ramsey Clark/Senate '76, Position Papers 1-2 (1976) (on file with the *University of Miami Law Review*).

7. *See* N. KALDOR, AN EXPENDITURE TAX *passim* (1955).

8. *See* MacDonald, *From Estate Duty to Inheritance Tax—Towards an Income Tax on Capital?*, BRIT. TAX REV. 306 (1973).

9. R. GOODE, *supra* note 2.

10. An examination of the statistical data will be undertaken later.

generation-skipping trusts were taxed,[11] the very largest estates would still not be broken up. Thus it is urged that a small annual tax (approximately three percent) be levied on that portion of "family"[12] wealth which is in excess of one million dollars. Since there are 194,000 millionaires in this country with a collective net worth of $516 billion, Clark estimates that such a 3% tax would yield the Treasury $11 billion annually, a sum which he says could be used to help reduce "crushing tax burdens" on the lower and middle income citizens as well as to stimulate the creation of small estates among a wider range of the citizenry. Provided that the new tax law is written in such a way as to prevent tax avoidance through trusts and other such devices, he asserts that it should all work out quite simply and satisfactorily. It is assumed throughout that a large redistribution of wealth in this country is both desirable and equitable.

Numerous important questions relating to the tax are left unanswered. These questions include whether the tax itself would be constitutional; whether the rate of tax would be fixed or progressive; whether corporations and unincorporated associations would be directly taxed; whether certain individuals, for example, farmers, would receive special treatment; whether any assets would be exempt from tax; how and when assets would be valued; whether the tax would be self-assessed like the income tax; and whether there would be any fixed maximum aggregate liability with respect to income and wealth taxes combined. Presumably these details would have been worked out had the election gone the other way.[13]

III. CONSTITUTIONALITY OF A WEALTH TAX

Whether or not it would be constitutional for Congress to impose a tax on an individual solely on the basis of his net worth depends upon the interpretation given to certain clauses in the United States Constitution from which all federal taxing authority is derived.

These clauses are:

> (1) 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 de-

11. Congress has recently amended the Internal Revenue Code to do precisely that. I.R.C. §§ 2601-03.

12. For purposes of wealth tax, it is not entirely clear whether husband, wife, and children are to be treated as one unit, or whether they are to be treated as separately assessable persons, notwithstanding the use of such terms as "millionaire families."

13. Ramsey Clark/Senate '76, *Position Papers* 1-2 (1976).

termined 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.[14]

(2) The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.[15]

(3) No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.[16]

(4) No Tax or Duty shall be laid on Articles exported from any State.[17]

(5) 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.[18]

Looking only at the language of the Constitution it would seem fair to conclude that, provided a tax is not deemed a "direct" one, it will be constitutionally valid.[19] Unfortunately, the concept of "direct tax" is fraught with uncertainty.[20] During the Constitutional Convention, the precise meaning of "direct taxation" was an issue which was left unresolved.[21] Alexander Hamilton argued for the United States in *Hylton v. United States*[22] that a tax on public carriages was not a direct tax within the meaning of the Constitution, and stated in his brief that no general principle could be found

14. U.S.CONST. art. I, § 2, cl. 3. Since the adoption of the fourteenth amendment, this article is now modified to include among those taxed within each state, every person excepting only Indians.

15. U.S. CONST. art. I, § 8, cl. 1.

16. U.S. CONST. art. I, § 9, cl. 4.

17. U.S. CONST. art. I, § 9, cl. 5.

18. U. S. CONST. amend. XVI.

19. In Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429, *on rehearing,* 158 U.S. 601 (1895), the Supreme Court held that a federal tax on income derived from real estate was a direct tax and therefore unconstitutional because it was not apportioned among the states according to population. The sixteenth amendment specifically nullified the holding in *Pollock* to the extent that "income" from any source could thenceforth be taxed without apportionment. Brushaber v. Union Pacific R.R. Co., 240 U.S. 1 (1916). Later cases made it clear, however, that the sixteenth amendment is to be taken as written, just as any other law authorizing the imposition of taxes might, but that it "is not to be extended beyond the meaning clearly indicated by the language used." Edwards v. Cuba R.R., 268 U.S. 628, 631 (1925). *See also* Bowers v. Kerbaugh-Empire Co., 271 U.S. 170, 174 (1926); Stanton v. Baltic Mining Co., 240 U.S. 103, 112 (1916).

20. For an excellent history of the origin, meaning and purpose of the "direct tax" clause, as well as the resulting confusion, see E. SELIGMAN, THE INCOME TAX 531-89 (2d ed. 1914).

21. 5 J. ELLIOT, DEBATES 451 (2d ed. 1836), *quoted in* E. SELIGMAN, *supra* note 20, at 568.

22. 3 U.S. (3 Dall.) 171 (1796).

which would distinguish "direct" taxes from any other ones. He insisted nevertheless that in order to give meaning to the Constitutional phrase, some arbitrary distinction was required. Thus, he concluded that certain taxes were presumed to be the only direct taxes: poll taxes on land, buildings, and general assessments, whether on their whole real or personal estate; all other taxes would of necessity be deemed indirect.[23] Hamilton's arguments prevailed insofar as the Court held that a tax on carriages was not a direct one, but the justices were not clear about what would constitute a direct tax. Justice Chase was inclined to think that only a poll tax and a tax on land would be direct.[24] Justice Patterson suggested that while the principal objects of the framers might have been the poll tax and the tax on land, they were not their only ones.[25] Justice Iredell felt that a direct tax had to be a tax on something inseparably attached to land.[26] All the justices agreed, however, that despite their uncertainty about how to classify any given tax, the Constitution did not contemplate any tax as a direct one except those which Congress could reasonably have subjected to the apportionment requirement. They agreed further that since a carriage tax could never be reasonably apportioned, Congress could never have intended apportionment, and the Constitution would not require it.[27]

In *Pollock v. Farmers' Loan & Trust Co.*,[28] decided some one hundred years after *Hylton*, the Court did not advert to the prior understanding about how to test whether or not the apportionment rule might apply; namely, that one looks to the thing to be taxed to decide if Congress could reasonably have wanted the tax apportioned. Rather, the court decided that an income tax on real estate

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23. E. SELIGMAN, *supra* note 20, at 572.

24. 3 U.S. (3 Dall.) at 175.

25. *Id.* at 177.

26. *Id.* at 183.

27. The difficulty of apportioning the carriage tax among the states according to population was illustrated by Justice Chase:

> Suppose two States, equal in census, to pay 80,000 dollars each, by a tax *on carriages*, of 8 dollars on every carriage; and in one State there are 100 carriages, and in the other 1,000. The owners of carriages in one State would pay *ten times* the tax of owners in the other. A. in one State would pay for his carriage 8 dollars, but B. in the other state, would pay for his carriage, 80 dollars.

Id. at 174. He concluded that: "If it is proposed to tax any *specific article* by the rule of *apportionment*, and it would evidently create great inequality and injustice, it is unreasonable to say, that the Constitution intended *such* tax should be laid by *that rule.*" *Id.* at 174. It should be clear from this example that given the enormous disparity between the numbers of citizens in each state and their per capita wealth respectively, a wealth tax similar to the Clark proposal or any wealth tax proposal for that matter would be extremely inequitable and, therefore, impossible to impose realistically.

28. 157 U.S. 429, 570-72, *on rehearing*, 158 U.S. 601 (1895).

required apportionment because it was, in reality, a tax on the land itself. The Court merely referred to the earlier *Hylton* case as having expressed no clear definition of what would constitute a direct tax except that it certainly included a tax on land, and that it did not provide any real guidance on the question before the Court.[29] Indeed, the *Pollock* Court was unequivocally certain as to the reason for the inclusion of the constitutional clauses themselves: the framers simply wanted to prevent the citizens from any state from being taxed by a majority of citizens from the other states by means of a general federal levy.[30] It was, as Chief Justice Fuller put it, "one of the great compromises of the Constitution, resting on the doctrine that the right of representation ought to be conceded to every community on which a tax is to be imposed, but crystallizing it in such forms as to allay jealousies in respect of the future balance of power . . . ."[31]

This historical interpretation has been subjected to scathing attack and is undoubtedly in error.[32] Far from having had anything to do with interstate rivalries, the direct tax clauses were inserted to induce the slave states to accept representation in the House of Representatives based on the three-fifths rule. With the disappearance of slavery and adoption of the fourteenth amendment, the reason for the clauses disappeared.[33]

The first *Pollock* case expressly declared that the definition of the term "direct taxes" was ultimately a question of constitutional interpretation and not one of economics.[34] It is true that the burden of proof would be on the taxpayer to show that a net worth tax was invalid under the Constitution unless apportioned, and that it did not fall within the scope of the sixteenth amendment (which lifted the apportionment requirement from those income taxes deemed direct).[35] It is also true that from the earliest days of the Republic,

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29. *Id.* at 570-72.

30. *Id.* at 582, 587; 158 U.S. at 620-21. Justice Fuller even declared, surprisingly, that "the distinction between direct and indirect taxation was well understood by the framers of the Constitution and those who adopted it." 157 U.S. at 573.

31. 157 U.S. at 563.

32. *See* E. SELIGMAN, *supra* note 20.

33. E. SELIGMAN, *supra* note 20, at 557-59. It has been suggested that the link between representative and direct taxation is clearly apparent in the Constitution, both in art. I, § 2, cl. 3, which sets the two together, and art. V, which prevented, until 1808, any alteration of either the direct tax clause or the clause forbidding any federal interference with state migration laws, both of which are set forth in art. I, § 9. B. BITKER & L. STONE, FEDERAL INCOME ESTATE AND GIFT TAXATION 6 n.5 (4th ed. 1972).

34. Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429, 558, (1895). *See also* Knowlton v. Moore, 178 U.S. 41, 82 (1900).

35. Simmons v. United States, 308 F.2d 160, 166 (4th Cir. 1962); 1 MERTENS, LAW OF FEDERAL INCOME TAXATION § 4.08 (1959).

a tax upon the exercise of only some of the rights adhering to ownership, such as upon the use of property[36] or its transfer, has been considered an indirect tax and, therefore, not subject to the apportionment requirement.[37] But there can be little doubt that a tax upon a privilege connected with property will be declared a property tax, and thereby, a direct tax, if the privilege is absolutely indispensable to any effective enjoyment of ownership.[38]

Thus, subsequent cases which have delved into the esoteric Constitutional language involved in *Pollock,* have construed it to mean that an unapportioned tax levied upon the ownership of real or personal property is unconstitutional.[39] Moreover, the influence of *Pollock* was decisive in allowing the Court in 1920, in *Eisner v. Macumber,*[40] to reach the conclusion that a stock dividend could not be taxed as income to the stockholder because the stock represented

36. In Stratton's Independence v. Howbert, 231 U.S. 399 (1913), the constitutionality of a federal statute which purported to treat the proceeds of ore mined by a corporation upon its own premises as "income" for the limited purpose of imposing an excise tax on the carrying on of business in a corporate capacity measured by the net annual income, was upheld as an indirect tax on the property, and therefore valid, without the need for apportionment according to population as would have been required by the Constitution if it had been found to be a direct tax. The Court gave short shrift to the argument that mining is, in reality, not a business, but a mere conversion of the capital represented by the real estate into capital represented by cash. While recognizing the peculiar nature of mining property, the Court stated that under no reasonable stretch of the imagination could it be asserted, either practically or theoretically, that a mining company was not "doing business" within the meaning of the statute, since it could not be seriously contended that the ores were not worth more at the surface than in the ground, plus the cost of the operation itself. *Id.* at 414-16. The Court declared that Congress, in exercising its prerogative to tax a legitimate subject of taxation, was not prevented from measuring the taxation by the total income although it was derived in part from property which considered by itself was not taxable. *Id.* at 416-17 (citing Flint v. Stone Tracy Co., 220 U.S. 107, 165 (1911)). As to petitioner's final contention that the depreciation of a mining property attributable to the extraction of the ore is co-extensive with the ore in place before it was mined, the Court said that the practical effect of such a notion would deny the reality of the yield resulting from the mining which exceeds the cost of property or the cost of developing it. Furthermore, the court stated:

> assuming the depletion of the mineral stock is an element to be considered in determining the reasonable depreciation that is to be treated as a loss in the ascertainment of the net income . . . , we deem it quite inadmissible to estimate such depletion as if it had been done by a trespasser, to whom all profit is denied.

Id. at 420-21. Since the mining company did not charge any amount for depreciation on its books and since the Court was limited by the method employed in the agreed statement of facts, it declined to decide what a reasonable allowance for depreciation of the mining property might have been. *Id.* at 422-23.

37. Simmons v. United States, 308 F.2d 160, 166 (4th Cir. 1962).

38. Note, 39 HARV. L. REV. 888, 889 (1926).

39. Eisner v. Macomber, 252 U.S. 189, 205 (1920); Flint v. Stone Tracy Co., 220 U.S. 107, 162 (1911); Knowlton v. Moore, 178 U.S. 41, 80-81 (1900); Simmons v. United States, 308 F.2d 160, 166 (4th Cir. 1962). *But see* New York *ex rel.* Cohen v. Graves, 300 U.S. 308, 315 (1937).

40. 252 U.S. 189 (1920); *see* I.R.C. § 305.

a capital asset which merely increased the value of the capital investment. Such increase in the value of the property could not be taxed without apportionment as required by article I, section 2, clause 3, and section 9, clause 4, without a sale or other disposition.[41] Endemic to any wealth tax is the notion that the property owner need not realize any material gain by his use of the property in order for the tax to be levied.

Even if the holding in the *Eisner* case should be or could be overturned,[42] the problem of taxing capital on the basis of ownership without apportionment does not disappear. While there has never been such a holding, there may be grounds to suppose that even if a wealth tax could overcome the direct tax and realization obstacles, it might still be "so repugnant to fundamental principles of equality and justice that the law should be held to be void, even although it transgresses no express limitation in the Constitution."[43] This would be the case particularly where a taxing statute was so capricious as to be tantamount to a confiscation.[44] It is not implausible that a wealth tax would be held eo ipso confiscatory since confiscation is one of the avowed purposes of such a tax.[45] On the whole, therefore, the case law and the commentators[46] are in general agreement that the constitutionality of a wealth tax would be doubtful.[47]

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41. In Helvering v. Independent Life Ins. Co., 292 U.S. 371, 378-80 (1934), the Court stated that any statute which required, without apportionment, the owner of a building to include in gross income the imputed rental value of the space therein, whether occupied by the owner or not, could not be sustained. Furthermore, neither use nor nonuse of the building constitute income within the meaning of the sixteenth amendment.

42. See Helvering v. Griffiths, 318 U.S. 371, 409 (1943) (Douglas, J., dissenting).

43. Knowlton v. Moore, 178 U.S. 41, 109 (1900). In upholding the federal inheritance tax of 1908, Justice White, speaking for the majority, expressed the view that:

> If a case should ever arise, where an arbitrary and confiscatory exaction is imposed bearing the guise of a progressive or any other form of tax, it will be time enough to consider whether the judicial power can afford a remedy by applying inherent and fundamental principles for the protection of the individual, even though there be no express authority in the Constitution to do so.

Id. at 109-10.

44. MERTENS, *supra* note 30, at § 4.09 *(citing* Heiner v. Donnan, 285 U.S. 312 (1932); Nichols v. Collidge, 27 U.S. 531 (1927)).

45. *See* Burnet v. Coronado Oil and Gas Co., 285 U.S. 393, 410 (1932) (Brandeis, J., dissenting).

46. R. GOODE, *supra* note 2, at 13; W. VICKERY, *supra* note 2, at 12.

47. Seligman, whose history of income taxation first appeared 65 years ago, concluded as follows:

> It would naturally occur to an unbiased observer that the simplest way out of the difficulty would be entirely to eliminate from the constitution the clause or clauses referring to direct taxes. . . . We must not forget that as long as the words "direct taxation" are retained in the Constitution, similar difficulties will arise in the future, even if the income tax matter is disposed of. Hamilton's prophecy that we shall be at a loss to find any disposition of the matter which can satisfac-

IV. Wealth and the Wealthy: Some Statistics

Economics, properly understood, is the study of the ways in which scarce resources can be allocated and the concomitant effects of employing any particular means of resource allocation. It does not offer an answer to the question: "What constitutes a just distribution of wealth?" To find that answer, we must necessarily enter the realm of value judgments and individual preferences. It is not necessary, however, to make such judgments if our inquiry is limited merely to the actual distribution of wealth; all we need then is accurate data.

As mentioned earlier, the Clark proposal suggested that between 20% and 22% of all privately held assets have been in the hands of .5% of the American people since at least 1953. Such figures are widely regarded as accurate[48] because they are calculated according to a technique employed by Robert J. Lampman called the estate multiplier method.[49] This method has been described as follows:

> [A]s currently used [it] rests on the assumption that death draws a random sample, stratified by age and sex, of the living population. If one has available age-sex-specific mortality rates, an estimate of the wealth of the living in a given period of time can be made by stepping-up the wealth of decedents in each age-sex class by the inverse of the mortality rates associated with that age-sex class, and summing the results across all age-sex classes.[50]

Lampman's estimates show that the greatest concentration of wealth held by the top .5% of all persons reached its peak in 1929 when such net worth represented 32.4% of the total. Thereafter it declined almost steadily until by 1949 the net worth figure had dropped to 19.3% of the total. According to calculations made by others for 1953, 1958, 1962, 1965, and 1969,[51] the figures show almost

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> torily determine the point has not only come true but will remain true in the future.

E. Seligman, *supra* note 20, at 594.

48. R. Goode, *supra* note 2, at 266; A. Tait, The Taxation of Personal Wealth 4-6 (1967). The Internal Revenue Service estimated the number of U.S. millionaires in 1969 at 121,000. IRS, *Statistics of Income*—1969 Personal Wealth 19 (1973), *cited in* R. Goode, *supra* note 2, at 268 n.41.

49. *See* R.J. Lampman, The Share of Top Wealth-Holders in National Wealth 1922-56 (1962). The technique is not new. For a history of its use see Smith & Calvert, *Estimating the Wealth of Top Wealth-Holders from Estate-Tax Returns*, American Statistical Association Proceedings of the Business and Economic Section 249-50 (1965).

50. Smith & Calvert, *supra* note 49, at 248.

51. Smith & Franklin, *The Concentration of Personal Wealth*, 64 Amer. Econ. Rev. 162, 166 (1974).

no change.[52] Thus according to Lampman, Clark is correct.

The problem with these figures is that all estimates based upon the estate multiplier method have inherent deficiencies. Such deficiencies, while known to those who do the calculating, are unknown or at least unmentioned by those who would make use of them. For example, in the United States the minimum gross estate size requiring filing a return is high;[53] therefore, the data is not at all suited to estimate total private wealth or its distribution along a complete Lorenz curve.[54] In addition, the sampling errors are the greatest where the estimates are based on small numbers of estates and in the youngest age groups.[55] The following provides a stunning illustration of how wealth estimates for younger persons can become completely exaggerated because relatively few of their number die at an early age. Using Internal Revenue printouts for 1958, one female under forty died with a recorded estate of $14,526,000, $13,609,000 of which was in annuities. Utilizing the high multiplier corresponding to females under forty, an estimate of annuities held by that grouping was valued at $19.8 *billion,* certainly an incorrect assessment.[56]

Other technical problems include guessing about the distribution of wealth among the lower ranges of wealth ownership, failure of a significant number of returns to include any age information, considerable sampling error involving very large estates as to types

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52. R. GOODE, *supra* note 2, at 266, table 10-4.

53. Only gross estates in excess of $60,000 are required to file an estate tax return. After December 31, 1976, only gross estates which exceed $120,000 must file, but by 1981 that figure will have increased to $175,000. Tax Reform Act of 1976, 26 U.S.C. §§ 2001(a)&(c), 2010, 6018(a).

54. Smith & Calvert, *supra* note 49, at 248. "A Lorenz curve is a curve formed by plotting the cumulative distribution of the amount of a variable against the cumulative frequency distribution of the individuals having the amount." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1337 (unabr. ed. 1971). The absurdity that can be reached by employing the estate multiplier method in just that way is illustrated in the undertaking by the Inland Reserve, Britain's Internal Revenue Service, for 1972-73. It was estimated that 51.3% and 67.2% of personal wealth was owned by the top 1% and 10% of the population, respectively. The problem with that estimate is that it assumed that over half the adult population owned no wealth at all. The report observed, nevertheless, that while a serious shortage of reliable information existed as to the distribution of wealth, the available data could provide a useful basis for study of wealth distribution in Britain, subject to its being interpreted with extreme care. Ilersic, *Incomes and Wealth in the U.K.*, 24 CAN. TAX J. 258, 261-62 (1976). Tait, recognizing at least some of the important deficiencies with the estate multiplier method, maintains that the broad validity of the distribution estimates are not discredited as to alter the distribution pattern. He even employs the statistics along a complete Lorenz curve. A. TAIT, *supra* note 48, at 5-6.

55. *U.K. Report of Commissioners of Inland Reserve for Year Ended 31 March 1964, 107th Report,* Feb. 1965, H.M.S.O. Cmd. 2573, at 165, *cited in* A. TAIT, *supra* note 48, at 4.

56. Smith and Franklin acknowlege as much but call it "a totally atypical fluke." Smith & Franklin, *supra* note 51, at 163 n.5.

of assets actually owned, totals which do not reflect average prices, property counted twice, failures to select suitable mortality rates, and the necessity to infer the year of death.[57] There are also technical problems which cause the figures to be underestimated.[58] In addition, the very definition of personal wealth is uncertain; apparently only marketable assets are included in the computations.[59]

It should be pointed out that the data compiled according to the estate multiplier method, with all its shortcomings in the aggregate may provide quite reliable information about the distribution of wealth in this or any other country. Given the possibility that it may convey spurious results, however, one ought to use caution before making drastic recommendations based on such data.

V. GENERAL PRINCIPLES: THE CONTROVERSY

A. *Arguments for a Wealth Tax*

Certain individuals believe that extraordinarily large concentrations of wealth in the hands of a relative handful of individuals is out of keeping with modern societal notions of proper wealth distribution.[60] Others consider the perpetual existence of huge private fortunes, with their concomitant plutocratic control of economic power, as a threat to the very continuation of democratic government.[61] Generally speaking, the principal justification adduced for any wealth tax—whether its primary objective is to break up or check the growth of large concentrations of wealth, or to serve as an alternative to higher progression of a currently progressive

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57. Smith & Calvert, *supra* note 49, at 248-49, 253; A. TAIT, *supra* note 48, at 5.

58. Smith & Calvert, *supra* note 49, at 248-49.

59. Smith & Franklin, *supra* note 51, at 166-67. In listing those things includible in their calculations, neither mention nor suggest that public and private employee pension rights were includible in the gross assets of the employees. Interestingly, a similar determination was made in the British study, namely, to exclude private occupational and state pension rights. Ilersic, *supra* note 54, at 262. Ilersic points out that when both occupational and state pension rights are included, the share of the bottom 80% of the population rises from 19.2% to 40.7%—a significant difference.

60. Ilersic, *Wealth Taxation in the U.K.*, 22 CAN. TAX J. 530-36 (1974).

61. Control over the [Japanese] economy is more nearly related to the ownership of wealth than to the receipt of income. Indeed, even very large incomes received as salary, or as royalties for a popular novel, or the like, do not represent the same danger to the preservation of democracy as would a comparable income derived from securities or other property. . . . [T]he accumulation of huge fortunes that threatens to concentrate the control of the economic system in the hands of a few wealthy individuals . . . is a danger of particular significance to Japan.

U.S. TAX MISSION TO JAPAN. *Report on Japanese Taxation by the Shoup Mission*, GENERAL HEADQUARTERS, SUPREME COMMANDER FOR THE ALLIED POWERS, 83 (1949), *cited in* Tanabe, *supra* note 3, at 129 n.14.

income tax structure[62]—is that wealth yields benefits above and beyond the income derived from it. It thus confers upon its possessor additional taxable capacity which equity requires to be taken into account.[63] The classic case used to illustrate the proposition is the contrast between the opulent rajah, whose wealth consists entirely of $10,000,000 worth of gold and jewels, and the beggar who possesses neither income nor property. Comparing the two on the basis of income alone, neither has any taxable capacity. But when we take into account the rajah's ability to convert a portion of his assets for current consumption, clearly he is better off than the beggar.[64] Even looking at individuals whose income-wealth comparison is far less severe, the fundamental situation remains the same. Thus, two persons with families of equal size, each with $10,000 annual income, are not equal in taxable capacity where one has over $1,000,000 in the bank while the other only $10,000. The former clearly has greater economic security as well as a greater ability to meet unfavorable contingencies. He can spend beyond his current income even to some point of extravagance, knowing that he has considerable sums on which he can rely. A certain feeling of esteem is also gained from the mere possession of such wealth. Thus the basic

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62. Practical considerations may impose limits on the degree of progression obtainable with income, spendings, and succession taxes alone. If still steeper progression is desired, a tax on net wealth may provide a possible method of topping off the tax structure. Such a net wealth tax would not be considered an important element in the revenue system, but rather a means of achieving a redistribution of wealth at the top of the scale more rapidly than is possible with the other taxes alone. . . . Such a net worth tax would be an acceptable substitute for the continuation of the graduation in the upper ranges of income, spendings, or succession taxes.

VICKERY, AGENDA FOR PROGRESSIVE TAXATION 362-63 (1947).

63. C. SANDFORD, TAXING PERSONAL WEALTH 24 (1971); Tanabe, *supra* note 3, at 130. Denis Healey, British Chancellor of the Exchequer, made the point as follows in the foreword to the Green Paper:

> One of the main purposes of personal direct taxation is to share out the burden of taxation fairly in accordance with the ability to pay. In this country we have come to think of income as the main yardstick of taxable capacity and have sought to promote a greater equality through a progressive income tax. However, income by itself is not an adequate measure of taxable capacity. The ownership of wealth, whether it produces income or not, adds to the economic resources of a taxpayer so that the person who has wealth as well as income of a given size necessarily has a greater taxable capacity than the one who has only income. Because our present tax system takes no account of this fact, although we have a highly progressive system of income tax, the bulk of privately owned wealth is still concentrated in relatively few hands. Once the additional taxable capacity represented by ownership of wealth is adequately brought into charge, excessive inequalities of wealth will in time be eroded, and it will be possible to reduce the high rates of tax on earned income.

Wealth Tax, *supra* note 5, at iii.

64. N. KALDOR, INDIAN TAX REFORM 20 (1956).

inadequacy of progressive income taxation as the near exclusive source of revenue is that it protects rather than redistributes wealth. It becomes a tax on *becoming* wealthy, providing those who are already wealthy with protection from the competition of those who would share the wealth with them.[65] In any event, it is generally conceded that such an argument for redistributing wealth rests primarily on moral rather than on economic grounds.[66]

Another argument in favor of a wealth tax is that it would contribute to a more productive use of capital insofar as the tax would be levied irrespective of yield.[67] This should promote the movement of capital out of non-income producing assets such as cash, precious metals, jewels, and uncultivated land, as well as low income producing ones such as certain bonds and securities. As a consequence, capital would be infused into higher yield investments. Thus, in reducing security and liquidity preferences, greater risk-taking and a more efficient use of productive resources is encouraged.[68]

A final argument advanced for net worth taxation is that it promotes a greater efficiency of income tax administration. This is done by providing information on capital values which can be used to cross-check the accuracy of income tax returns, thus discouraging concealment of the income from invested wealth because of the greater likelihood of detection.[69]

B. *Arguments Against a Wealth Tax*

While it is suggested by some that the general arguments against a wealth tax are reducible to concerns about practical difficulties in administering the tax and the possible adverse economic consequences, particularly on saving,[70] the arguments are in fact

65. M. FRIEDMAN, THERE'S NO SUCH THING AS A FREE LUNCH 22 (1975); Due, *Net Worth Taxation*, 15 PUBLIC FINANCE 315 (1960).

66. C. SANDFORD, *supra* note 63, at 24; A. TAIT, *supra* note 48, at 21.

67. C. SANDFORD, *supra* note 63, at 12.

68. Due, *supra* note 65, at 318. Professor Due also claims that a wealth tax,

> while not taxing increases in capital values, as such, does reach the higher values as they accrue. By contrast, the income tax, in practice, never reaches them until they are realized—and thus gives an incentive to avoid realization (the locked-in effect). Even when realized, the gains are taxed very inadequately, under the income tax laws of many countries.

Id. at 316. This argument may not be a very strong one insofar as a wealth tax is not an adequate substitute for a capital gains tax. C. SANDFORD, R. WILLIS & D. IRONSIDE, AN ANNUAL WEALTH TAX (1975) [hereinafter cited as SANDFORD].

69. Tanabe, *supra* note 3, at 132-33.

70. SANDFORD, *supra* note 68, at 12; Thurow, *Net Worth Taxes*, 25 NAT'L TAX J. 417, 421-23 (1972).

more numerous. In a subjective sense, it is impossible to be sure if individuals are equally wealthy since personal satisfaction cannot be measured directly.[71] Materialistic wealth has always been an extremely incomplete index of taxable capacity, since it does not consider the human resources of individuals who depend on earnings from personal services.[72] A wealth tax concerns itself only with the status quo and not how the situation arose in the first place, suggesting that if all wealth were taxed as it was transferred into new ownership, the claim that wealth represented additional taxable capacity would no longer stand.[73] Indeed, this argument points in the direction of an integrated estate, gift, and income tax system, rather than the introduction of a wealth tax as a check on concentrations of wealth.[74]

There is no definition of what constitutes an unacceptable wealth distribution. Wherever there is a relatively high exemption limiting the application of a wealth tax,[75] it is indicative only of the point at which wealth accumulation may be considered unacceptable. But to tax wealth only when it reaches a certain level proves that it is not aimed at ownership of wealth per se, but only at excessive inequalities of wealth. This would tend to weaken the equity argument of additional taxable capacity unless it too was intended to apply only to excessive concentrations of wealth.[76]

Redistribution of wealth can take two forms: it can flow from one individual to other individuals or from an individual to the state. The static nature of a wealth tax demonstrates that it can achieve only the latter since it operates only when the unacceptable level of wealth has been reached. Thus, it merely serves to confiscate accumulations above that level.[77] For there to be a significant redistribution to the state, a confiscating marginal rate approaching one

71. Macdonald, *The Wealth Tax—The Wrong Tool for the Job*, 1975 BRIT. TAX REV. 287.

72. R. GOODE, *supra* note 2, at 21; Tanabe, *supra* note 3, at 146-47. Regarding the suggestion that human capital be included in the base of a wealth tax, Goode denies the validity of any such consideration, arguing that the capital value of personal earnings is not wealth. R. GOODE, *supra* note 2, at 21. The reasons are that the right to receive all such income cannot be bought and sold, long-term labor contracts are usually barred, and short-term contracts cannot be freely transferred.

73. Macdonald, *supra* note 71, at 286.

74. R. GOODE, *supra* note 2, at 31. *See also* M. FRIEDMAN, CAPITALISM AND FREEDOM 168-76 (1962).

75. Clark's exemption limit, as noted *infra*, would exclude the first one million from wealth tax assessment. The comparable British figure has been put at £100,000, though that figure is assumed for illustrative purposes. Wealth Tax, *supra* note 5, at 3. See Tanabe, *supra* note 3, at 137-38, for a comparison of the exemption limits in the fourteen countries in his study.

76. Macdonald, *supra* note 71, at 283.

77. *Id.* at 284.

hundred percent is required, a rate which clearly would be unacceptable.[78] The argument that great concentrations of wealth bring power to those who possess them might suggest that the power be controlled, not necessarily that the wealth itself should be confiscated or broken up.[79]

It has been said that those who decry inequalities in wealth distribution often advance such criticism only to hide their basic envy and political discontent.[80] Discrimination of this sort against a wealthy minority of a population without any criteria for limiting the extent of such discrimination is incompatible with the governing principles of democracy and the rule of law. A majority of persons should not be able to decide the appropriate limit on another citizen's wealth. The consumption of the wealthy, however extravagant or wasteful, is always conspicuous, but even conspicuous waste must be countenanced as the price of freedom. A world in which a majority could prevent all that it did not like would probably be a stagnant and a declining world.[81]

Those who seek to justify the wealth tax on equitable grounds fail to consider the significance of the fact that income from different kinds of property of the same value can still differ greatly. Taxes levied on the basis of property values discriminate against those whose income yield on investments is negligible. The lead time for enterprises to become productive can be lengthy, causing an individual who holds shares in such an investment to pay a tax based on the market value of his shares, notwithstanding that no dividends may be payable for years. He is thus forced to consume his capital to meet his tax liability.[82]

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78. *Id.* at 283-84. *See also* Stern, *The Needle's Eye of a Socialist Heaven*, BOW GROUP MEMORANDUM (1974); Thurow, *supra* note 70, at 420-22.

79. Macdonald, *supra* note 71, at 287.

80. Ilersic, *supra* note 60, at 530.

81. *See* F. HAYEK, THE CONSTITUTION OF LIBERTY 124-30, 306-23 (1960).

82. Tanabe, *supra* note 3, at 145. Lester Thurow is quite sanguine about the idea of forcing some individuals to sell assets in order to pay for the wealth tax. He believes wealthy individuals will figure out how to maintain the necessary degree of liquidity in their portfolios. In any event, generous spreading provisions should eliminate or at least reduce this particular problem. But he concludes:

> There is no doubt that some individuals would be forced to sell assets. This is precisely what a wealth tax is all about. Wealth taxes are designed to control the distribution of wealth. They are not designed to allow every individual to keep that degree of wealth that he would like.

Thurow, *supra* note 70, at 421. It was pointed out that the taxing of wealth holders with little money income (recall Kaldor's rajah) was one of the reasons leading to the abolition of the net wealth tax in Japan. It seems that forests represented one of the principal sources of wealth in 1950. With little or no current income the owners were being forced to sell the forest land to pay the tax. But the conservation of forests was considered one of the chief instruments for improving the war-ravaged economy. Tanabe, *supra* note 3, at 144-46.

VI. Administrative Problems Attendant to a Wealth Tax

A. *Introduction*

A wealth tax bears great similarity to that form of general property taxation which has existed at one time or another in every nation, including our own, since ancient times.[83] A property tax differs from a wealth tax insofar as property taxes are generally imposed on the gross value of the property, primarily real property, while a wealth tax takes into account the outstanding liabilities of the taxpayer so as to arrive at a net figure. Thus, the wealth tax is levied on the particular person involved, but the property tax is levied on the property itself.[84]

Having examined the general property tax in its historical, theoretical and practical aspects, Seligman concluded:

> The general property tax as actually administered is beyond all doubt one of the worst taxes known in the civilized world. Because of its attempt to tax intangible as well as tangible things, it sins against the cardinal rules of uniformity, of equality and of universality of taxation. It puts a premium on dishonesty and debauches the public conscience; it reduces deception to a system, and makes a science of knavery; it presses hardest on those least able to pay it; it imposes double taxation on one man and grants entire immunity to the next. In short, the general property tax is so flagrantly inequitable, that its retention can be explained only through ignorance or inertia. It is the cause of such crying injustice that its alteration or its abolition must become the battle cry of every statesman and reformer.[85]

Most experts still criticise property taxation, particularly with regard to its assessment.[86] The principal difficulty inherent in property tax administration lies in the absence of a market transaction: without a sale, assessments must be based on fallible human judgment.[87] Property taxation is undoubtedly made easier whenever the number of appraisal tasks are kept to a minimum. Even then, despite notable improvements in property tax administration in some areas, discrimination and inequity remain.[88] Insofar as the wealth tax would be administered on the federal level without the luxury of a narrow property tax base, assessment difficulties are almost certain to become more acute.

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83. *See* E. Seligman, Essays in Taxation 32-37 (10th ed. 1931).

84. Tanabe, *supra* note 3, at 125.

85. E. Seligman, *supra* note 83, at 62.

86. G. Benson, S. Benson, H. McClelland & P. Thomson, The American Property Tax: Its History, Administration and Economic Impact 84-86 (1965) [hereinafter cited as Benson].

87. *Id.* at 87.

88. *Id.* at 87-100.

B. *Threshold Level and Assessment Costs*

The administratively desirable threshold liability level for incidence of a wealth tax depends to a great extent on the purpose of such a tax.[89] Where, as under the Clark proposal, the purpose is both to reduce undue concentrations of wealth and to provide tax relief to lower and middle income groups, a high threshold such as the proposed one million dollar figure is justified.[90] A high threshold has the added benefit of reducing the number of individuals liable to the tax. This latter point is no small matter. To have audited net worth returns from only the top .5% of the population in 1970 would have required over 1,000,000 such audits, at a time when the number of millionaires was estimated at 148,000.[91] Assuming that the net value

89. Tanabe, *supra* note 3, at 137-38.

90. It has been pointed out that the American experience with the general property tax, a limited form of wealth taxation, has revealed great difficulties in the discovery and valuation of intangibles and household property. Even while conceding that the federal government might be more adept than local assessors and that the linkup between wealth and income tax levies might be potentially advantageous, the idea of a wealth tax with low exemptions and broad coverage seems unrealistic. R. GOODE, *supra* note 2, at 31. Mindful of similar difficulties, the British are contemplating a £100,000 exemption from their wealth tax. Wealth Tax, *supra* note 5, at 3.

91. R. GOODE, *supra* note 2, at 268 (citing INTERNAL REVENUE SERVICE, STATISTICS OF INCOME—1969, PERSONAL WEALTH 54 (1973)). The number of individuals with a gross estate in excess of $1,000,000 is not strictly comparable to those whose net worth exceeds $1,000,000. The latter figure for 1969 would be only $121,000. *Id.* at 268 n.41.

TABLE 1

1969

	Value Held by Richest			Share Held by Richest	
Asset	100.0%	0.5% billions	1.0%	0.5% per cent	1.0%
Real estate	$1,188.8	$117.0	$170.7	9.8	14.4
Corporate stock	832.5	366.3	423.3	44.0	50.8
Bonds	198.9	63.7	71.5	32.0	35.9
Cash	495.0	48.1	71.2	9.7	14.4
Debt instruments	85.3	21.9	29.6	25.7	34.7
Life insurance (CSV)	127.2	8.4	13.8	6.6	10.8
Miscellaneous and trusts	705.8	107.0	133.2	15.2	18.9
Trusts	70.4	60.0	64.5	85.2	91.6
Miscellaneous	633.7	47.0	68.7	7.4	10.8
Total assets	$3,561.4	$672.4	$848.8	18.9	23.8
Liabilities	$ 557.5	$ 75.8	$100.5	13.6	18.0
Net worth	$3,003.0	$596.7	$748.1	19.9	24.9
		millions			
Number of persons		1.01	2.03		

Source: Smith & Franklin, *The Concentration of Personal Wealth*, 64 AMER. ECON. REV. 166 (1974).

of all assets held by the aforementioned grouping has not significantly increased,[92] the elimination of some 850,000 individuals from any filing requirement will have almost no effect on the overall yield, but it would greatly facilitate the reasonable assessment of the remaining returns where most of the total revenues would be derived. Nevertheless, wealth tax assessments on only the estimated 175,000 millionaires would greatly increase the Internal Revenue Service workload,[93] as well as increase the costs related to producing those audits.[94]

Consistent with American practice regarding other tax assessments, self-assessment undoubtedly would be followed. This is probably necessary to prevent the collection of such a tax from becoming an impossibly massive undertaking.[95] Additionally, since a high exemption threshold is envisaged, wealth tax liability could be handled on the basis of a single return for both income and

92. There are no available statistics.

93. The figures which roughly approximate the magnitude and scope of such a filing requirement are those relating to the filing of estate tax returns. In 1973, 174,899 estate tax returns, representing gross estates totaling thirty-eight billion dollars were filed. Assuming net worth valuations for the 175,000 individuals who would be required to pay a wealth tax are correct, they would represent some fifteen times the value of current annual estate tax return valuations.

TABLE 2

ESTATE TAX RETURNS

	Revenue Agents			Tax Auditors		
	FY 1975	FY 1974	FY 1973	FY 1975	FY 1974	FY 1973
Total Examinations	9,995	8,876	6,857	3,118	2,594	1,980
Total Direct Examination Time (Days)	14,195	12,367	11,309	2,344	2,265	1,974
Total Dollar Recommendations (Mils)	$64.4	$65.9	$77.7	$2.7	$2.9	$2.3
Average Hours Per Return	10.4	10.9	11.4	5.7	6.6	6.5
Average Dollar Recommendations Per Return	$6,465	$7,424	$11,337	$ 860	$1,118	$1,163
No Change Percentage	30%	28%	28%	34%	31%	36%

Source: I.R.S. ANNUAL REPORT 116 (1975).

94. R. GOODE, *supra* note 2, at 33 n.34 (citing INTERNAL REVENUE SERVICE, STATISTICS OF INCOME—1970, INDIVIDUAL INCOME TAX RETURNS 91 (1974)).

95. *See* Ashton, *Administrative Costs of the Proposed Wealth Tax—A Preliminary Estimate*, 1975 BRIT. TAX REV. 98. The British Green Paper also proposes a system of self-assessment. Wealth Tax, *supra* note 5, at 61-65.

wealth taxes. The assessment itself would require a detailed and rather complicated form, however, the filling out of which would constitute a hidden cost of the tax.[96]

In addition to the administrative costs to the government and to the taxpayer, any change in tax incidence which will increase the burden on some while reducing it on others, bears close scrutiny because it may bring enough resentment from the former to cause them to act contrary to the design of such change. It may be argued that a tax policy deliberately directed at the elimination of large private fortunes will induce a significant number of hitherto law abiding taxpayers to evade such levies or to act even more unpredictably.[97] The underlying premise is that while the threat of detection is a factor inducing tax compliance, attitudes toward the tax system—particularly concerning the equity or fairness of the system—may be even more important.[98] A significant number of wealthy individuals may even decide to emigrate with their wealth to countries more hospitable to the acquisition and accumulation of large fortunes.[99]

It has been suggested that the use of wealth tax values for the purpose of other taxes offers important savings in administrative and compliance costs through useful cross-checks.[100] This alone would never justify the imposition of such a tax, however, particu-

96. SANDFORD, *supra* note 68, at 252. It was estimated that the cost of taxpayer compliance would be considerable when compared with the revenue generated by a wealth tax. Wheatcroft, *The Administrative Problems of a Wealth Tax*, 1963 BRIT. TAX REV. 410, 413-14. It was reported that there was "no serious concern" among the five continental European countries which have a wealth tax. It was acknowledged, however, that in the Netherlands, which most closely resembled a self-assessment, self-valuation system, the costs of compliance were high. SANDFORD, *supra* note 68, at 251.

97. Wheatcroft, *supra* note 96, at 421. In the first *Pollock* case, Justice Field, in his concurring opinion, stated:

> Whenever a distinction is made in the burdens a law imposes or in the benefits it confers on any citizens by reason of their birth, or wealth, or religion, it is class legislation, and leads inevitably to oppression and abuses, and to general unrest and disturbance in society. . . . It is the same in essential character as that of the English income statute of 1691, which taxed Protestants at a certain rate, Catholics, as a class, at double the rate of Protestants, and Jews at another and separate rate.

Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429, 596 (1895) (Field, J., concurring).

98. Spicer, *New Approaches to the Problem of Tax Evasion*, 1975 BRIT. TAX REV. 152, 153. The author's sampling of Ohio households indicated a positive relationship between tax evasion and the perceived inequity of the tax system. Thus he concluded that whenever unfavorable attitudes toward the tax system exist, efforts should be made to isolate that part of the tax system deemed peculiarly obnoxious and consideration should be given as to whether the perceived benefits from that portion outweigh the potential costs to the system due to noncompliance. *Id.* at 153-54.

99. Wheatcroft, *supra* note 97, at 421.

100. SANDFORD, *supra* note 68, at 249-50.

larly because a wealth tax would add complexity to our already complex tax laws. Significant revisions would be necessary to accommodate taxing the wealth held in trusts[101] and closely held corporations.[102] In addition, married couples affected by the tax would likely seek to reduce their personal wealth through gift-splitting. Therefore, consideration would have to be given to treating the family as the taxable unit, rather than the individual.[103] The place of children in the tax unit is even more difficult.[104] It may be difficult to determine who owns the capital upon which the tax will be assessed.[105] Finally, the administrative difficulties which make taxation of unrealized capital gains infeasible apply equally to a wealth tax.[106] For these reasons, improving the existing income and transfer taxes may be more prudent than introducing a wealth tax.[107]

C. *Discovery of Assets*

In theory at least, it seems altogether sensible that if one were to institute a wealth tax at all, its scope should be as comprehensive as possible. In other words, the taxpayer should be taxed on the total value of all his assets, wherever situated;[108] however, the

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101. *See* A. TAIT, *supra* note 48, at 163-65; SANDFORD, *supra* note 68, at 189-97. *See also* Ray, *Wealth Tax—An Analysis of the Green Paper,* 1974 NEW L.J. 876.

102. SANDFORD, *supra* note 68, at 200-16.

103. The federal estate tax recognizes individual rather than family ownership of property, although the 50% marital deduction represents a partial recognition of family ownership. I.R.C. §§ 2001, 2056.

104. A. TAIT, *supra* note 48, at 161.

105. *Id.* at 155-57.

106. *See* R. GOODE, *supra* note 2, at 28 & n.7 (citing H. SIMONS, FEDERAL TAX REFORM 48, 74 (1950)).

107. *Id.* at 31.

108. SANDFORD, *supra* note 68, at 115. *See also* Tanabe, *supra* note 3, at 136. A possible modification of the cadastral method which might improve its effectiveness would be the monitoring of annual valuation changes in the official or base values by employing a modified version of a statistical model used in multiple linear regression analysis. In simplified terms, the mathematical solution to the problem can be stated thus: our base year enables us to assign an actually known value to an asset in that year. We know that the ultimate value of the asset in any subsequent year depends upon many factors, or variables which are related to it, but which do not interact with each other in their effects upon that ultimate value. What we do not know is the combined effect of any number of independent variables on a dependent one. This can be expressed by the formula $Y^1 = a + b_1X_1 + b_2X_2 + \ldots + b_nX_n$ where Y^1 represents the anticipated value of the asset, *a* represents the value of the asset in the base year, *X* represents the values of the independent variables, and *b* represents the constant weight assigned to each independent variable. The method by which the constants and the variables are calculated is well beyond the scope of this paper. Let it suffice, however, that the aforementioned equation will best approximate the value of any asset by finding the value which deviated the least from among all possible values for that asset, given the number of independent variables employed that would effect it. Remaining would be a line which cannot be represented in geometrical form because the coordinate points require as many dimensions as there are independent variables; a computer, therefore, would be needed to find the line.

broader the coverage the more difficult it would be to prevent evasion by under-reporting. Assets like cash, gold, art, jewelry and some intangibles which are generally in unregistered form are extremely difficult to discover.[109] This problem could be alleviated by exempting from the wealth tax all household and personal effects, jewelry, works of art, and collections.[110] Of course, this would encourage avoidance of the tax. It would also destroy the rationale that the tax encouraged investment. Even without such an exemption, a wealth tax necessarily discriminates against real property owners whose net wealth is easily identified in favor of those whose wealth is unable to be traced.[111]

It has been suggested that this problem is not insurmountable, provided that the government has access to all insurance records of individuals who would normally insure their valuables.[112] Notwithstanding the administrative nightmare caused by monitoring insurance policies, tax avoiders would respond to this policing method by simply not buying insurance. It is likely that no effective wealth tax could be administered without the adoption of a far more circumscribed system of property registration and property transfer, prospects which many would find unsettling.[113]

Wherever the line is ultimately located, some values will obviously be above the line, others below it. This means, in practical terms, that certain taxpayers will find their assets undervalued while the assets of others will be overvalued. It can therefore be anticipated that unless this method of valuation is immune from attack (an extremely doubtful assumption, given that this very method of valuation, in its self-conscious integrity, must admit that it arbitrarily assigns no importance whatsoever to the actual value of any *particular* asset), those adversely affected will challenge its employment. This will mean a revenue loss from those underassessed and reduced revenue from those overassessed, reflected in the cost of the latter's obtaining due process.

Another difficulty with this approach, aside from its costs, is that the validity of our findings depend critically on the validity of our assumptions. For each asset, variables must be assigned. The more time and money put into the project, the more reliable the final result will be. There will always be some factor which may influence the value of any asset which cannot be accounted for. Now, of course, the validity of our assumptions could be verified directly by obtaining information from everyone in the population; if that were done, however, there would be no need for employing a statistical method of approximation in the first place. For a more thorough discussion of the utility of multiple regression analysis, see J. HEY, STATISTICS IN ECONOMICS 299-347 (1974); D. PALUMBO, STATISTICS IN POLITICAL AND BEHAVIORAL SCIENCE 208-16 (1969).

109. SANDFORD, *supra* note 68, at 275; Due, *supra* note 65, at 320. It is Professor Due's contention, however, that "[w]ith a nationally administered tax, [underreporting] would not be as serious as it might appear, since cross-checking between income and wealth tax returns would reveal many omissions." Due, *supra* note 65, at 320. This assumes that there will be something with which to cross-check; individuals who desire to conceal income from property will not be peculiarly motivated to report the property itself.

110. *See*, SANDFORD, *supra* note 68, app. C, at 308.

111. Tanabe, *supra* note 3, at 144. In 1969, as Table 1 shows (*supra* note 91), about 10% of all wealth held by the top .5% was held in real estate.

112. Thurow, *supra* note 70, at 423.

113. *See generally* Tanabe, *supra* note 3, at 151.

D. *Valuation of Assets*

As previously mentioned, any tax which attempts to take into account all accrued but unrealized changes in the value of assets and liabilities might not be desirable even if it were feasible. The argument against its feasibility has been stated as follows:

> To take account of unrealized gains and losses would require the detailed listing of taxpayers' assets and liabilities and annual valuations. The lists would be long, and for many items market quotations would not be readily available. Considerable difficulty is encountered in valuing certain securities and many business properties for purposes of the estate tax, even though these valuations need to be made only once for each of a relatively small number of taxpayers. Most experts agree that annual appraisals would not be feasible under the income tax. Even if valuations were made somewhat less frequently, the accrual treatment seems impractical despite some offsetting gains in the form of simplification or elimination of certain complex features of the present income tax.[114]

An annual wealth tax would compound the aforementioned difficulties insofar as it contemplates an assessed valuation for *all* assets on an annual basis, not merely those upon which gain has accrued. This means ascertaining representative market values for all forms of property. It has been pointed out that the task is not difficult wherever there is a large and continuous market in the rights or commodities involved, as there are in most stocks and bonds. Where, however, there are few or no market transactions the valuation problem is particularly acute.[115] Furthermore, nonliquid assets such as partnerships, farms, buildings, real estate, oil wells and other mineral rights, and closely held business enterprises also present valuation problems.[116]

"Fair market value" has been defined as "that amount which one ready and willing but not compelled to buy would pay to another ready and willing but not compelled to sell the property."[117] The application of this principle for wealth tax purposes is desirable because any higher value might be regarded as unfair while any

114. R. GOODE, *supra* note 2, at 28. For a contrary view, see Thurow, *supra* note 70, at 421. Thurow declares that the administrative difficulties of wealth tax are illusory and that tax lawyers and tax economists are to blame for having scared away the public.

115. A. TAIT, *supra* note 48, at 157. Tait points out that even where a large market exists for something, valuation can be troublesome whenever the asset being valued is large. Any attempt to sell such asset could severely depress the market price for the marginal unit and this might require a sale over a prolonged period of time.

116. Tanabe, *supra* note 3, at 152.

117. Treas. Reg. § 301.6325-1(b) (1976).

lower value might create a "locked-in" effect. Even where the fair market value of property is easily ascertained, there may be a big difference between the price at which a taxpayer can purchase an asset and that at which he can sell the very same asset.[118] Thus a value for wealth tax purposes, if it is set at the upper range of what the asset would cost, could be unfair.

A number of solutions have been proposed to handle valuation problems. Lord Kaldor, in his report on India, proposed that property be valued initially when the tax is introduced (forming the cost at which it is entered into the accounting books) and subsequently when the property is transferred to a different owner otherwise than by sale.[119] The approach has been criticized because the wealth tax would lose much of its appeal as an added measure of taxable capacity:

> Failure to take account of unrealized appreciation or decreases in the value of assets would be a more serious defect in a wealth tax than in an income tax. Any particular gain or loss affects wealth in all subsequent years but affects income of only one year; consequently later actual or constructive realization will do more to make up for the earlier omission of accrued gains and losses under the income tax than under the wealth tax. A wealth tax on book value, like a tax on realized income, imposes an additional liability when appreciated assets are sold and hence may deter economically desirable switches of investment.[120]

The method proposed by Professor Sandford is for the establishment of cadastral or official values to be placed on all assets without readily ascertainable market values, to be revised approximately every five years, thus minimizing administrative costs and avoiding uncertainty and delay.[121] The major difficulty with this, however, is that such values, notwithstanding inflation, will generally lag behind current ones, and the taxes paid thereupon will be based on inadequate values.[122] Another possible solution is self-valuation of assets by the owners, subject to government challenge within a statutorily limited amount of time. This approach is most consistent with our general treatment of tax matters and might be

118. SANDFORD, *supra* note 68, at 160. An example offered is of a consumers' organization which bought a diamond for £2595, but was able to get only two offers for it one week later —one for £550 and another for £1000. *Id.*

119. N. KALDOR, *supra* note 64, at 25.

120. R. GOODE, *supra* note 2, at 31.

121. SANDFORD, *supra* note 68, at 161-67.

122. R. GOODE, *supra* note 2, at 32.

adopted despite the implicit uncertainties. Without an effective enforcing device, however, this approach also has its defects.[123]

Whichever method is chosen, there is a real danger that certain wealth holders will be forced to sell their assets to pay the tax. Clearly, it would be undesirable to compel farmers, whose agricultural land has been rising steadily in price, to liquidate in whole or in part their principal asset in order to satisfy the tax.[124] This problem would be felt similarly in a business where a sole proprietor places a substantial portion of his assets as well as accumulated profits into the venture, only to be confronted with the wealth tax assessment.[125]

Assuming that a satisfactorily workable valuation for all assets could be found, any wealth tax proposal would have to solve the problem caused by the selection of an assessment date.[126] An arbitrary assessment date necessarily distorts the actual net worth of each individual assessed, benefitting some, injuring others. Some averaging scheme might be possible to rectify this, but again not without considerable compliance and administrative costs.[127] Bank balances would be an example of property so affected.[128] Therefore, although the idea of a limited annual wealth tax may be administratively feasible, it will nevertheless cause hardships which may outweigh the benefits.[129]

VII. Economic Aspects of a Wealth Tax

The practical effects of a wealth tax on economic behavior are unpredictable because they generally encompass but a small part of the economy as a whole and because economic behavior is influenced by many more considerations than a particular form of taxation.[130] Numerous economic benefits are claimed for the net wealth tax relative to its effects upon investment and economic development generally.[131] An important asserted benefit is that since the tax will not impinge upon the incremental gain from investment or expansion but rather upon the total accumulation of an individual, there should be a disincentive to avoid earning income; that is, past

123. *See generally id.* at 153.
124. *See generally* Sandford, *supra* note 68, at 217-31.
125. *Id.* at 199-216.
126. Due, *supra* note 65, at 320.
127. R. Goode, *supra* note 2, at 32.
128. Due, *supra* note 65, at 320.
129. R. Goode, *supra* note 2, at 31-32.
130. Tanabe, *supra* note 3, at 147; A. Tait, *supra* note 48, at 183-90.
131. Due, *supra* note 65, at 317-19.

and future effort will be taxed regardless of yield, so the assets might as well be directed towards meeting the tax payments. In addition, as mentioned earlier, there may be a tendency to push investments out of cash, gold, and low income securities and into higher-yield investments, presumably contributing to economic growth and efficiency.[132] No economic benefits, however, are seriously asserted for a wealth tax when the combination of wealth and income tax levies approaches or exceeds 100% of net income.[133] The Clark proposal contemplates a tax on 3% of net worth, which would be the equivalent of a 60% tax on income derived from net wealth on which the yield is 5%.[134] Depending on an individual's tax bracket, the yield on his assets, and the source of that yield, the prospect of certain individuals being unable to meet reasonable consumption requirements from disposable net income becomes very real. This would not be as serious if the tax were designed to reduce higher marginal rates of taxation on both income and investments. Advocates of such an additive wealth tax, however, are usually contemptuous of any tax provision aimed at reducing high marginal rates and would rather see them made more effective.[135] There is scant empirical evidence to support the proposition that any particular combined rate of income and wealth tax will have any adverse effect on work effort, incentives to produce, and savings. It is expected, nevertheless, that rates above a 70% level will seriously diminish the foregoing endeavors.[136] A study in India was made to analyze the impact of a similar wealth tax which, when combined with the income tax, took between 90% and 120% of net income on savings and investment. The study was done by comparing aggregate savings and investments seven years before and seven years after the tax was introduced.[137] The conclusion was that capital formation in the na-

132. *Id.* at 317. This argument is questionable since it assumes that efficiency is coextensive with high yield and that resources are infinitely mobile. There are circumstances where a low yield demonstrates neither the inefficiency of the producer nor the desirability that the particular resources be taken away in the national interest. New ventures often have good future prospects without having attained profitability, for example, farm yields can suddenly plummet notwithstanding a rise in the value of agricultural land. SANDFORD, *supra* note 68, at 12.

133. SANDFORD, *supra* note 68, at 279-83.

134. *See* Tanabe, *supra* note 3, at 140.

135. *See* SANDFORD, *supra* note 68, at 277. Thus the Clark proposal calls for, *inter alia*, the abandonment of the maximum tax on earned income in I.R.C. § 1348. It is instructive to note that no European country which has a wealth tax employs it to reduce wealth inequalities. There is, therefore, no directly comparable experience anywhere. SANDFORD, *supra* note 68, at 278. *See also id.* at app. 3, 302-19, for a tabular summary of some European wealth taxes.

136. SANDFORD, *supra* note 68, at 274-78.

137. M. GOPAL, WEALTH TAX IN INDIA (1970). When the wealth tax was first introduced

tional aggregate had not been affected in any appreciable degree nor had it substantially reduced private savings in the community.[138] It was conceded, however, that the wealth tax had had a considerable effect on capital formation—there existed unaccounted for money, income and wealth which had escaped assessment. Tax evasion in India was found to be widespread and growing rapidly, concentrated mainly in the higher income groups comprising the wealth tax assessees. The data collected about the amounts that had been concealed tended to suggest that overall tax evasion had had a considerable effect on reducing otherwise productive utilizations of capital. The efficiency of the wealth tax in this instance was severely criticized, even to the point of encouraging its abolition.[139]

Whether or not there are investment incentives caused by the introduction of a wealth tax, even when it is substituted for a higher rate of income tax of equal yield, is a highly complex and debatable question.[140] "A wealth tax would allow losses to be offset against taxable wealth up to the full extent of the investor's net worth."[141] Such a set-off would seem to encourage investment enterprise. On the other hand, the ultimate effect of a capital levy depends so heavily on such matters as the use to which the levy is put, the unexpectedness of the levy, the likelihood of repetition, and inflation, that prediction is difficult.[142] It is safe to say only that any reward resulting from risk-taking will increase wealth tax liability only in the event that it is added to net worth.[143]

The effect of a wealth tax on savings appears to be much easier to assess because the tax falls directly on all accumulations as such.[144] The opportunity to add to future consumption through saving would seem to be restricted among the affected taxpayers,[145]

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in 1957-58, the rates of wealth tax ranged from .5% on wealth of 2 Rs. lakh (1 lakh is 100,000 rupees) up to 1.5% on wealth in excess of 22 Rs. lakh. But since that time it has increased five times while the exemption limit has been halved. SANDFORD, *supra* note 68, at 262-63.

138. M. GOPAL, *supra* note 137, at 86.

139. *Id.* at 78-87. One possible criticism of attempting to analyze possible or probable occurrences in the United States upon the adoption of a tax policy similar to that in India, is that attitudes about tax evasion are perhaps different. "While in the Western countries evasion is regarded as a social crime by society, in India it is regarded as a feat of intelligence and cleverness evoking admiration." *Id.* at 78 n.3 (quoting M. TYAGI, REPORT OF THE WORKING GROUP ON CENTRAL DIRECT TAX ADMINISTRATION 204 (1968)).

140. *Compare* R. GOODE, *supra* note 2, at 45-50 *with* A. TAIT, *supra* note 48, at 183-90.

141. R. GOODE, *supra* note 2, at 48.

142. A. TAIT, *supra* note 48, at 188. It has been suggested that since a net worth tax applies only to investment in nonhuman capital, individuals would have a significant incentive to invest more of their capital in education. Due, *supra* note 65, at 319.

143. Tanabe, *supra* note 3, at 147; *see* R. GOODE, *supra* note 2, at 46.

144. R. GOODE, *supra* note 2, at 40.

145. *Id.*

with no likelihood that the incidence of the tax can be shifted.[146] On the other hand, it has been found that large wealth tends to be associated with individuals whose marginal propensity to save is very high and who would be likely to save any increment in income or assets if they were able to do so.[147] Additionally, the psychological effect of a wealth tax spread over the entire amount rather than an income tax concentrated on the fruits of additional savings may not prove negative after all.[148] Whether or not a potential decline in aggregate saving would condemn a wealth tax depends to a great extent on government savings and prevailing employment conditions.[149] Thus, this question too remains unanswered.

VIII. Conclusion

Individuals who advocate a redistribution of wealth in America often are so irresistibly drawn to any proposal which has as its purpose the economic leveling of the wealthiest group of individuals, that they are either unmindful or unconcerned about the inherent problems which will ensue. The wealth tax proposal of Ramsey Clark is no different. It assumes a perfectly designed tax as well as an effectively administered one. It foresees nothing but perfect acquiescence by those affected by the wealth tax. It supposes that the tax can be instituted with modest costs. It dismisses any notion that such a tax could have economically adverse consequences. None of these notions is beyond serious challenge.

Any attempt to levy a federal tax on property solely by reason of its ownership is probably unconstitutional, unless it is done in such a way as to emasculate its very purpose. The suggestion that the constitutional impediment no longer has any validity because of the erroneous historical judgments upon which it is based should be given little weight since subsequent Supreme Court decisions have consistently applied the earlier understanding.

The judgments often made about the supposed distribution of net worth in America are based upon a statistical model, the usefulness of which depends upon its ability to deduce wealth strata from estate tax returns. This may or may not be an accurate way to ascertain such information and caution should therefore be applied in using it.

The principal justification for a wealth tax is that individuals with enormous economic resources are not being taxed according to

146. *But see* Due, *supra* note 65, at 313.
147. Morgan, *The Motivation of Savers,* Savings in the Modern Economy 214 (1953).
148. Tanabe, *supra* note 3, at 149.
149. A. Tait, *supra* note 48, at 193.

their ability to pay because income alone should not be the only index of taxable capacity. In addition, wealth tax advocates point to the likelihood of increased economic productivity caused by penalizing inefficient uses of capital. There are also benefits to be gained in income tax administration by providing cross-checks between income and the property which produced it.

Opponents of a wealth tax argue that those who favor it are really insincere. If they really meant what they said, they would be proposing rates which would make it absolutely impossible for the tax to be met out of income; however, to do so would reveal much of the envy and class animosity which actually motivate them. Any degree of redistribution contemplated by a wealth tax could be accomplished much more easily and less costly with some modifications of our present estate, gift, and income tax structure. There is no justification for making our tax laws any more complex than they are already. A wealth tax would pose a serious problem for individuals whose yield on their assets is low, whether it is the result of hoarding or the result of the particular enterprises in which they are involved. It is inconsistent with democratic principles to discriminate without any limitation against a wealthy minority. A majority of citizens should not be able to legislate the amount of wealth allowed to be held by others.

Even assuming some self-assessment mechanism for a wealth tax, the administrative costs to the Internal Revenue Service and the compliance costs to the taxpayer would be significant. There is a strong possibility that the imposition of such a tax would invite tax evasion. In any event, it will be difficult to discover certain assets, thus reducing the tax base and discriminating against those with more visible assets. The considerations which make it difficult to value accrued but unrealized gains will be made even more difficult with a wealth tax which attempts to value all assets, regardless of gain or loss. The fair market value of any particular asset will not be as easy to assess as wealth tax proponents might assume, particularly when the assets involved are not readily bought and sold. The timing of the assessment of the wealth tax is so crucial to the amount of cumulative liability that without a reasonable solution the expected yield from the tax may be greatly distorted.

The effect of a wealth tax on savings, investments, and risk-taking is difficult to gauge, unpredictable, and dependent upon too many imponderables. It is unlikely, however, that a wealth tax such as the Clark proposal which causes the combined cumulative liability from income and wealth taxes to exceed 70% of net income can fail to affect adversely these economic concerns.